As filed with the Securities and Exchange Commission on October 3, 2024.
Registration No. 333-279382

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

Amendment No. 3
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

HERITAGE DISTILLING HOLDING COMPANY, INC.

(Exact name of registrant as specified in its charter)

Delaware	2085	83-4558219
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

9668 Bujacich Road
Gig Harbor, Washington 98332
(253) 509-0008
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Justin Stiefel
Chief Executive Officer
9668 Bujacich Road
Gig Harbor, Washington 98332
(253) 509-0008
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to the public:
As soon as practicable after this Registration Statement is declared effective.

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 of 1933, as amended, 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, 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(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. ☐

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	Smaller reporting company ☒
	Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

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 or until the Registration Statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This registration statement contains two prospectuses, as set forth below.

- IPO Prospectus. A prospectus to be used for the initial public offering (the "IPO Prospectus") of up to 1,500,000[(1)] shares of common stock, with such shares to be sold in a firm commitment underwritten offering through the underwriters named on the cover page of the IPO Prospectus.
- Resale Prospectus. A prospectus to be used for the resale by the selling stockholders (the "Selling Stockholders") set forth in the section of the resale prospectus (the "Resale Prospectus") entitled "Selling Stockholders" of an aggregate of 313,187 shares of common stock.
- The Resale Prospectus is substantively identical to the IPO Prospectus, except for the following principal points:
  - they contain different outside and inside front covers and back covers;
  - they contain different "Offering" sections in the "Prospectus Summary" section;
  - they contain different "Use of Proceeds" sections;
  - the "Capitalization" and "Dilution" sections of the IPO Prospectus are deleted from the Resale Prospectus;
  - a "Selling Stockholders" section is included in the Resale Prospectus;
  - the "Underwriting" section from the IPO Prospectus is deleted from the Resale Prospectus and a "Plan of Distribution" is inserted in its place in the Resale Prospectus; and
  - the "Legal Matters" section in the Resale Prospectus deletes the reference to counsel for the underwriters.

We have included in this registration statement a set of alternate pages after the back cover page of the IPO Prospectus (the "Alternate Pages") to reflect the foregoing differences in the Resale Prospectus as compared to the IPO Prospectus. The IPO Prospectus will exclude the Alternate Pages and will be used for our initial public offering of common stock. The Resale Prospectus will be substantively identical to the IPO Prospectus except for the addition or substitution of the Alternate Pages and such other changes as may be necessary to clarify references to the initial public offering or the resale offering and will be used for the resale offering by the Selling Stockholders named therein.

The sales of our common stock pursuant to the IPO Prospectus and the Resale Prospectus may result in two offerings taking place concurrently, which could affect the price and liquidity of, and demand for, our common stock. This risk and other risks are included in "Risk Factors" beginning on page 14 of the IPO Prospectus.

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(1) Assumes the underwriters' option to purchase up to 225,000 additional shares of common stock to cover over-allotments, if any, has not been exercised.

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The information in this preliminary 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 preliminary 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.

SUBJECT TO COMPLETION, DATEDOCTOBER 3, 2024

PRELIMINARY PROSPECTUS

1,500,000 Shares

HERITAGE DISTILLING Co

Heritage Distilling Holding Company, Inc.

Common Stock

This is an initial public offering of shares of common stock of Heritage Distilling Holding Company, Inc. We are offering 1,500,000 shares of our common stock.

Prior to this offering, there has been no public market for our common stock. It is currently estimated that the initial public offering price per share of our common stock will be between $4.50 and $5.50. We have applied to list our common stock on The Nasdaq Capital Markets ("Nasdaq") under the symbol "CASK." If our common stock is not approved for listing on Nasdaq, we will not consummate this offering.

In a concurrent private placement, we are also offering to certain of our existing security holders common warrants to purchase an aggregate of up to 500,000 shares of our common stock (the "Common Warrants") at an exercise price of $0.01 per share. The Common Warrants will be sold in such private placement for a purchase price per Common Warrant equal to the price per share at which the common stock is sold in this offering less $0.01. The Common Warrants will be immediately exercisable and will expire five years from the date of issuance. Subject to limited exceptions, a holder of Common Warrants will not have the right to exercise any portion of its Common Warrants if the holder, together with its affiliates, would beneficially own in excess of 4.99% (or, at the election of the holder, 9.99%) of the number of shares of common stock outstanding immediately after giving effect to such exercise. We are offering the Common Warrants to enable certain existing securityholders of our company that are expected to participate in this offering to maintain their percentage ownership interest in our company without violating the purchaser concentration rules of Nasdaq applicable to initial public offerings of common stock. The Common Warrants and the shares of common stock issuable upon exercise of such warrants are not being registered under the Securities Act of 1933, as amended (the "Securities Act"), are not being offered pursuant to this prospectus and are being offered pursuant to an exemption from the registration requirements of the Securities Act provided in Section 4(a)(2) of the Securities Act and Rule 506(b) promulgated thereunder.

In addition to the firm commitment underwritten offering of our common stock by us pursuant to this prospectus, simultaneously with this offering, certain of our securities holders are offering 313,187 shares of our common stock pursuant to a prospectus to be used in connection with the potential distribution of such shares by such security holders (the "Resale Prospectus"). We are registering the shares to be offered under the Resale Prospectus to enable us to meet the minimum public float requirements of Nasdaq required for the proposed listing of our common stock on Nasdaq. No shares will be sold under the Resale Prospectus if our common stock is not approved for listing on Nasdaq.

We are an "emerging growth company" as that term is defined in the Jumpstart Our Business Startups Act of 2012 and, as such, have elected to take advantage of certain reduced public company reporting requirements.

Investing in our common stock involves a high degree of risk. Please read "Risk Factors" beginning on page 14 of this prospectus.

Neither the 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.

	Per Share	Total
Public offering price	$	$
Underwriting discounts and commissions[(1)]	$	$
Proceeds to us, before expenses	$	$

(1) Does not include warrants that are issuable by us to the representative of the underwriters to purchase a number of shares of common stock equal to 5% of the shares of common stock sold in this offering at a price per share equal to 100% of the initial public offering price, or certain out-of-pocket expenses of the underwriters that are reimbursable by us. The registration statement of which this prospectus forms a part also registers the issuance of the shares of common stock issuable upon exercise of the representative's warrants. See "Underwriting" beginning on page 134 of this prospectus for a description of the compensation payable to the underwriters.

We have granted the representative of the underwriters an option, exercisable within 30 days from the date of this prospectus, to purchase from us up to an additional 225,000 shares of common stock at the public offering price of $ per share, less the underwriting discounts and commissions, to cover over-allotments, if any. If the representative of the underwriters exercises the option in full, the total underwriting discounts and commissions payable will be $, and the total proceeds to us, before expenses, will be $.

Delivery of the shares of common stock is expected to be made on or about , 2024.

Newbridge Securities Corporation

The date of this prospectus is , 2024

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HERITAGE®
DISTILLING Co

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ABOUT THIS PROSPECTUS

The registration statement of which this prospectus forms a part, which we have filed with the Securities and Exchange Commission (the "SEC"), includes exhibits that provide more detail on the matters discussed in this prospectus.

You should read this prospectus and the related exhibits filed with the SEC together with the additional information described under the heading "Where You Can Find More Information."

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. This prospectus is an offer to sell only the securities offered hereby but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date. Our business, financial condition, results of operations, and prospects may have changed since that date.

We are not offering to sell or seeking offers to purchase these securities in any jurisdiction where the offer or sale is not permitted. We have not done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the jurisdiction of the United States who come into possession of this prospectus are required to inform themselves about and to observe any restrictions relating to this offering and the distribution of this prospectus applicable to that jurisdiction.

Unless otherwise noted, the share and per share information in this prospectus reflects a reverse stock split of the outstanding common stock at a 0.57-for-one ratio that occurred on May 14, 2024.

Unless the context otherwise requires, the terms the "Company," "Heritage," "we," "us," and "our" refer to Heritage Distilling Holding Company, Inc. and our subsidiaries. We have registered our name, our logo, and a number of our trademarks, including Stiefel's Select®, Tribal Beverage Network®, TBN®, Cocoa Bomb®, Cask Club®, Elk Rider®, My Batch®, and Thinking Tree Spirits®, in the United States. Other service marks, trademarks, and trade names referred to in this prospectus are the property of their respective owners. Except as set forth above and solely for convenience, the trademarks and trade names in this prospectus are referred to without the ®, ©, and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate is based on information from independent industry and research organizations, other third-party sources (including industry publications, surveys and forecasts), and management estimates. Management estimates are derived from publicly available information released by independent industry analysts and third-party sources, as well as data from our internal research, and are based on assumptions made by us upon reviewing such data and our knowledge of such industry and markets, which we believe to be reasonable. Although we believe the data from these third-party sources is reliable, we have not independently verified any third-party information. In addition, projections, assumptions and estimates of the future performance of the industry in which we operate, and our future performance are necessarily subject to uncertainty and risk due to a variety of factors, including those described in "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements." These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus and does not contain all of the information that you should consider before investing in our securities. This summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere in this prospectus. You should read this entire prospectus carefully, including the information set forth in the sections titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes thereto contained in this prospectus, before making an investment decision. Unless the context requires otherwise, references in this prospectus to "we," "us," "our," "our company," or similar terminology refer to Heritage Distilling Holding Company, Inc. and its subsidiaries.

Our Company

Overview

We are a craft distillery producing, marketing, and selling a diverse line of award-winning craft spirits, including whiskeys, vodkas, gins, rums, and "ready-to-drink" canned cocktails. We recognize that taste and innovation are key criteria for consumer choices in spirits and innovate new products for trial in our company-owned distilleries and tasting rooms. We have developed differentiated products that are responsive to consumer desires for rewarding and novel taste experiences.

We compete in the craft spirits segment, which is the most rapidly-growing segment of the overall $288 billion spirits market. According to the American Craft Spirits Association, a craft distillery is defined generally as a distillery that produces fewer than 750,000 gallons annually and holds an ownership interest of 51% or more of a distilled spirits plant that is licensed by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury. According to the Craft Spirits Global Market Report 2023 of Grand View Research, the craft spirits segment had revenues of more than $21.4 billion in 2023, an increase of 20.9% from 2021, and is estimated to grow at a compound annual growth rate ("CAGR") of 29.4% between 2024 and 2030. We believe we are well positioned to grow in excess of the growth rate of the market by increasing our marketing efforts, increasing the size of our sales teams, and broadening our wholesale distribution.

Out of the more than 2,600 craft producers in North America, we have been recognized with more awards for our products from the American Distilling Institute, the leading independent spirits association in the U.S., than any other North American craft distiller for each of the last ten years, plus numerous other Best of Class, Double Gold, and Gold medals from multiple national and international spirits competitions. We are one of the largest craft spirits producers on the West Coast based on revenues and are developing a national reach in the U.S. through traditional sales channels (wholesale, on-premises, and e-commerce) and our unique and recently-developed Tribal Beverage Network ("TBN") sales channel. Based upon our revenues and our continued track record of winning industry awards in an increasingly competitive environment, we believe we are one of the leading craft spirits producers in the United States.

We sell our products through wholesale distribution, directly to consumers through our five owned and operated distilleries and tasting rooms located in Washington and Oregon, and by shipping directly to consumers on-line where legal. Currently, we sell products primarily in the Pacific Northwest with limited distribution in other states throughout the U.S. In addition, in collaboration with Native American tribes, we have recently developed a new sales, manufacturing, and distribution channel on tribal lands that we expect will increase and broaden the recognition of our brand as that network expands nationally.

Our growth strategy is based on three primary areas. First, we are focused on growing our direct-to-consumer ("DtC") sales by shipping to legal purchasers to their homes where allowed. We currently use a three-tier compliant, third-party platform to conduct these sales and deliveries in 46 states in which approximately 96.8% of the U.S. population reside. This allows us to develop a relationship directly with the consumer through higher-margin sales while collecting valuable data about our best performing products. We can then use this data to target the consumer based on location, age, key demographics, and product types. With the data collected, we can also retarget and resell to these customers thereby generating more revenue.

We are also focused on growing our wholesale volume and revenue, which is supported by our DtC strategy. Our distributors resell our products through local, regional and key national accounts both on-premises and off-premises. By building brand recognition for key products in selected regions or states through DtC sales, we

can better support the wholesale launch, marketing, and product pull-through of those products in partnership with wholesalers in those targeted states. While DtC sales result in singular high-margin sales, growing volume through wholesale distribution is the most efficient way to drive large-scale growth across retail chains.

Third, we are focused on expanded growth of our collaboration with Native American tribes through the TBN model we created. In concert with tribal partners, this sales channel includes Heritage-branded micro production hubs, Heritage-branded stores and tasting rooms, and the sale of our products and new tribally-branded products. In the typical TBN collaboration, the tribes will own these businesses and we will receive a royalty on gross sales through licenses we grant to use our brands, products, recipes, programs, IP, new product development, on-going compliance support, and the other support we provide. The TBN is expected to form a network of regional production hubs that will support product trials and sampling and will generate sales of finished, intermediate, and bulk spirits depending on location, equipment, and market. Importantly, because these premium spirits will be produced locally, we believe the TBN will promote the positioning of our brands as local and regional. We expect that, as the brands grow and the TBN footprint expands, there will be an important synergy with increased adoption and growth through our wholesale channels in the regions where the TBN locations are driving trial and awareness. Similarly, as demand for our products grows through our wholesale channels, there should be a positive effect on the demand for our products through the tribal distilleries.

Competitive Strengths

We attribute our success to the following competitive strengths:

- ***Premium Aged Whiskeys.*** We have been testing, distilling, and aging premium whiskeys since our inception over ten years ago. Unlike many new brands entering the premium craft whiskey and bourbon category that rely on sourced liquid for their blends, we chose to produce and age all of our own product in-house for our recently-launched super premium whisky line under our *Stiefel's Select* label. This approach has allowed us to leverage our experience and our innovative distillation methods while taking advantage of the Pacific Northwest's unique climate to produce aged whiskeys that are of the highest quality and authentic to our name. We introduced our first single barrel selections to the public in late 2022 under the *Stiefel's Select* brand. The initial single barrel selections, which included a four-grain bourbon, a high rye bourbon, a wheated bourbon, a peated bourbon, a 100% rye whiskey, and a single malt whiskey, sold out quickly, and we have begun releasing more single barrel selections to the market. We expect to continue to release these whiskeys as either "single barrel picks" or "small batch blends" depending on the recipe and target market. We have been awarded a Double Gold Medal, Gold Medal, and Best of Category for our first releases of *Stiefel's Select* by some of the most prestigious spirits competitions in the world, including at the San Francisco International Spirits Competition and the Fred Minnick Ascot Awards.
- ***Purposefully Aligned Products.*** We recently launched a new line of spirits called *Special Operations Salute* under our *Salute Series* of whiskeys in which we created a super-premium whiskey to generate high-margin revenue and raise donations for carefully-vetted non-profit groups that support active duty, retired and injured special operations heroes, veterans, first responders, and their families. Each bottle of our initial release comes in a specially-designed bespoke whiskey tube with a commissioned reproduction lithograph from Michael Solovey, a well-known military artist. Each bottle currently sells for $125, of which $10 is donated to our non-profit partners. Our current partners include 21 national and local charities, such as the Green Beret Foundation, the Marine Raider Foundation, the Honor Foundation, the Special Forces Foundation, the Army Special Operations Association, the Special Operations Memorial Foundation, and the Foundation for Exceptional Warriors, among others. Since the launch of the *Army SOF* version in late October 2023, we have sold more than 8,000 bottles directly to consumers in our tasting rooms and online, representing more than $1,000,000 in retail revenue. In May 2024, we launched a three-bottle set commemorating the 80th anniversary of D Day, which also features artwork by Michael Solovey depicting the combined air, land, and sea efforts of June 6, 1944, along the coast of Normandy, France. In the first month after our pre-sale launch on May 7, 2024, we sold more than 1,250 bottles of this series, with a portion of the proceeds going to the Green Beret Foundation and other partnering charities. These bottles retail for $95 each, plus taxes and shipping (if shipped DtC). We plan to launch additional versions honoring other branches of the military, first responders, and military special occasions. This new product follows on the successful seven years of learnings producing and selling 1st Special Forces Group whiskey, from which we supported Special Forces charities at Joint Base Lewis McChord. We view our new *Special Operations Salute* line to be a significant new development for our growth.

- ***Compelling Product Offerings — Flavored Craft Spirits and Ready-to-Drink ("RTD") Segments.*** We offer a diverse line of traditional and flavored craft spirits and innovative and refreshing canned RTD alcoholic beverages with appealing taste profiles, such as *Cocoa Bomb Chocolate Whiskey, Florescence Grapefruit & Pomelo Vodka, Peachy Bourbon Canned Cocktail*, and *Blood Orange Vodkarita*. This is evidenced by the more than 300 awards we have received over the past ten years. We were the original creator of Flavored Bourbon, a flavored bourbon that won "World's Best Flavored Whiskey" by *Whiskey Magazine* in London two years in a row. Through our recent acquisition of Thinking Tree Spirits Inc. ("Thinking Tree Spirits"), we added several of its super premium spirits to our portfolio of flavored craft spirits, including its *Butterfly Pea Lavendar Vodka,* which was named "Vodka of the Year" for 2023 by Wine and Spirits Magazine.
- ***Differentiated Distribution Strategy.*** We believe we have a strong distribution approach that increases the availability of our brands and product offerings to our target consumers.
  - *Direct to Consumer ("DtC").*
    - We have five Heritage-branded tasting rooms and one Thinking Tree Spirits tasting room in the Pacific Northwest that allow us to sell directly to consumers and that we use to sample new products and ideas.
    - We also sell through e-commerce and engage in other subscription-based program activities to target customers to generate recurring revenue and customer loyalty. In March 2023, we contracted with a third-party e-commerce platform to sell online to consumers in 34 states via its three-tier compliant system. In March 2024, we ended that relationship and began migrating to LiquidRails, a third-party, three-tier compliant platform that relies on delivery to consumers via licensed retailers. This platform expands our DtC outreach to 45 states and the District of Columbia and eliminates our shipping costs to the consumer, which will help us to both increase our net margin and expand our sales opportunities. Prior to March 2023, we shipped directly to consumers in only nine states. We also recently added our offerings from our *Special Operations Salute* line onto the Seelbach's DtC platform, a third-party, three-tier compliant DtC platform that is well known to whiskey enthusiasts around the country, which expanded our reach to a new whiskey-focused DtC audience. This DtC sales method allows us to collect high-margin sales and consumer data to drive future sales and to support the growth of our traditional spirits through the three-tier wholesale system.
    - In our *Cask Club*® program, consumers join as members and work with our distilling team to develop their own 10-liter barrel batches, which are custom aged, flavored, bottled, proofed, and labeled in our retail locations. Over the last ten years, we have demonstrated that this program creates repeat customer foot traffic in our tasting rooms and encourages members to bring friends and family to the locations to sample products, enjoy cocktails, and purchase products of their own. It also serves as an innovation laboratory that provides us with an opportunity to develop and test new products and concepts with the goal of bringing the strongest performers to the market.
    - In our *Spirits Club*®, a DtC subscription service, we offer members the opportunity to purchase three or four selections of spirits per year, which are automatically shipped to their homes or are available for pick up in our tasting rooms.
  - *Wholesale.* We have distribution agreements with the two largest spirits distributors in the U.S., Southern Glazers Wine and Spirits ("SGWS") and Republic National Distributing Company ("RNDC"), each of which has a dedicated sales force in our core states of Washington, Oregon, and Alaska focused on our portfolios. The revenues of these two distributors in 2023 collectively represented more than 50% of the market share of the total wine and spirits wholesale market in the U.S. Our existing wholesale footprint includes the seven states in the Pacific Northwest (Washington, Oregon, Alaska, Idaho, Montana, Utah, and Wyoming), Oklahoma, and special-order options in Virginia through the state liquor system. Since the beginning of 2024, we have secured new wholesale distribution in Kansas, Kentucky, and portions of Colorado. We began wholesale distribution in the third quarter of 2024 in these new states. Our wholesale leadership team is actively meeting with additional distributors in other states, including several large beer wholesalers that are starting to distribute spirits as they see the volumes of beer in decline and the growth of spirits emerging in their markets, to expand our footprint for wholesale sales in 2024 and beyond.

- *Tribal Beverage Network.* According to *500nations.com*, a website focused on Native American tribal casinos and casino gambling, there are currently 245 tribes in the U.S. operating 524 gaming operations in 29 states, generating annual revenues of approximately $32 billion. In most counties across the U.S. in which there are tribal casinos, the casinos are the largest accounts for spirits, beer, and wine in such counties. We believe a significant percentage of the millions of visitors collectively visiting those tribal-owned operations will patronize Heritage-branded TBN distillery tasting rooms to sample and consume cocktails, sign up for one or more of our subscription-based member programs, and purchase bottles of spirits to go. Under this model, the tribes exercise their tribal sovereignty and enter a new business with significant revenue and margin potential. The TBN model also includes us working with each of the participating tribes to develop their own unique brands to feature in their properties and regions.

  We believe the TBN model is unique in the adult beverage industry. To set up this network, we have leveraged the role of our Chief Executive Officer in overturning in 2018 a 184-year-old federal law prohibiting Native Americans from distilling spirits on tribal lands. We designed the TBN to assist Native American tribes in developing a new business, complementary to their existing casino and entertainment businesses, to attract new visitors and consumers. By working with us, tribes get access to our expertise and our full portfolio of brands. We believe this is a significant new business opportunity for tribes with the potential for strong revenue and profit growth, allowing tribes to capture the full margin benefit as manufacturers, and the ability to collect and keep state spirits taxes for products made and sold on their sovereign land. Following the announcement of our partnership with the Tonto Apache Tribe in Arizona in 2023, in May 2024, we announced a landmark agreement with the Coquille Tribe of Oregon after helping them navigate negotiations with the Oregon Liquor Control Board to allow for the first tribal distillery in Oregon. This is the first of such agreements between a Native American tribe and one of the 18 liquor control states in the United States.

- *Co-Located Retail Spaces.* Our marketing plan includes partnering with some of the most highly-regarded premium craft spirits producers in key regions across the U.S. to cobrand and cross operate retail tasting rooms. Qualified partners must have the key attributes of high-quality products, a consumer-focused tasting room opportunity to drive trial and sales, and the ability to send and receive spirits in bulk for localized bottling. As we and these other producers cross-brand our collective tasting rooms to consumers who do not otherwise have access to them in their general markets, we believe we will collectively be driving more consumer trials and increased sales as well as building co-marketed brands in other regions of the country without the expense of new buildings, leased spaces, production capacity, employees or other capital expenditures.

- ***Capital-Efficient and Scalable Operational Structure.*** We have strategically structured, and plan to continue to structure, our organization and operations to minimize and most effectively manage our capital investment requirements while maintaining flexibility to rapidly scale our production capabilities to meet consumer demands. We do this by utilizing our internal distilling and bottling capabilities while leveraging a network of reputable third-party providers with industry expertise and experience performing various functions falling outside of our internal core competencies.

  For example, we are able to contract with third-party canning and packaging companies to pack our RTDs rather than investing in the required equipment and supporting infrastructure and personnel for in-house canning operations. We can also source specific spirits or buy bulk spirits in the market or have them produced at tribal and non-tribal facilities under contract. We believe the planned expansion of the TBN will also enhance our ability to scale our production, distribution, and selling operations with limited capital expenditures across many regions of the U.S. while allowing us to retain “local” brand status in those areas. We plan to continually review the structure of our organization and operations, and to make any changes we deem necessary, to best accommodate our growth and changing market conditions.

- ***Food and Beverage Industry Experience.*** Our executive team and board of directors operate with a focus on human capital management and hold a firm belief that quality people with proven track records can produce quality results. Our leadership team and board of directors are made up of multi-disciplinary executives with proven track records of successfully launching, growing, and operating companies of all sizes and across many industries, including in the spirits industry.

Strategies for Growth

Our growth plan focuses on gaining brand and product visibility, thereby increasing sales and market share, by executing the following strategies:

- ***Grow Brand Recognition for Our Principal Product Lines Through High-Margin DtC Sales.*** By taking advantage of the internet and targeted digital marketing, we can place our brands in front of consumers and make direct sales to them. These sales generate high-margin revenue for us while building our customer database and product data. We plan to further leverage direct-to-consumer sales through company-owned tasting rooms, through the TBN, and through co-located tasting rooms. Growing on our successful launch of the *Army Special Operations Salute,* our *D-Day 80th Anniversary* edition, and adding new versions for other branches of the military, first responders, and military special events, we expect that our *Special Operations Salute* line of spirits will be an important part of our accelerating reach with consumers.
- ***Grow Our Principal Product Lines Through High-Volume Distribution.*** By leveraging the data we collect from our DtC sales, we plan to continue to produce and sell innovative, premium-branded products through our primary channels of distribution. These channels consist of wholesale distribution to retail establishments such as retail supermarkets, liquor stores, state liquor stores (in control states), hotels, casinos, bars, and restaurants.
- ***Grow the TBN model.*** One of our primary focus areas is the expansion of the TBN to create a national network of tribal spirits production and retail operation locations in or around tribal casinos and high-foot-traffic entertainment districts on tribal lands. We believe these operations will benefit from the fact that, as sovereign nations, tribes are exempt from a variety of state and local zoning and construction codes and can collect and keep state and local excise and sales taxes on the products they produce and sell on tribal lands, along with distributing products to their own properties.
- ***Continue to Innovate New Products.*** We plan to continue to employ a synergistic process of rapid development and testing of new products through DtC sales, sampling in our company-owned distilleries and tasting rooms, and, in collaboration with the TBN, selling products to consumers in our Heritage-branded TBN distilleries. Once we obtain positive feedback on a new product, we can then launch it for sale directly to consumers via the internet to generate revenue and collect more data from consumers across the country. With new data in hand, we can make decisions with our wholesale partners on which products should be taken to the wholesale market. This direct-to-consumer launch model is a strategy we have utilized since our inception. It has been an important part of our ability to launch, test, re-formulate, and re-launch products that have subsequently proven to be appealing to consumers.
- ***Continue to Innovate Marketing Through the Adoption of Artificial Intelligence ("AI").*** We plan to continue testing new AI technology, methods, and tools focused on the creation of content, designs, themes, and audience identification to maximize the efficiency of our marketing efforts.

Recent Developments

Acquisition of Thinking Tree Spirits. On February 21, 2024, we completed the acquisition of Thinking Tree Spirits for a purchase price equal to $670,686 plus the assumption of $365,000 of indebtedness. We paid the purchase price by initially issuing 50,972 shares of our common stock at the negotiated value of $13.16 per share, which is subject to adjustment to the price per share at which our common stock is sold in this offering, subject to an offset for the amount, if any, we are obligated to pay to former stockholders who have exercised dissenter's rights. Assuming a purchase price of $5.00 per share of common stock in this offering (which is the midpoint of the price range reflected on the cover of this prospectus), we will be obligated to issue to the sellers an additional 83,165 shares of common stock assuming no payments are made in respect of the claims of former stockholders who have exercised dissenter's rights. We believe the Thinking Tree Spirits brands will be valuable supplements to our existing product offerings and we intend to complete the roll out the Thinking Tree Spirits product offerings through our DtC and wholesale distribution channels in the fourth quarter of 2024. We also intend to co-brand the Thinking Tree Spirits tasting rooms with our Heritage tasting room and plan to open this combined location as our first co-branded tasting room in Eugene, Oregon late in the fourth quarter of 2024 or early in the first quarter of 2025. We will be working to co-locate the production and retail tasting spaces of Thinking Tree Spirits in Eugene, Oregon with our current Eugene properties in the coming months, with the goal of earning higher-margin revenue from the core activities associated with producing and selling premium spirits as we transition away from low-margin contract production work. The recorded fair value of the acquisition was reviewed as of June 30, 2024, with a decrease in valuation for the contingent earn out payments to $127,076 and decrease in fair value recorded in the income statement as an operating gain of $457,127.

Private Placement of Securities. Between June 15, 2024 and September 27, 2024, we completed a private placement to nine accredited investors of an aggregate of 494,840 shares of our Series A Convertible Preferred Stock ("Series A Preferred Stock") and warrants to purchase an aggregate of 197,013 shares of common stock for an aggregate purchase price of $4,948,478, of which $2,025,000 was paid in cash, $1,155,000 was paid by the sale and transfer to us of an aggregate of 525 barrels of premium aged whiskey with an average value of $2,200 per barrel, $110,600 was paid by the sale and transfer to us of an aggregate of 50 barrels of premium aged whiskey with an average value of $2,212 per barrel, and $719,919 was paid to us by the cancellation of outstanding indebtedness. Each share of Series A Preferred Stock has a stated value of $12.00 per share, pays dividends at the rate of 15% per annum of the stated value (or $1.80 per share), and is convertible by the holder at any time into a number of shares of common stock determined by dividing (a) an amount equal to 110% of the sum of (i) the stated value plus (ii) the amount of all accrued and unpaid dividends, by (b) the then-applicable conversion price. The Series A Preferred Stock is also mandatorily convertible on such basis on June 15, 2027, or at our option at any time on or after June15, 2025. The conversion price of the Series A Preferred Stock is initially $5.00 per share or, if lower, the price per share at which our common stock is sold in this offering. The warrants issued in this offering have an exercise price equal to the $5.00 per share or, if lower, the price per share at which our common stock is sold in this offering and will expire on June 15, 2029; however, at any time after June 15, 2027, the warrants will automatically exercise on a cashless basis if our common stock has traded for five consecutive trading days at or above an amount equal to 125% of the exercise price of the warrants.

In September 2024, we completed a private placement to two accredited investors of 93,789shares of our Series A Preferred Stock, that did not include any related warrants, in exchange for the cancellation of warrants to purchase 510,315 shares of common stock at $6.00 per share. The value assigned to the cancelled warrants was determined to be $937,959, or $1.838 per warrant, using a Black-Scholes Valuation model with an estimated stock price of $5.00, which is the midpoint of the price range for our common stock reflected on the cover of this prospectus, and an exercise price equal to $6.00 per share.

Risks Associated with Our Business

Our ability to execute our business strategy is subject to numerous risks, as more fully described in the section captioned "Risk Factors" immediately following this prospectus summary. You should read these risks before you invest in our common stock. Risks associated with our business include, but are not limited to, the following:

- Our operating history and evolving business make it difficult to evaluate our prospects and risks.
- We have a history of losses, anticipate increasing our operating expenses in the future, and may not achieve or maintain profitability in the future.
- As we have incurred recurring operating losses and negative cash flows from operations since our inception, there is no assurance that we will be able to continue as a going concern absent additional financing, which we may not be able to obtain on favorable terms, or at all.
- We could be materially adversely affected by health concerns such as, or similar to, the COVID-19 pandemic, food-borne illnesses, and negative publicity regarding food quality, illness, injury or other health concerns.
- We face experienced and well capitalized competition and could lose market share to these competitors.
- We could fail to attract, retain, motivate or integrate our personnel.
- We may not be able to maintain and continue developing our reputation and brand recognition.
- We could fail to maintain our company culture as we grow, which could negatively affect our business.
- Our growth strategy will subject us to additional costs, compliance requirements, and risks.
- We could fail to effectively manage our growth and optimize our organizational structure.
- There may be uncertainties with respect to the legal systems in the jurisdictions in which we operate.
- As we expand our product offerings, we may become subject to additional laws and regulations.
- We may be subject to claims, lawsuits, government investigations, and other proceedings.

- Our failure to protect or enforce our intellectual property rights could harm our business.
- Claims by others that we infringed their intellectual property rights could harm our business.
- Changes in laws relating to privacy and data protection could adversely affect our business.
- We are subject to changing laws regarding regulatory matters, corporate governance, and public disclosure that could adversely affect our business or operations.
- Our working capital deficiency, incurrence of significant losses, and required additional funding to meet our obligations and sustain our operations raise substantial doubt about our ability to continue as a going concern.
- We could lose momentum with our TBN efforts, or fail to secure substantial numbers of new agreements, or fail to maintain the agreements we already have. As it relates to TBN, we could also see a degradation of our brand if we cannot ensure product quality and consistency throughout all locations.
- Our failure to maintain an effective system of internal control over financial reporting could adversely affect our ability to present accurately our financial statements and could materially and adversely affect us, including our business, reputation, results of operations, financial condition or liquidity.

Implications of Being an Emerging Growth Company and a Smaller Reporting Company

We qualify as an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. For as long as we remain an emerging growth company, we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies. These provisions include, but are not limited to:

- being permitted to have only two years of audited financial statements and only two years of related selected financial data and management's discussion and analysis of financial condition and results of operations disclosure;
- an exemption from compliance with the auditor attestation requirement in the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act;
- reduced disclosure about executive compensation arrangements in our periodic reports, registration statements, and proxy statements; and
- exemptions from the requirements to seek non-binding advisory votes on executive compensation or golden parachute arrangements.

In addition, the JOBS Act permits emerging growth companies to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are not choosing to "opt out" of this provision. We will remain an emerging growth company until the earliest of (i) the end of the fiscal year following the fifth anniversary of the completion of this offering, (ii) the first fiscal year after our annual gross revenues exceed $1.235 billion, (iii) the date on which we have, during the immediately preceding three-year period, issued more than $1.0 billion in non-convertible debt securities or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeds $700 million as of the end of the second quarter of that fiscal year.

We are also a "smaller reporting company," meaning that the market value of our stock held by non-affiliates plus the proposed aggregate amount of gross proceeds to us as a result of this offering is less than $700 million and our annual revenue is less than $100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company after this offering if either (i) the market value of our stock held by non-affiliates is less than $250 million or (ii) our annual revenue is less than $100 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700 million. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

Our Corporate Information

We were incorporated in the State of Delaware on April 25, 2019. Heritage Distilling Company, Inc. ("HDC") was incorporated in the State of Washington on July 19, 2011 to own and operate a network of craft distilleries for the purpose of creating products and services around craft distilling, blending, bottling, and marketing premium distilled spirits. HDC's first distillery began production in late 2012 in Gig Harbor, WA. On March 4, 2019, as part of a corporate restructuring, HDC became our wholly-owned subsidiary. As a result of the restructuring, we are a holding company and HDC and Thinking Tree Spirits are our operating subsidiaries through which all of our business is conducted. Our principal executive offices are located at 9668 Bujacich Road, Gig Harbor, Washington 98332, and our telephone number is (253) 509-0008. Our website address is *www.HeritageDistilling.com.* Information on our website is not part of this prospectus.

About This Offering

Shares offered by us	1,500,000 shares.
Common stock issued and outstanding prior to this offering	3,653,405 shares.
Common stock to be issued and outstanding after this offering	5,153,405 shares, or 5,378,405 shares if the underwriters exercise their over-allotment option in full.
Over-allotment option	The underwriters have an option for a period of 30 days to purchase from us up to an additional 225,000 shares of common stock, at the assumed public offering price of $5.00, which is the midpoint of the price range reflected on the cover of this prospectus, less the underwriting discounts and commissions, solely to cover over-allotments, if any.
Concurrent Private Placement	In a concurrent private placement, we are selling to certain purchasers of shares of our common stock in this offering Common Warrants to purchase 500,000 shares of our common stock at an exercise price of $0.01 per share. The Common Warrants will be sold to such purchasers for a purchase price per Common Warrant equal to the price per share at which the common stock is sold in this offering less $0.01. The Common Warrants and the shares of our common stock issuable upon the exercise of such warrants are not being offered pursuant to this prospectus and are being offered pursuant to the exemption provided in Section 4(a)(2) under the Securities Act and Rule 506(b) promulgated thereunder. See “Private Placement Transaction.”
Use of proceeds	We currently intend to use the net proceeds from this offering and the net proceeds from the sale of the Common Warrants for the payment of outstanding indebtedness and payables, working capital and other general corporate purposes, including the purchase of raw goods and materials, equipment purchases and modifications, marketing and sales, general operating expenses, and the hiring of additional personnel. See “Use of Proceeds.”
Lock-up	We, our directors and executive officers and certain shareholders have entered into lock-up agreements. Under these agreements, these individuals have agreed, subject to specified exceptions, not to sell or transfer any shares of common stock or securities convertible into, or exchangeable or exercisable for, shares of common stock during a period ending 180 days after the date of this prospectus, without first obtaining the written consent of the Representative of the underwriters.

Representative Warrants	We have agreed to issue to the Representative of the underwriters warrants to purchase up to 5% of the number of shares of common stock sold in this offering. The warrants will be exercisable at any time, and from time to time, in whole or in part, during the five (5) year period commencing 180 days from the commencement of sales of the common stock in this offering, which is also the effective date of the registration statement of which this prospectus is a part, which period is in compliance with applicable FINRA rules. The warrants are exercisable at a per share price equal to $ per share, or 100% of the public offering price per share of common stock sold in this offering.
Risk Factors	See "Risk Factors" commencing on page 14 for a discussion of certain factors to consider carefully before deciding to purchase any shares of common stock.
Proposed Nasdaq Symbol	We have applied to list our common stock on The Nasdaq Capital Market under the symbol "CASK." No assurance can be given that a liquid trading market will develop for our common stock.

The number of shares of our common stock to be outstanding after this offering is based on 441,935 shares of common stock outstanding as of June 30, 2024, and gives effect to (i) the issuance of 1,500,000 shares of common stock in this offering, (ii) the exchange of certain promissory notes (including accrued interest) and certain warrants subsequent to June 30, 2024 for an aggregate of 5,961,870 shares of our common stock, (iii) the exchange by certain stockholders of an aggregate of 2,816,291 shares of common stock for prepaid warrants to purchase 2,816,291 shares of common stock prior to the consummation of this offering, and (iv) the net exercise subsequent to June 30, 2024 of 65,891 prepaid warrants into common stock, and excludes

- Up to 991,667 shares of common stock issuable upon the exercise of warrants with an exercise price of $6.00 per share that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and that expire between August 2028 and August 2029;
- 4,304,721 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $0.001 per share and the Common Warrants with an exercise price of $0.01 per share, that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% (or, in certain warrants, 9.99%) of our outstanding shares of common stock;
- 6,164 shares of common stock issuable upon the exercise of outstanding stock options issued under our 2019 Equity Incentive Plan with an exercise price of $157.89 per share that expire between June 2025 and November 2026;
- 243,089 shares of common stock issuable upon the settlement of outstanding restricted stock units under our 2019 Equity Incentive Plan that will settle upon the expiration of the lock-up period described in the "Underwriting" section of this prospectus;
- Up to 762,984 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the volume weighted average price per share ("VWAP") of our common stock over a 10-trading-day period reaches 200% of the price per share at which common stock is sold in this offering provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the second anniversary of the closing of this offering;
- Up to 1,525,968 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 300%

of the price per share at which common stock is sold in this offering, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 42-month anniversary of the closing of this offering;

- Up to 1,907,460 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 500% of the price per share at which common stock is sold in this offering, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 60-month anniversary of the closing of this offering;
- Up to 197,013 shares of common stock issuable upon the exercise of warrants with an exercise price of $5.00 per share or, if lower, the price per share at which our common stock is sold in this offering, that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and that expire in June 2029;
- Up to 1,306,392 shares of common stock issuable upon conversion of our 494,840 outstanding shares of Series A Preferred Stock (assuming an offering price of $5.00 per share in this offering, which is the midpoint of the price range reflected on the cover of this prospectus, but excluding any dividends accrued prior to such conversion), which shares are convertible at any time unless such conversion would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock;
- Up to 83,165 shares of common stock in connection with our acquisition of Thinking Tree Spirits (assuming an offering price of $5.00 per share in this offering, which is the midpoint of the price range reflected on the cover of this prospectus);
- Up to [ ] shares of common stock ([ ] shares if the underwriters' overallotment option is exercised in full) issuable upon the exercise of the Representative's Warrants at an exercise price equal to the price per share at which our common stock is sold in this offering; and
- Up to 2,500,000 shares of common stock reserved for future issuance under our 2024 Equity Incentive Plan and up to 7,247 shares of our common stock reserved for future issuance under our 2019 Equity Incentive Plan.

Except as otherwise noted, all information in this prospectus:

- gives effect to the 0.57-for-one reverse stock split of our outstanding shares of common stock that occurred on May 14, 2024;
- assumes no exercise of the underwriters' option to purchase up to 225,000 additional shares of common stock in this offering; and
- assumes no exercise of the outstanding options and warrants described above.

SELECTED FINANCIAL INFORMATION

The following table sets forth a summary of our historical financial data as of, and for the periods ended on, the dates indicated. The operating data for the years ended December 31, 2023 and 2022 and the balance sheet data as of December 31, 2023 and 2022 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The operating data for the six months ended June 30, 2024 and 2023 and the balance sheet data as of June 30, 2024 have been derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. The unaudited interim condensed consolidated financial statements were prepared on the same basis as our audited consolidated financial statements. In our opinion, such financial statements include all adjustments, consisting of normal recurring adjustments, that we consider necessary for a fair presentation of the financial information for those periods. The summary financial data should be read with the financial statements and the accompanying notes included in this prospectus. In addition, the summary financial data should be read in conjunction with the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this prospectus.

	Six Months Ended June 30,		Year Ended December 31,	
	2024	2023	2023	2022
Operating Data:				
Net sales	$ 3,548,474	$ 3.437,355	$ 7,971,224	$ 8,309,566
Gross profit	1,156,334	674,935	2,151,041	2,212,426
Loss from operations	(4,524,562)	(7,119,025)	(11,264,559)	(11,827,342)
Gain on investments	3,421,222	—	—	—
Change in fair value of convertible notes	9,044,748	(19,544,020)	(22,764,854)	2,117,636
Change in fair value of warrant liabilities	1,705,020	(343,104)	(240,159)	148,364
Change in fair value of TTS acquisition liabilities	457,127	—	—	—
Net income/(loss)	8,859,341	(28,211,694)	(36,798,419)	(12,268,216)

	Pro Forma June 30, 2024[1]	As of June 30, 2024	As of December 31,	
			2023	2022
Balance Sheet Data:				
Cash	$ 151,613	$ 151,613	$ 76,878	$ 223,034
Total assets	31,288,444	31,288,444	26,268,232	27,959,107
Current liabilities	27,658,354	45,725,442	62,848,642	21,853,356
Long-term liabilities	3,415,520	18,298,457	6,842,046	12,737,042
Total liabilities	31,073,874	64,023,989	69,690,688	34,590,398
Total stockholders' equity/(deficit)	(214,570)	(32,735,545)	(43,422,456)	(6,631,291)

(1) Pro forma balance sheet data presented above includes the reclassification of certain liabilities to stockholders' equity upon the closing of this offering, which is (i) the remaining prerequisite for the unconditional exchange of certain convertible notes into equity and (ii) the event that fixes the strike price of the related warrants, thereby triggering the reclassification of both the notes and the related warrant liabilities from liabilities to stockholders' equity. See Note 16 to our unaudited interim condensed consolidated financial statements for the six months ended June 30, 2024 included elsewhere in this prospectus.

Non-GAAP Financial Measures

Adjusted net loss is a supplemental measure of our performance not required by or presented in accordance with U.S. generally accepted accounting principles ("GAAP"). We define adjusted net loss as net loss before the change in value of the convertible notes and change in value of the warrant liabilities. The most directly comparable GAAP measure is net loss. Adjusted net loss is not a recognized term under GAAP and should not be considered as an alternative to net loss as a measure of financial performance or cash provided by operating activities as a measure of liquidity, or any other performance measure derived in accordance with GAAP. In addition, in evaluating adjusted net loss, you should be aware that in the future we may incur expenses similar to the adjustments in the presentation of adjusted net loss. The presentation of adjusted net loss should not be construed as an inference that our future

results will be unaffected by unusual or non-recurring items. Because not all companies use identical calculations, the presentations of adjusted net loss may not be comparable to other similarly titled measures of other companies and can differ significantly from company to company.

We present this non-GAAP measure because we believe it assists investors and analysts in comparing our operating performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. Management believes adjusted net loss is useful to investors in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate, and capital investments. Management uses adjusted net loss to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, to establish discretionary annual incentive compensation, and to compare our performance against that of other peer companies using similar measures. Management supplements GAAP results with non-GAAP financial measures to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone provide.

There are a number of limitations related to the use of adjusted net loss rather than net loss, which is the most directly comparable financial measure calculated and presented in accordance with GAAP. Some of these limitations are:

- Adjusted net loss does not reflect the cash requirements necessary to service interest on our debt, which affects the cash available to us;
- Adjusted net loss does not reflect change in fair value of financial instruments since it does not reflect our core operations and is a non-cash expense;
- the expenses and other items that we exclude in our calculations of adjusted net loss may differ from the expenses and other items, if any, that other companies may exclude from adjusted net loss when they report their operating results.

In addition, other companies may use other measures to evaluate their performance, all of which could reduce the usefulness of our non-GAAP financial measures as tools for comparison.

The following table reconciles net loss to adjusted net loss, the most directly comparable financial measure calculated and presented in accordance with GAAP.

	Six Months Ended June 30, 2024	Years Ended December 31,	
		2023	2022
Reconciliation of Net Loss to Adjusted Net Loss:			
Net income/(loss)	$ 8,859,341	$ (36,798,419)	$ (12,268,216)
Add back: Change in fair value of convertible notes	(9,044,748)	22,764,854	(2,117,636)
Add back: Change in fair value of warrant liabilities	(1,705,020)	240,159	(148,364)
Add back: Change in fair value of acquisition contingency	(457,127)	—	—
Adjusted net income (loss)	$ (2,347,554)	$ (13,793,406)	$ (14,534,216)

RISK FACTORS

Investing in our securities involves a high degree of risk. You should carefully consider the following information about these risks, together with the other information appearing elsewhere in this prospectus, including our financial statements, the notes thereto and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations," before deciding to invest in our securities. The occurrence of any of the following risks could have a material and adverse effect on our business, reputation, financial condition, results of operations and future growth prospects, as well as our ability to accomplish our strategic objectives. As a result, the trading price of our securities could decline, and you could lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations and stock price.

Risks Related to Our Financial Position and Capital Needs

We have a history of losses, anticipate increasing our operating expenses in the future and may not achieve or maintain profitability in the future.

We have a history of operating losses, including operating losses of $4,524,562, $11,264,559 and $11,827,342 for the six months ended June 30, 2024 and the years ended December 31, 2023 and 2022, respectively, and have incurred net losses in each year since our inception other than in 2021, the year in which we sold a controlling interest in our B S B — B rown S ugar B ourbon ("*Flavored Bourbon*") brand. We had an accumulated deficit of $66,442,262 at June 30, 2024 (after taking into account all convertible note conversions and the recognition of the associated fair value changes), and there can be no assurance if or when we will produce sufficient revenue from our operations to support our costs. We must generate and sustain higher revenue levels in future periods to become profitable, and, even if we do, we may not be able to maintain or increase our profitability. We expect to continue to incur losses for the foreseeable future as we expend substantial financial and other resources on, among other things:

- sales and marketing, including expanding our direct sales organization and marketing programs, particularly for larger customers and for expanding our Tribal Beverage Network efforts;
- investments in our distillation and production team, and the development of new formulations and enhancements of our existing brands;
- expansion of our ready-to-drink canned cocktails into national distribution;
- hiring additional personnel to add to our production teams if we can successfully increase our wholesale sales; and
- general administration, including legal, accounting and other expenses related to being a public company.

These expenditures may not result in additional revenue or the growth of our business. Accordingly, we may not be able to generate sufficient revenue to offset our expected cost increases and achieve and sustain profitability. If we fail to achieve and sustain profitability, the market price of our common stock could decline.

As we have incurred recurring operating losses and negative cash flows from operations since our inception, there is no assurance that we will be able to continue as a going concern absent additional financing, which we may not be able to obtain on favorable terms, or at all.

We have incurred operating losses since our inception and there can be no assurance if or when we will produce sufficient revenue from our operations to cover our costs. Even if profitability is achieved in the future, we may not be able to sustain profitability consistently. We expect to continue to incur substantial losses and negative cash flow from operations for the foreseeable future. Our financial statements included in this prospectus have been prepared assuming that we will continue as a going concern. However, we have concluded that, absent access to additional working capital, substantial doubt about our ability to continue as a going concern exists and our auditors have referred to this in their audit report on our audited consolidated financial statements for the years ended December 31, 2023 and 2022. As a result, it may be more difficult for us to attract investors. Our future is dependent upon our ability to obtain financing and upon future profitable operations from the sale of our products and services.

Our ability to obtain additional financing will be subject to many factors, including market conditions, our operating performance and investor sentiment. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay or scale back our operations or obtain funds by entering into agreements on unattractive terms, which would likely have a material adverse effect on our business, stock price and our business relationships with third parties, at least until additional funding is obtained. If we do not have sufficient funds to continue operations, we could be required to seek bankruptcy protection or other alternatives, including selling some or all of our aging barreled spirits inventory or equipment. The sale of such assets could impact our operations and our ability to produce products for sale and diminish future revenue opportunities. Any of these actions would likely result in our stockholders losing some or all of their investment in us.

We do not have any credit facilities as a source of future funds, and if we need additional financing after this offering, there can be no assurance that we will be able to raise sufficient additional capital on acceptable terms, or at all. We may seek additional capital through a combination of private and public equity offerings, debt financing and strategic collaborations. If following this offering we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our stockholders could be significantly diluted, and these newly-issued securities may have rights, preferences or privileges senior to those of existing stockholders. Debt financing, if obtained, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, which could increase our expenses and require that our assets secure such debt. Moreover, any debt we incur must be repaid regardless of our operating results.

Our future capital needs are uncertain, and we may need to raise additional funds to support those needs.

We believe the net proceeds from this offering and the cash generated from our current operations will enable us to fund our operations for a minimum of 12 months following the consummation of this offering. However, we may need to seek significant future financing, namely to:

- develop or acquire additional brands or products;
- expand our sales and marketing efforts to further commercialize our products and TBN-related services;
- hire additional personnel;
- add operational, financial and management information systems;
- pay increased expenses as a result of operating as a public company; and
- expand our research and development efforts to expand and improve our product offerings and to successfully launch new products;

Our future funding requirements will depend on many factors, including:

- market acceptance of our products and services;
- the cost and timing of establishing additional sales, marketing and distribution capabilities;
- our ability to expand the TBN and to generate royalty revenues therefrom;
- the cost of our research and development activities;
- the success of our existing distribution and marketing arrangements and our ability to enter into additional arrangements in the future; and
- how competing products and market developments in our industry impact our position in the market and how consumers view us and our products.

There can be no assurance that we will be able to obtain additional funds on acceptable terms, or at all. Our ability to obtain additional financing will be subject to market conditions, our operating performance and investor sentiment, among other factors. If we raise additional funds by issuing equity or equity-linked securities, our stockholders may experience dilution. Future debt financing, if available, may involve covenants restricting our operations or our ability to incur additional debt. Any debt or equity financing may contain terms that are not favorable to us or our stockholders. If we do not have, or are not able to obtain, sufficient funds, we may have to

delay development or commercialization of our products. We also may have to reduce marketing, customer support or other resources devoted to our products or cease operations. Any of these factors could have a material adverse effect on our financial condition, operating results, and general business operations.

We may continue to have limited capital depending on the amount of net proceeds we receive from this offering, how our funds are managed and how well our products and services continue to be received in the marketplace.

There can be no assurance that we can timely realize our business plan, if at all, to reach sustainable revenues to cover future operational costs or new obligations that we may incur to expand our operations. Any material deviation from our business plan timetable could require us to seek additional capital. There can be no assurance that such capital would be available at reasonable cost, or that it would not materially dilute the investment of our stockholders if it were obtained.

Our senior secured lender may accelerate our indebtedness and foreclose on our assets.

In the past, we have not met certain financial covenants required pursuant to the terms of our loan agreement with our senior secured lender. These covenants include semi-annual minimum liquidity tests, semi-annual minimum interest coverage ratios and semi-annual minimum EBITDA ratios. In addition, in the past, we have missed certain reporting deadlines required pursuant to the terms of such loan agreement. While we have secured a waiver of those past covenant defaults, and have entered into a loan modification agreement that reduces our reporting requirements and our financial covenants, there is no guarantee that our senior secured lender will continue to waive future defaults, if any. If our senior secured lender were to declare a default and accelerate our indebtedness under those circumstances, or were to seize our assets, it would be very difficult, if not impossible, for us to continue normal operations. Such a result would likely have a material adverse effect on our business, liquidity, financial condition and results of operations and result in our stockholders losing some or all of their investment in us.

Sustained or increasing inflation could adversely impact our operations and our financial condition.

The inflation rate could remain high or increase in the foreseeable future. This could put cost pressure on our company faster than we can raise prices on our products. In such cases, we could lose money on products, or our margins or profits could decline. In other cases, consumers may choose to forgo making purchases that they do not deem to be essential, thereby impacting our growth plans. Likewise, labor pressures could continue to increase as employees become increasingly focused on their own standard of living, putting upward labor costs on our company before we have achieved some or all of our growth plans. Our management continues to focus on cost containment and is monitoring the risks associated with inflation and will continue to do so for the foreseeable future. However, sustained or increasing inflation could adversely impact our operations, results of operations and financial condition.

Higher interest rates could adversely affect our ability to obtain debt financing and our operating results.

Interest rates rose substantially between March 2022 and July 2023, and there is uncertainty as to when and the rate at which interest rates will decline. If interest rates continue to rise or remain higher than we have experienced in recent history, there is a risk it will cost more for us to conduct our business or to get access to credit. There is also a risk that consumers may feel increased economic pressure and not be willing to spend on our goods or services. Management continues to focus on interest rates and their impact on our business, the cost of borrowing and the potential impacts on our future capital-raising efforts.

Small Business Association ("SBA") Paycheck Protection Program ("PPP") loan repayment risk and timing.

In April 2022, we were advised we may have received a PPP loan over the amount we were qualified for in Round 1 of that program, and in April 2023, we received a similar notification for our Round 2 PPP loan. Those loans were part of the federal government's relief package in response to the COVID-19 pandemic. The SBA had forgiven both loans as we had followed all rules associated with the use of proceeds under that program. It is possible that the SBA may determine that we must repay some of the amounts we received as PPP loans. If a demand is made by the SBA for some repayment, it is unclear at this time what the payment term length would be for such repayment and there is a risk that the SBA may require immediate payment or payment on a timeline that is shorter than we anticipate. Any demand for repayment could reduce our working capital and available cash in a way that adversely impacts on our ability to execute our business and operating plans. If the SBA demands that we repay

any amounts owed more than the amount of our available cash, it could force us to raise new capital under less than favorable terms that could be dilutive to stockholders, or to take on debt that could have higher borrowing costs. As of June 30, 2024, the total exposure for these two loans was $2,269,456, plus accrued interest of $95,815.

We could be materially adversely affected by health concerns such as, or similar to, the COVID-19 pandemic, food-borne illnesses, and negative publicity regarding food quality, illness, injury or other health concerns.

The United States and other countries have experienced, or may experience in the future, outbreaks of viruses, such as the current outbreak of the COVID-19 pandemic, norovirus, Avian Flu or "SARS," or H1N1. If a virus is transmitted by human contact, our employees or customers may become infected, or may choose, or be advised, to avoid gathering in public places, any of which may adversely affect the customer traffic of our tasting rooms and our ability to adequately staff our tasting rooms, receive deliveries on a timely basis or perform functions at the corporate level. We also may be adversely affected if jurisdictions in which we, or the tribes in our TBN, have distilleries or tasting rooms impose mandatory closures, seek voluntary closures or impose restrictions on operations. Even if such measures are not implemented and a virus or other disease does not spread significantly, the perceived risk of infection or significant health risk may adversely affect our business.

A health pandemic (such as the COVID-19 pandemic) is a disease outbreak that spreads rapidly and widely by infection and affects many individuals in an area or population at the same time. Our tasting rooms are places where people can gather for human connection. Customers might avoid public gathering places in the event of a health pandemic, and local, regional or national governments might limit or ban public gatherings to halt or delay the spread of disease. The impact of a health pandemic on us might be disproportionately greater than on other food service locations that have lower customer traffic and that depend less on the gathering of people.

In addition, we cannot guarantee that our operational controls and employee training will be effective in preventing food-borne illnesses, food tampering and other food safety issues that may affect our tasting rooms. Food-borne illness or food tampering incidents could be caused by customers, employees or food suppliers and transporters and, therefore, could be outside of our control. Any negative publicity relating to health concerns or the perceived or specific outbreaks of food-borne illnesses, food tampering or other food safety issues attributed to one or more of our tasting rooms, or the tasting rooms of any of the tribes in our TBN, could result in a significant decrease in guest traffic in all of our tasting rooms or the tasting rooms of the tribes in our TBN, and could have a material adverse effect on our results of operations. Furthermore, similar publicity or occurrences with respect to other tasting rooms or restaurants could also decrease our guest traffic and have a similar material adverse effect on our results of operations and financial condition.

COVID-19 did not have a material impact on our operations, supply chain, liquidity or capital resources in 2023 as all state restrictions were lifted in 2022. However, future shutdowns related to additional or increased outbreaks could have a negative impact on our operations, including voluntary or mandatory temporary closures of our facilities or offices; interruptions in our supply chain, which could impact the cost or availability of raw materials; disruptions or restrictions on our ability to travel or to market and distribute our products; reduced consumer demand for our products or those of our customers due to bar and restaurant closures or reduced consumer traffic in bars, restaurants and other locations where our products or those of our customers are sold; and labor shortages. Because of our industry, we were deemed an "essential business" in the states in which we operate (Washington and Oregon), which allowed us to remain open during the COVID-19 pandemic. In the event of future shutdowns related to additional or increased outbreaks of COVID-19 or any other health crises, we expect that we would qualify for the same "essential business" designation, which would allow us to remain operational and limit the impact to our business of any such shutdowns.

Furthermore, our facilities and those of our customers and suppliers have been required to comply with additional regulations and may be required to comply with new regulations imposed by state and local governments in response to the COVID-19 pandemic, including COVID-19 safety guidance for production and manufacturing facilities. Compliance with these measures, or new measures, may cause increases in the cost, or delays or a reduction in the volume of products produced at our facilities or those of the TBN partners of suppliers. The COVID-19

outbreak has also disrupted credit markets and may continue to disrupt or negatively impact credit markets, which could adversely affect the availability and cost of capital. Such impacts could limit our ability to fund our operations and satisfy our obligations.

The extent of the impact on our business, financial condition, and results of operations from any future shutdowns is dependent on the length of time in which society, consumers, the supply chain and markets return to pre-shutdown "normal" levels of operations, if they do at all, and whether we qualify for "essential business" designation in the states in which we operate. The response to any future shutdowns may adversely impact our business, financial condition, and results of operations in one or more ways not identified to date.

Our current working capital deficiency, incurrence of significant losses and required additional funding to meet our obligations and sustain our operations raise substantial doubt about our ability to continue as a going concern. Furthermore, our independent registered public accounting firm has included an explanatory paragraph relating to our ability to continue as a going concern in its report on our audited consolidated financial statements included in this prospectus.

The report from our independent registered public accounting firm on our financial statements for the years ended December 31, 2023 and 2022 includes an explanatory paragraph stating that our working capital deficiency, incurrence of significant losses and need to raise additional funds to meet our obligations and sustain our operations raise substantial doubt about our ability to continue as a going concern. We expect to continue to incur substantial losses and negative cash flow from operations for the foreseeable future. Our financial statements included in this prospectus have been prepared assuming that we will continue as a going concern. If, following this offering, we are unable to obtain sufficient funding to support our growth plans, our business, prospects, financial condition and results of operations could be materially and adversely affected, and we may be unable to continue as a going concern. If we are unable to continue as a going concern, we may have to liquidate our assets and may receive less than the value at which those assets are carried on our audited consolidated financial statements, and it is likely that investors will lose all or a part of their investment. Such action could also trigger a foreclosure by our senior secured lender, which would have a material adverse effect on our business operations. After this offering, future reports from our independent registered public accounting firm may also contain statements expressing doubt about our ability to continue as a going concern. If, following this offering, we seek additional financing to fund our future business activities and there remains doubt about our ability to continue as a going concern, investors or other financing sources may be unwilling to provide additional funding on commercially reasonable terms or at all.

We may be subject to litigation from vendors for unpaid invoices, which could materially affect our business, results of operations, financial condition or liquidity.

We have accrued sums of accounts payable for past services rendered by vendors that are overdue and, while those vendors have exhibited patience in waiting to get paid, there is a risk that one or more of them could initiate litigation against us in an attempt to force payment of the amounts owed. In such a case, the litigation could cause us to incur significant costs defending such action. A successful suit could also hurt our credit standing, making it more difficult or expensive for us to secure additional funding or lines of credit in the future. Any penalties or fines associated with such judgments could also change or increase the amounts we owe or change the timing of payments owed in a way that affects our projected cash flow or use of proceeds from this offering.

Our failure to maintain an effective system of internal control over financial reporting could adversely affect our ability to present accurately our financial statements and could materially and adversely affect us, including our business, reputation, results of operations, financial condition or liquidity.

Our independent registered public accounting firm identified material weaknesses in our internal controls over financial reporting in connection with the preparation of our financial statements and audit as of and for the year ended December 31, 2023, which relate to a deficiency in the design and operation of our financial accounting and reporting controls. Specifically, the material weaknesses resulted from (i) a lack of segregation of duties within the financial accounting and reporting processes due to limited personnel and (ii) a lack of adequate and precise review

of account reconciliations and journal entries resulting in audit adjustments. A material weakness 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 a company's annual or interim financial statements will not be prevented or detected on a timely basis.

We have begun to address and remediate such material weaknesses by hiring a Chief Financial Officer with significant accounting and public company financial reporting and compliance experience. While we intend to implement additional measures to remediate the material weaknesses, there is no guarantee that they can be remediated in a timely fashion or at all. Our failure to correct these material weaknesses could result in inaccurate financial statements and could also impair our ability to comply with the applicable financial reporting requirements on a timely basis. While we believe we have addressed any regulatory or financial reporting issues highlighted by our auditor, such compliance issues, should they materialize or persist, could cause investors to lose confidence in our reported financial information and may result in volatility in and a decline in the market price of our securities, as well as adverse directions from federal, state and local regulatory authorities.

Before closing this offering, we are not subject to the Sarbanes-Oxley Act. Following this offering, Section 404 of the Sarbanes-Oxley Act will require that we include a report from management on the effectiveness of our internal control over financial reporting in our annual report on Form 10-K. It may take us time to develop the requisite internal control framework. Our management may conclude that our internal control over financial reporting is not effective, or the level at which our controls are documented, designed or reviewed is not adequate, and may result in our independent registered public accounting firm issuing a report that is qualified. In addition, the reporting obligations may place a significant strain on our management, operational and financial resources and systems for the foreseeable future. We may be unable to complete our evaluation testing and any required remediation promptly.

Risks Related to Our Business Model

We face significant competition with an increasing number of products and market participants that could materially and adversely affect our business, results of operations and financial results.

Our industry is intensely competitive and highly fragmented. Our craft spirits compete with many other domestic and foreign premium whiskies and other spirits. Our products also compete with popularly-priced generic whiskies and with other alcoholic and, to a lesser degree, non-alcoholic beverages, for drinker acceptance and loyalty, shelf space and prominence in retail stores, presence and prominence on restaurant alcoholic beverage lists and for marketing focus by our distributors, many of which carry extensive portfolios of spirits and other alcoholic beverages. We compete on the basis of product taste and quality, brand image, price, service and ability to innovate in response to consumer preferences. This competition is driven by established companies and new entrants in our markets and categories. In the United States, spirits sales are relatively concentrated among a limited number of large suppliers, including Diageo plc (NYSE: DEO), Pernod Ricard SA, E & J Gallo Winery, Proximo Spirits, Sazerac Company, MGP, and Constellation Brands, Inc. (NYSE: STZ), among others. These and our other competitors may have more robust financial, technical, marketing and distribution networks and public relations resources than we have. As a result of this intense competition, combined with our growth goals, we have experienced and may continue to face upward pressure on our selling, marketing and promotional efforts and expenses. There can be no assurance that in the future we will be able to successfully compete with our competitors or that we will not face greater competition from other distilleries, producers and beverage manufacturers.

If we are unable to successfully compete with existing or new market participants, or if we do not effectively respond to competitive pressures, we could experience reductions in market share and margins that could have a material and adverse effect on our business, results of operations and financial results.

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 the 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 we have been successful in establishing our brands as recognizable brands in the regional Pacific Northwest premium craft spirits industry, we 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, retail customers and consumers. We believe the success of our 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 effect on our revenues and financial results.

A reduction in consumer demand for whisky, vodka, gin, RTDs and other spirits, which may result from a variety of factors, including demographic shifts and decreases in discretionary spending, could materially and adversely affect our business, results of operations and financial results.

We rely on consumers' demand for our craft spirits. While over the past several years there have been modest increases in consumption of beverage alcohol in most of our product categories and geographic markets, there have been periods in the past in which there were substantial declines in the overall per capita consumption of beverage alcohol products in the U.S. and other markets in which we participate or plans to participate. Consumer preferences may shift due to a variety of factors, including changes in demographic or social trends, changes in discretionary income, public health policies and perceptions and changes in leisure, dining and beverage consumption patterns. Our success will require us to anticipate and respond effectively to shifts in consumer behavior and drinking tastes. If consumer preferences were to move away from our *Heritage Distilling* or other brands, our results of operations would be materially and adversely affected.

A limited or general decline in consumer demand could occur in the future due to a variety of factors, including:

- a general decline in economic or geopolitical conditions;
- a general decline in the consumption of alcoholic beverage products in on-premises establishments, such as those that may result from smoking bans and stricter laws relating to driving while under the influence of alcohol and changes in public health policies, including those implemented to address the COVID-19 pandemic;
- a generational or demographic shift in consumer preferences away from whiskies and other spirits to other alcoholic beverages or non-alcoholic beverages;
- increased activity of anti-alcohol groups;
- increased regulation placing restrictions on the purchase or consumption of alcoholic beverage products;
- concern about the health consequences of consuming alcoholic beverage products; and
- increased federal, state, provincial, and foreign excise, or other taxes on beverage alcohol products and increased restrictions on beverage alcohol advertising and marketing.

Demand for premium spirits brands, like ours, may be particularly susceptible to changing economic conditions and consumer tastes, preferences and spending habits, particularly among younger demographic groups, which may reduce our sales of these products and adversely affect our profitability. For instance, a reduction in the overall number of consumers over the legal drinking age, but who are relatively new to the market, may choose to consume less alcohol, or to stop consuming alcohol altogether. An unanticipated decline or change in consumer demand or preference could also materially impact on our ability to forecast future production requirements, which could, in turn, impair our ability to effectively adapt to changing consumer preferences. Any reduction in the demand for our spirits products would materially and adversely affect our business, results of operations and financial results.

Adverse public opinion about alcohol could reduce demand for our products.

In the past, anti-alcohol groups have advocated successfully for more stringent labeling requirements, higher taxes and other regulations designed to discourage alcohol consumption. More restrictive regulations, negative publicity regarding alcohol consumption and/or changes in consumer perceptions of the relative healthfulness or safety of beverage alcohol could decrease sales and consumption of alcohol and thus the demand for our products. This could, in turn, significantly decrease both our revenues and our revenue growth, causing a decline in our results of operations.

Due to the three-tier alcohol beverage distribution system in the United States, we are heavily reliant on our distributors that resell alcoholic beverages in all states in which we do business. Our inability to obtain distribution in some states, or a significant reduction in distributor demand for our products, would materially and adversely affect our sales and profitability.

Due to regulatory requirements in the United States, we sell a significant portion of our craft spirits to wholesalers for resale to retail accounts. A change in the relationship with any of our significant distributors could harm our business and reduce our sales. The laws and regulations of several states prohibit changes of distributors, except under certain limited circumstances, making it difficult to terminate or otherwise cease working with a distributor for poor performance without reasonable justification, as defined by applicable statutes. Any difficulty or inability to replace a distributor, poor performance of our major distributors or our inability to collect accounts receivable from our major distributors could harm our business. In addition, an expansion of the laws and regulations limiting the sale of our spirits would materially and adversely affect our business, results of operations and financial results. There can be no assurance that the distributors and accounts to which we sell our products will continue to purchase our products or provide our products with adequate levels of promotional support, which could increase competitive pressure to increase sales and marketing spending and could materially and adversely affect our business, results of operations and financial results.

Failure of third-party distributors upon which we rely could adversely affect our business.

We rely heavily on third-party distributors for the sale of our products to retailers, restaurants, bars, hotels, casinos, entertainment venues and other accounts. We expect sales to distributors to represent an increasingly substantial portion of our future net sales as we continue to grow our network of wholesale distributors. Consolidation among distributors or the loss of a significant distributor could have a material adverse effect on our business, financial condition and results of operations. Our distributors may also provide distribution services to competing brands, as well as larger, national or international brands, and may be to varying degrees influenced by their continued business relationships with other larger beverage, and specifically, craft spirits companies. Our independent distributors may be influenced by a large competitor if they rely on that competitor for a significant portion of their sales. There can be no assurance that our distributors will continue to effectively market and distribute our products. The loss of any distributor or the inability to replace a poorly-performing distributor in a timely fashion, or our inability to expand our distribution network into states in which we do not currently have distribution, could slow our growth and have a material adverse effect on our business, financial condition and results of operations. Furthermore, no assurance can be given that we will successfully attract new distributors as we increase our presence in their existing markets or expand into new markets.

We incur significant time and expense in attracting and maintaining key distributors.

Our marketing and sales strategy depends largely on our independent distributors' availability and performance. We currently do not have, nor do we anticipate in the future that we will be able to establish, long-term contractual commitments or agreements from some of our distributors and some of our distributors may discontinue their relationship with us on short notice. Some distributors handle several competitive products. In addition, our products are a small part of our distributors' business. We may not be able to maintain our current distribution relationships or establish and maintain successful relationships with distributors in new geographic distribution areas. Moreover, there is the additional possibility that we may have to incur additional costs to attract and maintain key distributors in one or more of our geographic distribution areas to profitably exploit our geographic markets.

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.

It is difficult to predict the timing and amount of our sales because our distributors and their accounts are not required to place minimum orders with us.

Our independent distributors and their accounts are not required to place a minimum of monthly or annual orders for our products. To reduce their inventory costs, independent distributors typically order products from us on a "just in time" basis in quantities and at such times based on the demand for the products in a particular distribution area. For products in higher demand, there is typically a minimum par level held in distributors' warehouses, and only

once the inventory falls below that par level will a reorder be triggered. Accordingly, we cannot predict the timing or quantity of purchases by any of our independent distributors or whether any of our distributors will continue to purchase products from us in the same frequencies and volumes as they may have done in the past. Additionally, our larger distributors and partners may make orders that are larger than we have historically been required to fill. Shortages in inventory levels, supply of raw materials or other key supplies could negatively affect us.

The sales of our products could decrease significantly if we cannot secure and maintain listings in the control states.

In the control states, the state liquor commissions act in place of distributors and decide which products are to be purchased and offered for sale in their respective states, and at what prices they will be offered to consumers. Products selected for listing must generally reach certain volumes and/or profit levels to maintain their listings. Products are selected for purchase and sale through listing procedures that are generally made available to new products only at periodically-scheduled listing intervals. Products not selected for listings can only be purchased by consumers in the applicable control state through special orders, if at all. If, in the future, we are unable to maintain our current listings in the control states, or secure and maintain listings in those states for any additional products we may produce or acquire, sales of our products could decrease significantly.

The privatization of a control state could adversely impact our sales and our results of operations.

Once products are approved for sale by the state liquor commission in a control state, the products move through the normal state warehousing, wholesale, distribution and retail sales channels established under such a system. State owned, managed or regulated stores set the prices for the products and there are rules and regulations regarding shelf placement, samplings and retail sales to consumers and bars and restaurants. In these markets, the approval for shelf space and pricing is conducted through the state process. In some control states, there are increasing levels of discussion about privatization, either because of negative views toward state ownership of the liquor system, the need for states to generate cash through the one-time sale of assets, or due to other political pressures in those states. Once a state privatizes its liquor system it creates significant disruption during the transition period towards privatization as distributors need to set up new warehouses and sales teams and new delivery routes, and bars and restaurants who were required to focus on purchasing only from their local state liquor store now must navigate a new distribution system, sometimes with new pricing and new taxes. Likewise, if spirits sales move into private stores and major retail chains, new challenges are created for small or new brands like ours which then must compete for shelf space with larger, more established or better funded brands. If we are successful in growing our brand approval and sales in control states and one or more of those control states privatizes its liquor system, our sales, revenue and profitability derived from sales in those states may be disrupted.

Substantial disruption to production at our distilleries and distribution facilities, or at a facility with which we contract or partner for production, could occur.

A disruption in production at our distilleries or third-party production facilities could have a material adverse effect on our business. In addition, a disruption could occur at any of our other facilities or those of our suppliers, bottlers, co-packers or distributors. The disruption could occur for many reasons, including a full production schedule, fire, natural disasters, weather, water scarcity, manufacturing problems, disease, strikes, transportation or supply interruption, government regulation, cybersecurity attacks or terrorism. Alternative facilities with sufficient capacity or capabilities may not be available, may cost substantially more or may take a significant time to start production, each of which could negatively affect our business and financial performance.

Disruption within our supply chain, contract manufacturing or distribution channels could have an adverse effect on our business, financial condition and results of operations.

The prices of ingredients, other raw materials, packaging materials, aluminum cans, glass bottles and other containers fluctuate depending on market conditions, governmental actions, climate change and other factors beyond our control, including the COVID-19 pandemic. Substantial increases in the prices of our ingredients, other raw materials, packaging materials, aluminum cans and other containers, to the extent they cannot be recouped through increases in the prices of finished beverage products, could increase our operating costs and reduce our profitability. Increases in the prices of our finished products resulting from a higher cost of ingredients, other raw

materials, packaging materials, aluminum cans and other containers could affect affordability in some markets and reduce our sales. In addition, some of our ingredients as well as some packaging containers, such as aluminum cans and glass bottles, are available from a limited number of suppliers. We and our suppliers and co-packers may not be able to maintain favorable arrangements and relationships with these suppliers, and our contingency plans may not be effective in preventing disruptions that may arise from shortages of any ingredients that are available from a limited number of suppliers. Adverse weather conditions may affect the supply of other agricultural commodities from which key ingredients for our products are derived. An increase in the cost, a sustained interruption in the supply, or a shortage of some of these ingredients, other raw materials, packaging materials, aluminum cans and other containers that may be caused by changes in or the enactment of new laws and regulations; a deterioration of our relationships with suppliers; supplier quality and reliability issues; trade disruptions; changes in supply chain; and increases in tariffs; or events such as natural disasters, widespread outbreaks of infectious diseases (such as the COVID-19 pandemic), power outages, labor strikes, political uncertainties or governmental instability, or the like could negatively impact our net operating revenues and profits.

Our reliance on distributors, retailers and brokers, or our inability to expand the TBN, could affect our ability to efficiently and profitably distribute and market our products, maintain our existing markets and expand our business into other geographic markets.

Our ability to maintain and expand our existing markets for our products, and to establish markets in new geographic distribution areas, is dependent on our ability to establish and maintain successful relationships with reliable distributors, retailers and brokers strategically positioned to serve those areas, and our ability to expand the reach of the TBN. Most of our distributors, retailers and brokers sell and distribute competing products and our products may represent a small portion of their business. This network's success will depend on the performance of its distributors, retailers and brokers. There is a risk that the mentioned entities may not adequately perform their functions within the network by, without limitation, failing to distribute to sufficient retailers or positioning our products in localities that may not be receptive to our product. Our ability to incentivize and motivate distributors to manage and sell our products is affected by competition from other beverage companies who have greater resources than we do. To the extent that our distributors, retailers and brokers are distracted from selling our products or do not employ sufficient efforts in managing and selling our products, including re-stocking the retail shelves with our products, our sales and results of operations could be adversely affected. Furthermore, the financial position or market share of such third parties may deteriorate, which could adversely affect our distribution, marketing and sales activities.

We also expect to expand our business into other geographic markets by expanding our TBN network and entering new relationships or joint ventures with additional North American Indian tribes. While we believe we have a significant first mover advantage in our ability to attract and expand the interest of North American Indian tribes in establishing distilleries on tribal lands, it is possible that the interest of tribes in the construction or operation of distilleries will not develop as expected or will develop at a slower pace. To the extent we are unable to expand the TBN in a timely manner or at all, our sales and results of operations could be adversely affected.

Our ability to maintain and expand our distribution network and attract additional distributors, retailers and brokers, and to expand the TBN will depend on many factors, some of which are outside our control. Some of these factors include:

- the level of demand for our brands and products in a particular distribution area;
- our ability to price our products at levels competitive with those of competing products; and
- our ability to deliver products in quantity and at the time ordered by distributors, retailers and brokers.

We may not be able to successfully manage all or any of these factors in any of our current or prospective geographic areas of distribution. Our inability to achieve success regarding any of these factors in a geographic distribution area will have a material adverse effect on our relationships in that geographic area, thus limiting our ability to maintain or expand our market, which will likely adversely affect our revenues and financial results.

Our TBN efforts may not be successful.

Our business plan includes licensing our products, services and concepts to certain third parties, including tribal business entities or American Indian Tribes as part of the TBN. As planned, we would receive royalties associated with revenues earned through non-exclusive limited licenses for the right to use, sell and assign certain

of our patents, trademarks, brands, recipes and other protected assets. However, these efforts may not be successful. While the current plan does not envision us providing any capital to build out and operate these licensed locations, our involvement in these efforts will require the time and efforts of our employees and executives, which may detract from their time spent building our brand and value as a standalone entity. The risks associated with our TBN plan, which individually or in the aggregate, could harm our overall brand, reputation, perception in the market and financial position, include:

- *Sovereign Immunity and Choice of Venue* — Tribes enjoy sovereign immunity for certain activities that take place on trust land. Since it is envisioned that these partnerships will occur on trust land, we intend to seek a waiver of sovereign immunity. There can be no assurance that such a waiver will be granted, or if it would be interpreted as enforceable later. Likewise, unless a Tribe grants us a waiver to seek relief in a federal or state court, there is a risk that a dispute must be heard in Tribal court, which may not provide us with a fair hearing.
- *Right of entry* — In the event we secure a waiver of sovereign immunity or the right to seek a venue for hearing in federal or state courts, there is no guarantee that we will secure an adequate right of entry onto Tribal land to enforce our rights. Such rights could include recovery of intellectual property, personal property or other property, goods, equipment, stock or other tangible assets owed to us. Even if we secure a right of entry, there can be no assurance that we will be respected or enforced by proper authorities with jurisdiction over the matter.
- *Product Quality* — There can be no assurance that our Tribal partners will adequately follow each of our prescribed procedures, recipes and protocols to ensure compliance with labeling standards or the quality of product that we otherwise insist on or they may not keep sufficiently detailed records for state and federal auditing purposes. Either event could cause products to be redistilled, dumped, impounded or disposed of in a way that adversely impacts our operating results and financial condition.
- *Failure to Produce* — Our Tribal partners might fail to produce the amount of product required to meet demand, fulfill contracts or propose new products to distribution outlets. Further, equipment, raw ingredients and/or finished ingredients or goods may not be readily available for licensed partners at any given time, which could negatively impact the cash flow and deliverability of an operation, the licensed partners and/or our brand.
- *Cross Sales into Distribution Channels* — Our Tribal partners might attempt to directly sell into the market in violation of our distribution agreements, or attempt to compete with us in distribution outside the context of a formal company-wide distribution plan, which could disrupt our contractual or legal obligations, undercut us in the market, flood the market with product or cause confusion within distribution channels.
- *Change of leadership* — Tribal organizations have regular elections for leadership positions. It is almost certain that at some point during the negotiation, design, construction or operation of a location that a change in Tribal governance will conflict with the operation of the business to the detriment of us. This could result in our decision to seek early termination of a contract to avoid disruptions in other parts of our business or to protect the integrity of our brand and reputation if the relationship with a Tribal partner materially deteriorates.
- *Failure to resell the concept* — The initial Tribes with which we work may not inspire other Tribes to join the TBN, thereby impacting the future number of TBN locations and future anticipated growth plans. Accordingly, an insufficient number of Tribal partners may decide to join the TBN, or such licensees may have an insufficient level of sales to justify or sustain continued operations.
- *Failure to take our management input into account* — Tribal partners may not consider our desire or input with respect to production, branding, marketing, sales and distribution.
- *Failure to have adequate oversight over employees, personnel, product* — As the actual employer of employees operating the new locations, Tribes may not consider our hiring input or guidance as it relates to customer service, technical and quality assurance, documentation and compliance, among other issues. In such an event, we would have little recourse to remove Tribal employees from key positions.

- *Failure to have access to the books and records* — Tribal partners might withhold financial information from us such that we cannot adequately determine sales, costs and net revenues, among other financial metrics.
- *Interpretation of federal or state law; failure to follow the law* — We are one of the first entities attempting to license spirits manufacturing. There is a risk that federal, state and/or local regulators may view this activity as a violation of applicable laws, rules or regulations, such that we and our licensed partners must adapt our business plans and strategies, or to abandon our TBN plans altogether. There is also a risk that a member tribe in our TBN may not follow the law.
- *Community backlash* — Before, during or after our partnerships, Tribal or non-Tribal members might accuse us of engaging in activities that enhance or promote alcoholism and our impact on Indian communities. Such a campaign could tarnish our brand and put pressure on us or our Tribal partners to terminate our arrangements.
- *Failure to be perceived as authentically "local"* — Some consumers may not view the idea of licensed distilleries as being authentically "local," such that our brand reputation and products may be diminished in a particular region.

A non-profit or charitable partner could act in a way that damages our brand.

We currently partner with non-profits and charitable organizations to market some of our products to generate sales for our company and raise donations for charities. There is a risk one or more of these entities, or specific people within their groups, could misuse donations we provide them or act in a way not in conformity with the goals or mission of the partnership. This could cause reputational damage to us or to our brands, particularly to our brands, that may be associated with the non-profit efforts and may make it more difficult for us to secure future partners.

If we do not adequately manage our inventory levels, our operating results could be adversely affected.

We need to maintain adequate inventory levels to be able to deliver products to distributors on a timely basis. Our inventory supply depends on our ability to correctly estimate demand for our products. Our ability to estimate demand for our products is imprecise, particularly for new products, seasonal promotions and new markets. If we materially underestimate demand for our products or are unable to maintain sufficient inventory of raw materials, we might not be able to satisfy demand on a short-term basis. If we overestimate distributor or retailer demand for our products, we may end up with too much inventory, resulting in higher storage costs, increased trade spending and the risk of inventory spoilage. If we fail to manage our inventory to meet demand, we could damage our relationships with our distributors and retailers and could delay or lose sales opportunities, which would unfavorably impact our future sales and adversely affect our operating results. In addition, if the inventory of our products held by our distributors and retailers is too high, they will not place orders for additional products, which would also unfavorably impact our sales and adversely affect our operating results.

We may not be able to replicate the flavor profiles of our products.

We may develop a following for one or more products in which we might not be able to replicate the recipe or flavor profile. Our super premium aged whiskeys, rums and brandies take time to age, and we follow specific steps in our recipes. There is a chance a particular step is not taken properly or is missed entirely. In this case, it might be years before we find the impact of such actions on the final product and by that time, we may not be able to use that product for our intended purposes, which could impact our business plans and/or revenue targets. It could also mean a product we were planning to age to meet future plans might not be available, which could impact future revenues or value.

There is a long lead time for the production of our products due to the aging process for spirits.

There is a significant lead time required for us to age products to scale up for increased demand. As our footprint and sales grow, it may be difficult for us to produce and adequately age certain of our products to meet or sustain demand. Likewise, if we find suppliers of adequate supplies in the marketplace, there is no guarantee such supplies will remain available, or that if they are available, that the price for such items will be commercially reasonable.

We have a minority ownership interest in another brand, the value of which may never be realized or monetized.

While we have a minority interest in Flavored Bourbon LLC ("FBLLC"), the owner of the*Flavored Bourbon* brand, there is no guarantee that such brand will ever grow in value or retain its current value. The management team of FBLLC could fail in their efforts to grow the *Flavored Bourbon* brand and our investment in such a brand may never be monetized. The majority owners of FBLLC, or FBLLC's management team, could fail to adhere to their contractual obligations to us as they relate to future distributions or payments, which could adversely affect our financial condition and results of operations. If an investor invests in us assuming a certain return or share in proceeds from the growth or sale of such brand, such investor may never realize such returns, or the value of such investor's investment in us could decrease materially.

In addition, a well-known actor and celebrity is a co-owner of FBLLC and has been publicly and prominently involved in marketing the *Flavored Bourbon* brand to consumers. If any celebrity associated with the brand falls ill and cannot fully recover, or he or she fully recovers and chooses to disengage from continuing to market the *Flavored Bourbon* brand, it could severely impact the planned growth for the brand and cause the anticipated future value to never be realized. It could also impact the ability of the *Flavored Bourbon* brand to be monetized. If an investor invests in us assuming a certain return or share in proceeds from the growth or sale of such brand because of the co-ownership and marketing support of such actor, such investor may never realize such returns, or the value of such investor's investment in us could decrease materially.

In addition, if any celebrity associated with the brand is accused of making comments or engaging in any activity that is offensive, dangerous or illegal, it could materially impact the value of the *Flavored Bourbon* brand and an investor's expectation of returns from the possible sale of such brand.

Some of our future earnings from any sale of FBLLC have been pledged as inducements to secure past financings, which could reduce or eliminate our receipt of gains from the future sale of FBLLC for the benefit of our company or our investors.

As an inducement to obtain financing in 2022 and 2023 through the sale of convertible notes, we agreed to pay to the investors in such financings a portion of the proceeds we may receive from the sale of FBLLC or the *Flavored Bourbon* brand in the amount of 150% of their subscription amounts. For additional information regarding such payment obligation, see Note 5 to our unaudited interim condensed consolidated financial statements for the six months ended June 30, 2024 included elsewhere in this prospectus. As a result of such payment obligation, purchasers of our common stock in this offering who may anticipate a certain return, or expect to share in our proceeds, from the growth or sale of FBLLC or the *Flavored Bourbon* brand may never realize such returns, or the value of such purchasers' investment in us could decrease materially after required payments to our creditors are made.

Our interest in FBLLC or any future brand or entity in which we invest could be subject to dilution if there is a capital call in which we do not participate.

As a minority owner in FBLLC, we do not control the budget, spending or planning associated with the *Flavored Bourbon* brand, nor do we control whether there is a capital call, nor the terms of any offering that would result from a capital call. A capital call by FBLLC for which we do not have the resources to participate in full, or at all, could lead to dilution of our ownership in the *Flavored Bourbon* brand. A capital call by FBLLC could also have terms that put us in a less favorable financial position regarding any future potential earnings of the brand if we do not or cannot participate in such capital call. Conversely, if we choose to participate in a capital call, there is no guarantee of success or a return on such an investment. If an investor invests in us assuming a certain return or share in proceeds from the growth or sale of the *Flavored Bourbon* brand because of our current ownership level in FBLLC, such investor may never realize such returns, or the value of such investor's investment in us could decrease materially. In the first quarter 2024, FBLLC completed approximately $10 million of a planned $12 million capital call to fund growth in its operations and marketing. It is assumed the final $2 million will be raised via this facility by the end of 2024 and there should be no expectation that we will participate in the remainder of that offering this year.

An interruption of our operations or a catastrophic event at our facilities or the facilities of a partner or supplier could negatively affect our business.

Although we maintain insurance coverage for various property damage and loss events, an interruption in or loss of operations at any of our distilleries or other production facilities could reduce or postpone production of our products, which could have a material adverse effect on our business, results of operations, or financial condition. To the extent that our premium or value-added products rely on unique or proprietary processes or techniques, replacing lost production by purchasing from outside suppliers would be difficult.

Part of our business plan contemplates our customers storing barreled inventory of aged premium whiskeys, rums and brandies at our barrel storage facility in Gig Harbor, Washington. If a catastrophic event were to occur at this facility or at our warehouses, our customers' products or business could be adversely affected. The loss of a significant amount of aged inventory at these facilities through fire, natural disaster or otherwise could result in customer claims against us, liability for customer losses, and a reduction of warehouse services revenue.

We also store a substantial amount of our own inventory at our distribution warehouses in Gig Harbor, Washington and Eugene, Oregon. In addition, we store finished goods and merchandise at all of our retail locations. Some of our raw inputs are stored at supplier warehouses until we are ready to receive them. At times we have raw goods, work-in-progress inventory, or finished goods at third-party production or co-packing facilities, or in transit between any number of locations. If a catastrophic event were to occur at any of these locations or while in transit or storage, our business, financial condition or results of operations could be adversely affected. The loss of a significant amount of our aged inventory at these facilities through fire, natural disaster or otherwise could result in a reduction in supply of the affected product or products and could affect our long-term performance of affected brands.

Likewise, the facility of a TBN partner or supplier producing or storing product, inventory or aging inventory could suffer an uninsured or underinsured loss that impacts our business. This could result in a reduction in supply of the affected product or products and could materially adversely affect the long-term performance of certain of our brands.

The formulas, recipes and proportions used in the production of our products may differ materially from those we have assumed for purposes of our business plan.

The assumed formulas, recipes and proportions in our business plan, and the resulting product yields, revenues and profits, could greatly differ from what we assumed. As a result, our financial projections could change dramatically overall and on a per-bottle or per-unit basis. Such changes could result in significant reductions in the assumptions for sales, profits and distributions for stockholders, thereby negatively impacting potential returns for investors or putting the investors' investments at risk.

We may be disparaged publicly or in the press for not being authentically "craft".

Having multiple distillery locations, increasing the scale of our operations, collaborating with larger partners to achieve our goals, licensing our brand to third parties for production, or becoming a publicly-traded company could, individually or in the aggregate, impact how and whether consumers, competitors, regulators and the media, among others, perceive us as a "craft" distiller. In addition, because we are permitted to, and often do, source intermediate and finished spirits materials in bulk, such as whiskeys and neutral grain spirits, for blending, flavoring, bottling, mixing or aging, a public accusation or pronouncement by a third party or the press of such a practice as not "craft" could cause us to come under intense scrutiny in the market such that we lose our perception as a "craft" distiller, which could result in consumer backlash, negative news stories, the removal of our products from bars, restaurants and retail stores and the dropping of our products by distributors and wholesalers. Any such scenario would likely cause significant hardship for us and could cause an investment in us to lose all or some of its value.

We are subject to seasonality related to sales of our products.

Our business is subject to substantial seasonal fluctuations. Historically, a significant portion of our net sales and net earnings has been realized during the period from June through August and in November and December. Accordingly, our operating results may vary significantly from quarter to quarter. Our operating results for any quarter are not necessarily indicative of any other results. If for any reason our sales were to be substantially below seasonal norms, our annual revenues and earnings could be materially and adversely affected.

If our inventory is lost due to theft, fire or other damage or becomes obsolete, our results of operations would be negatively impacted.

We expect our inventory levels to fluctuate to meet customer delivery requirements for our products. We are always at risk of loss of that inventory due to theft, fire or other damage, and any such loss, whether insured against or not, could cause us to fail to meet our orders and harm our sales and operating results. Also, our inventory may become obsolete as we introduce new products, cease to produce old products or modify the design of our products' packaging, which would increase our operating losses and negatively impact our results of operations.

Weather conditions may have a material adverse effect on our sales or on the price of raw materials used to produce spirits.

We operate in an industry in which performance is affected by the weather. Extreme changes in weather conditions may result in lower consumption of craft spirits and other alcoholic beverages. Unusually cold spells in winter or high temperatures in the summer can result in temporary shifts in customer preferences and impact demand for the alcoholic beverages we produce and distribute. Similar weather conditions in the future may have a material adverse effect on our sales, which could affect our business, financial condition and results of operations. In addition, inclement weather may affect the availability of grain used to produce raw spirit, which could result in a rise in raw spirit pricing that could negatively affect margins and sales.

Climate change, or legal, regulatory or market measures to address climate change, may negatively affect our business, operations or financial performance, and water scarcity or poor quality could negatively impact our production costs and capacity.

Our business depends upon agricultural activity and natural resources. There has been much public discussion related to concerns that carbon dioxide and other greenhouse gases in the atmosphere may have an adverse impact on global temperatures, weather patterns and the frequency and severity of extreme weather and natural disasters. Severe weather events and climate change may negatively affect agricultural productivity in the regions from which we presently source our agricultural raw materials. Decreased availability of our raw materials may increase the cost of goods for our products. Severe weather events, or changes in the frequency or intensity of weather events, can also disrupt our supply chain, which may affect production operations, insurance cost and coverage, as well as delivery of our products to wholesalers, retailers and consumers.

Water is essential in our product production and is a limited resource in some of the regions in which we operate. If climate patterns change and droughts become more severe in any of the regions in which we operate, there may be a scarcity of water or poor water quality which may affect our production costs or impose capacity constraints. Such events could adversely affect the results of operations and financial condition.

During the fermentation process required to make spirits, carbon dioxide is produced and vented into the atmosphere. Currently there are no regulations in the industry requiring capture of carbon dioxide. If a government decided to implement such requirements, it might not be technically feasible for us to comply, or to comply in a way that allows us to operate profitably. Failure to implement any such rules could result in temporary or permanent loss of licenses, fines, penalties or other negative outcomes for us.

The equipment we use and intend to purchase in the future to make our products or offer our services may not perform as planned or designed.

The equipment we use and intend to purchase in the future to make our products or offer our services may not perform as planned or designed. Such failures could significantly extend the time required to make batches of products for sale. As such, our reputation could suffer, thereby impacting future sales and revenues.

Further, given that we will be engaged in a manufacturing process, it is likely that equipment will break down or wear out, including after the lapse of a warranty period related to such equipment, which could require us to expend unanticipated resources to repair or replace such equipment, thereby delaying, reducing or otherwise impacting our anticipated revenues.

Temperature issues in fermentation vessels, bacteria or other contamination could negatively affect the fermentation process for our products.

Our products require proper fermentation of grains or fruits. Temperature issues in fermentation vessels could negatively affect the fermentation process, as could bacteria or other contamination. As such, faulty fermentation or contamination could force us to discard batches of fermenting product before it can be distilled. This would not only cost us in wasted fermenting products that must be disposed of, but would also extend the sales cycle for the affected products, thereby delaying, reducing or otherwise impacting our anticipated revenues.

We operate in highly-competitive industries, and competitive pressures could have a material adverse effect on our business.

The alcoholic beverages production and distribution industries in our region are intensely competitive. The principal competitive factors in these industries include product range, pricing, distribution capabilities and responsiveness to consumer preferences, with varying emphasis on these factors depending on the market and the product. The alcoholic beverage industry competes with respect to brand recognition, product quality, brand loyalty, customer service and price. Our failure to maintain and enhance our competitive position could materially and adversely affect our business and prospects for business. Wholesaler, retailer and consumer purchasing decisions are influenced by, among other things, the perceived absolute or relative overall value of our products, including our quality or pricing, compared to competitor's products. Unit volume and dollar sales could also be affected by pricing, purchasing, financing, operational, advertising or promotional decisions made by wholesalers, state and provincial agencies, and retailers which could affect their supply of, or consumer demand for, our products. We could also experience higher than expected selling, general and administrative expenses if we find it necessary to increase the number of our personnel or our advertising or marketing expenditures to maintain our competitive position or for other reasons.

Our failure to manage growth effectively or prepare for product scalability could have an adverse effect on our employee efficiency, product quality, working capital levels and results of operations.

Any significant growth in the market for our products or our entry into new markets may require an expansion of our employee base for managerial, operational, financial, and other purposes. During any period of growth, we may face problems related to our operational and financial systems and controls, including quality control and delivery and service capacities. We would also need to continue to expand, train and manage our employee base. Continued future growth will impose significant added responsibilities upon the members of management to identify, recruit, maintain, integrate and motivate new employees.

Aside from increased difficulties in the management of human resources, we may also encounter working capital issues, as we will need increased liquidity to finance the marketing of the products we sell and the hiring of additional employees. For effective growth management, we must continue to improve our operations, management, and financial systems and controls. Our failure to manage growth effectively may lead to operational and financial inefficiencies that will have a negative effect on our profitability. We cannot assure investors that we will be able to timely and effectively meet that demand and maintain the quality standards required by our existing and potential customers.

We may not be successful in introducing new products and services.

Our success in developing, introducing, selling and supporting new and enhanced products or services depends upon a variety of factors, including timely and efficient completion of service and product design, development and approval, and timely and efficient implementation of product and service offerings. Because new product and service commitments may be made well in advance of sales, new product or service decisions must anticipate changes in the industries served. There can be no assurance that we will be successful in selecting, developing, and marketing new products and services or in enhancing our planned products or services. Failure to do so successfully may adversely affect our business, financial condition and results of operations.

Further, new product and service introductions or enhancements by our competitors, or their use of other novel technologies, could cause a decline in sales or a loss of market acceptance of our planned products and services. Specifically, our competitors may attempt to install systems or introduce products or services that directly compete with our planned products or service offerings with newer technology or at prices we cannot meet. Depending on our customer arrangements then in effect, we could lose customers as a result.

Our management team may not be able to successfully implement our business strategies.

If our management team is unable to execute our business strategies, then our development, including the establishment of revenues and our sales and marketing activities, would be materially and adversely affected. In addition, we may encounter difficulties in effectively managing the budgeting, forecasting and other process control issues presented by any future growth. We may seek to augment or replace members of our management team, or we may lose key members of our management team, and we may not be able to attract new management talent with sufficient skill and experience.

If we are unable to retain key executives and other key affiliates, our growth could be significantly inhibited and our business harmed with a material adverse effect on our business, financial condition and results of operations.

Our success is, to a certain extent, attributable to the management, sales and marketing, and operational and technical expertise of certain key personnel. Justin Stiefel, our Chief Executive Officer, and Jennifer Stiefel, our President, perform key functions in the operation of our business. The loss of either officer could adversely affect our business, financial condition and results of operations. We do not maintain key-person insurance for members of our management team beyond those two executive officers because it is cost prohibitive to do so at this point. If we lose the services of any senior management, we may not be able to locate suitable or qualified replacements and may incur additional expenses to recruit and train new personnel, which could severely disrupt our business and prospects.

Our success in the future may depend on our ability to establish and maintain strategic alliances, and any failure on our part to establish and maintain such relationships would adversely affect our market penetration and revenue growth.

Due to the regulated nature of the alcoholic beverage industry, we must establish strategic relationships with third parties. Our ability to establish strategic relationships will depend on many factors, many of which are outside our control, such as the competitive position of our product and marketing plan relative to our competitors. We may not be able to establish other strategic relationships in the future. In addition, any strategic alliances that we establish may subject us to several risks, including risks associated with sharing proprietary information, loss of control of operations that are material to developed business and profit-sharing arrangements. Moreover, strategic alliances may be expensive to implement and subject us to the risk that the third party will not perform its obligations under the relationship, which may subject us to losses over which we have no control or expensive termination arrangements. As a result, even if our strategic alliances with third parties are successful, our business may be adversely affected by factors outside of our control.

Our strategy may include acquiring companies or brands, which may result in unsuitable acquisitions or failure to successfully integrate acquired companies or brands, which could lead to reduced profitability.

We may embark on a growth strategy through acquisitions of companies or operations that complement our existing product lines, customers or other capabilities, such as our recent acquisition of Thinking Tree Spirits. We may be unsuccessful in identifying suitable acquisition candidates or may be unable to consummate desired acquisitions. To the extent any acquisitions are completed, we may be unsuccessful in integrating acquired companies or their operations, or if integration is more difficult than anticipated, we may experience disruptions that could have a material adverse impact on future profitability. Some of the risks that may affect our ability to integrate, or realize any anticipated benefits from, acquisitions include:

- unexpected losses of key employees or customers of the acquired company;
- difficulties integrating the acquired company’s products, services, standards, processes, procedures and controls;
- difficulties coordinating new product and process development;
- difficulties hiring additional management and other critical personnel;
- difficulties increasing the scope, geographic diversity and complexity of our operations;
- difficulties consolidating facilities or transferring processes and know-how;

- difficulties reducing costs of the acquired company's business;
- diversion of management's attention from our management; and
- adverse impacts on retaining existing business relationships with customers.

Our recent acquisition of Thinking Tree Spirits could present several challenges or potential liabilities that could adversely affect our business, including the following:

- we may not be able to fully integrate the acquired brands or products into our platform;
- we may not be able to recover the cost of the investment in a way that makes the acquisition profitable or a good decision;
- we may suffer reputational harm in the communities in which Thinking Tree Spirits is located from people who object to a local business being acquired;
- we may not have been given all relevant information during our due diligence process, which could have affected our decision to proceed with the acquisition or could have allowed us to renegotiate the purchase price or other terms;
- we are obligated by certain earn-out provisions of our purchase contract to issue to the sellers of Thinking Tree Spirits additional shares of our common stock over the next three years if the Thinking Tree Spirits brands grow in revenue over that period, which could lead to dilution for all other shareholders; and
- as the purchaser in the acquisition, we may be subject to litigation related to certain acts of Thinking Tree Spirits or its management that occurred prior to the acquisition, including wrongful termination or age discrimination claims, securities fraud, whistleblower issues or other matters, known or unknown to us at the time.

Certain former Thinking Tree Spirits shareholders opposed our acquisition of that company and filed a notice exercising dissenters' rights, which exposes us to uncertain costs and risks.

In July 2024, three Thinking Tree Spirits shareholders provided Thinking Tree Spirits a notice of dissent to our proposed acquisition of Thinking Tree Spirits on the terms set forth in our acquisition agreement for that company. In July 2024, such former shareholders notified Thinking Tree Spirits and us of their intention to commence litigation to seek damages against Thinking Tree Spirits and us if we do not pay such former shareholders an amount in cash that they allege is the fair value of the shares of capital stock they held in Thinking Tree Spirits as required by Oregon law. The amount the dissenting shareholders alleged was the fair value of their shares exceeds the amount we believe was the actual fair value of such shares. If we cannot reach a negotiated agreement with the dissenting former shareholders on the fair market value of the shares they held in Thinking Tree Spirits, such dissenting shareholders may pursue litigation under Oregon state law seeking a judicially determined value. The statutory time period has passed for any other party to assert dissenters' rights.

In the event a litigation is commenced, we intend to deny the allegations of the purported value of the Thinking Tree Spirits shares and to vigorously defend the suits. However, the outcome of litigation is inherently uncertain and it is possible that the plaintiffs in any such litigation will prevail no matter how vigorously we defend ourselves. In such case, the judicially-determined value of the shares of the dissenting shareholders could exceed the per share value of the consideration we paid for Thinking Tree Spirits, which could result in the payment of significant compensatory damages by our company. Any such adverse decision in such actions could have a material adverse effect on our financial position and liquidity and on our business and results of operations. In addition, regardless of the outcome, litigation can have an adverse impact on us because of defense costs, diversion of management resources and other factors. Further, in the event there is litigation that becomes public, such litigation could cause harm to our brand and our reputation, thereby impacting the value of our shares of common stock held by our stockholders. Finally, in the event we reach a negotiated settlement with the dissenting shareholders or there is an adverse decision in any litigation that is commenced, it is likely that some cash will be required to be paid to the plaintiffs. Any cash payments will reduce the available cash we have to run our company and to invest in our business and our growth, which could have a material adverse effect on our financial position and liquidity and on our business and results of operations.

We may enter partnerships,co-branding arrangements, licensing agreements, co-location, joint branding or other collaborative arrangements with other brands, producers, partners or celebrities which could distract from our core business plans, create new risks for our company or otherwise dilute our efforts at growing the value of our company or our brands.

To grow our sales, increase revenue, open new channels of distribution or increase the presence of our company or a brand, we may enter in several arrangements or agreements, including but not limited to partnerships, co-branding arrangements, licensing agreements, co-location, joint branding or other collaborative arrangements, with other brands, producers, partners or celebrities. Examples of some of these arrangements could include:

- *Co-branded or jointly branded products* — There is a risk that the co-branding does not work or does not make sense to the consumer, which would depress sales and could result in a loss of the effort, time and money spent on developing such products. There is also a risk the other brand owner with whom we partnered on the effort may not be able to fulfill its agreements, thereby resulting in lower sales, revenue and profitability compared to expectations heading into such arrangements. There is a risk the other brand owner cannot pay its bills, becomes insolvent, files for bankruptcy, is foreclosed upon or otherwise must cease operations, in which case we could have a co-branded product without a corresponding co-branding partner. In such a case, it may also be that we lose the right to continue using the co-branded designs, recipes or trademarks because of a change in operation. There is also a risk that the entity with whom we have co-branded, or one of its employees, managers, executives, directors, or prominent shareholders, does or says something to cause harm to the co-branded product and our brand by association.

- *Licensing Agreements* — There is a risk that if we license to others one or more of our brands, trademarks or patents, the licensee might not pay us the licensing fees or royalties due to us for a variety of reasons. The licensee might attempt to modify or use such licensed items in an inappropriate way inconsistent with our company, the brand, or the terms of the license. There is a risk the licensee, or one of its employees, managers, executives, directors, or prominent shareholders, does or says something to cause harm to the licensed product and our brand by association.

- *Co-location* — We may decide to co-locate or co-brand retail spaces with other distillers or producers, either in their space or in our space to increase the variety of our offerings, attract new consumers to our space or get our brand and products in front of consumers in areas of the country where we do not have a physical presence. There is a risk that the co-location does not work or does not make sense to the consumer, which would depress sales and could result in a loss of the effort, time and money spent on developing such co-location presence. There is also a risk the other brand owner with whom we partnered in the effort may not be able to fulfill its agreements, thereby resulting in lower sales, revenue and profitability compared to expectations heading into such an arrangement. There is a risk the staff of the co-location partner does not represent our brand properly to consumers, or creates confusion about the brand or the products, or otherwise encourage consumers to skip purchasing our brands in favor of trying and purchasing their own brands. Likewise, there is a risk the co-location partner accuses our retail employees of not representing the co-located brand properly to consumers, or creating confusion about the brand or the products, or otherwise is accused of encouraging consumers to skip purchasing those brands in favor of trying and purchasing our own brands. There is a risk the other brand owner cannot pay their debts, becomes insolvent, files for bankruptcy, is foreclosed upon or otherwise must cease operations, in which case we could have a co-located presence without a corresponding co-location partner to fulfill its terms of the agreement. In such a case, it may also be that we lose the right to continue using the co-located space to market and sell our products. There is also a risk that the entity with which we have co-located, or one of its employees, managers, executives, directors, or prominent shareholders, does or says something to cause harm to the co-located product and our brand by association.

- *Other collaborative arrangements with brands, producers, partners, or celebrities*— We may enter into collaborative agreements with other brands, producers, partners, or celebrities. There is a risk that those collaborative partners might not fulfill their obligations under the agreements, or they may not pay fees or royalties due to us. They may use licenses from us in an inappropriate way inconsistent with our company, our brands, or the terms of the license. There is a risk they could do or say something to cause harm to our brand or the collaboration effort by association.

Any one or more of the above risks, if they materialize, could result in lower sales, less revenue than anticipated, less profit than anticipated or a reduction in the value of our brands or reputation or value, which could have a material adverse effect on our business or operating results.

From time to time, we may become subject to litigation specifically directed at the alcoholic beverage industry, as well as litigation arising in the ordinary course of business.

Companies operating in the alcoholic beverage industry may, from time to time, be exposed to class action or other private or governmental litigation and claims relating to product liability, alcohol marketing, advertising or distribution practices, alcohol abuse problems or other health consequences arising from the excessive consumption of or other misuse of alcohol, including underage drinking. Various groups and governmental agencies have, from time to time, publicly expressed concern over problems related to harmful use of alcohol, including drinking and driving, underage drinking and health consequences from the use or misuse of alcohol, and efforts have been made attempting to tie the consumption of alcohol to certain diseases, including various cancers. These campaigns could result in an increased risk of litigation against us and other companies in our industry. Lawsuits have been brought against beverage alcohol companies alleging problems related to alcohol abuse, negative health consequences from drinking, problems from alleged marketing or sales practices and underage drinking. While these lawsuits have been largely unsuccessful in the past, others may succeed in the future.

From time to time, we may also be party to other litigation in the ordinary course of our operations, including in connection with commercial disputes, enforcement or other regulatory actions by tax, customs, competition, environmental, anti-corruption and other relevant regulatory authorities, or, following this transaction, securities-related class action lawsuits, particularly following any significant decline in the price of our securities. Any such litigation or other actions may be expensive to defend and result in damages, penalties or fines as well as reputational damage to us and our spirits brands and may impact the ability of management to focus on other business matters. Furthermore, any adverse judgments may result in an increase in future insurance premiums, and any judgments for which we are not fully insured may result in a significant financial loss and may materially and adversely affect our business, results of operations and financial results.

We may not be able to maintain our production,co-branded or co-packed spirits products or win any such agreements in the future.

We have previously secured, and continue to bid on, contract production, co-branded or co-packed spirits products. However, there is no guarantee that we can maintain those contracts, or that any products produced pursuant to such contracts will have success in the market, or that we can continue to secure additional similar projects. The loss of any such current or future projects could significantly impact our cash flow, finances and equipment utilization rates.

We have affiliations with products associated with more established brands and celebrities.

More established brands with which we partner, for which we produce products or with which we are otherwise engaged in business could become the subject of public criticism for the actions, or lack thereof, related to issues in the public sphere. This could include the actions of executives, employees or spokespersons associated with such brands, or public positions related to social or political matters. Such items could negatively impact the perception of our brand by association.

We are also endorsed by certain celebrities, and we have an ownership interest in brands associated with celebrities. There is a risk that actions taken by such celebrities could negatively impact our brand or the perception of our goods and services. Any brands in which we have an ownership interest that are associated with public figures could have a diminished value due to certain actions taken by such public figures.

We may be subject to claims for personal injuries at our facilities.

We offer tours of our facility and, pursuant to our*My Batch* program, allow customers to assist the distillers and other employees in the use of our equipment to make products for the customers' specific purchase under our supervision. We also allow the public entry into other areas of our facilities, including our tasting rooms, and sometimes we make our spaces available for private events.

Because of the processes, equipment, products and chemicals we have on-site, employees, customers, delivery persons, vendors, suppliers, contractors or other persons could be injured or killed in the event of an accident. Any such result could force us to limit or curtail all or some of our operations or sales, thereby negatively impacting our financial performance significantly. Such an incident may also cause us to be subject to significant liability that may not be covered by insurance. In addition, such an event would likely result in litigation that could be costly and could distract our management from operations.

We may be subject to vandalism or theft of our products or equipment.

We may be subject to vandalism or theft of our products or equipment, including, but not limited to, theft by our employees or "shrinkage." Loss of a product or equipment could take a long time to replace, causing disruptions in our cash flow and overall financial position. Such events may not be covered by insurance, in whole or in part. If covered by insurance, the cost of our deductible could be high. Any such event could pose a material challenge to our ability to maintain operations. Further, if loss is the result of employee theft or shrinkage of products, federal or state agency audits may result in a penalty for loss of product outside of allowed norms.

A failure of one or more of our key IT systems, networks, processes, associated sites or service providers could have a material adverse impact on our business operations, and if the failure is prolonged, our financial condition.

We rely on IT systems, networks and services, including internet sites, data hosting and processing facilities and tools, hardware (including laptops and mobile devices), software and technical applications and platforms, some of which are managed, hosted, provided and used by third parties or their vendors, to assist us in the management of our business. The various uses of these IT systems, networks and services include, but are not limited to: hosting our internal network and communication systems; supply and demand planning; production; shipping products to customers; hosting our distillery websites and marketing products to consumers; collecting and storing customer, consumer, employee, stockholder, and other data; processing transactions; summarizing and reporting results of operations; hosting, processing and sharing confidential and proprietary research, business plans and financial information; complying with regulatory, legal or tax requirements; providing data security; and handling other processes necessary to manage our business.

Increased IT security threats and more sophisticated cybercrimes and cyberattacks, including computer viruses and other malicious codes, ransomware, unauthorized access attempts, denial of service attacks, phishing, social engineering, hacking and other types of attacks pose a potential risk to the security of our IT systems, networks and services, as well as the confidentiality, availability, and integrity of our data, and we have in the past, and may in the future, experience cyberattacks and other unauthorized access attempts to our IT systems. Because the techniques used to obtain unauthorized access are constantly changing and often are not recognized until launched against a target, we or our vendors may be unable to anticipate these techniques or implement sufficient preventative or remedial measures. If we are unable to efficiently and effectively maintain and upgrade our system safeguards, we may incur unexpected costs and certain of our systems may become more vulnerable to unauthorized access. In the event of a ransomware or other cyber-attack, the integrity and safety of our data could be at risk, or we may incur unforeseen costs impacting our financial position. If the IT systems, networks or service providers we rely upon fail to function properly, or if we suffer a loss or disclosure of business or other sensitive information due to any number of causes ranging from catastrophic events, power outages, security breaches, unauthorized use or usage errors by employees, vendors or other third parties and other security issues, we may be subject to legal claims and proceedings, liability under laws that protect the privacy and security of personal information (also known as personal data), litigation, governmental investigations and proceedings and regulatory penalties, and we may suffer interruptions in our ability to manage our operations and reputational, competitive or business harm, which may adversely affect our business, results of operations and financial results. In addition, such events could result in unauthorized disclosure of material confidential information, and we may suffer financial and reputational damage because of lost or misappropriated confidential information belonging to us or to our employees, stockholders, customers, suppliers, consumers or others. In any of these events, we could also be required to spend significant financial and other resources to remedy the damage caused by a security breach or technological failure and the reputational damage resulting therefrom, to pay for investigations, forensic analyses, legal advice, public relations advice or other services, or to repair or replace networks and IT systems. Even though we maintain cyber risk insurance, this insurance may not be sufficient to cover all our losses from any future breaches or failures of our IT systems, networks and services.

We are testing the use of Artificial Intelligence (AI) in our marketing, branding and other efforts, which could create several risks for our operations.

We are testing various AI tools and efforts to achieve multiple objectives, including but not limited to, creating new creative material to support our brands and marketing efforts, creating new designs for packaging and marketing, creating content for social media and other uses, streamlining the placement of paid advertising via streaming services or social media to maximize efficacy, speed up development of such efforts or to cut costs associated with these efforts. Such efforts may not yield the results we want or provide a satisfactory return on investment,

In addition, some of companies offering AI tools we use or may use in the future, which may be free or may be accessible in beta testing mode, may begin to charge us for their services or increase their fees to use such tools. These costs or cost increases could become unaffordable for us or not fit within our budget parameters. If we have become reliant upon such tools and we can no longer afford to use them, our revenue and profitability may be affected in a negative way. If the loss of such tools results in fewer sales and less revenue, our business operations may be negatively impacted, which could adversely affect the value of our common stock.

It is also possible that some of the AI tools we become reliant upon may be acquired by third parties that will restrict their use, making it either not economically feasible for us to continue using them, or not give us access to the tools at all. In this case, we may be required to hire new employees or consultants, find new outside vendors, or change strategies or tactics to meet our planned objectives, sales targets, revenue and profitability. If the use of such AI tools drives new revenue, increases our sales or profitability, or lowers our costs, the resulting loss of access to them could have an overall negative impact on our business.

Recent court cases have determined that AI-generated content may not qualify for copyright protection. As such, a product, good, service, design, element or some other item we create using AI tools and put into commerce to market or sell a brand, service or product may not qualify for such protection, which could weaken our intellectual property portfolio and allow competitors to use such elements for their own or competing purposes. This could lead to product or brand confusion in the marketplace with little to no way for us to enforce intellectual property rights we might otherwise rely upon.

The AI tools we may come to rely upon may create third-party liability for our company.

The use of AI for business-related activities is still in its very early days and the use of AI is still unproven. In some cases, we may use AI tools to create new branding, marketing materials, strategies, content, or documents to achieve our goals or objectives. Because AI tools work with everchanging inputs in the background and we have no visibility to how the AI tools are performing their work, there is a risk that a product produced by an AI tool for us infringes on another person's, brand's or entity's intellectual property, or that the finished product was also provided by the AI tool to other persons, brands, entities or businesses who may or may not be in competition with us. The use of similar finished products in marketing, branding, advertising, strategies, or tactics could cause confusion in the marketplace or open us up to accusation of plagiarism or the violation of another's intellectual property rights. Such accusations, if proven true, could cause disruptions for us, cause us to have to change tactics or strategies resulting in fewer sales and less revenue, or subject us to liability for monetary compensation.

There is also a risk that the work product coming from AI tools we use may result in a finished product that is based on the biases of the inputs of the creators, programmers or engineers of such AI tools. Further, such biases could be built into how the algorithms driving such AI are constructed, altering the outputs in a way that makes our use of the finished work product less effective or not consistent with our company or our brand objectives.

There is a risk that competitors, members of the public or others who want to hurt our company or our brand, begin to post on social media about our company or our brands that causes a backlash among consumers, or use AI to create false narratives about our company. There is also a risk that social media influencers, pundits or public personalities who may be viewed as controversial attempt to align themselves with our company or our brands that causes a backlash among consumers.

AI tools are being used to create fake video clips and fake images. Some AI tools can also allow users to create videos in which it appears someone is doing or saying something that never took place. These videos are becoming very difficult, if not impossible, to identify as fake. There is a risk that someone could create videos or clips purporting to show one of our employees, executives, directors, contractors, suppliers, vendors, partners, influencers

or other party or affiliate associated with our company saying something offensive, hurtful, defamatory, or otherwise designed in such a way as to harm our reputation or the reputation of our brands. In such cases, the resulting public backlash or boycotts of our products, the potential for cancelled partnerships, or the removal of our products or brands from distribution, bars, restaurants, retail shelves or other locations where they are sold and served, could cause us to lose sales and revenue and impact our operations or business prospects. Such actions could also cause reputational harm to our company and our brands that cannot be overcome, thereby impacting our ability to conduct business or to generate sales or profits, and ultimately negatively impact the value of our common stock.

There is also a risk that social media influencers, pundits or public personalities who may be viewed as controversial by some group or community attempt to align themselves with our company or our brands that causes a backlash among consumers or specific groups or communities. These people, acting on their own or in concert with others, could feel they are making positive posts about us or our brands, but communities or groups with opposing viewpoints from those posting about us could attempt to create a backlash against our company or our brands due to the appearance of the association with such people. If we or our brands were to get swept up in a backlash or boycott of our products, goods or services simply because of the public comments made by others, even if we are not involved and do not condone or sanction such comments, our sales, revenue and profits could be impacted, and it could ultimately negatively impact the value of our common stock.

Our failure to adequately maintain and protect the personal information of our customers or our employees in compliance with evolving legal requirements could have a material adverse effect on our business.

We collect, use, store, disclose or transfer (collectively, "process") personal information, including from employees and customers, in connection with the operation of our business. A wide variety of local and international laws as well as regulations and industry guidelines apply to the privacy and collecting, storing, use, processing, disclosure and protection of personal information and may be inconsistent among countries or conflict with other rules. Data protection and privacy laws and regulations are changing, subject to differing interpretations and being tested in courts and may result in increasing regulatory and public scrutiny and escalating levels of enforcement and sanctions.

A variety of data protection legislation apply in the United States at both the federal and state level, including new laws that may impact our operations. For example, the State of California has enacted the California Consumer Privacy Act of 2018 ("CCPA"), which generally requires companies that collect, use, share and otherwise process "personal information" (which is broadly defined) of California residents to make disclosures about their data collection, use, and sharing practices, allows consumers to opt-out of certain data sharing with third parties or the sale of personal information, allows consumers to exercise certain rights with respect to any personal information collected and provides a new cause of action for data breaches. In addition, a new privacy law, the California Privacy Rights Act ("CPRA"), which significantly modifies the CCPA, was approved by ballot initiative during the November 3, 2020 general election. There remains significant uncertainty regarding the timing and implementation of the CPRA, which may require us to incur additional expenditures to ensure compliance. Additionally, the Federal Trade Commission, and many state attorneys general are interpreting federal and state consumer protection laws to impose standards for the online collection, use, dissemination, and security of data. The burdens imposed by the CCPA and other similar laws that have been or may be enacted at the federal and state level may require us to modify our data processing practices and policies and to incur additional expenditures to comply.

Compliance with these and any other applicable privacy and data protection laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new privacy and data protection laws and regulations. Our actual or alleged failure to comply with any applicable privacy and data protection laws and regulations, industry standards or contractual obligations, or to protect such information and data that we processes, could result in litigation, regulatory investigations, and enforcement actions against us, including fines, orders, public censure, claims for damages by employees, customers and other affected individuals, public statements against us by consumer advocacy groups, damage to our reputation and competitive position and loss of goodwill (both in relation to existing customers and prospective customers) any of which could have a material adverse effect on our business, financial condition, results of operations, and cash flows. Additionally, if third parties that we work with, such as vendors or developers, violate applicable laws or our policies, such violations may also place personal information at risk and have an adverse effect on our business. Even the perception of privacy concerns, whether or not valid, may harm our reputation, subject us to regulatory scrutiny and investigations, and inhibit adoption of our spirits and other products by existing and potential customers.

Contamination of our products and/or counterfeit or confusingly similar products could harm the image and integrity of, or decrease customer support for, our brands and decrease our sales.

The success of our brands depends upon the positive image that consumers have of them. Contamination, whether arising accidentally or through deliberate third-party action, or other events that harm the integrity or consumer support for our brands, could affect the demand for our products. Contaminants in raw materials purchased from third parties and used in the production of our products or defects in the distillation and fermentation processes could lead to low beverage quality as well as illness among, or injury to, consumers of our products and could result in reduced sales of the affected brand or all of our brands. Also, to the extent that third parties sell products that are either counterfeit versions of our brands or brands that look like our brands, consumers of our brands could confuse our products with products that they consider inferior. This could cause them to refrain from purchasing our brands in the future and in turn could impair our brand equity and adversely affect our sales and operations.

We could be faced with risks associated with cyberattacks by non-state actors or countries since the Russian invasion of Ukraine and the terrorist attacks by Hamas on Israel, recent attacks by Iran, and the resulting responses by Israel.

Increased IT security threats and more sophisticated cybercrimes and cyberattacks, including computer viruses and other malicious codes, ransomware, unauthorized access attempts, denial of service attacks, phishing, social engineering, hacking and other types of attacks pose a potential risk to the security of our IT systems, networks and services, as well as the confidentiality, availability and integrity of our data, and we have in the past, and may in the future, experience cyberattacks and other unauthorized access attempts to our IT systems. These attempts could increase as state and non-state actors look to disrupt companies in the U.S. Specifically as it relates to potential attacks from Russia, Hamas, Iran or aligned groups, we cannot choose which countries, non-state actors or private groups to defend against. Our focus is on maintaining the integrity of our systems regardless of the source of the threat.

From a physical threat perspective, we do not have, and do not plan to have, employees in Ukraine or Israel nor in regions in their vicinity. Likewise, we do not currently, nor do we plan to, source materials or inputs from, or make investments in, those regions. To the extent there may be future sourcing, hiring or investment decisions in or near those regions, our board of directors would need to evaluate the risks and approve such action given the heightened risks associated with those regions currently. Likewise, from an IT or cybersecurity threat perspective, our board will need to receive regular reports from our IT team, including an assessment of attempted attacks, new methods of attack and defense, and updates regarding the state-of-the-art techniques provided by our vendors to help fend off such attacks. In addition, we anticipate that if we are to maintain or secure insurance coverage to compensate us for losses from any such attacks, that coverage and the steps required to ensure the coverage stays in place will be overseen by at least one committee of our board in the normal course of business.

The techniques used to obtain unauthorized system access are constantly changing and often are not recognized until launched against a target. As such, we or our vendors may be unable to anticipate these techniques or implement sufficient preventative or remedial measures. If we are unable to efficiently and effectively maintain and upgrade our system safeguards, we may incur unexpected costs and certain of our systems may become more vulnerable to unauthorized access. In the event of a ransomware or other cyber-attack, the integrity and safety of our data could be at risk, or we may incur unforeseen costs impacting our financial position. If the IT systems, networks or service providers we rely upon fail to function properly, or if we suffer a loss or disclosure of business or other sensitive information due to any number of causes, ranging from catastrophic events, power outages, security breaches, unauthorized use or usage errors by employees, vendors or other third parties and other security issues, we may be subject to legal claims and proceedings, liability under laws that protect the privacy and security of personal information (also known as personal data), litigation, governmental investigations and proceedings and regulatory penalties, and we may suffer interruptions in our ability to manage our operations and reputational, competitive or business harm, which may adversely affect our business, results of operations and financial results. In addition, such events could result in unauthorized disclosure of material confidential information, and we may suffer financial and reputational damage because of lost or misappropriated confidential information belonging to us or to our employees, stockholders, customers, suppliers, consumers or others. In any of these events, we could also be required to spend significant financial and other resources to remedy the damage caused by a security breach or

technological failure and the reputational damage resulting therefrom, to pay for investigations, forensic analyses, legal advice, public relations advice or other services, or to repair or replace networks and IT systems. Even though we maintain cyber risk insurance, this insurance may not be sufficient to cover all of our losses from any future breaches or failures of our IT systems, networks and services.

Global conflicts could increase our costs, which could adversely affect our operations and financial condition.

Management continues to monitor the changing landscape of global conflicts and their potential impacts on our business. First among these concerns is the ongoing conflict in Ukraine, which has caused disruption in the grain, natural gas and fertilizer markets, and the result of which is uncertainty in pricing for those commodities. Because we rely on grains for part of our raw material inputs, these disruptions could increase our supply costs. However, as we source all of our grain from local or known domestic suppliers, management believes the impact of the Ukraine war has not been significant based on our history and relationship with the existing farmers and growers. The other potential conflict we monitor is the threatening military activity between China and Taiwan. Historically we have sourced our glass bottles from suppliers in China and we have recently migrated this production to Taiwan. Although we now have what we consider an adequate supply of our glass bottles at the current utilization rate, considering the potential disruption in Taiwan, we have started to evaluate new producers who can produce glass bottles in other countries. Finally, most recently the attacks on Israel and the resulting and potentially escalating tensions in the region could feed uncertainty in the oil markets, which could impact prices for fuel, transportation, freight and other related items, impacting costs directly and indirectly leading to more inflation.

Risks Related to our Intellectual Property

It is difficult and costly to protect our proprietary rights.

Our commercial success will depend in part on obtaining and maintaining trademark protection and trade secret protection of our products and brands, as well as successfully defending these trademarks against third-party challenges. We will only be able to protect our intellectual property related to our trademarks and brands to the extent that we have rights under valid and enforceable trademarks or trade secrets that cover our products and brands. Changes in either the trademark laws or in interpretations of trademark laws in the U.S. and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our issued trademarks or in third-party patents. The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage.

We may face intellectual property infringement claims that could betime-consuming and costly to defend, and could result in our loss of significant rights and the assessment of treble damages.

From time-to-time we may face intellectual property infringement, misappropriation or invalidity/non-infringement claims from third parties. Some of these claims may lead to litigation. The outcome of any such litigation can never be guaranteed, and an adverse outcome could affect us negatively. For example, were a third party to succeed on an infringement claim against us, we may be required to pay substantial damages (including up to treble damages if such infringement were found to be willful). In addition, we could face an injunction barring us from conducting the allegedly infringing activity. The outcome of the litigation could require us to enter into a license agreement that may not be acceptable, commercially reasonable, or on practical terms, or we may be precluded from obtaining a license at all. It is also possible that an adverse finding of infringement against us may require us to dedicate substantial resources and time to developing non-infringing alternatives, which may or may not be possible.

Finally, we may initiate claims to assert or defend our own intellectual property against third parties. Any intellectual property litigation, irrespective of whether we are the plaintiff or the defendant, and regardless of the outcome, is expensive and time-consuming, and could divert our management’s attention from our business and negatively affect our operating results or financial condition.

We may be subject to claims by third parties asserting that our employees or we have misappropriated our intellectual property, or claiming ownership of what we regard as our own intellectual property.

Although we try to ensure that we and our employees and independent contractors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees or independent contractors have used or disclosed intellectual property in violation of others' rights. These claims may cover a range of matters, such as challenges to our trademarks, as well as claims that our employees or independent contractors are using trade secrets or other proprietary information of any such employee's former employer or independent contractors. As a result, we may be forced to bring claims against third parties, or defend claims they may bring against us, to determine the ownership of what we regard as our intellectual property. If we fail in prosecuting or defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and be a distraction to management.

Our new Special Operations Salute and Salute Series lines of spirits may be subject to claims of misuse or unapproved use of certain imagery or terms associated with the U.S. military. We may come under attack for not having authentic military or first responder roots for a particular line or design under this product line.

Although we try to ensure that we do not infringe on any third-party trademark, or use unapproved logos or images in our marketing, certain branches of the U.S. military may object to our brand positioning of our *Special Operations Salute, Salute Series* or related spirits lines or to our use of certain terms, marks, images or logos. While we have successfully navigated this issue over the past seven years with our 1st Special Forces Group Whiskey honoring the 1st Special Forces Group at Joint Base Lewis McChord, another branch of the military may take issue with our brand positioning related to that branch or to a particular product or its packaging. Likewise, there is no guarantee that the Federal Alcohol and Tobacco Tax and Trade Bureau (the "TTB") will approve our label designs for any such branch or that after approval by the TTB that such approval may later be rescinded. Such results would require us to rethink our branding or designs for one or more branches or products. Any successful challenge to our effort around this line of products could diminish our ultimate future growth opportunities from this product concept.

Likewise, people who have served in specific branches or units of the military or as first responders tend to be very protective and parochial about their history. If we develop a product, line or image in which we do not have a company founder or employee with specific ties to a branch, unit or group, we could be attacked in public or in social media by members of such group that think we are trying to position ourselves in this brand at the expense of others, even though we will endeavor to advance this line with honor and respect and in partnership with select non-profits that will benefit from the sales of products under this line. Successful attacks on our brand or efforts in this way could diminish the value of our efforts, the value of the brand and ultimately sales to the public.

Risks Related to Regulation

We are subject to extensive government regulation and are required to obtain and renew various permits and licenses; changes in or violations of laws or regulations or failure to obtain or renew permits and licenses could materially adversely affect our business and profitability.

Our business of marketing and distributing craft spirits and other alcoholic beverages in the United States is subject to regulation by national and local governmental agencies. These regulations and laws address such matters as licensing and permit requirements, regarding the production, storage and import of alcoholic products; competition and anti-trust matters; trade and pricing practices; taxes; distribution methods and relationships; required labeling and packaging; advertising; sales promotion; and relations with wholesalers and retailers. Loss of production capacity due to regulatory issues can negatively affect our sales and increase our operating costs as we attempt to increase production at other facilities during that time to offset the lost production. It is possible that we could have similar issues in the future that will adversely impact our sales and operating costs. Additionally, new or revised regulations or requirements or increases in excise taxes, customs duties, income taxes, or sales taxes could materially adversely affect our business, financial condition and results of operations.

In addition, we are subject to numerous environmental and occupational, health and safety laws and regulations in the countries in which we plan to operate. We may incur significant costs to maintain compliance with evolving environmental and occupational, health and safety requirements, to comply with more stringent enforcement of existing applicable requirements or to defend against challenges or investigations, even those without merit. Future legal or regulatory challenges to the industry in which we operate, or our business practices and arrangements could give rise to liability and fines, or cause us to change our practices or arrangements, which could have a material adverse effect on us or our revenues and profitability.

Governmental regulation and supervision as well as future changes in laws, regulations or government policy (or in the interpretation of existing laws or regulations) that affect us, our competitors or our industry generally, strongly influence our viability and how we operate our business. Complying with existing laws, regulations and government policy is burdensome, and future changes may increase our operational and administrative expenses and limit our revenues.

Additionally, governmental regulatory and tax authorities have a high degree of discretion and may at times exercise this discretion in a manner contrary to law or established practice. Our business would be materially and adversely affected if there were any adverse changes in relevant laws or regulations or in their interpretation or enforcement. Our ability to introduce new products and services may also be affected if we cannot predict how existing or future laws, regulations or policies would apply to such products or services.

We are subject to regulatory overview by the Federal Alcohol and Tobacco Tax and Trade Bureau and state liquor control agencies.

We are required to secure certain label and formula approvals for the products we make. Such approvals are made at the discretion of the TTB. The TTB could deny our applications for labels and/or formulas entirely or force us to change them so that the result would be different from that which we currently sell or plan to sell. The TTB could also force us to change labels it has already approved and that we have already begun to sell or could revoke approval for existing formulas and/or labels. Any such delays in formula and/or label approval could cause delays in bringing products to market and could force us to limit or curtail all or some operations or sales, thereby negatively impacting our financial performance significantly.

Similarly, one or more state liquor control agencies may not approve a product for sale even though we have received federal approval to produce and sell the product.

Our regulatory licenses may be suspended or revoked, or we may fail to secure or retain required permits or licenses.

Samples or servings provided through our tasting room or at other events in which we participate could be provided to minors. The result of such an event could be a fine or penalty applied against us by a state or federal enforcement agency. Further, such penalty could result in a temporary or permanent suspension of our license to operate, which would negatively impact our financial results.

We also might not be able to secure or keep permits and/or licenses required to open and operate our business, including but not limited to building and trades permits, Conditional Use/Special Use Permits or other zoning permits, health permits, food permits, our federal TTB license, federal Food and Drug Administration license, state liquor licenses or other licenses or permits. Any such suspension or losses could negatively impact our financial results.

We are subject to various insurance and bonding requirements.

We are required by the TTB to secure and maintain insurance for various aspects of our operations. We may not be able to secure all of the insurance our business requires or, once we obtain the required insurance, such insurance could be cancelled or terminated. We may also only be able to secure insurance at rates that we deem to be commercially unreasonable.

We are also required by the TTB to provide bonds for the distilled spirits products we make, store, bottle and prepare for sale. Such bonds could be revoked, or the cost of bonding might become materially more expensive than we currently anticipate. As production and storage grows, there is a chance we may not be able to secure an increase in our bonding adequate to cover federal obligations, or our operations could exceed our bonded authority.

This could require us to halt our operations until such increased bonding is secured, if at all. Further, as a condition of obtaining a bond, a bonding company could require that we set aside dedicated funds to backstop the bond. Such a requirement would hamper our ability to use funds for revenue generating purposes, thereby changing our plans for growth. In any of these situations, we would be forced to limit or curtail all or some of our operations, thereby negatively impacting our financial performance significantly.

We are subject to certain record-keeping requirements to which we may not properly adhere.

We are required to track the source of products we make, produce and/or bottle, including raw ingredients used, mashing, fermentation, distillation, storage, aging, blending, bottling, removal from bond and sales. Historically, we may not have accurately captured, or in the future may not accurately capture, all of such data. Moreover, in the event of an audit, state or federal revenue officers may interpret our data differently than we do, which could lead to a finding that we either underpaid or overpaid federal excise and state sales taxes.

As we open new locations, the staff at those locations may not properly track and record all data. The failure to adequately track production could put some products at risk from a labeling or valuation standpoint or cause the TTB to impound certain of our products from future sales. Failure to properly track and report the required data could also result in fines and/or penalties levied against us, or the suspension or rescission of our permits or licenses. Suspension or rescission of a permit or license would put us at risk of not being able to continue operations.

We operate in a highly-regulated industry subject to state and federal regulation, and it is possible that state or federal legislative or regulatory bodies could change or amend laws that impact us.

We operate in a highly-regulated industry subject to state and federal regulation, and it is possible that state or federal legislative or regulatory bodies could change or amend laws that impact us. Such changes could include, but are not limited to:

- the amount of product we can produce annually;
- regulations on the manufacturing, storage, transportation and sale of our distilled spirits;
- license rates we must pay to the state;
- tax rates on products we make and sell;
- how, where and when we can advertise our products;
- how products are classified; and
- labeling and formulation approvals.

In addition, it is possible that legislative bodies could amend or revoke the statutes that allow us to operate, in whole or in part. In such an event, we may be forced to cease operations, which would materially affect our value and any investment made in us.

The failure of Congress to pass federal spending bills could impact our ability to secure federal permits that are critical to our business and our growth plans.

The chance that continued inaction in Congress to secure final passage of annual spending bills puts us at risk of a government shutdown, which could impact our ability to secure certain federal permits through the TTB, including transfer in bond permits, and formula or label approvals. Likewise, tribal partners we are working with to open *Heritage*-branded distilleries and tasting rooms will rely on securing their own TTB permits. Any government shutdown could slow down progress on the development, opening or operating of those locations.

We may become subject to audits by government agencies that find themis-collection or mis-payment of taxes or fees.

We may become subject to audits by government agencies that could find the miscollection or mis-payment of taxes or fees. Such an event could require us to allocate financial resources and personnel into areas to which we are not currently planning to allocate and to subject us to fines, interest and penalties in addition to the taxes or fees that may be owed. In the past, we have not timely filed and paid certain taxes, but no fines or penalties have been assessed for such late filings to date. However, a governmental entity could attempt to institute fines and/or assess other penalties for our past late tax filings and payments. Such an action could also include a suspension or termination of one or more of our permits or licenses.

Our products could be subject to a voluntary or involuntary recall.

Our products could be subject to a voluntary or involuntary recall for any number of reasons. In such an event, we may be forced to repurchase products we have already sold, cover other costs associated with the product or the recall, cease the sale of product already in the sales pipeline, or destroy product still in our control or that we are still processing. Any such product recalls could negatively impact our financial performance and impugn our reputation with consumers.

Our agreements with partners may be perceived as de facto franchise relationships.

Our agreements with partners, including American Indian Tribes or other licensees, allowing such partner to operate a Heritage-branded location could be interpreted by a state or federal court or administrative body as being a de facto franchise relationship, in which case we may need to revise the terms of our licensing arrangement with such partner, thereby altering our anticipated return and risk profile. If an agreement with a partner is determined to be a de facto franchise relationship, we may be required to file franchise documents with state and the federal governments for approval and we will be liable for fines or penalties for not pre-filing such franchise documents.

Direct to consumer shipping could become more regulated or be curtailed or terminated through government regulation or enforcement.

We currently use a three-tier compliant third-party retailer that resells, ships and handles fulfillment for certain of our products directly to consumers in 45 states and the District of Columbia. There are several risks associated with direct-to-consumer shipping, including that one or more states could decide such activities do not comport with their specific laws or regulations. In addition, there is a risk the third-party fulfillment firm could be forced to curtail or cease operations by virtue of a federal or state demand or reinterpretation of statute or rule, or that such firm could exit the market on its own free will. In any of these cases, the loss of direct-to-consumer shipping would likely lead to fewer sales, less revenue, and less profitability for our company, which could impact the value of our common stock. The loss of such sales and revenue could also negatively impact our operating plan as we would have less operating cash flow to work with, which could force us to alter our growth and marketing plans. There is also a risk that a third-party delivery company that is delivering the product to a consumer leaves the package where an individual under the age of 21 can gain access to it, or that such company delivers it to a location and fail to verify the person's age. In such case, a state or local enforcement entity could attempt to claim we are partially culpable in the delivery to a person who is not 21 years of age. If that person were to consume the product and engage in an activity dangerous to themselves or others that causes death or serious bodily injury, a claim could be made against us as being part of the transaction. We could fail to successfully defend any such claims, in addition to paying monetary damages. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management or negatively impact the reputation of our company.

We are subject to state-specific regulatory risks related to our location in Eugene, Oregon.

There are several risks associated with our locations in Eugene, Oregon, including but not limited to:

- The legislature or voters in Oregon may elect to privatize the state's current monopoly-owned retail and distribution system, which would likely materially alter the way in which spirits are distributed and priced in the state and would also change the way we have to market to secure shelf space in stores and in restaurants and bars in order to gain or maintain market share.

- The Oregon Liquor Control Commission (the "OLCC") may not approve some or all of our products for listing and sale in the state or in our tasting rooms located in Oregon.
- The OLCC could deny our request to open additional tasting rooms in the state of Oregon, thereby stranding equipment and capital and materially impacting our plan to generate more retail sales in our own locations.

Risks Related to this Offering and Ownership of Our Common Stock

The market price of our common stock may be highly volatile, and you could lose all or part of your investment.

Prior to this offering, there was no public market for the shares of our common stock. The offering price for the shares sold in this offering will be determined by negotiation between the underwriters and us. Neither we nor the underwriters can assure you that the initial public offering price will bear any relationship to the market price at which our common stock may trade after our initial public offering. Shares of companies offered in an initial public offering often trade at a discount to the initial offering price due to underwriting discounts and commissions and related offering expenses. As a result, the trading price of our common stock is likely to be volatile, which may prevent you from being able to sell your shares at or above the public offering price. Our prices of our common stock could be subject to wide fluctuations in response to a variety of factors, which include:

- actual or anticipated fluctuations in our financial condition and operating results;
- announcements of new product offerings or technological innovations by us or our competitors;
- announcements by our customers, partners or suppliers relating directly or indirectly to our products, services or technologies;
- overall conditions in our industry and market;
- addition or loss of significant customers;
- changes in laws or regulations applicable to our products;
- actual or anticipated changes in our growth rate relative to our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures, capital commitments or achievement of significant milestones;
- additions or departures of key personnel;
- competition from existing products or new products that may emerge;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- disputes or other developments related to proprietary rights, including patents, litigation matters or our ability to obtain intellectual property protection for our technologies;
- announcement or expectation of additional financing efforts;
- sales of our common stock by us or our stockholders;
- stock price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- reports, guidance and ratings issued by securities or industry analysts; and
- general economic and market conditions.

If any of the foregoing occurs, it would cause our stock prices or trading volume to decline. Stock markets in general and the market for companies in our industry in particular have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions such as recessions, interest rate changes or international currency fluctuations, may negatively impact the market price of our common stock You may not realize any return on your investment in us and may lose some or all of your investment.

We may be subject to securities litigation, which is expensive and could divert our management's attention.

The market price of our securities may be volatile, and in the past companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

We have broad discretion in the use of the net proceeds from this offering and may invest or spend the proceeds in ways with which you disagree or that may not yield a return.

While we set forth our anticipated use for the net proceeds from this offering and our concurrent private placement of the Common Warrants in the section titled "Use of Proceeds," our management will have broad discretion on how to use and spend any proceeds that we receive from this offering and our concurrent private placement and may use the proceeds in ways that differ from the anticipated uses set forth in this prospectus. Investors in this offering will need to rely upon the judgment of our management with respect to the use of proceeds with only limited information concerning management's specific intentions. It is possible that we may decide in the future not to use the proceeds of this offering and our concurrent private placement in the manner described in this offering. Our management may spend a portion or all of the net proceeds from this offering and our concurrent private placement in ways that holders of our common stock may not desire or that may not yield a significant return or any return at all. Investors will receive no notice or vote regarding any such change and may not agree with our decision on how to use such proceeds. If we fail to utilize the proceeds we receive from this offering and our concurrent private placement effectively, our business and financial condition could be harmed, and we may need to seek additional financing sooner than expected. Pending their use, we may also invest the net proceeds from this offering and our concurrent private placement in a manner that does not produce income or that loses value.

There is no existing market for our common stock, and we do not know if one will develop to provide you with adequate liquidity.

Prior to this offering, there was no public market for our common stock. Although we have applied to have our common stock listed on Nasdaq, an active trading market for our common stock may never develop or be sustained following this offering. You may not be able to sell your shares quickly or at the market price if trading in our common stock is not active. The initial public offering price for the shares of common stock offered will be determined by negotiations between us and the underwriters and may not be indicative of the prices of our common stock that will prevail in the trading market. You may not be able to sell your shares of our common stock at or above the price you paid in the offering. As a result, you could lose all or part of your investment. Further, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic partnerships or acquire companies or products by using our shares of common stock as consideration.

Our directors, executive officers and principal stockholders will continue to have substantial control over our company after this offering, which could limit your ability to influence the outcome of key transactions, including a change of control.

Upon completion of this offering, our executive officers, directors and principal stockholders and their affiliates will beneficially own 1,679,718 shares of our outstanding common stock, or approximately 32.59% of the outstanding shares of our common stock, assuming the sale of 1,500,000 shares in this offering at an assumed initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and the underwriters' over-allotment option is not exercised. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors and the approval of mergers, acquisitions or other extraordinary transactions. They may also have interests that differ from yours and may vote in a way with which you disagree, and which may be adverse to your interests. This concentration of ownership may have the effect of delaying, preventing or deterring a change of control of our company, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company and might ultimately affect the market price of our common stock.

Our failure to meet the continued listing requirements of the Nasdaq could result inde-listing of our common stock.

If, after listing, we fail to satisfy the continued listing requirements of Nasdaq, such as the corporate governance requirements or the minimum closing bid price requirement, Nasdaq may take steps to de-list our common stock. Such a de-listing would likely have a negative effect on the price of our common stock and would impair your ability to sell or purchase our common stock when you wish to do so. In the event of a de-listing, we would take actions to try to restore our compliance with the Nasdaq marketplace rules, but our common stock may not be listed again, and such actions may not stabilize the market price or improve the liquidity of our common stock, prevent our common stock from dropping below the Nasdaq minimum bid price requirement or prevent future non-compliance with the Nasdaq marketplace rules.

If our shares become subject to the penny stock rules, it would become more difficult to trade our shares.

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than $5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not obtain or retain a listing on Nasdaq and if the price of our common stock is less than $5.00, our common stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may reduce the trading activity in the secondary market for our common stock, so stockholders may have difficulty selling their shares.

The concurrent offering of shares of our common stock by certain existing stockholders of our company could adversely affect the market for our common stock.

The registration statement we filed with the SEC to register under the Securities Act the shares of our common stock offered hereby included a second prospectus (the "Resale Prospectus") pursuant to which certain of our stockholders may offer and sell to the public from time to time up to an aggregate of 313,187 shares of our common stock. Unless otherwise bound by an executed lockup agreement, such stockholders are not bound by any agreement that prohibits sales of such shares of common stock concurrently with the commencement of our initial public offering of common stock pursuant to this prospectus. The sales of our common stock pursuant to this prospectus and the Resale Prospectus may result in two offerings taking place concurrently, which could adversely affect the price and liquidity of, and demand for, our common stock.

Future sales of shares by existing stockholders could cause our stock price to decline.

If our existing stockholders sell, or indicate an intent to sell, substantial amounts of our common stock in the public market, the trading price of our common stock could decline significantly and could decline below the initial public offering price. After giving effect to this offering and the exchange of certain indebtedness for equity upon the closing of this offering, we will have outstanding 5,153,405 shares of common stock, assuming no exercise of outstanding options and warrants or the Common Warrants. Of these shares, approximately 2,859,872 shares will be held by our non-affiliated stockholders and, together with 1,500,000 shares of common stock offered hereby, plus any shares sold pursuant to the underwriters' option to purchase additional shares, will be immediately freely tradable, without restriction, in the public market. Pursuant to a resale registration statement that will become effective concurrently with this offering, we are registering under the Securities Act the resale of an additional 313,187 shares of common stock held by our non-affiliated stockholders, which will allow such shares to be freely tradeable so long as the related prospectus remains current. If our non-affiliated stockholders sell substantial amounts of our common stock in the public market, or if the public perceives that such sales could occur, this could have an adverse impact on the market price of our common stock, even if there is no relationship between such sales and the performance of our business. Following this offering, we also intend to register for resale the shares of common stock underlying the

Common Warrants and all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates and the lock-up agreements described in the "Underwriting" section of this prospectus. Our non-affiliated stockholders are not subject to any lock-up agreements.

After the expiration of any lock-up agreements pertaining to this offering with our directors, executive officers and stockholders owning more than 5% of our outstanding shares of common stock, additional shares will be eligible for sale in the public market. If our existing stockholders sell substantial amounts of our common stock in the public market, or if the public perceives that such sales could occur, this could have an adverse impact on the market price of our common stock, even if there is no relationship between such sales and the performance of our business.

If you purchase shares of common stock in this offering, you will suffer immediate dilution of your investment in the shares of common stock.

The public offering price of the shares of common stock offered hereby will be substantially higher than the net tangible book value per share of our common stock. Therefore, if you purchase shares of common stock in this offering, you will pay a price per share of the common stock comprising such Units that substantially exceeds our net tangible book value per share after this offering. Based on an assumed initial public offering price of $5.00 per share, which is the midpoint of the price range for the shares of common stock set forth on the cover page of this prospectus, you will experience immediate dilution of $3.42 per share, representing the difference between our pro forma net tangible book value per share, after giving effect to this offering, and the assumed initial public offering price.

We could use shares of our common stock to acquire a position in, or all of, another company or brand, which could result in dilution for shareholders of record at that time.

In the future we could use shares of our common stock as a form of currency to invest in or acquire other companies or brands. The issuance of these shares would be dilutive to other stockholders of our company. Our management and our board of directors will make these decisions and stockholders may have little to no view or say in these transactions. As such, the issuance of such shares creating dilution could result in lower returns for investors. A company or brand that we invest in or acquire might not fit our portfolio and might not yield a return for us or our stockholders. The strategy may not work and may result in a dilutive effect from the issuance of those shares that could result in a loss of some or all of the investment for stockholders.

We are an "emerging growth company" and the reduced disclosure requirements applicable to emerging growth companies could make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act. We may remain an emerging growth company until as late as December 31, 2029 (the fiscal year-end following the fifth anniversary of the completion of our initial public offering), though we may cease to be an emerging growth company earlier under certain circumstances, including (1) if the market value of our common stock that is held by non-affiliates exceeds $700 million as of any June 30, in which case we would cease to be an emerging growth company as of the following December 31, or (2) if our gross revenue exceeds $1.235 billion in any fiscal year. Emerging growth companies may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. Investors could find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

In addition, Section 102 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended, or the Securities Act, for complying with new or revised accounting standards. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

We will incur significant costs from operating as a public company, and our management expects to devote substantial time to public company compliance programs.

As a public company, we will incur significant legal, accounting and other expenses due to our compliance with regulations and disclosure obligations applicable to us, including compliance with the Sarbanes-Oxley Act, as well as rules implemented by the SEC and Nasdaq. Stockholder activism, the current political environment and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact, in ways we cannot currently anticipate, the way we operate our business. Our management and other personnel will devote a substantial amount of time to these compliance programs and monitoring of public company reporting obligations and as a result of the new corporate governance and executive compensation related rules, regulations and guidelines prompted by the Dodd-Frank Act and further regulations and disclosure obligations expected in the future, we will likely need to devote additional time and costs to comply with such compliance programs and rules. These rules and regulations will cause us to incur significant legal and financial compliance costs and will make some activities more time-consuming and costlier.

To comply with the requirements of being a public company, we may need to undertake various actions, including implementing new internal controls and procedures and hiring new accounting or internal audit staff. The Sarbanes-Oxley Act requires that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is accumulated and communicated to our principal executive and financial officers. Our current controls and any new controls that we develop may become inadequate and weaknesses in our internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls when we become subject to this requirement could negatively impact the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we may be required to include in our periodic reports we will file with the SEC under Section 404 of the Sarbanes-Oxley Act, harm our operating results, cause us to fail to meet our reporting obligations or result in a restatement of our prior period financial statements. If we are not able to demonstrate compliance with the Sarbanes-Oxley Act, that our internal control over financial reporting is perceived as inadequate or that we are unable to produce timely or accurate financial statements, investors may lose confidence in our operating results and the price of our common stock could decline. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on Nasdaq.

Our management team has limited experience managing a public company.

Most members of our management team have limited experience managing a publicly-traded company, interacting with public company investors and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage our transition to being a public company subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents will require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, financial condition and operating results.

Because we have elected to use the extended transition period for complying with new or revised accounting standards for an emerging growth company our financial statements may not be comparable to companies that comply with public company effective dates.

We have elected to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(1) of the JOBS Act. This election allows us to delay the adoption of new or revised accounting standards that have different effective dates for public and private companies until those standards apply to private companies. As a result of this election, our financial statements may not be comparable to companies that comply with public company effective dates, and thus investors may have difficulty evaluating or comparing our business, performance or prospects in comparison to other public companies, which may have a negative impact on the value and liquidity of our common stock.

If securities or industry analysts do not publish research, or publish inaccurate or unfavorable research, about our business, our common stock price and trading volume could decline.

The trading market for our common stock will depend, in part, on the research and reports that securities or industry analysts publish about us or our business. Securities and industry analysts do not currently, and may never, publish research on us. If no securities or industry analysts commence coverage of us, the price for our common stock could be negatively impacted. In the event securities or industry analysts initiate coverage, if one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, the prices of our common stock could decline. In addition, if our operating results fail to meet the forecast of analysts, the prices of our common stock could decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our common stock could decrease, which might cause the prices of our common stock and trading volume to decline.

Anti-takeover provisions in our charter documents and under Delaware law could make the acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.

Provisions in our amended and restated certificate of incorporation and bylaws, as in effect upon the closing of this offering, may delay or prevent a change of control of our company or changes in our management. Our planned second amended and restated certificate of incorporation and amended and restated bylaws will include provisions that:

- provide for a staggered board of directors;
- authorize our board of directors to issue, without further action by the stockholders, up to 4,500,000 shares of undesignated existing preferred stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;
- require the affirmative vote of the holders of at least 2/3 of the voting power of all of our outstanding shares of voting stock, voting together as a single class, to amend, alter, change or repeal our bylaws or certain provisions of our certificate of incorporation;
- specify that, except as required by applicable law, special meetings of our stockholders can be called only by our board of directors pursuant to a resolution adopted by the majority of the board of directors;
- establish an advance notice procedure for stockholder approvals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our board of directors;
- provide that our directors may be removed only for cause; and
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders owning more than 15% of our outstanding voting stock to merge or combine with us.

Our Second Amended and Restated Certificate of Incorporation will provide that the Court of Chancery of the State of Delaware is the exclusive forum for certain litigation that may be initiated by our stockholders.

Our second amended and restated certificate of incorporation to be filed in connection with the closing of this offering will provide that the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory law or Delaware common law, subject to certain exceptions: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders; (3) any action asserting a claim against us arising pursuant to provisions of the Delaware General Corporation Law or our

second amended and restated certificate of incorporation or amended and restated bylaws; or (4) any action asserting a claim governed by the internal affairs doctrine. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees, and agents. Stockholders who do bring a claim in the Court of Chancery could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near the State of Delaware. The Court of Chancery may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments or results may be more favorable to us than to our stockholders. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business and financial condition. By agreeing to the exclusive forum provisions, investors will not be deemed to have waived our compliance obligations with any federal securities laws or the rules and regulations thereunder.

This exclusive forum provision will not apply to claims under the Exchange Act. In addition, our amended and restated certificate of incorporation provides that, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with the Company or any of its directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims, although the our stockholders will not be deemed to have waived the Company's compliance with federal securities laws and the rules and regulations thereunder. We cannot be certain that a court will decide that this provision is either applicable or enforceable, and if a court were to find the choice of forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition. In addition, although the Delaware Supreme Court ruled in March 2020 that federal forum selection provisions purporting to require claims under the Securities Act be brought in federal court were facially valid under Delaware law, there is uncertainty as to whether other courts will enforce the Company's federal forum selection clause.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future and, as such, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

We have never declared or paid cash dividends on our common stock. Our existing credit agreement with Silverview Credit Partners L.P. currently restricts our ability to pay cash dividends and we do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. In addition, our current loan facility and any future loan arrangements we enter into may contain terms prohibiting or limiting the number or amount of dividends that may be declared or paid on our common stock. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. The forward-looking statements are contained principally in the sections titled "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," but are also contained elsewhere in this prospectus. In some cases, you can identify forward-looking statements by the words "may," "might," "will," "could," "would," "should," "expect," "intend," "plan," "objective," "anticipate," "believe," "estimate," "predict," "project," "potential," "continue" and "ongoing," or the negative of these terms, or other comparable terminology intended to identify statements about the future, although not all forward-looking statements contain these words. These statements relate to future events or our future financial performance or condition and involve known and unknown risks, uncertainties and other factors that could cause our actual results, levels of activity, performance or achievement to differ materially from those expressed or implied by these forward-looking statements. These forward-looking statements include, but are not limited to, statements about:

- our ability to hire additional personnel and to manage the growth of our business;
- our ability to continue as a going concern;
- our reliance on our brand name, reputation and product quality;
- our ability to adequately address increased demands that may be placed on our management, operational and production capabilities.
- the effectiveness of our advertising and promotional activities and investments;
- our reliance on celebrities to endorse our products and market our brands;
- general competitive conditions, including actions our competitors may take to grow their businesses;
- fluctuations in consumer demand for craft spirits;
- overall decline in the health of the economy and consumer discretionary spending;
- the occurrence of adverse weather events, natural disasters, public health emergencies, including the COVID-19 pandemic, or other unforeseen circumstances that may cause delays to or interruptions in our operations;
- risks associated with disruptions in our supply chain for raw and processed materials, including glass bottles, barrels, spirits additives and agents, water and other supplies;
- the impact of COVID-19 on our customers, suppliers, business operations and financial results;
- disrupted or delayed service by the distributors we rely on for the distribution of our products;
- our ability to successfully execute our growth strategy, including continuing our expansion in our TBN and direct-to-consumer sales channels;
- quarterly and seasonal fluctuations in our operating results;
- anticipated accounting recognition associated with reports generated for us by outside valuation experts as they relate to the treatment of and accounting for the exchange of certain convertible promissory notes into common stock and prepaid warrants;
- our success in retaining or recruiting, or changes required in, our officers, key employees or directors;
- our ability to protect our trademarks and other intellectual property rights, including our brands and reputation;
- our ability to comply with laws and regulations affecting our business, including those relating to the manufacture, sale and distribution of spirits and other alcoholic beverages;
- the risks associated with the legislative, judicial, accounting, regulatory, political and economic risks and conditions;

- claims, demands and lawsuits to which we are, and may in the future, be subject and the risk that our insurance or indemnities coverage may not be sufficient;
- our ability to operate, update or implement our IT systems;
- our ability to successfully pursue strategic acquisitions and integrate acquired businesses, products, services or brands;
- our ability to implement additional finance and accounting systems, procedures and controls to satisfy public company reporting requirements;
- our potential ability to obtain additional financing when and if needed;
- the potential liquidity and trading of our securities; and
- the future trading prices of our common stock and the impact of securities analysts' reports on these prices.

You should read this prospectus, including the section titled "Risk Factors," and the documents that we reference elsewhere in this prospectus and have filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual results may differ materially from what we expect as expressed or implied by our forward-looking statements. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. Considering the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all.

These forward-looking statements represent our estimates and assumptions only as of the date of this prospectus regardless of the time of delivery of this prospectus or any sale of our common stock. 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 after the date of this prospectus. All subsequent forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to herein.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately $6,752,000 (net of commissions and unaccrued offering expenses) from the sale of the 1,500,000 shares of common stock offered in this offering, or approximately $7,787,000 (net of commissions and unaccrued offering expenses) if the underwriters exercise their option to purchase additional shares in full, based on an assumed initial public offering price of $5.00 per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. In addition, we estimate that we will receive net proceeds of approximately $2,300,000 (net of placement agent fees) from the sale of the 500,000 Common Warrants in our concurrent private placement based on an assumed initial public offering price of $5.00 per share of common stock in this offering, the midpoint of the price range set forth on the cover page of this prospectus.

Each $1.00 increase (decrease) in the assumed public offering price of $5.00 per share of common stock in this offering would increase (decrease) the net proceeds to us from this offering, and our concurrent private placement, after deducting the estimated underwriting discounts and commissions, estimated placement agent fees and estimated offering expenses payable by us, by approximately $1,380,000, assuming that the number of shares of common stock offered by us in this offering and the number of Common Warrants we offer in our concurrent private placement, each as set forth on the cover page of this prospectus, remains the same. We may also increase or decrease the number of shares of common stock or Common Warrants we are offering. An increase (decrease) of 100,000 in the number of shares of common stock or Common Warrants we are offering would increase (decrease) the net proceeds to us from this offering and our concurrent private placement, after deducting the estimated underwriting discounts and commissions, the estimated placement agent fees and estimated offering expenses payable by us, by approximately $460,000 assuming the initial public offering price stays the same.

The following table sets forth a breakdown of our estimated use of our net proceeds from this offering and our concurrent private placement as we currently expect to use them.

	Amount
Purchase of raw goods for product production	$ 150,000
Equipment maintenance, upgrades and/or installation	300,000
Marketing and sales efforts	150,000
Vendor obligations	3,000,000
Hiring personnel	150,000
Repayment of indebtedness	2,375,000
Working capital and general corporate purposes	2,927,000
Total use of proceeds	$ 9,052,000

Due to the uncertainties inherent in our operations and business, it is difficult to estimate with certainty the exact amounts of the net proceeds from this offering that may be used for any specific purposes. The amounts and timing of our actual expenditures will depend upon numerous factors, including our sales and marketing efforts, the demand for our products and services, our operating costs and the other factors described under “Risk Factors” in this prospectus. Accordingly, our management will have flexibility in applying the net proceeds from this offering. An investor will not have the opportunity to evaluate the economic, financial or other information on which we base our decisions on how to use the net proceeds.

If the underwriters exercise the over-allotment option in full, we intend to use such additional net proceeds (up to $1,035,000) for working capital and other general corporate purposes.

As set forth above, we expect to use approximately $2,375,000, or approximately 26.2%, of the net proceeds of this offering for the partial repayment of our secured term loan from Silverview Credit Partners L.P. (the “Silverview Loan”). The Silverview Loan was incurred in March and September 2021 with an aggregate borrowing capacity of $15,000,000, currently accrues interest at the rate of 15% per annum, which rate will increase to 16.5% per annum following the closing of this offering, and matures on October 25, 2026. On June 30, 2024, the principal

balance of the Silverview Loan was $12,250,000. For additional information regarding the Silverview Loan, see "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources" and Note 6 to our unaudited interim condensed consolidated financial statements for the six months ended June 30, 2024 included elsewhere in this prospectus.

Until we use the net proceeds of this offering and our concurrent private placement in our business, such funds will be managed through a treasury management program under the supervision of our Acting Chief Financial Officer and invested in short-term, interest-bearing investments, which may include interest-bearing bank accounts, money market funds, certificates of deposit and U.S. government securities.

DIVIDEND POLICY

We do not anticipate paying cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. Any future determination related to our dividend policy will be made at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements, contractual restrictions, business prospects, the requirements of current or then-existing debt instruments and other factors our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June30, 2024:

- on an actual basis;
- on a pro forma basis to give effect to:
  - (i) the reclassification subsequent to June 30, 2024 of $18,067,088 in convertible note debt into equity in the form of 3,312,148 shares of common stock and 507,394 prepaid warrants to purchase common stock, effective upon the consummation of this offering;
  - (ii) the issuance of 250,632 shares of common stock in exchange for the relinquishment of certain warrants upon consummation of this offering;
  - (iii) the reclassification subsequent to June 30, 2024 of $13,978,467 in convertible note debt and $20,378 in related warrant liability as of June 30, 2024 into equity in the form of 2,399,090 shares of common stock and 546,927 prepaid warrants to purchase common stock, effective upon the consummation of this offering;
  - (iv) the reclassification in April 2024 of $884,182 of fair value of warrant liabilities to equity upon establishing a fixed exercise price of certain outstanding warrants (see Note 10 to our unaudited interim condensed consolidated financial statement for the six months ended June 30, 2024 included elsewhere in this prospectus);
  - (v) additional proceeds of $250,000 in July 2024 from an accounts receivable factoring agreement that was subsequently exchanged for Series A Preferred Stock;
  - (vi) our sale subsequent to June 30, 2024 of 218,051 additional shares of Series A Preferred Stock (and related warrants), for which we received $1,350,000 of cash proceeds and $110,600 in the form of 50 barrels of premium aged whiskey and we cancelled $719,919 of outstanding indebtedness under accounts receivable factoring agreements, of which $410,667 was outstanding at June 30, 2024;
  - (vii) the net exercise subsequent to June 30, 2024 of 65,891 prepaid warrants into common stock;
  - (viii) the exchange in September 2024 of warrants to purchase 510,315 shares of common stock at $6.00 per share that were valued at $937,959 for 93,789 shares of Series A Preferred Stock;
  - (ix) the exchange prior to the consummation of this offering of 2,816,921 shares of common stock for warrants to purchase an equal number of shares of common stock with an exercise price of $.001 per share; and
- on a pro forma as adjusted basis to give further effect to:
  - (i) our issuance and sale of 1,500,000 shares of common stock in this offering at an assumed initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, for estimated net cash proceeds of $6,752,000 after deducting the underwriting discounts and commissions and estimated unaccrued offering expenses paid and payable by us but assuming no exercise of the warrants granted to the Representative of the underwriters;
  - (ii) our issuance and sale of Common Warrants to purchase 500,000 shares of common stock in our concurrent private placement at an assumed offering price of $4.99 per Common Warrant, which is based on the midpoint of the price range for our common stock in this offering set forth on the cover page of this prospectus, for estimated net cash proceeds of $2,300,000 after deducting the placement agent fees payable by us but assuming no exercise of the Common Warrants; and
  - (iii) the use of $2,375,000 of the net proceeds of this offering for the repayment of indebtedness.

The pro forma and pro forma as adjusted information below is illustrative only and our capitalization following the completion of this offering is subject to adjustment based on the initial public offering price of our common stock and other terms of this offering determined at pricing. You should read the following table in conjunction

with "Use of Proceeds," "Selected Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Description of Capital Stock" and other financial information contained in this prospectus, including the financial statements and related notes appearing elsewhere in this prospectus.

	As of June 30, 2024		
	Actual	Pro Forma	Pro Forma As Adjusted
Cash[(1)]	$ 151,613	$ 1,751,613	$ 8,428,211
Convertible Notes Payable, Current	$ 18,067,088	$ —	$ —
Notes Payable, Current	14,783,425	14,372,758	11,997,758
Convertible Notes Payable, Long-term	13,978,467	—	—
Notes Payable, Long-term	389,875	389,875	389,875
Warrant Liabilities, Long-term	904,560	—	—
Stockholders' (Deficit)			
Preferred Stock, par value $0.0001 per share, 5,000,000 shares authorized; 183,000 shares issued and outstanding actual; 494,840 shares outstanding pro forma and pro forma as adjusted	18	49	49
Common Stock, par value $0.0001 per share, 70,000,000 shares authorized; 441,935 shares issued and outstanding on an actual basis; 3,653,405 issued and outstanding on a pro forma basis; and 5,153,405 issued and outstanding on a pro forma as adjusted basis	72	393	543
Additional Paid in Capital	33,249,500	70,141,644	77,636,494
Accumulated Deficit	(65,985,135)	(67,806,249)	(67,806,249)
Total Stockholders' Equity/(Deficit)	(32,735,545)	2,335,837	9,830,837
Total Capitalization	$ 15,387,870	$ 17,098,470	$ 22,218,470

(1) Pro forma cash includes actual cash as of June 30, 2024 plus $1,350,000 in proceeds from the sale of shares of Series A Preferred Stock and $250,000 in proceeds from an accounts receivable factoring agreement subsequent to June 30, 2024, which was subsequently exchanged for Series A Preferred Stock. Further, pro forma as adjusted cash reflects net proceeds of $9,051,598 from this offering of common stock and the concurrent offering of Common Warrants net of underwriter and placement agent fees and commissions and cash offering expenses related to both offerings, and takes into account the repayment of $2,375,000 of principal and accrued interest related to the Silverview Loan.

A $1.00 increase or decrease in the assumed initial public offering price of $5.00 per share of common stock, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, each of cash, paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $1,840,000, assuming the number of shares of common stock and the number of Common Warrants offered by us, as stated on the cover page of this prospectus, remains unchanged and after deducting underwriting discounts and commissions, estimated placement agent fees and estimated offering expenses payable by us. Similarly, each increase or decrease of 100,000 in the number of shares of common stock or number of Common Warrants we are offering would increase or decrease, as applicable, each of cash, paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $460,000, assuming the assumed initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The preceding table gives effect to the transactions described above and does not include:

- Up to 991,667 shares of common stock issuable upon the exercise of warrants with an exercise price of $6.00 per share that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and that expire between August 2028 and August 2029;
- 4,304,721 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $0.001 per share and the Common Warrants, with an exercise price of $0.01 per share that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% (or, in certain warrants, 9.99%) of our outstanding shares of common stock;

- 6,164 shares of common stock issuable upon the exercise of outstanding stock options issued under our 2019 Equity Incentive Plan with an exercise price of $157.89 per share that expire between June 2025 and November 2026;
- 243,089 shares of common stock issuable upon the settlement of outstanding restricted stock units issued under our 2019 Equity Incentive Plan that will settle upon the expiration of the lock-up described in the "Underwriting" section of this prospectus;
- Up to 762,984 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the volume weighted average price per share ("VWAP") of our common stock over a 10-trading-day period reaches 200% of the price per share at which common stock is sold in this offering provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the second anniversary of the closing of this offering;
- Up to 1,525,968 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 300% of the price per share at which common stock is sold in this offering, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 42-month anniversary of the closing of this offering;
- Up to 1,907,460 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 500% of the price per share at which common stock is sold in this offering, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 60-month anniversary of the closing of this offering;
- Up to 197,013 shares of common stock issuable upon the exercise of warrants with an exercise price of $5.00 per share or, if lower, the price per share at which our common stock is sold in this offering, that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and that expire in June 2029;
- Up to 1,306,392 shares of common stock issuable upon conversion of our 494,840 outstanding shares of Series A Preferred Stock (assuming an offering price of $5.00 per share in this offering, which is the midpoint of the price range reflected on the cover of this prospectus, but excluding any dividends accrued prior to such conversion), which shares are convertible at any time unless such conversion would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock;
- Up to 83,165 shares of common stock in connection with our acquisition of Thinking Tree Spirits (assuming an offering price of $5.00 per share in this offering, which is the midpoint of the price range reflected on the cover of this prospectus);
- Up to [ ] shares of common stock ([ ] shares if the underwriters' over-allotment option is exercised in full) issuable upon the exercise of the Representative's Warrants at an exercise price equal to the price per share at which our common stock is sold in this offering; and
- Up to 2,500,000 shares of common stock reserved for future issuance under our 2024 Equity Incentive Plan and up to 7,247 shares of our common stock reserved for future issuance under our 2019 Equity Incentive Plan.

DILUTION

If you invest in our securities in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering.

Our historical net tangible book value (deficit) is the amount of our total assets less our liabilities. Our historical net tangible book value (deficit) per share is our historical net tangible book value (deficit) divided by the number of shares of common stock outstanding as of June 30, 2024 (441,935 shares). Our historical net tangible book value (deficit) as of June 30, 2024, was $(35,998,105), or $(81.46) per share of common stock.

Our pro forma net tangible book value (deficit) is our historical net tangible book value (deficit) divided by the number of our outstanding shares of common stock as of June 30, 2024 after giving effect to:

(i) the reclassification subsequent to June 30, 2024 of $18,067,088 in convertible note debt into equity in the form of 3,312,148 shares of common stock and 507,394 prepaid warrants to purchase common stock, effective upon the consummation of this offering;

(ii) the issuance of 250,632 shares of common stock in exchange for the relinquishment of certain warrants upon consummation of this offering;

(iii) the reclassification subsequent to June 30, 2024 of $13,978,467 in convertible note debt and $20,378 in related warrant liability as of June 30, 2024 into equity in the form of 2,399,090 shares of common stock and 546,927 prepaid warrants to purchase common stock, effective upon the consummation of this offering;

(iv) the reclassification subsequent to June 30, 2024 of $884,182 of fair value of warrant liabilities to equity upon establishing a fixed exercise price of certain outstanding warrants (see Note 10 to our unaudited interim condensed consolidated financial statement for the six months ended June 30, 2024 included elsewhere in this prospectus);

(v) the net exercise subsequent to June 30, 2024 of 65,891 prepaid warrants into common stock;

(vi) the exchange prior to the closing of this offering of 2,816,291 shares of common stock for warrants to purchase 2,816,291 shares of common stock for a purchase price of $0.001 per share;

(vii) additional proceeds of $250,000 in July 2024 from an accounts receivable factoring agreement that was subsequently exchanged for Series A Preferred Stock;

(viii) our sale subsequent to June 30, 2024 of 218,051 additional shares of Series A Preferred Stock (and related warrants), for which we received $1,350,000 of cash proceeds; $110,600 in the form of 50 barrels of premium aged whiskey; and cancelled $719,919 of outstanding indebtedness (from accounts receivable factoring agreements), of which $410,667 was outstanding at June 30, 2024; and

(ix) the exchange in September 2024 of warrants to purchase 510,315 shares of common stock at $6.00 per share that were valued at $937,959 for 93,789 shares of Series A Preferred Stock.

We refer to the adjustments in (i) through (ix) above collectively as the "Pre-Closing Adjustments."

Pro forma as adjusted net tangible book value is our pro forma net tangible book value (deficit) as of June 30, 2024, after giving further effect to (i) our issuance and sale of 1,500,000 shares of common stock in this offering at an assumed initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses paid and payable by us but assuming no exercise of the warrants granted to the Representative of the underwriters; (ii) the net proceeds from our issuance and sale of Common Warrants to purchase 500,000 shares of common stock in the concurrent private placement offering at an assumed offering price of $4.99 per Common Warrant, which is based on the midpoint of the price range for our common stock in this offering set forth on the cover page of this prospectus, after deducting the placement agent fees and commissions payable by us but assuming no exercise of the Common Warrants; and (iii) the use of proceeds of this offering in the amount of $2,375,000 for the repayment of indebtedness (collectively, the "Post-Closing Adjustments").

The following table illustrates this dilution on a per share basis to new investors:

Assumed initial public offering price per share		$ 5.00
Historical net tangible book value (deficit) per share as of June 30, 2024, before giving effect to the Pre-Closing Adjustments	$ (81.46)	
Increase in pro forma net tangible book value per share attributable to the Pre-Closing Adjustments	81.21	
Pro forma net tangible book value (deficit) per share as of June 30, 2024, before giving effect to the Post-Closing Adjustments	(0.25)	
Increase in pro forma net tangible book value per share attributable to the Post-Closing Adjustments	1.83	
Pro forma as adjusted net tangible book value per share after this offering		1.58
Dilution in pro forma net tangible book value per share to new investors participating in this offering		$ 3.42

If, immediately following the consummation of this offering and our concurrent private placement, the holders of our outstanding Common Warrants for the purchase of up to 500,000 shares of our common stock for a purchase price of $0.01 per share were to exercise such warrants in full, our pro forma as adjusted net tangible book value per share after this offering would decrease to $1.44 per share, representing a decrease in pro forma net tangible book value to existing stockholders of $0.14 per share and an increase in dilution to new investors participating in the offering to $3.56 per share.

If, immediately following the consummation of this offering and our concurrent private placement, the holders of our outstanding Common Warrants for the purchase of up to 500,000 shares of common stock for a purchase price of $0.01 per share, and the holders of our outstanding warrants for the purchase of up to 3,804,721 shares of common stock for a purchase price of $0.001 per share, were to exercise such warrants in full, our pro forma as adjusted net tangible book value per share after this offering would decrease to $0.86 per share, representing a decrease in pro forma net tangible book value to existing stockholders of $0.72 per share and an increase in dilution to new investors participating in the offering to $4.14 per share.

A $1.00 increase or decrease in the assumed initial public offering price of $5.00 per share of common stock, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, the pro forma as adjusted net tangible book value (deficit) after this offering and our concurrent offering of Common Warrants by approximately $1,840,000, and decrease or increase by approximately $0.33 per share, respectively, as applicable, the dilution in pro forma net tangible book value (deficit) per share to investors participating in this offering, assuming that the number of shares of common stock and Common Warrants offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions, placement agent fees and estimated offering expenses payable by us.

Similarly, a 100,000 share increase or decrease in the number of shares of common stock or number of Common Warrants offered by us, as set forth on the cover page of this prospectus, would increase or decrease, as appropriate, the pro forma as adjusted net tangible book value (deficit) after this offering by approximately $460,000, as applicable, and increase by approximately $0.05 per share or decrease by approximately $0.06 per share, respectively, as applicable, the dilution in pro forma net tangible book value (deficit) per share to investors participating in this offering, assuming the assumed initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, remains the same, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma information discussed above is illustrative only and will change based on the actual initial public offering price, number of shares and other terms of this offering determined at pricing.

If the underwriters exercise in full their option to purchase additional shares of our common stock in this offering, the pro forma as adjusted net tangible book value will increase to $1.70 per share, representing an increase in pro forma net tangible book value to existing stockholders of $0.12 per share and a dilution of $3.30 per share to new investors participating in this offering.

The following table sets forth as of June 30, 2024, on the pro forma as adjusted basis described above, the differences between our existing stockholders and the purchasers of shares of common stock in this offering with respect to the number of shares of common stock purchased from us, the total consideration paid to us and the weighted average price paid per share paid to us, based on an assumed initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		Weighted Average Price per Share
	Number	Percent	Amount	Percent	
Existing stockholders	3,653,405	70.9%	$ 68,631,567	90.1%	$ 18.79
New investors	1,500,000	29.1	7,500,000	9.9	5.00
Total	5,153,405	100.0%	$ 76,131,567	100.0%	

If the underwriters exercise in full their option to purchase additional shares of our common stock in this offering, the number of shares held by existing stockholders will be reduced to 67.9% of the total number of shares of common stock that will be outstanding upon completion of this offering, and the number of shares of common stock held by new investors participating in this offering will be further increased to 32.1% of the total number of shares of common stock that will be outstanding upon completion of the offering.

To the extent that any outstanding options or warrants, including the Common Warrants to be issued in our concurrent private placement, are exercised, any outstanding RSUs are settled, our outstanding Series A Preferred Stock is converted, or new equity securities are issued under our 2019 Plan or our 2024 Plan, or we issue additional shares of common stock in the future, there may be further dilution to investors participating in this offering. If all outstanding options, RSUs, warrants (including the Common Warrants) and shares of Series A Preferred Stock were exercised, settled, or converted (without giving effect to the accrual of dividends earned on Preferred Series A Stock upon conversion into common stock), then our existing stockholders, including holders of such options, warrants, RSUs and shares of Series A Preferred Stock, would own 89.1% and our new investors would own 10.9% of the total number of shares of our common stock outstanding upon the completion of this offering. In such event, the total consideration paid by our existing stockholders, including the holders of such options, warrants, RSUs and shares of Series A Preferred Stock, would be approximately $102 million, or 93.1% of the total consideration for our common stock outstanding upon the completion of this offering, the total consideration paid by our new investors purchasing the common stock in this offering would be $7.5 million, or 6.9% of the total consideration for our common stock outstanding upon the completion of this offering, and the weighted average price per share paid by our existing stockholders, including the holders of such options, warrants, RSUs, and shares of Series A Preferred Stock, would be $7.19 and the price per share paid by our new investors would be $5.00, assuming an initial public offering price of $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus.

A $1.00 increase or decrease in the assumed initial public offering price of $5.00 per share of common stock, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as appropriate, the total consideration paid by new investors by $1,500,000 assuming the number of shares we are offering, as set forth on the cover page of this prospectus, remains the same. We may also increase or decrease the number of shares we are offering. Similarly, each increase or decrease of 100,000 shares offered by us would increase or decrease, as appropriate, the total consideration paid by new investors by $500,000, if the assumed initial price to the public remains the same.

We may choose to raise additional capital through the sale of equity or equity-linked securities due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that any options are issued under our equity incentive plan, or we issue additional shares of common stock or equity-linked securities in the future, there will be further dilution to investors purchasing in this offering.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes and other financial information included elsewhere in this prospectus and the section of this prospectus entitled "Information about Heritage." In addition to historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" and elsewhere in this prospectus. Unless the context otherwise requires, for the purposes of this section, "Heritage," "we," "us," "our," or the "Company" refer to Heritage Distilling Holding Company, Inc. and its subsidiaries.

Business Overview

We are a craft distiller producing, marketing and selling a diverse line of award-winning craft spirits, including whiskeys, vodkas, gins, rums, and "ready-to-drink" canned cocktails. We recognize that taste and innovation are key criteria for consumer choices in spirits and innovate new products for trial in our company-owned distilleries and tasting rooms. We believe we have developed differentiated products that are responsive to consumer desires for rewarding and novel taste experiences.

We compete in the craft spirits segment, which is the most rapidly-growing segment of the overall $288 billion spirits market. According to the American Craft Spirits Association, a craft distillery is defined generally as a distillery that produces fewer than 750,000 gallons annually and holds an ownership interest of 51% or more of a distilled spirits plant that is licensed by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury. According to the Craft Spirits Global Market Report 2023 of Grand View Research, the craft spirits segment had revenues of more than $21.4 billion in 2023 and is estimated to grow at a compound annual growth rate ("CAGR") of 29.4% between 2024 and 2030. We believe we are well positioned to grow more than the growth rate of the market by increasing our marketing efforts, increasing the size of our sales teams and broadening our wholesale distribution.

Out of the more than 2,600 craft producers in North America, we have been recognized with more awards for our products from the American Distilling Institute, the leading independent spirits association in the U.S., than any other North American craft distiller for each of the last ten years. Plus, numerous other Best of Class, Double Gold and Gold medals from multiple national and international spirits competitions. We are one of the largest craft spirits producers on the West Coast based on revenues and are developing a national reach in the U.S. through traditional sales channels (wholesale, on-premises and e-commerce) and our unique and recently-developed Tribal Beverage Network ("TBN") sales channel. Based upon our revenues and our continued track record of winning industry awards in an increasingly competitive environment, we believe we are one of the leading craft spirits producers in the United States.

We sell our products through wholesale distribution, directly to consumers through our five owned and operated distilleries and tasting rooms located in Washington and Oregon and by shipping directly to consumers on-line where legal. Currently, we sell products primarily in the Pacific Northwest with limited distribution in other states throughout the U.S. In addition, in collaboration with Native American tribes, we have recently developed a new sales, manufacturing and distribution channel on tribal lands that we expect will increase and broaden the recognition of our brand as that network expands nationally.

Our growth strategy is based on three primary areas. First, we are focused on growing our direct-to-consumer ("DtC") sales via shipping to legal purchasers to their homes where allowed. We currently use a three-tier compliant, third-party platform to conduct these sales and deliveries in 46 states in which approximately 96.8% of the U.S. population reside. This allows us to develop a relationship directly with the consumer through higher-margin sales while collecting valuable data about our best performing products. We can then use this data to target the consumer based on location, age, key demographics and product types. With the data collected, we can also retarget and resell to them generating more revenue.

Our DtC sales also support our second growth area, which entails growing our wholesale volume with our distributors through key national accounts both on-premises and off-premises. By building brand recognition for key products in selected regions or states through DtC sales, we can better support the wholesale launch, marketing and product pull-through of those products in partnership with wholesalers in those targeted states. While DtC sales result in singular high-margin sales, growing volume through wholesale distribution is the most efficient way to drive large-scale growth across retail chains.

Third, we are focused on expanded growth of our collaboration with Native American tribes through the TBN model we created. In concert with tribal partners, this sales channel includes Heritage-branded micro production hubs, Heritage-branded stores and tasting rooms and the sale of our products and new tribally-branded products. In the typical TBN collaboration, the tribes will own these businesses and we will receive a royalty on gross sales through licenses we grant to use our brands, products, recipes, programs, IP, new product development, on-going compliance support and the other support we provide. The TBN is expected to form a network of regional production hubs that will support product trials and sampling, and will generate sales of finished, intermediate and bulk spirits depending on location, equipment and market. Importantly, because these premium spirits will be produced locally, we believe the TBN will promote the positioning of our brands as local and regional. We expect that, as the brands grow and the TBN footprint expands, there will be an important synergy with increased adoption and growth through our wholesale channels in the regions where the TBN locations are driving trial and awareness. Similarly, as demand for our products grows through our wholesale channels, there should be a positive effect on the demand for our products through the tribal distilleries.

Key Factors Affecting Our Operating Results

Management believes that our performance and future success depend on many factors that present significant opportunities, but also pose challenges, including the following:

Pricing, Product Cost and Margins

To date, most of our revenue has been generated by retail sales of our spirits in our retail tasting rooms and through our eCommerce platform. Having completed the construction of our existing production facilities and contracted with established distributors, we now intend to focus our production capacity, record of success in developing award-winning products, and a portion of the net proceeds from this offering on the growth of our wholesale channel. Going forward, we expect to sell our products in a variety of vertical industry markets in partnership with our distributors across states and geographic regions. Pricing may vary by region due to market-specific dynamics and various layers of taxes applied by the states at the different steps of distribution and retail sales. As a result, our financial performance will depend, in part, on the mix of our sales in different markets during a given period and our ability to scale efficiently.

We have experienced inflation in some of our raw inputs, particularly in grains, bottles, cans and barrels. Some of these price increases began to moderate beginning in the second half of 2021, such as in grain. Grain prices increased due to supply chain issues associated with the war in Ukraine and the increased input cost of fertilizers tied to high natural gas prices. Grain prices have moderated as some additional sources of supply opened up and the market price for grain has come down from its recent historic highs. Aluminum prices for cans and bottles increased in 2021 and early 2022, but began to decline in the second half of 2022, and we were able to achieve more favorable pricing based on larger order quantities in late 2022. While glass bottle prices also increased, we were able to lock in pricing for two years at favorable prices in 2021. In 2023, our suppliers indicated their price increases were moderating and their supply chains were returning to normal. During the uncertain periods in 2021 and 2022, we elected to take possession of glass bottle quantities designed to last two years at favorable prices, insulating these costs to a measurable degree moving into 2024. The cost of oak barrels necessary for the aging of spirits escalated by approximately 30% since the beginning of 2022 due to the growing demand for barrels needed to age whiskey and constraints in the raw oak market. While constraints in the freight market caused historically high shipping rates, those shipping rates were returning to their previous levels until the recent bankruptcy announcement by one of the largest freight companies in the U.S. That bankruptcy, when combined with high diesel prices and a lack of licensed drivers, continues to cause uncertainty in the freight markets. Likewise, employees are facing financial stress as inflation hits them at home, and their desire for more compensation creates higher cost pressures on overall operations absent finding offsetting cost efficiencies. In addition, the annual minimum wage increases for hourly retail and production staff in the states in which we operate are higher than other parts of the U.S. Unlike singular commodity spikes in the recent past due to an isolated incident, or short-term supply chain issues, the confluences of these factors created pressure across all parts of our operations, requiring us to manage each aspect carefully. Finally, we have begun to see

a change in the buying habits of consumers who are looking for “experiences” rather than buying “things,” and we believe consumers are electing to buy fewer but more premium items. As a result, we must re-examine how we engage with consumers at retail and online to ensure we stay relevant.

Continued Investment and Innovation

Our performance is dependent on our ability to continue to develop products that resonate with consumers. It is essential that we continually identify and respond to rapidly-evolving consumer trends, develop and introduce innovative new products, enhance our existing products, and generate consumer demand for our products. Management believes that investment in beverage product innovation will contribute to long-term revenue growth, especially in the premium and ultra-premium segments.

Key Components of Results of Operations

Net Sales

Our net sales consist primarily of the sale of spirits and services domestically in the United States. Customers consist primarily of wholesale distributors and direct consumers. Substantially all revenue is recognized from products transferred at a point in time when control is transferred, and contract performance obligations are met. Service revenue represents fees for distinct value-added services that we provide to third parties, including production, bottling, marketing, consulting and other services, including for the TBN, aimed at growing and improving brands and sales. Service revenue is recognized over the period in which the service is provided.

Cost of Sales

We recognize the cost of sales in the same manner that the related revenue is recognized. Our cost of sales consists of product costs, including manufacturing costs, duties and other applicable importing costs, shipping and handling costs, packaging, warranty replacement costs, fulfillment costs, warehousing costs, and certain allocated costs related to management, facilities and personnel-related expenses associated with supply chain logistics.

Gross Profit and Gross Margin

Our gross profit is the difference between our revenues and cost of sales. Gross margin percentage is obtained by dividing gross profit by our revenue. Our gross profit and gross margin are, or may be, influenced by several factors, including:

- Market conditions that may impact our pricing;
- Our cost structure for manufacturing operations, including contract manufacturers, relative to volume, and our product support obligations;
- Our capacity utilization and overhead cost absorption rates;
- Our ability to maintain our costs on the components that go into the manufacture of our products; and
- Seasonal sales offerings or product promotions in conjunction with plans created with our distributors or retail channels.

We expect our gross margins to fluctuate over time, depending on the factors described above.

Sales and Marketing

Sales and marketing expenses consist primarily of employee-related costs for individuals working in our sales and marketing departments, our tasting room general managers and Cask Club directors, our hourly tasting room sales associates, the executives to whom all general managers report, and the executives whose primary function is sales or marketing, and rent and associated costs for running each tasting room. The expenses include our personnel responsible for managing our e-commerce platform, wages, commissions and bonuses for our outside sales team members who market and sell our products to distributors and retail end users and the associated costs of such sales. Sales and marketing expenses also include the costs of sports and venue sponsorships, radio, television, social media, influencers, direct mail and other traditional marketing costs, costs related to trade shows and events and an allocated portion of overhead costs. We expect our sales and marketing costs will increase as we expand our headcount, open new locations in partnership with tribes, expand our wholesale distribution footprint and initiate new marketing campaigns.

General and Administrative

General and administrative expenses consist primarily of personnel-related expenses associated with our executive, finance, legal, insurance, information technology and human resources functions, as well as professional fees for legal, audit, accounting and other consulting services, and an allocated portion of overhead costs. We expect our general and administrative expenses will increase on an absolute dollar basis as a result of operating as a public company, including expenses necessary to comply with the rules and regulations applicable to companies listed on a national securities exchange and related to compliance and reporting obligations pursuant to the rules and regulations of the SEC, as well as increased expenses for general and director and officer insurance, investor relations, and other administrative and professional services. In addition, we expect to incur additional costs as we hire additional personnel and enhance our infrastructure to support the anticipated growth of our business.

As of June 30, 2024, we had outstanding restricted stock units ("RSUs") that, upon vesting, will settle into an aggregate of 11,064 shares based upon the grant date with a fair value of $157.89 and 232,025shares based upon the grant date with a fair value of $4.00. We expect to recognize an aggregate of $2,674,995, of previously-unrecognized compensation expense for RSU awards upon the settling of those RSUs on the expiration the lock-up agreements to be entered into in connection with this offering. Included above are an aggregate of 232,025 RSUs to employees, directors and consultants that the Board of Directors approved in May 2024, with a fair grant value of $4.00 per unit. These RSUs contain a double trigger and, upon grant, were deemed to have met their time-based service requirements for vesting. They will settle on the expiration of the lock-up agreements that will be entered into in connection with this offering.

Interest Expense

Interest expenses include cash interest accrued on our secured debt, cash interest and non-cash interest paid or accrued on our notes payable, interest on leased equipment or assets, and costs and interest on credit cards.

Change in Fair Value of Convertible Notes and Warrant Liabilities

We elected the fair value option for the convertible notes we issued in 2022 and 2023 (the "Convertible Notes") and the warrants that were issued in connection with the Convertible Notes under ASC Topic 825, *Financial Instruments*, with changes in fair value reported in our consolidated statements of operations as a component of other income (expense). We believe the fair value option better reflects the underlying economics of the Convertible Notes and the related warrants given their embedded conversion or exercise features. As a result, the Convertible Notes and the related warrants were recorded at fair value upon issuance and were subsequently, and will continue to be, remeasured at each reporting date until settled or converted. Accordingly, the Convertible Notes and the related warrants are recognized initially and subsequently (through and including their exchange for common stock, or in the case of the warrants, the fixing of their exercise price) at fair value, inclusive of their respective accrued interest at their stated interest rates, which are included in convertible notes on our consolidated balance sheets. The changes in the fair value of the Convertible Notes and related warrants are recorded as "changes in fair value" as a component of other income (expenses) in our consolidated statements of operations. The changes in fair value related to the accrued interest components of the Convertible Notes are also included within the single line of change in fair value of convertible notes on our consolidated statements of operations.

Changes in Fair Value of Investment in Flavored Bourbon, LLC

As of June 30, 2024 and December 31, 2023, we had a 12.2% and 15.1% ownership interest in Flavored Bourbon, LLC, respectively, and did not record any impairment charges related to our investment in Flavored Bourbon, LLC for the year ended December 31, 2023. In January 2024, Flavored Bourbon LLC conducted a capital call, looking to raise $12 million from current and new investors at the same valuation as its last raise. We chose not to participate in the raise, but still retained our rights to full recovery of our capital account of $25.3 million, with the Company being guaranteed a pay out of this $25.3 million, which we must be paid in the event the brand is sold to a third party, or we can block such sale. As of June 30, 2024, a total of $9,791,360 of the $12 million had been raised, with the remainder targeted to be raised by the end of 2024. We retain a 12.2% ownership interest in this entity plus a 2.5% override in the waterfall of distributions. As a result of the January 2024 capital call, in accordance with adjusting for observable price changes for similar investments of the same issuer pursuant to

ASC 321 as noted above, we performed a qualitative assessment of our Investment in Flavored Bourbon, LLC. On the basis of our analysis we determined that the fair value of our Investment in Flavored Bourbon, LLC, should be adjusted to $14,285,000, with the resulting increase in fair value of $3,421,000 recorded as gain on increase in value of Flavored Bourbon, LLC on our condensed consolidated statement of operations for the six months ended June 30, 2024.

Changes in Fair Value of Convertible Notes

As of June 30, 2024, the fair value of the Convertible Notes that were issued in 2022 and 2023 and were exchanged in October and November 2023 for a fixed number of shares of common stock and prepaid warrants, was revalued to $18,067,088, which reflected the impact of the then-anticipated pricing of this offering of $5.00 per share in the valuation calculation methodology, resulting in a $18,216,803 decrease in the fair value of such notes. We anticipate that upon the effectiveness of this offering, the fair value of the Convertible Notes will be increased and reclassified from a liability to common stock in the amount of $19,097,710 (representing the 3,312,148 shares of common stock and 507,394 prepaid warrants for which the Convertible Notes were exchanged multiplied by the price per share of our common stock in this offering, currently anticipated at $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus), with the remaining $1,030,622 anticipated to be recorded as a loss for the increase of the fair value of those Convertible Notes for the six months ended June 30, 2024 and the date of the closing of this offering. This value could be adjusted further depending on the date of consummation of this offering, which is the date on which the contingent treatment of the liability associated with such convertible notes is relieved.

As of June 30, 2024, the fair value of the convertible notes issued in 2024 and related warrant liabilities, which notes and warrants were exchanged for 2,399,090 shares of common stock and 546,927 prepaid warrants in April 2024, was $13,978,467 and $20,378, respectively, which reflected the impact of the then-anticipated pricing in this offering of $5.00 per share in the valuation calculation methodology. We anticipate that upon the effectiveness of this offering, the fair value of such convertible promissory notes and related warrant liabilities will be increased and reclassified from a liability to common stock in the aggregate amount of $14,730,085 (representing the 2,399,090 shares of common stock and 546,927 prepaid warrants for which the Convertible Notes were exchanged multiplied by the price per share of our common stock in this offering, currently anticipated at $5.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus), with the remaining $751,618 anticipated to be recorded as a loss for the increase of the fair value of those convertible notes and related warrant liabilities for the six months ended June 30, 2024 and the date of the closing of this offering. This value could be adjusted further depending on the date of consummation of this offering, which is the date on which the contingent treatment of the liability associated with such convertible notes is relieved.

As the exchange of the Convertible Notes to common stock was conditioned upon the closing of an initial public offering of our common stock prior to a specified date, the aggregate fair value of the Convertible Notes will continue to be reflected as a liability on our consolidated balance sheet until the closing of this offering, at which time the Convertible Notes will be reclassified from convertible notes payable to equity as the remaining contingency to the exchange of the Convertible Notes to common stock will have been satisfied. With the satisfaction of that remaining contingency, the exchange of the convertible notes payable for common stock will qualify for equity classification, as depicted on our pro forma capitalization table under the caption “Capitalization”. See also Notes 5 and 16 to our unaudited interim condensed consolidated financial statements for the six months ended June 30, 2024 included elsewhere in this prospectus.

Changes in Fair Value of Warrant Liabilities

We issued certain warrants for the purchase of shares of our common stock in connection with certain Convertible Notes and classified such warrants as a liabilities on our consolidated balance sheet pursuant to ASC Topic 480 because, when issued, the warrants were to settle by issuing a variable number of shares of our common stock based on the then-unknown price per share of our common stock in this offering. The warrant liabilities were initially recorded at fair value on the issuance date of each warrant and are subsequently remeasured to fair value at each reporting date. Changes in the fair value of the warrant liabilities are recognized as a component of other income (expense) in the consolidated statements of operations. As originally drafted, changes in the fair value of the warrant liabilities are recognized until the warrants are exercised, expire or qualify for equity classification.

In April 2024, certain of such warrants and the related Convertible Notes were exchanged (contingent upon the consummation of this offering) for common stock. The remaining warrants, which will remain outstanding subsequent to the closing of this offering, were amended to fix the exercise price at $6.00 per share effective upon the closing of this offering, thereby removing the floating price optionality. The fixing of the exercise price will allow us to reclassify the warrant liabilities as equity on a pro forma basis, per ASC Topic 420. That recognition is depicted on our pro forma capitalization table under the caption "Capitalization." See also Notes 5 and 16 to our unaudited interim condensed consolidated financial statements for the six months ended June 30, 2024 included elsewhere in this prospectus.

Income Taxes

Our income tax provision consists of an estimate for U.S. federal and state income taxes based on enacted rates, as adjusted for allowable credits, deductions, uncertain tax positions, changes in deferred tax assets and liabilities and changes in tax law.

Comparison of the Results of Operations for the Six Months Ended June 30, 2024 and 2023

The following table summarizes our results of operations for the six months ended June30, 2024 and 2023.

	For the Six Months Ended June 30,		
	2024	**2023**	**Change**
Net Sales			
Products	$ 2,675,858	$ 2,183,521	$ 492,337
Services	872,616	1,253,834	(381,218)
Total Net Sales	3,548,474	3,437,355	111,119
Cost of Sales			
Products	2,311,463	2,309,796	1,667
Services	80,677	452,624	(371,947)
Total Cost of Sales	2,392,140	2,762,420	(370,280)
Gross Profit	1,156,334	674,935	481,399
Operating Expenses			
Sales and Marketing	2,487,650	3,093,568	(605,918)
General and Administrative	3,193,246	4,700,392	(1,507,146)
Total Operating Expenses	5,680,896	7,793,960	(2,113,064)
Operating Loss	(4,524,562)	(7,119,025)	2,594,463
Other Income (Expense)			
Interest Expense	(1,235,656)	(1,205,545)	(30,111)
Gain on investments	3,421,222	—	3,421,222
Change in Fair Value of Convertible Notes	9,044,748	(19,544,020)	28,588,768
Change in Fair Value of Warrant Liabilities	1,705,020	(343,104)	2,048,124
Changes in Fair Value of Acquisition Contingency Other Income	592	—	592
Total Other Expense	13,393,053	(21,092,669)	34,485,722
Income/(Loss) Before Income Taxes	8,868,491	(28,211,694)	37,080,185
Income Taxes	(9,150)	—	(9,150)
Net Income/(Loss)	$ 8,859,341	$ (28,211,694)	$ 37,071,035
Net Income/(Loss) Per Share, Basic	$ 20.97	$ (73.93)	$ 94.90
Weighted Average Common Shares Outstanding, Basic	421,799	381,600	40,199
Net Income/(Loss) Per Share, Diluted	$ (2.44)	$ (73.93)	$ 71.49
Weighted Average Common Shares Outstanding, Diluted	4,573,063	381,600	4,191,463

Net Sales

Net sales were approximately $3,548,000 and $3,437,000 for the six months ended June 30, 2024 and 2023, respectively, an increase of approximately $111,000, or 3.2%, period over period. The increase in net sales resulted primarily from:

- an increase in product sales of approximately $492,000, or 22.5%, to approximately $2,676,000 for the six months ended June 30, 2024, compared to approximately $2,184,000 for the six months ended June 30, 2023, due mainly to the launch of the *Special Operations Services* product line in November 2023. This increase would have been greater except for the closure of our Ballard, Washington retail location in late March 2023, which generated almost a full quarter of retail tasting room revenue in 2023, while the six months ended June 30, 2024 included none of that revenue.
- a decrease of approximately $381,000, or 30.4%, in services sales, to approximately $873,000 for the six months ended June 30, 2024 compared to approximately $1,254,000 for the six months ended June 30, 2023 resulting primarily from the termination of a modest third-party bottling contract in January 2024.

We note that total sales for the six months ended June 30, 2024 would have been higher than total sales in the six months ended June 30, 2023 had we not closed our Ballard, Washington tasting room in March of 2023 in connection with our decision not to renew the lease for that facility, which we believe demonstrates that 2023 was a year of stabilization in anticipation of new product launches and new wholesale markets opening in 2024 to begin our growth.

The approximately $492,000 net increase in products sales, period over period, included:

	Six Months Ended June 30, (rounded to $000's)		
Products Sales	**2024**	**2023**	**Change**
Wholesale	$ 807,000	$ 787,000	$ 20,000
Retail	1,682,000	1,169,000	513,000
Third Party	187,000	228,000	(41,000)
	$ 2,676,000	$ 2,184,000	$ 492,000

- The approximately $513,000 increase in retail products sales was primarily a result of the launch of our *Special Operations Salute* line in November 2023. This increase would have been greater except for the closure of our Ballard, Washington retail location in late March 2023, which generated almost a full quarter of retail tasting room revenue in 2023, while the six months ended June 30, 2024 included none of that revenue.
- The approximately $41,000 decrease in third-party products sales was primarily a result of our production of bulk spirits under contract for third parties and royalties from spirits sales under the new TBN model.

The approximately $381,000 decrease in net sales of services period over period included:

	Six Months Ended June 30, (rounded to $000's)		
Services Sales	**2024**	**2023**	**Change**
Third Party Production	$ 117,000	$ 559,000	$ (442,000)
Retail Services	665,000	602,000	63,000
Consulting and Other	91,000	93,000	(2,000)
	$ 873,000	$ 1,254,000	$ (381,000)

- The approximately $442,000 decrease in third-party production resulted from the ending of a modest third-party bottling contract as of January 31, 2024. The bulk of our revenue in this category included production services revenue related to a contract we had to produce a gin for a large international spirit brand owner; contract bottling services; and third-party barrel storage revenues. We expect our barrel storage revenue to continue to increase as more third-party barrels are put into our warehouse. We terminated our gin production contract in early January 2024 as we shifted our focus toward applying our resources in higher-margin activities under our own core brands and programs and reducing risks associated with hourly labor in certain markets.

- The approximately $63,000 increase in retail services included Cask Club sales increasing $28,000 and Cocktail orders in the tasting rooms increasing $45,000.

Cost of Sales

Cost of sales were approximately $2,392,000 and $2,763,000 for the six months ended June 30, 2024 and 2023, respectively, a decrease of approximately $371,000, or 13.4%, period over period. The reduction in cost of sales resulted primarily from an approximately $372,000 decrease in services cost of sales, to approximately $81,000 for the six months ended June 30, 2024 compared approximately $453,000 for the six months ended June 30, 2023.

	Six Months Ended June 30, (rounded to $000's)		
Total Cost of Sales	**2024**	**2023**	**Change**
Products	$ 2,311,000	$ 2,310,000	$ 1,000
Services	81,000	453,000	(372,000)
	$ 2,392,000	$ 2,763,000	$ (371,000)

The approximately $1,000 increase in net products cost of sales period over period included: a decrease in product cost of approximately $170,000 to approximately $1,139,000 for the six months ended June 30, 2024, from approximately $1,309,000 for the six months ended June 30, 2023 and an increase in unabsorbed overhead of approximately $171,000 to approximately $1,172,000 as of June 30, 2024 from approximately $1,001,000 as of June 30, 2023. We began analyzing unabsorbed overhead as a separate component of cost of sales in 2022.

	Six Months Ended June 30, (rounded to $000's)		
Components of Products Cost of Sales	**2024**	**2023**	**Change**
Product Cost (from inventory)	$ 1,139,000	$ 1,309,000	$ (170,000)
Overhead – Unabsorbed	1,172,000	1,001,000	171,000
	$ 2,311,000	$ 2,310,000	$ 1,000

	Six Months Ended June 30,		
Components of Products Cost of Sales	**2024**	**2023**	**Change**
Product Cost (from inventory)	49.3%	56.7%	(7.4)%
Overhead – Unabsorbed	50.7%	43.3%	7.4%
	100.0%	100.0%	0.0%

The approximately $1,000 increase in net products cost of sales period over period is further detailed as follows:

	Six Months Ended June 30, (rounded to $000's)		
Cost of Sales Products Sales	**2024**	**2023**	**Change**
Spirits – Wholesale	$ 581,000	$ 648,000	$ (67,000)
Spirits – Retail	338,000	260,000	78,000
Spirits – Third Party	113,000	182,000	(69,000)
Hand Sanitizer – Wholesale	—	46,000	(46,000)
Merchandise and Prepared Food	107,000	173,000	(66,000)
Unabsorbed Overhead	1,172,000	1,001,000	171,000
	$ 2,311,000	$ 2,310,000	$ 1,000

- The larger realized increase in third-party production costs indicates low margins on those efforts, which is the principal reason why management is moving us away from those efforts starting in 2024 as we execute on our plan to open more TBN locations and look to realize significant gains in both topline revenue and high-margin DtC sales of our *Special Operations Salute* whiskey and expanded wholesale distribution of our core products in key states. Management is also working with our wholesale sales team to move us out of the low-margin well vodka business in favor of higher-margin premium whiskey products.
- The approximately $46,000 in one-time aggregate hand sanitizer cost of sales for the six months ended June 30, 2023 was due to a vendor invoice from 2020 that we did not receive until early 2023 when the vendor audited its billings for prior years. There was no similar expense in the six months ended June 30, 2024 and we do not anticipate any future expenses associated with hand sanitizer moving forward.
- Our unabsorbed overhead, which is a measure of our capacity relative to our current utilization, increased by approximately $171,000 to approximately $1,172,000 for the six months ended June 30, 2024 compared to approximately $1,001,000 for the six months ended June 30, 2023, indicating an increase in our underutilization of current production capacity. We expect that our unabsorbed overhead will decrease over time as our production volumes increase with increased sales, as our overhead expenses will be more fully allocated to increased levels of production.

Gross Profit

Gross profit was approximately $1,156,000 and $675,000 for the six months ended June 30, 2024 and 2023, respectively, an increase of approximately $481,000, or 71%, period over period, and included:

	Six Months Ended June 30, (rounded to $000's)		
Total Gross Profit	**2024**	**2023**	**Change**
Products	$ 364,000	$ (126,000)	$ 490,000
Services	792,000	801,000	(9,000)
	$ 1,156,000	$ 675,000	$ 481,000

	Six Months Ended June 30,		
Total Gross Margin	**2024**	**2023**	**Change**
Products	13.6%	(5.8)%	19.4%
Services	90.7%	63.9%	26.8%
	32.6%	19.6%	12.9%

	Six Months Ended June 30, (rounded to $000's)		
Total Sales	**2024**	**2023**	**Change**
Products	$ 2,676,000	$ 2,184,000	$ 492,000
Services	873,000	1,254,000	(381,000)
	$ 3,549,000	$ 3,438,000	$ 111,000

- Gross margin was approximately 32.6% and 19.6% for the six months ended June 30, 2024 and 2023, respectively, based upon total net sales of approximately $3,549,000 and $3,438,000, respectively. As we add more *Special Operations Salute* sales via online channels, we expect to see our overall gross margin increase. Likewise, as we add more states into our wholesale distribution channel focused solely on high-margin items, rather than any low-margin well vodka in those states, we expect to see additional margin increases. Also, as we add more cases of production through our system, we expect the unabsorbed overhead costs will be reduced as each additive case of new sales volume begins to carry incremental overhead costs as part of the normal manufacturing cost accounting, which should increase our overall margins. Finally, our third-party production contracts were very low margin for us, which is why management made the decision to end those contracts at the end of January 2024. Moving forward, management will focus on higher-margin activities, which we expect will increase our overall margins.

Sales and Marketing Expenses

Sales and marketing expenses were approximately $2,488,000 for the six months ended June 30, 2024 compared to approximately $3,094,000 for the six months ended June 30, 2023. This approximately $606,000 decrease included:

	Six Months Ended June 30, (rounded to $000's)		
Sales and Marketing Expense	**2024**	**2023**	**Change**
Personnel	$ 1,309,000	$ 1,741,000	$ (432,000)
Tasting Room	70,000	67,000	3,000
Leases and Rentals	353,000	391,000	(38,000)
Sales and Marketing Expenses	277,000	521,000	(244,000)
Other	479,000	374,000	105,000
	$ 2,488,000	$ 3,094,000	$ (606,000)

- The approximately $432,000 decrease in personnel expense was primarily a result of a decrease of five full-time marketing and retail administration staff in May 2023.
- The approximately $38,000 decrease in leases and rentals expenses was primarily due to the closure of our Ballard, Washington retail location in March 2023.
- The approximately $244,000 decrease in sales and marketing expenses included: an increase in digital advertising production expense, which was offset by decreases in sponsorships and print advertising as we shifted to a new third-party e-commerce platform; two large sports sponsorships that were put under contract before COVID-19 shutdowns went into effect, which contracts were reinstated in 2022 and 2023, could not be cancelled and are not being renewed for 2024 or beyond.
- The approximately $105,000 increase in other sales and marketing expenses included increases in: professional fees for contracted Chief Revenue Officer services and e-commerce distribution services and travel; software for an improved point-of-sale software upgrade; location utilities and insurance; and a net increase in other sales and marketing expenses.

General and Administrative Expenses

General and administrative expenses were approximately $3,194,000 for the six months ended June 30, 2024, compared to approximately $4,700,000 for the six months ended June 30, 2023. This approximately $1,056,000 decrease included:

	Six Months Ended June 30, (rounded to $000's)		
General and Administrative Expense	**2024**	**2023**	**Change**
Personnel	$ 1,083,000	$ 1,003,000	$ 80,000
Recruiting and retention	12,000	156,000	(144,000)
Professional Fees	772,000	1,831,000	(1,059,000)
Leases and Rentals	321,000	311,000	10,000
Depreciation	532,000	649,000	(117,000)
Other	474,000	750,000	(276,000)
	$ 3,194,000	$ 4,700,000	$ (1,056,000)

- The approximately $80,000 increase in personnel expense was primarily a result of reducing staff in March 2023. This was net of other general and administrative expense reductions that took place during the period because of a strategic reduction in headcount in other parts of our business.

- The approximately $144,000 decrease in recruiting and retention expenses included recruiting expenses related to hiring a Senior VP of Sales in the first quarter of 2023 and expense related to hiring a Chief Financial Officer in the second quarter of 2023.
- The approximately $10,000 increase in leases and rentals was primarily the result of our Capitol Hill lease terminating May 2023. This increase was offset by; our Ballard tasting room closing, resulting in our move of lease cost from the retail and marketing category to G&A expenses beginning in April 2023 and then this lease terminating April 2024, also a portion of our warehouse location was moved from retail and marketing category to G&A expenses beginning May 2023.
- The approximately $117,000 decrease in depreciation expense was primarily the result of accelerating depreciation in 2023 to write off the remaining assets of our Ballard tasting room, which was closed in March 2023.
- The approximately $276,000 decrease in other general and administrative expenses included accumulative smaller changes in utilities, travel, insurance and other expenses.
- The approximately $1,059,000 decrease in professional fees expense included:

	Six Months Ended June 30, (rounded to $000's)		
Professional Fees	**2024**	**2023**	**Change**
Accounting and Valuation Services	$ 312,000	$ 1,224,000	$ (912,000)
Legal	126,000	488,000	(362,000)
Other	334,000	119,000	215,000
Total	$ 772,000	$ 1,831,000	$ (1,059,000)

- A majority of our professional fees expense in the six months ended June30, 2024 and 2023 were incurred as a result of general preparedness of our financial reporting and capital structure for an SEC filing event, including for this offering, and previously, for the proposed SPAC transaction discussed below (which was terminated in May 2023). Accordingly, within that context, most of our professional fees expense and changes in expense levels between the respective year-over-year periods were as follows:
  - The approximately $912,000 decrease in accounting and valuation services expenses included a decrease of approximately $576,000 to approximately $69,000 for the six months ended June 30, 2024 compared to approximately $645,000 for the six months ended June30, 2023, in professional fees for financial statement preparation and review expenses; additional $104,000 related to the SPAC transaction; $40,000 for contract chief financial officer services that ended in April 2023 and a decrease in general accounting and financial services of approximately $192,000.
  - The approximately $326,000 decrease in legal fees was primarily the result of legal work in the six months ended June 30, 2024 related to this offering compared to legal work in the six months ended June 30, 2023 related to the merger agreement for the proposed SPAC transaction and work associated with the preparation of related filings with the SEC.
  - The approximately $215,000 increase in other professional fees was primarily the result of the $180,000 media expense catch up in June 30, 2024 that was previously in deferred.

Beginning in 2022, we began exploring funding options, including preparations for the possible merger into a special purpose acquisition company (SPAC). While the costs directly associated with this activity were capitalized and deferred to the balance sheet to be recognized as a cost of the transaction upon a successful completion or other disposition, we also incurred certain other expenses related to preparing for the transaction that did not directly qualify for capitalization and deferral, such as the preparation of audited consolidated financial statements, and certain expenses for valuation and other financial services. In May 2023, we abandoned work on the proposed SPAC transaction, and as of December 31, 2023, we expensed the approximately $424,000 of related costs that had previously been capitalized and deferred to the balance sheet. See "*Recent Developments*" for further information.

Interest Expense

Interest expense increased by approximately $30,000 to approximately $1,236,000 for the six months ended June 30, 2024, compared to approximately $1,206,000 for the six months ended June30, 2023. The increase was partly due to a loan agent fee for Silverwood of $25,000 for the six months ended June 30, 2024, while no such fee was recorded for the six months ended June 30, 2023. For the six months ended June30, 2024, interest expense of 1% (or $11,000) was accrued on the PPP loan, while no such accrual was recorded for the six months ended June 30, 2023. For the six months ended June30, 2024, fees totaling $11,000 were accrued on a Factoring Agreement not paid at June 15, 2024, which were classified as an interest expense.

Income Taxes

The provision for income taxes for the six months ended June30, 2024 and 2023 was immaterial, primarily as we were in a net loss position for those periods.

Comparison of the Results of Operations for the Years Ended December 31, 2023 and 2022

The following table summarizes our results of operations for the years ended December31, 2023 and 2022.

	For the Years Ended December 31,		
	2023	**2022**	**Change**
Net Sales			
Products	$ 5,136,482	$ 5,228,682	$ (92,200)
Services	2,834,742	3,080,884	(246,142)
Total Net Sales	7,971,224	8,309,566	(338,342)
Cost of Sales			
Products	4,963,176	5,245,106	281,930
Services	857,007	852,034	(4,973)
Total Cost of Sales	5,820,183	6,097,140	276,957
Gross Profit	2,151,041	2,212,426	(61,385)
Operating Expenses			
Sales and Marketing	5,938,315	6,441,449	503,134
General and Administrative	7,477,285	7,598,319	121,034
Total Operating Expenses	13,415,600	14,039,768	624,168
Operating Loss	(11,264,559)	(11,827,342)	562,783
Other Income (Expense)			
Interest Expense	(2,526,740)	(2,611,371)	84,632
Change in Fair Value of Convertible Notes	(22,764,854)	2,117,636	(24,882,490)
Change in Fair Value of Warrant Liabilities	(240,159)	148,364	(388,523)
Other Income	4,892	(87,402)	92,294
Total Other Expense	(25,526,860)	(432,773)	(25,094,087)
Loss Before Income Taxes	(36,791,419)	(12,260,115)	(24,531,304)
Income Taxes	(7,000)	(8,101)	1,101
Net Loss	$ (36,798,419)	$ (12,268,216)	$ (24,530,203)
Net Loss Per Share, Basic and Diluted	$ (96.41)	$ (32.17)	$ (64.24)
Weighted Average Common Shares Outstanding, Basic and Diluted	381,672	381,388	284

Net Sales

Net sales were approximately $7,971,000 and $8,310,000 for the years ended December31, 2023 and 2022, respectively, a decrease of approximately $339,000 or 4.1%, period over period. The decrease in net sales resulted primarily from an approximately $246,000, or 8.0%, decrease in services sales, to approximately $2,835,000 for the year ended December 31, 2023, compared to approximately $3,081,000 for the year ended December 31, 2022, and also included a decrease in product sales of approximately $93,000, or 1.8%, to approximately $5,136,000 for the year ended December 31, 2023, compared to approximately $5,229,000 for the year ended December 31, 2022. This decrease was partly due to the closure of one of our six tasting room locations (in Ballard, WA) in mid-March 2023 in connection with our decision not to renew the lease for such tasting room.

We note that total sales for 2023 would have been higher than sales in 2022 had we not closed the Ballard tasting room in connection with our decision not to renew the lease demonstrating that 2023 was a year of stabilization in anticipation of new product launches and new wholesale markets opening in 2024 to begin our growth.

The approximately $93,000 net decrease in products sales, period over period, included:

	Years Ended December 31, (rounded to $000's)		
Products Sales	**2023**	**2022**	**Change**
Wholesale	$ 1,658,000	$ 1,643,000	$ 15,000
Retail	3,182,000	3,473,000	(291,000)
Third Party	295,000	112,000	183,000
	$ 5,135,000	$ 5,228,000	$ (93,000)

- The approximately $291,000 decrease in retail products sales was primarily a result of the impact of increased revenues in 2022 resulting from a "blow out" sale of the remaining inventories of our popular flavored bourbon product that utilized the original recipe in old packaging.

  In addition, in 2022, we had access to outdoor retail zones where we could serve customers food and drinks. Those spaces were open in 2022 under emergency COVID-19 guidelines that ended in December 2022. The termination of the emergency guidelines reduced our seating capacity by about 40% in 2023 as we no longer had access to this expanded outdoor seating and the increased table space, which adversely affected our sales opportunities that came with that expanded space. Finally, as discussed above, we closed one of our six retail tasting rooms in mid-March 2023. Some associated refunds to customers associated with Cask Club membership fees in that closed location meant for a brief period in the second quarter of 2023 we had negative sales for that closed location because of refunds being issued with no additional revenue associated with the closed location.

  The approximately $183,000 increase in third party products sales was primarily a result of producing bulk spirits under contract for third parties and royalties from spirits sales under the new TBN model.

The approximately $246,000 decrease in net sales of services period over period included:

	Years Ended December 31, (rounded to $000's)		
Services Sales	**2023**	**2022**	**Change**
Third Party Production	$ 1,094,000	$ 1,172,000	$ (78,000)
Retail Services	1,387,000	1,642,000	(255,000)
Consulting and Other	354,000	267,000	87,000
	$ 2,835,000	$ 3,081,000	$ (246,000)

- The approximately $78,000 decrease in third-party production resulted from the ending of a modest third-party bottling contract. The bulk of our revenue in this category included increased production services revenue related to a contract we have to produce a world-class gin for a large international spirit brand owner; increased contract bottling services; and increased third-party barrel storage revenues. We expect our barrel storage revenue to continue to increase as more third-party barrels are put into our warehouse. Our gin production contract will expire in early 2024 as we shift our focus toward putting our resources into higher margin activities under our own core brands and programs and reducing risks associated with hourly labor in certain markets.
- The approximately $255,000 decrease in retail services sales was primarily due to decreases in Cask Club and My Batch sales; tastings sales; and other retail services revenue, primarily associated with the closure of our Ballard, WA tasting room in mid-March 2023, with offsetting increases in retail cocktail sales;
- The approximately $87,000 increase in consulting and other revenues included increases in consulting revenues from TBN-related services as we have signed more tribes to join the TBN program, in which case the upfront consulting fees prior to opening will offset our costs associated with getting such locations up and running; and increases in royalties primarily from the TBN product sales.

Cost of Sales

Cost of sales were approximately $5,820,000 and $6,097,000 for the years ended December31, 2023 and 2022, respectively, a decrease of approximately $277,000, or 4.5%, period over period. The reduction in cost of sales resulted primarily from an approximately $282,000 decrease in products cost of sales, to approximately $4,963,000 for the year ended December 31, 2023, compared approximately $5,245,000 for the year ended December 31, 2022.

	Years Ended December 31, (rounded to $000's)		
Total Cost of Sales	**2023**	**2022**	**Change**
Products	$ 4,963,000	$ 5,245,000	$ (282,000)
Services	857,000	852,000	5,000
	$ 5,820,000	$ 6,097,000	$ (277,000)

The approximately $282,000 decrease in net products cost of sales period over period included: a increase in product cost of approximately $191,000 to approximately $2,751,000 for the year ended 2023, from approximately $2,560,000 for the year ended 2022 and a decrease in unabsorbed overhead of approximately $473,000 to approximately $2,212,000 as of December 31, 2023 from approximately $2,685,000 as of December 31, 2022. We began analyzing unabsorbed overhead as a separate component of cost of sales in 2022.

	Years Ended December 31, (rounded to $000's)		
Components of Products Cost of Sales	**2023**	**2022**	**Change**
Product Cost (from inventory)	$ 2,751,000	$ 2,560,000	$ 191,000
Overhead – Unabsorbed	2,212,000	2,685,000	(473,000)
	$ 4,963,000	$ 5,245,000	$ (282,000)

	Years Ended December 31,		
Components of Products Cost of Sales	**2023**	**2022**	**Change**
Product Cost (from inventory)	55.4%	48.8%	6.6%
Overhead – Unabsorbed	44.6%	51.2%	(6.6)%
	100.0%	100.0%	0.0%

The approximately $282,000 decrease in net products sales cost of sales period over period is further detailed as follows:

	Years Ended December 31, (rounded to $000's)		
Cost of Sales Products Sales	**2023**	**2022**	**Change**
Spirits – Wholesale	$ 1,388,000	$ 1,398,000	$ (10,000)
Spirits – Retail	769,000	764,000	5,000
Spirits – Third Party	230,000	37,000	193,000
Hand Sanitizer – Wholesale	35,000	—	35,000
Hand Sanitizer – Retail	11,000	—	11,000
Merchandise and Prepared Food	318,000	361,000	(43,000)
Unabsorbed Overhead	2,212,000	2,685,000	(473,000)
	$ 4,963,000	$ 5,245,000	$ (282,000)

- The larger realized increase in third-party production costs indicates low margins on those efforts, which is the principal reason why management is moving us away from those efforts starting in 2024 as we execute on our plan to open more TBN locations and look to realize significant gains in both topline revenue and high-margin DtC sales for our *Special Operations Salute* whiskey and expanded wholesale distribution of our core products in key states. Management is also working with our wholesale sales team to move us out of the low margin well vodka business in favor of high margin premium whiskey products.
- The approximately $46,000 in one-time aggregate hand sanitizer cost of sales for the year ended December 31, 2023 was due to a vendor bill from 2020 that we did not receive until early 2023 when the vendor audited its billings for prior years. There was no similar expense in the year ended December 31, 2022 and we do not anticipate any future expenses associated with hand sanitizer moving forward.
- The approximately $2,212,000 of unabsorbed overhead for the year ended December31, 2023, which decreased by approximately $473,000 compared to approximately $2,685,000 for the year ended December 31, 2022, is a measure of our capacity more than current utilization, indicating underutilization of current production capacity. We expect that as our production volumes increase with increased sales, our unabsorbed overhead will decrease over time as overhead expenses will be more fully allocated to increased levels of production.

Gross Profit

Gross profit was approximately $2,151,000 and $2,212,000 for the years ended December31, 2023, and 2022, respectively, a decrease of approximately $61,000, or 2.8%, period over period, and included:

	Years Ended December 31, (rounded to $000's)		
Total Gross Profit	**2023**	**2022**	**Change**
Products	$ 173,000	$ (17,000)	$ 190,000
Services	1,978,000	2,229,000	(251,000)
	$ 2,151,000	$ 2,212,000	$ (61,000)

	Years Ended December 31,		
Total Gross Margin	**2023**	**2022**	**Change**
Products	3.4%	(0.3)%	3.7%
Services	69.8%	72.3%	(2.6)%
	27.0%	26.6%	0.4%

Total Sales	Years Ended December 31, (rounded to $000's) 2023	2022	Change
Products	$ 5,136,000	$ 5,229,000	$ (93,000)
Services	2,835,000	3,081,000	(246,000)
	$ 7,971,000	$ 8,310,000	$ (339,000)

- Gross margin was approximately 27.0% and 26.6% for the years ended December31, 2023, and 2022, respectively, based upon total net sales of approximately $7,971,000 and $8,310,000, respectively. As we add more *Special Operations Salute* sales via online channels, we expect to see our overall gross margin increase. Likewise, as we add more states into our wholesale distribution channel focused solely on higher margin items, and not including any low margin well vodka in those states, we expect to see additional margin increases. Also, as we add more cases of production through our system, we expect the unabsorbed overhead costs will be reduced as each additive case of new sales volume begins to carry incremental overhead costs as part of the normal manufacturing cost accounting. Finally, the third-party production contracts are very low margin for us, which is why management made the decisions to end those contracts at the end of January 2024. Moving forward, higher margin activities are management's focus, and we expect overall margins to increase.

Sales and Marketing Expenses

Sales and marketing expenses were approximately $5,938,000 for the year ended December31, 2023 compared to approximately $6,441,000 for the year ended December 31, 2022. This approximately $503,000 decrease included:

Sales and Marketing Expense	Years Ended December 31, (rounded to $000's) 2023	2022	Change
Personnel	$ 3,259,000	$ 3,606,000	$ (347,000)
Tasting Room	119,000	166,000	(47,000)
Leases and Rentals	712,000	829,000	(117,000)
Sales and Marketing Expenses	1,006,000	1,280,000	(274,000)
Other	842,000	560,000	282,000
	$ 5,938,000	$ 6,441,000	$ (503,000)

- The approximately $347,000 decrease in personnel expense was primarily a result of our addition of four new full-time salespeople to sell into the wholesale market at the end of 2022, offset with a decrease of five full-time marketing and retail administration staff in May 2023 with a net decrease reflecting in the full year of 2023.
- The approximately $47,000 decrease in tasting room expenses was primarily a result of decreased tasting room supplies and facility maintenance expenses.
- The approximately $117,000 decrease in rentals and leases expenses was primarily due to the closure of our Ballard retail location in March 2023.
- The approximately $274,000 decrease in sales and marketing expenses included: an increase in radio and television production expense, which was offset by decreases in sponsorships and print and web advertising as we shifted to a new third-party e-commerce platform. Two large sports sponsorships that were put under contract before COVID-19 shutdowns went into effect were reinstated in 2022 and 2023. In 2023, those contracts alone exceeded $1 million and could not be canceled. Those contracts are not being renewed for 2024 or beyond.

- The approximately $282,000 increase in other sales and marketing expenses included increases in: professional fees for contracted Chief Revenue Officer services and e-commerce distribution services and travel; software for an improved point-of-sale software upgrade; location utilities and insurance; and a net increase in other sales and marketing expenses.

General and Administrative Expenses

General and administrative expenses were approximately $7,477,000 for the year ended December31, 2023, compared to approximately $7,598,000 for the year ended December 31, 2022. This approximately $121,000 decrease included:

	Years Ended December 31, (rounded to $000's)		
General and Administrative Expense	**2023**	**2022**	**Change**
Personnel	$ 1,961,000	$ 2,010,000	$ (49,000)
Recruiting and retention	163,000	55,000	108,000
Professional Fees	2,220,000	1,677,000	543,000
Leases and Rentals	658,000	1,253,000	(595,000)
Depreciation	1,160,000	1,246,000	(86,000)
Other	1,315,000	1,357,000	(42,000)
	$ 7,477,000	$ 7,598,000	$ (121,000)

- The approximately $49,000 decrease in personnel expense was primarily a result of hiring employees in the finance department to prepare us for this offering and the hiring of a new Senior VP of Sales and a new Acting CFO in the second quarter of 2023. This increase is net of other general and administrative expense reductions that took place during the period because of a strategic reduction in headcount in other parts of our business.
- The approximately $108,000 increase in recruiting and retention expenses included recruiting expenses related to hiring a Senior VP of Sales in the first quarter of 2023 and hiring an Acting CFO in the second quarter of 2023.
- The approximately $595,000 decrease in leases and rentals was primarily a result of: a portion of leases and rentals expense now being applied to Production (Cost of Sales) as increased production capacity in our Tumwater production distillery and the establishment of our Distribution Warehouse; the recording of an impairment related to closing down our Capitol Hill tasting room, closing down our Ballard tasting room and moving that lease cost from the retail and marketing category and placing it here; recording of an adjustment due to ASC 842 adoption in 2022; and other items, including an offsetting increase for tasting room closures. We recently subleased a small portion of our warehouse in Gig Harbor beginning on January 1, 2024 to be used as storage by a third party, which we anticipate will reduce our annual net lease burden by $144,000 per year. This anticipated reduction is not reflected in the current year or prior period results.
- The approximately $86,000 decrease in depreciation expense was primarily the result of accelerating depreciation to write off the remaining assets of our Ballard tasting room, which was closed in March 2023.
- The approximately $42,000 decrease in other general and administrative expenses included accumulative smaller changes in utilities, travel, insurance, and other expenses.

- The approximately $543,000 increase in professional fees expense included:

	Years Ended December 31, (rounded to $000's)		
Professional Fees	**2023**	**2022**	**Change**
Accounting and Valuation Services	$ 1,318,000	$ 812,000	$ 506,000
Legal	657,000	272,000	385,000
Investment Banking	—	323,000	(323,000)
Other	245,000	270,000	(25,000)
Total	$ 2,220,000	$ 1,677,000	$ 543,000

- A majority of our professional fees expense in the years ended December31, 2023 and 2022 were incurred as a result of general preparedness of our financial reporting and capital structure for an SEC filing event, including for the proposed SPAC transaction discussed below (which was terminated in May 2023) and, after termination of the proposed SPAC transaction, for this offering. Accordingly, within that context, most of our professional fees expense and changes in expense levels between the respective year-over-year periods were as follows:
  - The approximately $506,000 increase in accounting and valuation services expenses included: approximately $1,031,000 of such SPAC-related expenses for the year ended December31, 2023 and $52,000 for the year ended December 31, 2022; an increase in other financial statement preparation and review expenses (which was also primarily SPAC-related) of approximately $979,000; and a decrease in general accounting and financial services of approximately $149,000.
  - The approximately $385,000 increase in legal fees was primarily the result of legal work in the year ended December 31, 2023 related to the merger agreement for the proposed SPAC transaction and work associated with the preparation of related filings with the SEC.
  - The approximately $323,000 of investment banking expense for the year ended December31, 2022 was primarily attributable to the value of warrants granted to investment advisors, which was a non-cash expense.
  - The approximately $25,000 decrease in other professional fees was a result of a decrease in human resources and payroll-related consulting and other general professional fees.

Beginning in 2022, we began exploring funding options, including preparations for the possible merger into a special purpose acquisition company (SPAC). While the costs directly associated with this activity were capitalized and deferred to the balance sheet to be recognized as a cost of the transaction upon a successful completion or other disposition, we also incurred certain other expenses related to preparing for the transaction that did not directly qualify for capitalization and deferral, such as the preparation of audited consolidated financial statements, and certain expenses for valuation and other financial services. In May 2023, we abandoned work on the proposed SPAC transaction, and as of December 31, 2023 we expensed the approximately $424,000 of related costs that had previously been capitalized and deferred to the balance sheet. See "*Recent Developments*" for further information.

	Years Ended December 31, (rounded to $000's)		
SPAC Related Professional Fees	**2023**	**2022**	**Change**
Accounting and Valuation Services	$ 151,000	$ —	$ 151,000
Legal	983,000	—	983,000
Investment Banking	—	323,000	(323,000)
	$ 1,134,000	$ 323,000	$ 811,000

Interest Expense

Interest expense decreased by approximately $84,000 to approximately $2,527,000 for the year ended December 31, 2023, compared to approximately $2,611,000 for the year ended December31, 2022. The decrease was primarily due to changes in the interest rate under our $12,250,000 secured credit facility, which interest rate was 15% during the year ended December 31, 2023, compared to 16.5% for the year ended December 31, 2022.

Income Taxes

The provision for income taxes for the years ended December31, 2023 and 2022 was immaterial, primarily as we were in a net loss position for those periods.

Non-GAAP Financial Measures

To supplement our consolidated financial statements, which are prepared and presented in accordance with GAAP, we use certain non-GAAP financial measures, as described below, to understand and evaluate our core operating performance. These non-GAAP financial measures, which may be different than similarly titled measures used by other companies, are presented to enhance investors' overall understanding of our financial performance and should not be considered a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP.

Adjusted Gross Profit and Adjusted Gross Margin: Adjusted gross profit represents GAAP gross profit adjusted for any nonrecurring gains and losses. Adjusted gross margin represents Adjusted gross profit as a percentage of total net sales. We use these measures (i) to compare operating performance on a consistent basis, (ii) for planning purposes, including the preparation of our internal annual operating budget, and (iii) to evaluate the performance and effectiveness of operational strategies.

EBITDA and Adjusted EBITDA: EBITDA represents GAAP net loss adjusted for (i) depreciation of property and equipment; (ii) interest expense; and (iii) provision for income taxes. Adjusted EBITDA represents EBITDA adjusted for nonrecurring gains and losses. We believe that EBITDA and adjusted EBITDA help identify underlying trends in our business that could otherwise be masked by the effect of the expenses that we include in GAAP operating loss. These non-GAAP financial measures should not be considered in isolation from, or as substitutes for, financial information prepared in accordance with GAAP. There are several limitations related to the use of this non-GAAP financial measure compared to the closest comparable GAAP measure. Some of these limitations are that:

- Adjusted gross profit, EBITDA and adjusted EBITDA do not reflect our cash expenditures, or future requirements for capital expenditures or contractual commitments;
- Adjusted gross profit, EBITDA and adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted gross profit, EBITDA and adjusted EBITDA exclude certain recurring, non-cash charges such as depreciation of property and equipment and, although this is a non-cash charge, the assets being depreciated may have to be replaced in the future;
- Adjusted gross profit, EBITDA and adjusted EBITDA exclude income tax benefit (expense); and
- Other companies in our industry may calculate our non-GAAP financial measures differently than we do, limiting their usefulness as comparative measures.

The following table presents a reconciliation of GAAP gross profit to adjusted gross profit for the six months ended June 30, 2024 and 2023, and for the years ended December 31, 2023 and 2022. Adjusted gross margin is the percentage obtained by dividing gross profit by our total net sales.

	Six Months Ended June 30, (rounded to $000's)		Years Ended December 31, (rounded to $000's)	
Gross Profit Analysis	**2024**	**2023**	**2023**	**2022**
GAAP Total Net Sales	$ 3,548,000	$ 3,437,000	$ 7,971,000	$ 8,310,000
GAAP Gross Profit	$ 1,156,000	$ 675,000	$ 2,151,000	$ 2,212,000
GAAP Gross Profit Additions/(Deductions) Inventory Write Off	—	—	—	884,000
Adjusted Gross Profit	$ 1,156,000	$ 675,000	$ 2,151,000	$ 3,096,000
GAAP Gross Margin	33%	20%	27%	26%
Adjusted Gross Margin	33%	20%	27%	37%

The following table presents a reconciliation of net loss to EBITDA and adjusted EBITDA for the six months ended June 30, 2024 and 2023, and the years ended December 31, 2023 and 2022.

	Six Months Ended June 30, (rounded to $000's)		Years ended December 31, (rounded to $000's)	
EBITDA Analysis	**2024**	**2023**	**2023**	**2022**
Net Income (Loss)	$ 8,859,000	$ (28,212,000)	$ (36,798,000)	$ (12,268,000)
Add (Deduct):				
Income Tax	9,000	—	—	8,000
Interest Expense	1,236,000	1,206,000	2,527,000	2,611,000
Depreciation and Amortization	655,000	777,000	1,430,000	1,513,000
EBITDA	$ 10,759,000	$ (26,229,000)	$ (32,841,000)	$ (8,136,000)
Change in fair value of convertible notes	(9,045,000)	19,544,000	22,765,000	(2,118,000)
Change in fair value of warrant liabilities	(1,705,000)	343,000	240,000	(148,000)
Change in Fair Value of Contingency Liabilities	(457,000)	—	—	—
Inventory write off	—	—	—	884,000
SPAC related expenses	—	—	—	303,000
Adjusted EBITDA	$ (448,000)	$ (6,342,000)	$ (9,836,000)	$ (9,215,000)

Liquidity and Capital Resources

We have prepared our financial statements assuming we will continue as a going concern. Since our inception, we have incurred net losses and experienced negative cash flows from operations as we have invested in equipment, location buildout, inventory buildout (including laying down barrels of whiskey for aging) and marketing to grow our presence and brands. To date, our primary sources of capital have been private placements of equity securities, term loans, and convertible debt. During the six months ended June 30, 2024 and 2023, we had net income and (loss) of approximately $8,859,000 and $(28,212,000), respectively (of which, approximately $(11,207,000) and $(19,887,000), respectively, stemmed from the (increase)/decrease in fair value of certain convertible notes, warrants and contingencies). We expect to incur additional losses and higher operating expenses for the foreseeable future as we continue to invest in inventory and the growth of our business.

At June 30, 2024, we had outstanding aged payables to vendors in the aggregate amount of approximately $6,000,000, inclusive of accrued amounts to service providers who were, or are, providing services for us related to this offering. We have reached agreements with most of these aged vendors, including the vendors with the largest outstanding invoices, to pay such payables upon the closing of this offering or periodically on payment dates following the closing of this offering. Of the aforementioned vendor obligations, approximately $834,000 are for services related to the preparation of this offering. The outstanding payables are for services rendered in connection with this offering have been included within our offering expenses disclosed herein. Most of the remaining payables relate to services that were agreed upon or contracted for prior to the COVID-19 lockdowns, but were put on hold or held over during those lockdowns and then restarted after the COVID lockdowns ended pursuant to the terms of the agreements. Many

of those contracts have been completed and will not renew or be renewed, and we expect to make payments to those vendors in a way that allows us to manage our cash on hand as we grow our higher-margin revenue in the second half of this year and into 2025. Given our shift away from low-margin products and services, management believes the use of cash for higher-margin activities and priorities, requiring fewer raw goods units to drive more top line revenue, and more profitable revenue, will also assist with reducing and eventually eliminating our cash burn. While we believe we have put in place satisfactory payment terms for the payment of our outstanding payables, there is a risk that one or more of our vendors could demand a more immediate payment or initiate litigation against us in an attempt to force payment of the amounts owed. In such a case, the litigation could cause us to incur significant costs defending such action, and any such payment could materially affect our business, financial condition or liquidity.

From time to time, we have been out of compliance with various financial and other debt covenants under the Silverview Loan, which is discussed below, with respect to our failure to meet certain financial thresholds and tests and the furnishing of some of our consolidated financial statements for the years ended December 31, 2023 and 2022. As of October 1, 2024, the lender waived any existing covenant compliance matters as of December 31, 2023 and 2022 and agreed to forbear from exercising its rights and remedies under the loan agreement for any covenant violations, defaults or breaches through the Silverview Loan reporting period ending June 30, 2024. During the first six months of 2024, we were out of compliance with certain debt covenants in connection with the furnishing of monthly income statements, meeting an EBITDA test, providing a monthly cash balance report, and providing a monthly operational performance report, of which those covenant breaches were also waived in the October 1, 2024 Silverview Loan modification. On October 1, 2024, we executed an agreement with our lender that will go into effect upon the closing of this offering and will, among other changes favorable to us, waive any past defaults and covenant breaches and simplify our financial tests and reporting requirements under the loan agreement, making it easier for us to remain in compliance as we focus on growing our business. As discussed in "*Use of Proceeds*," we intend to use a portion of the net proceeds of this offering to repay a portion of the principal amount of the Silverview Loan. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth in the section titled "*Risk Factors — Risks Related to Our Business Model*".

We believe the net proceeds from this offering, together with our cash generated from our sales and services, will enable us to fund our operations, including our near-term expansion plans, into at least the third quarter of 2025. After this offering, however, we will continue seeking additional financing from time to time to meet our working capital requirements, make continued investment in research and development and make capital expenditures needed for us to maintain and expand our business. We do not have any credit facilities as a source of future funds, and there can be no assurance that we will be able to raise sufficient additional capital on acceptable terms, or at all. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, or if we expend capital on projects that are not successful, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, or we may have to cease our operations. These factors, among others, raise substantial doubt about our ability to continue as a going concern. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock, including shares of common stock sold in this offering.

Line of Credit and Debt Agreements

In March 2021, we entered into a secured term loan agreement with Silverview Credit Partners, L.P. (the "Silverview Loan") for a secured term loan of up to $15,000,000. The Silverview Loan originally matured on April 15, 2025, but was extended to October 25, 2026 in the October 1, 2024 Silverview Loan modification. The Silverview Loan initially accrued interest through the 18-month anniversary of the closing date at (i) a fixed rate of 10.0% per annum, which portion was payable in cash, and (ii) a fixed rate of 6.5% per annum, which portion was payable in kind and added to the outstanding obligations as principal. Commencing in October 2022, the Silverview Loan began accruing interest at a fixed rate of 15.0% per annum through maturity. We had an option to prepay the Silverview Loan with a prepayment premium up to 30.0% of the outstanding obligations during the first 24 months of the loan, after which time we could prepay the loan with no premium due. We are now past that initial 24-month window and can prepay all or some of the outstanding balance without penalty. The Silverview Loan is secured by substantially all of our assets.

The original Silverview Loan contained certain financial and other debt covenants that, among other things, imposed certain restrictions on indebtedness, liens, investments and capital expenditures. The financial covenants required that, at the end of each applicable fiscal period, as defined pursuant to the Silverview Loan agreement, we either had (i) an EBITDA

interest coverage ratio up to 2.00 to 1.00, or (ii) a cash interest coverage ratio of not less than 1.25 to 1.00. Commencing with the fiscal quarter ending June 30, 2021, we were required to maintain liquidity of not less than $500,000. The Silverview Loan was used for general corporate purposes, including working capital needs and capital expenditures. The covenants and tests have since been deleted as part of the October 1, 2024 loan modification.

As discussed above, in the past, we have violated various financial and other debt covenants regarding our failure to comply with the financial covenants and to timely furnish our consolidated financial statements for the year ended December 31, 2023. As the chance of meeting the same or more restrictive covenants at subsequent compliance measurement dates within the following year was remote, we determined that the Silverview Loan should be classified as a current liability as of June 30, 2024. As of June 30, 2024 and December 31, 2023 and 2022, the outstanding balance of the Silverview Loan was $12,250,000. The lender had previously agreed to waive any existing covenant compliance matters as of December 31, 2022 and to forbear from exercising its rights and remedies under the loan agreement through December 31, 2023. In June 2024, we reached an agreement in principal to modify the Silverview Loan in the following ways. The modification was executed by the parties on October 1, 2024 and will go into effect upon the closing of this offering:

1) extend the maturity date by 18 months to October 25, 2026;

2) recast the amortization schedule to reduce the amount paid each quarter to allow us to preserve cash, as follows: $300,000 due December 31, 2024, $700,000 due June 30, 2025 and then $500,000 due every six months thereafter;

3) increase the per annum interest rate from 15% to 16.5% commencing in the month following the closing of this offering, with monthly interest payments remaining in effect;

4) waive any past missed amortization payments;

5) waive any past covenant faults;

6) add a 1% additional exit fee due at loan payoff;

7) add an additional 1% exit fee due at payoff if we do not refinance or repay the entire loan by the original July 30, 2025 maturity date;

8) eliminate the EBITDA coverage and interest coverage ratio tests; and

9) reduce and simplify the reporting requirements to match the reporting we must make to the SEC as a public company.

With these changes and the net proceeds we receive from this offering, we expect to remain in compliance with all financial covenants in the loan agreement. We intend to use approximately $2,375,000 of the net proceeds of this offering to repay a portion of the principal amount of the Silverview Loan.

In April 2020, we were granted a loan under the Paycheck Protection Program (“PPP”) offered by the Small Business Administration (the “SBA”) under the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), section 7(a)(36) of the Small Business Act for $3,776,100. The proceeds from the PPP loan could only be used to retain workers and maintain payroll or make mortgage interest, lease and utility payments and all or a portion of the loan could be forgiven if the proceeds are used in accordance with the terms of the program within the eight or 24-week measurement period. The loan terms required the principal balance and 1% interest to be paid back within two years of the date of the note. In June 2021, our bank approved forgiveness of the loan of $3,776,100. During the year ended of December 31, 2021, the forgiveness was partially rescinded by the SBA and we recognized $1,506,644 as other income in the consolidated statements of operations, resulting in $2,269,456 in debt. Under the terms of the PPP loan, we have also recorded interest on the PPP loan at the rate of 1%, for a total of $90,156 as of June 30, 2024. We are currently in the process of disputing a portion if not all of the difference. The terms of the agreement state that we have 18-24 months to repay the PPP loan. Following the date of the forgiveness, the remaining balance of the PPP loan of $2,269,456 is expected to be repaid in the next 12 months with our general assets.

In January 2022, we entered into an unsecured business loan and security agreement with Channel Partners Capital, LLC (the "2022 Channel Partners Loan") for an aggregate borrowing capacity of $250,000. The Channel Partners Loan matured on June 26, 2023 and accrued interest at a fixed rate of 13.982%. Principal of $16,528 plus interest is payable monthly. We had an option to prepay the Channel Partners Loan with a prepayment discount of 5.0%. As of both June 30, 2024 and December 31, 2023, the outstanding balance of the 2022 Channel Partners Loan was $0 (having been paid off in April 2023). In April 2023, we entered into a new secured business loan and security agreement with Channel Partners Capital, LLC (the "2023 Channel Partners Loan") for an aggregate borrowing capacity of $250,000, of which $47,104 of proceeds were used to pay off the 2022 Channel Partners Loan. The 2023 Channel Partners Loan will mature on October 5, 2024 and accrues interest at a fixed rate of 13.34% per annum. A principal payment of $16,944 plus interest is payable monthly. We have an option to prepay the 2023 Channel Partners Loan with a prepayment discount of 5.0%. As of June 30, 2024 and December 31, 2023, the outstanding balance of the 2023 Channel Partners Loan was $108,370 and $149,824, respectively.

Cash Flows

The following table sets forth a summary of cash flows for the periods presented:

	Six Months Ended June 30, (rounded to $000's)		Years ended December 31, (rounded to $000's)	
Summary of Cash Flows	**2024 (as restated)**	**2023**	**2023**	**2022**
Net Cash Used in Operating Activities	$ (4,488,000)	$ (4,585,000)	$ (8,480,000)	$ (9,297,000)
Net Cash Used in Investing Activities	(27,000)	(208,000)	(24,000)	(614,000)
Net Cash Provided by Financing Activities	4,590,000	4,590,000	8,358,000	9,929,000
Net increase (decrease) in cash	$ 75,000	$ (203,000)	$ (146,000)	$ 18,000

Net Cash Used in Operating Activities

During the six months ended June 30, 2024 and 2023, net cash used in operating activities was approximately $(4,488,000) and $(4,585,000), respectively, resulting primarily from net gain and (loss) of approximately $8,859,000 and $(28,212,000), respectively. During the six months ended June 30, 2024 and 2023, approximately $179,000 and $2,521,000, respectively, of cash was generated by changes in account balances of operating assets and liabilities. Non-cash adjustments to reconcile net loss to net cash used in operating activities were approximately $(13,526,000) and $21,104,000 in the respective periods.

The approximately $(13,526,000) of non-cash adjustments for the six months ended June 30, 2024 consisted primarily of approximately: $(9,045,000) of gain on change in fair value of convertible notes; $(1,705,000) of gain on change in fair value of warrant liabilities; $(457,000) of gain on change in fair value of acquisition contingency liability; $(3,421,000) of gain on investment; $655,000 of depreciation expense; $257,000 of non-cash amortization of operating lease right-of-use assets; and, $163,000 of non-cash interest expense primarily associated with our notes payable.

The approximately $21,104,000 of non-cash adjustments in the six months ended June 30, 2023 included approximately: $777,000 of depreciation expense; $229,000 of non-cash amortization of operating lease right-of-use assets; $19,544,000 of loss on change in fair value of convertible notes; $343,000 of loss on change in fair value of warrant liabilities; and $160,000 of non-cash interest expense primarily associated with our notes payable.

During the years ended December 31, 2023 and 2022, net cash used in operating activities was approximately $(8,480,000) and $(9,297,000), respectively, resulting primarily from net losses of approximately $(36,798,000) and $(12,268,000), respectively. During the years ended December 31, 2023 and 2022, approximately $2,893,000 and $2,002,000, respectively, of cash was generated by changes in account balances of operating assets and liabilities. Non-cash adjustments to reconcile net loss to net cash used in operating activities were approximately $25,425,000 and $970,000 in the respective periods.

The approximately $25,425,000 of non-cash adjustments for the years ended December 31, 2023 consisted primarily of approximately: $22,745,000 of loss on change in fair value of convertible notes; a $240,000 loss on change in fair value of warrant liabilities; $1,430,000 of depreciation expense; $493,000 of non-cash amortization of operating lease right-of-use assets; and, $435,000 of non-cash interest expense primarily associated with our notes payable.

The approximately $970,000 of non-cash adjustments in the year ended December 31, 2022 included approximately: $1,513,000 of depreciation expense; $377,000 of non-cash amortization of operating lease right-of-use assets; $303,000 of issuance of warrants; $2,118,000 of gain on change in fair value of convertible notes; $148,000 of gain on change in fair value of warrant liabilities; and $918,000 of non-cash interest expense primarily associated with our notes payable.

Net Cash Used in Investing Activities

During the six months ended June 30, 2024 and 2023, net cash used in investing activities was approximately $27,000 and $208,000, respectively. During the years ended December 31, 2023 and 2022, net cash used in investing activities was approximately $24,000 and $614,000, respectively. Investing activities during the years ended December 31, 2023 and 2022 were related primarily to the purchase of property and equipment, net of minor amounts related to sales of assets.

Net Cash Used in Financing Activities

During the six months ended June 30, 2024 and 2023, net cash provided by financing activities was approximately $4,590,000 and $4,590,000, respectively. The cash proceeds received in the six months ended June 30, 2024 were primarily comprised of proceeds from the sale of convertible notes of approximately $3,656,000 (of which approximately $1,433,000 was from a related party); $439,000 proceeds from notes payable; $675,000 from the sale of preferred stock. During the six months ended June 30, 2024, the aggregate proceeds of the convertible notes, notes payable and preferred stock of approximately $4,770,000 were slightly offset by approximately $180,000 of other expenditures, including deferred transaction costs associated with this offering of approximately $92,000, and repayment of notes payable of approximately $86,000. The cash proceeds received in the six months ended June 30, 2023 of approximately $4,590,000 were related to proceeds from convertible notes of approximately $4,590,000 (of which approximately $2,200,000 was from a related party); $250,000 proceeds from notes payable. During the six months ended June 30, 2023, the aggregate proceeds of the convertible notes and notes payable of approximately $4,840,000 were partially offset by an aggregate of approximately $250,000 of other expenditures, including repayment of notes payable of approximately $108,000, and deferred transaction costs associated with our terminated business combination of approximately $131,000.

During the years ended December 31, 2023 and 2022, net cash provided by financing activities was approximately $8,358,000 and $9,929,000, respectively. The cash proceeds received in 2023 were primarily comprised of proceeds from convertible notes of approximately $8,565,000 (of which approximately $3,750,000 was from a related party) and proceeds from notes payable of approximately $250,000. During the year ended December 31, 2023, the aggregate proceeds of the convertible notes and notes payable of approximately $8,815,000 were slightly offset by approximately $457,000 of other expenditures, including deferred transaction costs associated with this offering of approximately $263,000, repayment of notes payable of approximately $183,000, and repurchase of common stock of approximately $11,000 from former employees. The cash proceeds received in 2022 were related to proceeds from convertible notes of approximately $10,740,000, of which approximately $4,675,000 was from a related party, and proceeds from notes payable of approximately $250,000, which were partially offset by an aggregate of approximately $1,009,000 of other expenditures, including repayment of notes payable of approximately $893,000, deferred transaction costs associated with our terminated business combination of approximately $147,000, repurchase of common stock of approximately $13,000, and approximately $50,000 in proceeds from an exercised warrant.

Supplemental Cash Flow Information

During the six months ended June 30, 2024, supplemental cash flow activity included approximately: $1,072,000 of cash paid for interest expense; $1,155,000 of Series A Preferred Stock that was issued in exchange for inventory and barrels; and $246,000 of unpaid deferred transaction costs that were recorded as a deferred expense on the balance sheet and recorded in accounts payable and other current liabilities. For the six months ended June 30, 2023, supplemental cash flow activity included approximately: $1,045,000 of cash paid for interest expense; and $815,000 of unpaid deferred transaction costs that were recorded as a deferred expense on the balance sheet and recorded in accounts payable and other current liabilities.

During the year ended December 31, 2023, supplemental non-cash cash flow activity included approximately: $2,091,000 of cash paid for interest expense; $290,000 of ROU's obtained in exchange for new operating leases; $194,000 of unpaid property additions; and $1,020,000 of unpaid deferred transaction costs that were recorded as

a deferred expense on the balance sheet and recorded in accounts payable and other current liabilities. For the year ended December 31, 2022, supplemental cash flow activity included approximately: $1,694,000 of cash paid for interest expense; $4,219,000 for recording right-of-use assets obtained in exchange for new operating lease liabilities upon adoption of ASC 842; and $562,000 of deferred transaction costs associated with a now-terminated business combination agreement that were recorded as a deferred expense on the balance sheet and recorded in accounts payable and other current liabilities.

Off-Balance Sheet Arrangements

We had no obligations, assets or liabilities that would be considered off-balance sheet arrangements as of June 30, 2024 or for the periods presented. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements. We have not entered any off-balance sheet financing arrangements, established any special purpose entities, guaranteed any debt or commitments of other entities, or purchased any non-financial assets.

Recent Accounting Pronouncements

A discussion of recent accounting pronouncements is included in Note 2 to our audited consolidated financial statements for the years ended December 31, 2023 and 2022 included elsewhere in this prospectus.

Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks from fluctuations in interest rates, which may adversely affect the results of operations and our financial condition. We seek to minimize these risks through regular operating and financing activities.

Inflation Risk

We do not believe that inflation had a significant impact on our results of operations for any periods presented in our consolidated financial statements. Nonetheless, if our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs, and our inability or failure to do so could harm our business, financial condition and results of operations.

Critical Accounting Estimates

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles in the U.S. The preparation of our consolidated financial statements and related disclosures requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, costs and expenses, and the disclosure of contingent assets and liabilities in our consolidated financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in the notes to our consolidated financial statements, we believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our consolidated financial statements.

Valuation of Convertible Notes

The fair value of the convertible notes at issuance and at each reporting period is estimated based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. We use a probability weighted expected return method (“PWERM”) and the Discounted Cash Flow (“DCF”) method to incorporate estimates and assumptions concerning our prospects and market indications into a model to estimate the value of the notes. The most significant estimates and assumptions used as inputs in the PWERM and DCF valuation techniques impacting the fair value of the convertible notes are the timing and probability of an initial public offering, de-SPAC Merger, held to maturity, and default scenario outcomes.

Specifically, we discounted the cash flows for fixed payments that were not sensitive to our equity value by using annualized discount rates that were applied across valuation dates from issuance dates of the convertible notes to each reporting period. The discount rates were based on certain considerations including time to payment, an assessment of our credit position, market yields of companies with similar credit risk at the date of valuation estimation, and calibrated rates based on the fair value relative to the original issue price from the convertible notes.

Valuation of Warrant Liabilities

The fair value of the warrant liabilities at issuance and at each reporting period are estimated based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. We use the PWERM and the Monte Carlo Simulation ("MCS") to incorporate estimates and assumptions concerning our prospects and market indications into the models to estimate the value of the warrants. The most significant estimates and assumptions used as inputs in the PWERM and MCS valuation techniques impacting the fair value of the warrant liabilities are the timing and probability of an initial public offering, de-SPAC Merger, held to maturity, and default scenario outcomes. The most significant estimates and assumptions used as inputs in the PWERM and MCS valuation techniques impacting the fair value of the warrant liabilities are those utilizing certain weighted average assumptions such as expected stock price volatility, expected term of the warrants, and risk-free interest rates.

Stock-Based Compensation

We measure compensation for all stock-based awards at fair value on the grant date and recognize compensation expense over the service period on a straight-line basis for awards expected to vest.

The fair value of options granted is estimated on the grant date using the Black-Scholes option pricing model. We use a third-party valuation firm to assist in calculating the fair value of our options. This valuation model requires us to make assumptions and judgment about the variables used in the calculation, including the volatility of our common stock and assumed risk-free interest rate, expected years until liquidity, and discount for lack of marketability. Since we do not have sufficient trading history of our common stock, we estimate the expected volatility of our options at the grant date by taking the average historical volatility of a group of comparable publicly traded companies over a period equal to the expected term of the options. We use the U.S. Treasury yield for our risk-free interest rate that corresponds with the expected term. We determine the expected term based on the average period the options are expected to remain outstanding using the simplified method, generally calculated as the midpoint of the options' vesting term and contractual expiration period, as we do not have sufficient historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior. We utilize a dividend yield of zero, as we do not currently issue dividends, nor do we expect to do so in the future. Forfeitures are accounted for and are recognized in calculating net expense in the period in which they occur. Stock-based compensation from vested options, whether forfeited or not, is not reversed.

Stock option awards generally vest on time-based vesting schedules. Stock-based compensation expense is recognized based on the value of the portion of stock-based payment awards that is ultimately expected to vest and become exercisable during the period. We recognize compensation expense for all stock-based payment awards made to employees, directors, and non-employees using a straight-line method, generally over a service period of four years.

We grant stock options to purchase common stock with exercise prices equal to the value of the underlying stock, as determined by the Board of Directors on the date the equity award was granted. The fair value of the common stock underlying our stock-based awards has historically been determined by our board of directors, with input from management and corroboration from contemporaneous third-party valuations. We believe that our board of directors has the relevant experience and expertise to determine the fair value of our common stock. Given the absence of a public trading market of our common stock, and in accordance with the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately Held Company Equity Securities Issued as Compensation, our board of directors exercised reasonable judgment and considered numerous objective and subjective factors to determine the best estimate of the fair value of our common stock at each grant date. These factors include:

- contemporaneous valuations of our common stock performed by independent third-party specialists;
- the lack of marketability inherent in our common stock;
- our actual operating and financial performance;

- our current business conditions and projections;
- the hiring of key personnel and the experience of our management;
- our history and the introduction of new products;
- our stage of development;
- the likelihood of achieving a liquidity event, such as an initial public offering (IPO), a merger, or acquisition of our company given prevailing market conditions;
- the operational and financial performance of comparable publicly traded companies; and
- the U.S. and global capital market conditions and overall economic conditions.

In valuing our common stock, the fair value of our business was determined using various valuation methods, including combinations of income and market approaches with input from management. The income approach estimates value based on the expectation of future cash flows that a company will generate. These future cash flows are discounted to their present values using a discount rate that is derived from an analysis of the cost of capital of comparable publicly traded companies in our industry or similar business operations as of each valuation date and is adjusted to reflect the risks inherent in our cash flows. The market approach estimates value based on a comparison of the subject company to comparable public companies in a similar line of business. From the comparable companies, a representative market value multiple is determined and then applied to the subject company's financial forecasts to estimate the value of the subject company. The fair value of our business determined by the income and market approaches is then allocated to the common stock using either the option-pricing method (OPM), or a hybrid of PWERM and OPM methods.

Application of these approaches and methodologies involves the use of estimates, judgments, and assumptions that are highly complex and subjective, such as those regarding our expected future revenue, expenses, and future cash flows, discount rates, market multiples, the selection of comparable public companies, and the probability of and timing associated with possible future events. Changes in any or all of these estimates and assumptions or the relationships between those assumptions impact our valuations as of each valuation date and may have a material impact on the valuation of our common stock.

For valuations after the closing of this offering, our board of directors will determine the fair value of each share of underlying common stock based on the closing price of our common stock as reported on the date of grant. Future expense amounts for any period could be affected by changes in our assumptions or market conditions.

Income Taxes

We follow the Financial Accounting Standards Board ("FASB") Accounting Standards Codification Topic 740, "*Income Taxes*" for establishing and classifying any tax provisions for uncertain tax positions. Our policy is to recognize and include accrued interest and penalties related to unrecognized tax benefits as a component of income tax expenses. We are not aware of any entity level uncertain tax positions.

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the audited consolidated financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statements and the tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in operations in the period that includes the enacted date.

Leases

We adopted ASC 842, *Leases* ("ASC 842") as of January 1, 2022. ASC 842 was adopted using the modified retrospective transition approach, with no restatement of prior periods or cumulative adjustments to accumulated deficit. Upon adoption, the operating lease right-of-use ("ROU") asset was measured at cost, which included the initial measurement of the lease liability, prepaid rent and initial direct costs incurred by us, less incentives received. The operating lease liability represents the present value of the remaining minimum lease payments as of January 1, 2022. We elected the package of three practical expedients, which allowed an entity to carry forward prior

conclusions related to whether any expired or existing contracts are or contain leases, the lease classification for any expired or existing leases and initial direct costs for existing leases. We elected not to apply the use-of-hindsight to reassess the lease term. We elected not to recognize leases with an initial term of 12 months or less within the consolidated balance sheets and to recognize those lease payments on a straight-line basis in the consolidated statements of operations over the lease term. We elected the practical expedient to not separate lease and non-lease components for all leases. The new lease accounting standard also provides practical expedients for an entity's ongoing accounting.

The interest rate used to determine the present value of the future lease payments is our incremental borrowing rate, because the interest rate implicit in our operating leases is not readily determinable. The incremental borrowing rate is estimated to approximate the interest rate on a collateralized basis with similar terms and payments, and in the economic environments where the leased asset is located. The incremental borrowing rate is calculated by modeling our credit rating on our historical arm's-length secured borrowing facility and estimating an appropriate credit rating for similar secured debt instruments. Our calculated credit rating on secured debt instruments determines the yield curve used. In addition, an incremental credit spread is estimated and applied to reflect our ability to continue as a going concern. Using the spread adjusted yield curve with a maturity equal to the remaining lease term, we determine the borrowing rates for all operating leases.

Impairment of Long-Lived Assets

All long-lived assets used are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable. Factors that we consider in deciding when to perform an impairment review include significant underperformance of the business in relation to expectations, significant negative industry or economic trends and significant changes or planned changes in the use of the assets. When such an event occurs, future cash flows expected to result from the use of the asset and its eventual disposition are estimated. If the undiscounted expected future cash flows are less than the carrying amount of the asset, an impairment loss is recognized for the difference between the asset's fair value and its carrying value. We did not record any impairment losses on long-lived assets for the six months ended June30, 2024 and 2023, or for the years ended December 31, 2023 and 2022.

Emerging Growth Company Status

The JOBS Act permits an "emerging growth company" such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies until those standards would otherwise apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, we will not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies, and our financial statements may not be comparable to other public companies that comply with new or revised accounting pronouncements as of public company effective dates. We may choose to early adopt any new or revised accounting standards whenever such early adoption is permitted for private companies.

We will cease to be an emerging growth company on the date that is the earliest of (i) the last day of the fiscal year in which we have total annual gross revenues of $1.235 billion or more, (ii) the last day of our fiscal year following the fifth anniversary of the date of the closing of this offering, (iii) the date on which we have issued more than $1.0 billion in nonconvertible debt during the previous three years or (iv) the date on which we are deemed to be a large accelerated filer under the rules of the SEC.

Further, even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company," which would allow us to take advantage of many of the same exemptions from disclosure requirements, including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our share price may be more volatile.

BUSINESS

Overview

We are a craft distiller producing, marketing and selling a diverse line of award-winning craft spirits, including whiskeys, vodkas, gins, rums, and "ready-to-drink" canned cocktails. We recognize that taste and innovation are key criteria for consumer choices in spirits and innovate new products for trial in our company-owned distilleries and tasting rooms. We have developed differentiated products that are responsive to consumer desires for rewarding and novel taste experiences.

We compete in the craft spirits segment, which is the most rapidly-growing segment of the overall $288 billion spirits market. According to the American Craft Spirits Association, a craft distillery is defined generally as a distillery that produces fewer than 750,000 gallons annually and holds an ownership interest of 51% or more of a distilled spirits plant that is licensed by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury. According to the Craft Spirits Global Market Report 2023 of Grand View Research, the craft spirits segment had revenues of in excess of $21.4 billion in 2023 and is estimated to grow at a compound annual growth rate ("CAGR") of 29.4% between 2024 and 2030. We believe we are well positioned to grow in excess of the growth rate of the market by increasing our marketing efforts, increasing the size of our sales teams and broadening our wholesale distribution.

Out of the more than 2,600 craft producers in North America, we have been recognized with more awards for our products from the American Distilling Institute, the leading independent spirits association in the U.S., than any other North American craft distiller for each of the last ten years, plus numerous other Best of Class, Double Gold and Gold medals from multiple national and international spirits competitions. We are one of the largest craft spirits producers on the West Coast based on revenues and are developing a national reach in the U.S. through traditional sales channels (wholesale, on-premises and e-commerce) and our unique and recently-developed Tribal Beverage Network ("TBN") sales channel. Based upon our revenues and our continued track record of winning industry awards in an increasingly competitive environment, we believe we are one of the leading craft spirits producers in the United States.

We sell our products through wholesale distribution, directly to consumers through our five owned and operated distilleries and tasting rooms located in Washington and Oregon and by shipping directly to consumers on-line where legal. Currently, we sell products primarily in the Pacific Northwest with limited distribution in other states throughout the U.S. In addition, in collaboration with Native American tribes, we have recently developed a new sales, manufacturing and distribution channel on tribal lands that we expect will increase and broaden the recognition of our brand as that network expands nationally.

Our growth strategy is based on three primary areas. First, we are focused on growing our direct-to-consumer ("DtC") sales by shipping to legal purchasers to their homes where allowed. We currently use a three-tier compliant, third-party platform to conduct these sales and deliveries in 46 states in which approximately 96.8% of the U.S. population reside. This allows us to develop a relationship directly with the consumer through higher-margin sales while collecting valuable data about our best performing products. We can then use this data to target the consumer based on location, age, key demographics and product types. With the data collected, we can also retarget and resell to these customers, thereby generating more revenue.

Our DtC sales also support our second growth area, which entails growing our wholesale volume with our distributors through key national accounts both on-premises and off-premises. By building brand recognition for key products in selected regions or states through DtC sales, we can better support the wholesale launch, marketing and product pull-through of those products in partnership with wholesalers in those targeted states. While DtC sales result in singular high-margin sales, growing volume through wholesale distribution is the most efficient way to drive large-scale growth across retail chains.

Third, we are focused on expanded growth of our collaboration with Native American tribes through the TBN model we created. In concert with tribal partners, this sales channel includes Heritage-branded micro production hubs, Heritage-branded stores and tasting rooms and the sale of our products and new tribally-branded products. In the typical TBN collaboration, the tribes will own these businesses and we will receive a royalty on gross sales through licenses we grant to use our brands, products, recipes, programs, IP, new product development, on-going compliance support and the other support we provide. The TBN is expected to form a network of regional production hubs that will support product trials and sampling, and will generate sales of finished, intermediate and bulk spirits depending on location, equipment and market. Importantly, because these premium spirits will be produced locally,

we believe the TBN will promote the positioning of our brands as local and regional. We expect that, as the brands grow and the TBN footprint expands, there will be an important synergy with increased adoption and growth through our wholesale channels in the regions where the TBN locations are driving trial and awareness. Similarly, as demand for our products grow through our wholesale channels, there should be a positive effect on the demand for our products through the tribal distilleries.

Competitive Strengths

We attribute our success to the following competitive strengths.

- ***Premium Aged Whiskeys.*** We have been testing, distilling and aging premium whiskeys since our inception over ten years ago. Unlike many new brands entering the premium craft whiskey and bourbon category that rely on sourced liquid for their blends, we chose to produce and age all of our own product in-house for our recently-launched super premium whisky line under our *Stiefel's Select* label. This approach has allowed us to leverage our experience and our innovative distillation methods while taking advantage of the Pacific Northwest's unique climate to produce aged whiskeys that are of the highest quality and authentic to our name. We introduced our first single barrel selections to the public in late 2022 under the *Stiefel's Select* brand. The initial single barrel selections, which included a four-grain bourbon, a high rye bourbon, a wheated bourbon, a peated bourbon, a 100% rye whiskey and a single malt whiskey, sold out quickly, and we have begun releasing more single barrel selections to the market. We expect to continue to release these whiskeys as either "single barrel picks" or "small batch blends" depending on the recipe and target market. We have been awarded a Double Gold Medal, Gold Medal and Best of Category for our first releases of *Stiefel's Select* by some of the most prestigious spirits competitions in the world, including at the San Francisco International Spirits Competition and the Fred Minnick Ascot Awards.

- ***Purposefully Aligned Products.*** We recently launched a new line of spirits called *Special Operations Salute* under our *Salute Series* of whiskeys in which we created a super-premium whiskey to generate high-margin revenue and raise donations for carefully-vetted non-profit groups that support active duty, retired and injured special operations heroes, veterans, first responders and their families. Each bottle of our initial release comes in a specially-designed bespoke whiskey tube with a commissioned reproduction lithograph from Michael Solovey, a well-known military artist. Each bottle currently sells for $125, of which $10 is donated to our non-profit partners. Our current partners include 21 national and local charities, such as the Green Beret Foundation, the Marine Raider Foundation, the Honor Foundation, the Special Forces Foundation, the Army Special Operations Association, the Special Operations Memorial Foundation, and the Foundation for Exceptional Warriors, among others. Since the launch of the *Army* SOF version in late October 2023, we have sold more than 8,000 bottles directly to consumers in our tasting rooms and online, representing more than $1,000,000 in retail revenue. In May 2024, we launched a three-bottle set commemorating the 80th anniversary of D Day, also featuring artwork by Michael Solovey depicting the combined air, land and sea efforts of June 6, 1944 along the coast of Normandy, France. In the first month after our pre-sale launch on May 7, 2024, we sold more than 1,250 bottles of this series, with a portion of the funds going to the Green Beret Foundation and other partnering charities. These bottles retail for $95 each, plus taxes and shipping (if shipped DtC). We plan to launch additional versions honoring other branches of the military, first responders and military special occasions. This new product follows on the successful seven years of learnings producing and selling 1st Special Forces Group whiskey, from which we supported Special Forces charities at Joint Base Lewis McChord. We view our new *Special Operations Salute* line to be a significant new development for our growth.

- ***Compelling Product Offerings — Flavored Craft Spirits and Ready-to-Drink ("RTD") Segments.*** We offer a diverse line of traditional and flavored craft spirits and innovative and refreshing canned RTD alcoholic beverages with appealing taste profiles, such as *Cocoa Bomb Chocolate Whiskey, Florescence Grapefruit & Pomelo Vodka, Peachy Bourbon Canned Cocktail,* and *Blood Orange Vodkarita.* This is evidenced by the more than 300 awards we have received over the past ten years. We were the original creator of *Flavored Bourbon*, a flavored bourbon that won "World's Best Flavored Whiskey" by *Whiskey Magazine* in London two years in a row — an unprecedented feat. Through our recent acquisition of Thinking Tree Spirits, we added several of its super premium spirits to our portfolio of flavored craft spirits, including its *Butterfly Pea Lavendar Vodka*, which was named Vodka of the Year for 2023 by Wine and Spirits Magazine.

- ***Differentiated Distribution Strategy.*** We believe we have a strong distribution approach that increases the availability of our brands and product offerings to our target consumers.
  - *Direct to Consumer ("DtC").*
    - We have five Heritage-branded tasting rooms and one Thinking Think Tree Spirits tasting room in the Pacific Northwest that allow us to sell directly to consumers and that we use to sample new products and ideas.
    - We also sell through e-commerce and engage in other subscription-based program activities to target customers to generate recurring revenue and customer loyalty. Commencing in March 2023, we contracted with a third-party e-commerce platform to sell online to consumers in 34 states via its three-tier compliant system. In March 2024, we ended that relationship and began migrating to LiquidRails, a third-party, three-tier compliant platform that relies on delivery to consumers via licensed retailers. This new platform expands our DtC outreach to 45 states and the District of Columbia and eliminates our shipping costs to the consumer, which will help us to both increase net margin and expand our sales opportunities. Prior to March 2023, we shipped directly to consumers in only nine states. We also recently added our offerings from our *Special Operations Salute* line on to the Seelbach's DtC platform, a third-party, three-tier compliant DtC platform that is well known to whiskey enthusiasts around the country, which expanded our reach to a new whiskey-focused DtC audience. This sales method allows us to collect high-margin sales and consumer data to drive future sales and to support the growth of our traditional spirits through the three-tier wholesale system.
    - In our *Cask Club*® program, consumers join as members and work with our distilling team to develop their own 10-liter barrel batches, which are custom aged, flavored, bottled, proofed and labeled in our retail locations. Over the last ten years we have demonstrated that this program creates repeat customer foot traffic in our tasting rooms and encourages members to bring friends and family to the locations to sample products, enjoy cocktails and purchase products of their own. It also serves as an innovation laboratory that provides us with an opportunity to develop and test new products and concepts with the goal of bringing the strongest performers to the market.
    - *In our Spirits Club*®, a DtC subscription service, we offer members the opportunity to purchase three or four selections of spirits per year, which are automatically shipped to their homes or are available for pick up in our tasting rooms.
  - *Wholesale.* We have distribution agreements with the two largest spirits distributors in the U.S., Southern Glazers Wine and Spirits ("SGWS") and Republic National Distributing Company ("RNDC"), each of which has a dedicated sales force in our core states of Washington, Oregon and Alaska focused on our portfolios. The revenues of these two distributors in 2023 collectively represented more than 50% of the market share of the total wine and spirits wholesale market in the U.S. Our existing wholesale footprint includes the seven states in the Pacific Northwest (Washington, Oregon, Alaska, Idaho, Montana, Utah and Wyoming), Oklahoma and special-order options in Virginia through the state liquor system. Since the beginning of 2024, we have secured new wholesale distribution in Kansas, Kentucky, and portions of Colorado. We began wholesale distribution in those states in the third quarter of 2024. Our wholesale leadership team is actively meeting with additional distributors in other states, including several large beer wholesalers that are starting to distribute spirits as they see the volumes of beer in decline and the growth of spirits emerging in their markets, to expand our footprint for wholesale sales in 2024 and beyond.
  - *Tribal Beverage Network.* According to *500nations.com*, a website focused on Native American tribal casinos and casino gambling, there are currently 245 tribes in the U.S. operating 524 gaming operations in 29 states, generating annual revenues of approximately $32 billion. In most counties across the U.S. in which there are tribal casinos, the casinos are the largest accounts for spirits,

beer and wine in such counties. We believe a significant percentage of the millions of visitors collectively visiting those tribal-owned operations will patronize Heritage-branded TBN distillery tasting rooms to sample and consume cocktails, sign up for one or more of our subscription-based member programs and purchase bottles of spirits to go. Under this model, the tribes exercise their tribal sovereignty and enter a new business with significant revenue and margin potential. The TBN model also includes us working with each of the participating tribes to develop their own unique brands to feature in their properties and regions.

We believe the TBN model is unique in the adult beverage industry. To set up this network, we have leveraged the role of our Chief Executive Officer in overturning in 2018 a 184-year-old law prohibiting Native Americans from distilling spirits on tribal lands. We designed the TBN to assist Native American tribes in developing a new business, complementary to their existing casino and entertainment businesses, to attract new visitors and consumers. By working with us, tribes get access to our expertise and our full portfolio of brands. We believe this is a significant new business opportunity for tribes with the potential for strong revenue and profit growth, allowing tribes to capture the full margin benefit as manufacturers and the ability to collect and keep state spirits taxes for products made and sold on their sovereign land. Following the announcement of our partnership with the Tonto Apache Tribe in Arizona in 2023, in May 2024, we announced a landmark agreement with the Coquille Tribe of Oregon after helping the Tribe navigate negotiations with the Oregon Liquor Control Board to allow for the first Tribal distillery in Oregon. This is the first of such agreements between a Native American tribe and one of the 18 liquor control states in the United States.

- *Co-Located Retail Spaces.* Our marketing plan includes partnering with some of the most highly-regarded premium craft spirits producers in key regions across the U.S. to co-brand and cross operate retail tasting rooms. Qualified partners must have the key attributes of high-quality products, a consumer-focused tasting room opportunity to drive trial and sales, and the ability to send and receive spirits in bulk for localized bottling. As we and these other producers cross-brand our collective tasting rooms to consumers who do not otherwise have access to them in their general markets, we believe we will collectively be driving more consumer trials and increased sales, as well as building co-marketed brands in other regions of the country without the expense of new buildings, leased spaces, production capacity, employees or other capital expenditures.

- ***Capital-Efficient and Scalable Operational Structure.*** We have strategically structured, and plan to continue to structure, our organization and operations to minimize and most effectively manage our capital investment requirements while maintaining flexibility to rapidly scale our production capabilities to meet consumer demands. We do this by utilizing our internal distilling and bottling capabilities while leveraging a network of reputable third-party providers with industry expertise and experience performing various functions falling outside of our internal core competencies.

  For example, we are able to contract with third-party canning and packaging companies to pack our RTDs rather than investing in the required equipment and supporting infrastructure and personnel for in-house canning operations. We can also source specific spirits or buy bulk spirits in the market or have them produced at tribal and non-tribal facilities under contract. We believe the planned expansion of the TBN will also enhance our ability to scale our production, distribution and selling operations with limited capital expenditures across many regions of the U.S. while allowing us to retain “local” brand status in those areas. We plan to continually review the structure of our organization and operations, and to make any changes we deem necessary, to best accommodate our growth and changing market conditions.

- ***Food and Beverage Industry Experience.*** Our executive team and board of directors operate with a focus on human capital management and hold a firm belief that quality people with proven track records can produce quality results. Our leadership team and board of directors are made up of multi-disciplinary executives with proven track records of successfully launching, growing and operating companies of all sizes and across many industries, including in the spirits industry.

Strategies for Growth

Our growth plan focuses on gaining brand and product visibility, thereby increasing sales and market share, by executing the following strategies:

- ***Grow Brand Recognition for Our Principal Product Lines Through High-Margin DtC Sales.*** By taking advantage of the internet and targeted digital marketing, we can place our brands in front of consumers and make direct sales to them. These sales generate high-margin revenue for us while building our customer database and product data. We plan to further leverage direct-to-consumer sales through company-owned tasting rooms, through the TBN and through co-located tasting rooms. Growing on our successful launch of the *Army Special Operations Salute,* our *D-Day 80th Anniversary* edition, and adding new versions for other branches of the military, first responders and military special events, we expect that our *Special Operations Salute* line of spirits will be an important part of our accelerating reach with consumers.

- ***Grow Our Principal Product Lines Through High-Volume Distribution.*** By leveraging the data we collect from our DtC sales, we plan to continue to produce and sell innovative, premium-branded products through our primary channels of distribution. These channels consist of wholesale distribution to retail establishments such as retail supermarkets, liquor stores, state liquor stores (in control states), hotels, casinos, bars and restaurants.

- ***Grow the TBN model.*** One of our primary focus areas is the expansion of the TBN to create a national network of tribal spirits production and retail operation locations in or around tribal casinos and high-foot-traffic entertainment districts on tribal lands. We believe these operations will benefit from the fact that, as sovereign nations, tribes are exempt from a variety of state and local zoning and construction codes and can collect and keep state and local excise and sales taxes on the products they produce and sell on tribal lands, along with distributing products to their own properties.

- ***Continue to Innovate New Products.*** We plan to continue to employ a synergistic process of rapid development and testing of new products through DtC sales, sampling in our company-owned distilleries and tasting rooms and, in collaboration with the TBN, selling products to consumers in our Heritage-branded TBN distilleries. Once we obtain positive feedback on a new product, we can then launch it for sale directly to consumers via the internet to generate revenue and collect more data from consumers across the country. With new data in hand, we can make decisions with our wholesale partners on which products should be taken to the wholesale market. This direct-to-consumer launch model is a strategy we have utilized since our inception. It has been an important part of our ability to launch, test, re-formulate and re-launch products that have subsequently proven to be appealing to consumers.

- ***Continue to Innovate Marketing Through the Adoption of Artificial Intelligence ("AI").*** We plan to continue testing new AI technology, methods and tools focused on the creation of content, designs, themes and audience identification to maximize the efficiency of our marketing efforts.

Market

We believe we are well positioned to grow as the overall spirits market continues its growth at the expense of beer and wine. Recent studies demonstrate that the spirits market is growing annually in terms of total alcohol volume and as a percentage share of alcohol dollars. According to drink market analysis firm IWSR, a leading source of data and intelligence in the alcoholic beverage market, spirits have gained market share among other alcoholic beverages continuously since 1998 (23 years), as consumers trend away from beer and wine into spirits. From 2000 to 2023, the market share of spirits by value increased nearly 13 percentage points, from 29% to 42%, according to a 2024 Distilled Spirits Council of the United States (DISCUS) report, an increase in total dollar value of $11.7 billion. The same report noted that 2023 was the second straight year in which spirits revenues for suppliers surpassed beer supplier revenue, making spirits the largest *dollar share* of the alcohol beverage market in the U.S. IWSR anticipates that by 2029, for the first time ever, beer will no longer represent the largest percentage of alcoholic beverage sales *by volume*. Grandview Research estimated the North American spirits market to be $216.6 billion in 2023, growing at a CAGR of 6.3% from 2024 to $312.5billion by 2030. Because spirits are worth more per ounce in the market than beer, as the spirits volume occupies more of the consumer share, *the value* of

that share for spirits as a percentage of all alcohol dollars spent will be even higher. We believe we are leaning into the market just as the rate of increase in spirits volume and value are set to achieve historic growth, making us well positioned to grow with the predicted growth of the overall spirits segment.

According to IWSR, in 2015, craft spirits volume market share was just 2% of the total spirits market; by 2020, this had more than doubled to almost 5%. An even greater gain was seen in value terms, with 2015's market share of 3% increasing to 7% by 2020. IWSR predicts that by 2025, craft spirits are forecasted to increase their volume market share to nearly 10%, and over 13% in market share value. This growth is in line with historic and current trends across the craft beer market from its inception in the 1980s, which initially represented less than 1% of the overall beer market and now commands more than 20% of the beer market by volume. IWSR posits that the driving force behind this growth will be the expansion of national distribution of craft spirits, some of which will be the result of acquisitions by larger groups. Confirming the IWSR predictions, the American Craft Spirits Association annual data project for 2022 shows that the market share for craft spirits has doubled since 2016.

Due to our position in the craft spirits segment of the overall spirits market, we are situated in the fastest-growing segment of the spirits market, which itself is the highest growth segment of the adult beverage market. In addition, according to the Distilled Spirits Council of The United States, consumers are increasingly shifting towards higher premium products in the spirits market, with spirits brands in the U.S. enjoying a multi-decade-long trend towards high-end and super premium products. Goldman Sachs Equity Research predicts super premium spirits products will soon represent almost 38% of the overall spirits market, and spirits have also demonstrated to be recession resistant in the U.S. over time, with a correlation coefficient of 0.002 since 1962 by volume.

Our Brands and Products

When we first opened in 2012, we produced only a limited line of traditional spirits products. However, in response to customer demand and consumer testing that we performed through our tasting rooms, we moved into the flavored segment in 2014 and launched 22 different flavored vodkas. As sales increased, we offered eight products through local distribution and over time have winnowed those products down to a core six flavors at wholesale. In 2014, we created a line of spirits products under the *BATCH No. 12* tradename that we still sell today and is primarily featured in the well at on-premise accounts. It provides a baseline of volume for us as we execute on our plan to transition to higher-margins spirits.

In 2015, we launched *Special Forces Whiskey,* a premium brand positioned towards active-duty military, retired military, military families, and others supportive of the armed forces in the Pacific Northwest, where the 1st Special Forces Group is stationed at Joint Base Lewis McChord ("JBLM"). We have produced seven blends of *Special Forces Whiskey* annually since 2015, and a portion of the sales proceeds of this brand are donated by us to special forces charities annually. These donations currently support the 1st Special Forces Group at JBLM, and we have raised more than $150,000 for charities at JBLM to support military personnel and their families. We are expanding this concept to the multiple Special Forces groups across the country with a greater emphasis on distribution in more states and direct to consumer shipping through our e-commerce platform. The new series is called *Special Operations Salute,* consisting of various bottlings branded for U.S. military branches and first responders. Since the launch of the *Army SOF* version in late October 2023, we have sold more than 8,000 bottles directly to consumers in our tasting rooms and online, representing more than $1,000,000 in retail revenue.

There are approximately 18.3 million active-duty military and retirees in the U.S., including National Guard, Air National Guard and reservists in each branch of the military. Assuming 1.5 dependents per person (a dependent is defined by the military as a spouse, child under 21 unmarried or under 23 if a student, parent or custodian dependent), the total population of active military, retired military and dependent affiliated persons is 45.75 million people. There are another 660,000 active-duty civilian law enforcement officers, 1 million career and volunteer firefighters, plus millions of retirees and affiliated family members. We believe the new *Special Operations Salute* line will garner a large following given the specialty packaging and non-profit charitable partnerships we are forming to support the launch and sale of the line.

In 2015, we also launched our *Dual Barrel* series of bourbon and rye whiskey, which through the end of 2022 was sold nationwide primarily through Total Wine and More under their Spirits Direct program. At the end of 2022, we withdrew that brand out of the Total Wine exclusive program so we can sell it across more states and across more retailers to achieve higher volume and growth.

On February 21, 2024, we acquired Thinking Tree Spirits, a small craft spirits producer and retailer located in Eugene, Oregon. In integrating Thinking Tree Spirits into our existing operations, we plan to continue to produce the best-performing products in its portfolio while working to expand its wholesale reach. We also plan to combine the Thinking Tree Spirits production facilities and tasting rooms with our production facilities and retail tasting rooms in Eugene to create a larger consumer experience while driving more high-margin revenue activity. We believe that with our broader sales reach and our more efficient production capabilities, we can generate revenue from this acquisition that exceed the annual revenues that we were generating from the products that were produced under our low-margin, third-party production contract we terminated on January 31, 2024. We believe the third-party production contract we terminated was not capable of increasing in value for us, was limiting the amount of profit we could generate from the products produced and created potential risk exposure from the number of employees involved in the operation. We believe the Thinking Tree Spirits acquisition will increase growth in the brands we continue to produce and sell, which could increase the value of those brands based on valuations multiples in the spirits industry. For example, Thinking Tree Spirit's *Butterfly Pea Lavendar Vodka* was named Vodka of the Year for 2023 by Wine and Spirits Magazine, making it one of the most premium products in the industry. We believe the addition of that product to our existing portfolio will strengthen the perception of our product offerings in the marketplace and help us grow our wholesale and retail revenues.

In 2017, we created and launched *Flavored Bourbon*, a bourbon flavored with brown sugar and cinnamon. It quickly grew into one of the fastest-growing flavored whiskeys in the Pacific Northwest and was named "World's Best Flavored Whiskey" in 2018 and 2019 by *Whiskey Magazine* in London. In 2020, we sold a majority interest in the brand to an industry group and retained a significant minority position. We have an economic right to participate in any ultimate sales proceeds of any sale or other disposition of substantially all of the purchaser's business or assets (for example, if the brand is sold, or if distributions or revenue shares from brand profits are generated). Following on the success of the *Flavored Bourbon* brand, and after examining the market, we created *Cocoa Bomb* chocolate whiskey, and tested it in limited distribution in the Pacific Northwest in 2022 with plans for wholesale expansion in 2023 and beyond. *Cocoa Bomb* was recently recognized as the best flavored whiskey in the West by *Sunset Magazine.*

While we were producing the whiskey products described above, we were aging additional whiskey with the goal of creating bottles of single-barrel selections with specific flavor profiles to appeal to the growing "bourbon hunter" demographic — a subset of whiskey drinkers who seek out small batch and unique high-quality whiskeys. Unlike many new brands entering the premium craft whiskey and bourbon category that rely on sourced liquid for all or a portion of their blends, we produce and age all of our products in-house for our *Stiefel's Select* line. This allows us to leverage our experience and our innovative distillation methods while taking advantage of the Pacific Northwest's unique climate to produce aged whiskeys that are authentic to our name and of the highest quality. Depending on the particular product, ingredients are blends of corn, rye, malted barley, unmalted barley, peated malt and wheat. Once aged in heavy-charred American Oak barrels, the finished product is bottled at 94 to 100 proof. Future releases could also include barrel-strength releases to be priced at the high end of the super-premium range. Each barrel is bottled, hand labeled, and hand numbered with sequentially-numbered bottles. All whiskeys under this brand are aged at least four years and are selected based on stringent tasting protocols we developed. We are working with Julia Nourney, an international whiskey expert, on additional blending and maturation protocols for the selection of barrels qualified for bottling under the brand. We also plan to build up our inventory of aging whiskey in barrels to increase product availability over time. Aged whiskeys are priced at super-premium prices and are frequently supply-constrained due to market demand and the time required to produce these products. As of June 30, 2024, we had 1,180 barrels of aged spirits in our warehouse that we distilled and are aging for ourselves and others. As of June 15, 2024, we added another 525 barrels of aged bourbon and rye whiskey to our inventory as part of the proceeds of our Series A Preferred Stock offering, bringing our total barrel inventory to 1,667 barrels through that date. The new 525 barrels are housed in licensed and bonded warehouses in Indiana and Kentucky and range in age from two to five years. Our original barrel inventory prior to the addition of the new 525 barrels was comprised primarily of aged whiskeys but also included barrels of rum and brandy. The prices at which we sell a barrel ranges from a low of $5,500 when product is bottled for sale through the wholesale channel to a high of approximately $20,000 or more if the contents are sold by the bottle through our own retail channels. Since the launch of *Stiefel's Select*, we have already been awarded a Double Gold Medal, Gold Medal and Best of Category for our first releases by some of the most prestigious spirits competitions in the world.

In late 2022, we also launched *Florescence Vodka*, a bold and clean vodka flavored with pomelo and grapefruit and made in collaboration with cookbook author and celebrity chef, Danielle Kartes. The product flavor and label of this product is geared toward female consumers, and through Ms. Kartes's strong media presence, this product has already received significant media placement. It was recently approved for sale by Total Wine & More across Washington, Oregon and Alaska.

In keeping with consumer trends, we also developed a line of super premium spirits-based RTDs in 12-ounce cans for on-the-go consumers. The RTD segment is among the fastest-growing segments of the alcoholic beverage market in the U.S., and our line of award-winning RTDs began to gain wholesale momentum in the Pacific Northwest in late 2022. These products come in four flavors: *Peachy Bourbon*, *Gin Jam Fizzzz*, *Easy Peasy Lemon Squeezy* and *Blood Orange Vodkarita*. Each recipe features a burst of flavors, low carbonation and a low 6.9% ABV (alcohol by volume). In a recent survey of 993 customers in our tasting rooms, 70% replied they would purchase our RTD products at a retailer, with the largest group of responders to the survey in the 26-45 age demographic. All four products have won awards from respected tasting competitions, including *Peachy Bourbon*, which was named best overall RTD among all RTD products by the Seattle Cocktail Club, a collection of the top bartenders and industry insiders in the region. In May 2023, all four RTDs ran the table at the International SIP judging with 3 Gold Medals, a Double Gold Medal, two Consumer Choice Awards and an Innovation Award. In the U.S., RTDs are projected by Grand View Research to reach $2.4 billion in revenue by 2030 with a 13% CAGR from 2020 to 2030. Consumers are increasingly favoring RTDs because of their convenience, consistent flavor profiles and lower alcohol content, which we believe helps to position the products in the growing "better for you" segment of the adult beverages market.

We also feature a series of gins, rums and limited-edition products, primarily in our tasting rooms as we examine which products perform well enough to try to push into broader distribution.

Distribution and Sales

We utilize an omni-channel approach for the distribution of our products, which includes sales through our-branded distilleries and tasting rooms; wholesale through distributors to retailers and on-premises accounts, such as bars and restaurants; DtC online sales; sales through state control systems; and sales through the TBN.

This approach includes five company-owned and Heritage-branded tasting rooms, two of which are attached to our distilleries in Washington and Oregon. We are also in the process of licensing out our brand, products and programs under our TBN model to several tribes for HDC branded tasting room facilities in or next to their casino operations. More information on our TBN effort is detailed in the next section.

As part of our innovation cycle, we utilize our owned distilleries and tasting rooms in the Pacific Northwest and partner tasting rooms to test products and trial and sell directly to consumers. In our tasting rooms, consumers can try new products as well as the mainstay or limited-production branded spirits and cocktails while they experience the excitement of drinking in a differentiated environment. We have developed a strong membership base across our facilities with over 2,500 active members, many of whom participate in our surveys on trends and taste preferences. These members are either part of our Cask Club, which allows them to develop custom products selected from a list of pre-approved recipes in our portfolio and to age them in their own 10-liter casks in our facility, or they are members of our Spirits Club, receiving regular shipments of spirits throughout the year.

We also rely upon, and intend to increasingly grow, the wholesale distribution of our products. SGWS, the leading U.S. spirits distributor with an approximately 34.6% market share across the U.S. in 2021, distributes our original mainstream products in Washington, Oregon and Alaska. For the years ended December 31, 2023 and 2022, SGWS represented over 10% of our revenues. In July 2021, we began a distribution arrangement with RNDC, the second largest U.S. spirits distributor with an approximate 20.3% market share in 2021, covering 39 of the 50 states in the U.S. plus Canada. In February 2024, we launched wholesale distribution in Oklahoma through the MillerCoors beer network and added distribution in the third quarter of 2024 in Kansas, Kentucky and portions of Colorado. We supplement the work of our distributors with a direct sales force of individuals assigned to specific sales territories. These individuals manage the relationships with the applicable distributor's sales teams, who themselves have teams of varying sizes selling products to accounts. This team works directly with retailers and on-premises operators to build demand and support their needs for marketing and other Heritage-specific information. In the six-month period ended June 30, 2024, we sold approximately 10,845 cases of product through our wholesale channel, a decrease of approximately 18.5% compared to the 11,732 cases we sold on a wholesale basis in the six-month period

ended June 30, 2023, while seeing an increase in our wholesale revenue in the six-month period ended June 30, 2024 to $811,507 compared to wholesale revenue of $798,210 in the six-month period ended June 30, 2023, an increase of 5%. Of note were some significant wholesale orders that we shipped, and for which we booked the associated revenue, in June 2023 to a large retail chain customer. This year, similar orders were set up for July shipments, which will cause those orders and their associated revenue to impact third quarter results. We believe this percentage increase in wholesale revenue, with a combined net absolute spread of 23.5% between the (18.5%) and 5%, was a contributing factor to our significant increase in our overall gross margin for the six-month period ended June 30, 2024 compared to the six-month period ended June 30, 2023, and further demonstrates that our migration away from lower-margin spirits to higher margin spirits is working. This improvement has the added value of allowing us to generate more revenue while using less cash in the production of fewer units of higher-margin products, which we believe will assist us in planning and forecasting as we work to scale and grow around these activities.

In 2023, we sold approximately 23,738 cases of product through our wholesale channel, a year-over-year increase of approximately 3.2% over the approximately 23,000 cases we sold through wholesale distribution in 2022, while preparing to transition our focus toward higher-margin products and away from very-low-margin and quasi-private label products for a select national spirits retailer.

To achieve our growth objective of increasing wholesale sales and revenue, we recently hired a national sales executive to work directly with our distributors and key accounts to gain greater focus and execution. In the U.S., liquor sales in approximately 17 states are controlled by state governments (such states, “Control States”), and as a result, all spirits products in such states are sold and distributed through state liquor warehouses and state owned or controlled stores. In those jurisdictions, distributors function like brokers, increasing product awareness to gain placement in retail and on-premises outlets. We also utilize sales managers who handle regional and local sales for specific stores. Sales managers are responsible for all activities related to the sales, distribution and marketing of our brands to the retail partners and distribution network.

As for our DtC channel, we have started to utilize new technologies and collaborations with the goal of reaching consumers in more than 46 states in 2024. This direct-to-consumer opportunity allows us to sell products to consumers in more states and enables the collection of consumer data and supports growth in product demand, which helps our distributors sell branded products in more states.

Tribal Beverage Network (TBN)

In addition to our traditional distribution channels, we have formed the TBN, which we believe will become an important production, sales and marketing channel over time, while helping to build our overall brand. This network was formed in collaboration with Native American tribes interested in entering a new business line that became available to them for the first time in 2018. In 2018, Justin Stiefel, our Co-Founder, Chairman and Chief Executive Officer, worked to lobby the U.S. Congress to pass legislation that overturned a 184-year federal law prohibiting spirits production on tribal lands. As a result of this landmark legislation, Native American tribes have a new economic opportunity and we are working with several Native American tribes on the development of our branded distilleries and tasting rooms, as well as the sale of our products and the creation of brands unique to participating tribes.

Today, Native American tribes that sell spirits to visitors at their casinos, restaurants, golf courses, hotels, resorts and shops are the largest sales accounts for spirits, wine and beer in each county in which they are present. Accordingly, we believe the potential revenue for participating Native American tribes is significant. As of December 31, 2023, there were approximately 245 Native American tribes in the U.S. with 524 tribal casinos in 29 states that generated annual revenues of approximately $32 billion. Not all tribes own casinos and several do not permit the sale of alcohol on their tribal lands. Each tribal casino that serves alcoholic beverages is the largest beer, wine and spirits account in the county or state in which they are located. Of the 524 tribal casinos, we estimate that approximately 250 are viable candidates for our TBN model. We calculate that with 100 TBN production and retail locations up and running in or near tribal casinos and entertainment districts, the participating tribes collectively can earn revenue from spirits sales and taxes on the products produced on their lands in excess of $450 million per year, and that we can earn royalties of approximately $45 million annually from these activities based on the value we bring to the relationships and operations. We believe the combination of growing TBN locations with more consumer exposure to our brand and products and the resulting product adoption within each region will support wholesale product sales with a positive feedback loop for our wholesale growth initiatives.

Using a "distributive and localized" network model, we expect to collaborate with tribes to lead the development of a nationwide tribal network for the production and sale of premium, branded craft spirits. The network is comprised of tribally-owned, localized distilleries with a centralized high-volume distributive distillery serving a specific area or region of the United States. Initial distilling production will occur at a single facility with additional distillers receiving bulk spirits for final production and sale. By using this approach to production, each localized distillery is expected to be able to produce finished spirits through bottling, canning and labeling without the need for excess distilling equipment and unused capacity.

We generally seek to negotiate multi-year contracts with tribes of up to nine years, plus extensions, and to charge a mix of advisory fees and royalties. In exchange for these fees, we provide services relating to economic analysis, location design, pre-opening hiring and training, marketing support, centralized marketing development, raw input sourcing, bulk buying power for direct inputs such as glass, labels, caps, merchandise, new product development, monthly reporting, compliance and back-office support, halo marketing, staff training and new product development. Upon the commencement of a contract, we charge development fees associated with analysis, pre-design, design and pre-opening service for advising the tribe on the development of distilleries, tasting rooms and brands, and then charge a royalty on gross revenue once the distillery is operating. As part of the agreement, the applicable tribe is expected to produce and sell our branded products, and we are expected to work jointly with the tribe on products and brands unique to the tribe and its locations and regions. We have already entered into agreements with multiple tribes, including the recently announced agreement with the Tonto Apache Tribe in Arizona, which is working to open its tasting room in early 2025 and its storage and bottling facility in 2025. In May 2024, we announced a landmark agreement with the Coquille Tribe of Oregon after helping the Tribe navigate negotiations with the Oregon Liquor Control Board to allow for the first Tribal distillery in Oregon. This is the first of such agreements between a Tribe and one of the 18 liquor control states in the United States. We have additional agreements in place with several other tribes in Washington, Idaho, and Oklahoma, which will each be publicly announced based on each Tribe's own schedule. We are in discussions with several additional tribes in other states as we work to build out this model.

Pursuant to our multi-year agreement with the tribes, we license portions of our intellectual property, including our brands, recipes, awards and programs, to the tribe for use at their branded facility. We also assist the tribe with new product development, marketing, distribution, and tasting room operations, and Cask Club operations. We also provide training, expertise and experience in the design, construction and operation of the tribe's distillery. We earn a monthly management fee from the tribe based on the monthly revenue of the tribe's distillery, and receive a portion of the revenue earned by the tribe, in each case, for retail operations related to distilled spirits sales and services on site and based on additional production we bring to the facility. The parties can terminate the agreement under certain circumstances, including upon certain events of default, including a material breach of the agreement, failure to achieve profitability after five years, changes in federal or state laws related to alcohol, and a change of control of our company, among other limited events. We intend to enter into similar agreements with other Native American tribes going forward.

We believe that membership in the TBN provides extensive benefits to participating U.S. tribes, whether a tribe owns and operates a distributive facility or a localized distillery within the network, including profit margins that are estimated to equal or exceed 80% on retail activities before fees are charged. Tribes also enjoy unique benefits related to property and sales taxes associated with the production and sale of spirits on tribal trust land, including:

- Tribes keep state and local liquor taxes on the sale of spirits they produce and sell to consumers on their lands, which allows tribes to generate strong profitability.
- Tribal land is sovereign land, so tribes control their own zoning and permitting, which enables them to substantially reduce the time and expense required to begin construction as compared to building on non-tribal land.
- Tribes pay no sales tax on purchases of equipment or construction of distilleries and tasting rooms, which lowers start-up costs as compared to non-tribal locations.
- Tribes also pay no state or county property tax, inventory tax, personal property tax or ad valorem tax, which lowers their overall cost of operations compared to operations set up outside of the tribal land.

In addition to the revenue generated by spirits produced on-site, we plan to create a member-based rebate for each tribe participating in the TBN based upon the production and sale of products on tribal lands and the overall growth of the brands produced on tribal lands and benefitting from marketing support at tribal casinos and entertainment districts.

We believe this rebate will encourage more tribes to enter the TBN and will enable participating tribes to share in the overall growth. In addition, by aligning with our nationwide branding and marketing efforts, TBN member tribes will receive support for the promotion of their own spirits production and associated events and activities. We believe that tribes that choose to locate a TBN distillery and our branded tasting room on, in or near a gaming and hospitality property will find the refined presentation of our locations adds a sophisticated, appealing experience to a dynamic space. The addition of this new customer amenity to a casino resort can highlight certain programs, thereby driving customer loyalty and repeat visits, while increasing margins through beverage sales via on-site restaurants and bars.

Under the TBN model, the participating tribes will fund the construction of their own distilleries and production and storage facilities and will pay all of the operating expenses of those facilities while we provide support for the tribe's operations, marketing, new product development and regulatory compliance functions. Heritage will provide tasting room managers to ensure consistency of operations, training and product and brand integrity. The recovery of the cost to Heritage associated with these employees comes off the top of retail revenue generated in the TBN tasting rooms. To facilitate the efficient construction of tribal distilleries, we have a strategic relationship with Haskell Corporation ("Haskell"), a leading architectural, design and construction company in the beverage space. Under this arrangement, Haskell will serve as the engineering, procurement and construction partner for the tribal properties developing a larger production facility. Haskell has been recognized for its work in the design and construction of distilleries and was the highest-ranked food and beverage manufacturing contractor by *Engineering News-Record* in 2021 and 2020.

Marketing

We believe we have developed a successful sales and marketing approach with our limited resources and anticipate that investing additional resources will be an important element in increasing the visibility of our brands and product offerings to our target consumers to support our ongoing growth.

Omni-Channel Marketing Approach. Today's consumers interact with brands through many channels, from traditional media to social media and other digital channels, and through various in-person and online purchasing methods. To build the visibility of our brands and create a grassroots consumer following to support our distribution channels, we have employed a strategic multichannel marketing approach that we believe allows consumers to engage with our company on their own terms and permits us to expand and deepen recognition for our brands. In addition to promotional activities, our marketing strategy utilizes data analytics, digital techniques and efficiency metrics, across a cross section of social media, lifestyle and brand influencer activities.

Working with one of our strategic advisors, we have developed an area of focus on DtC sales channels. While still in its early development and testing phases, the concept is to develop and streamline ways to get our products directly in front of consumers for trial, sampling and purchasing in our branded tasting rooms, partner TBN tasting rooms, TBN-specific entertainment districts with pop-up shops, trial, sampling, and bottle sales, and future planned co-located collaborative tasting rooms in partnership with other premium craft producers across the United States. The platform is built upon one-to-one marketing efforts through digital, social email and text to drive consumer trial and adoption of products and brands. We are also experimenting with artificial intelligence ("AI") to create dynamic content to better identify and connect directly with consumers in key target demographic for each product and brand. The sales resulting from such efforts tends to be higher margin than the traditional wholesale route to market, which is the norm in the spirits industry right now. While all the other craft brands fight for shelf space in an increasingly crowded marketplace bottlenecked by more and more distributor consolidation, we are developing a route to go straight to the consumer through multiple paths in a one-stop retail way that allows us to control the dialog and the brand position and to collect the consumer data. This effort has the combined positive attributes of allowing us to generate sales at high margins, capture consumer data and contact information for future sales targeting, and to build brand and product recognition to better support the wholesale launches of the best performing products and brands in the general market.

Labelling and Innovative Packaging Initiatives. We recognize the importance of packaging and product labelling and their influences on consumers' purchasing practices. We conduct surveys and consumer research to validate the taste profile and positioning of our products. As we grow and can access more resources, we expect our ability to refine our products in response to consumer interests will improve.

Production

We have two distilleries and two warehouses comprising an aggregate of approximately 100,000 square feet dedicated to end-to-end production and storage. Each distillery has and maintains mash, fermentation, distillation and bottling equipment. We began production of spirits after a thorough market search for high-quality equipment at each stage of the production process. For example, we selected Italian distilling equipment that provides for gentle treatment of the spirits and easy calibration to produce clean flavor profiles. Additionally, we source barrels made by Spanish coopers using American white oak that is cured in Spain for two years. We believe these special barrels and the charring levels in each one allows us to make consistent, smooth and flavorful spirits.

Sustainability is also an important aspect of our selection of grains. Where possible, we select family farms using organic and regenerative processes. As an example, according to the research database *Science Direct*, regeneratively grown grains typically save approximately 170,000 gallons of water per barrel produced over the course of the growing cycle.

Based on management's estimates, we believe our current production capacity can expand by approximately six times without the need for additional investment. As volumes grow, we expect that future production capacity will also be provided by distilleries affiliated with member tribes in the TBN.

Raw Materials and Suppliers

Generally, the principal raw materials used in our products include corn and other grains (including rye, barley, wheat, barley malt and milo) and flavorings. The principal materials used in the packaging of our spirits include oak barrels, glass bottles, labels, aluminum cans and cartons. These materials are generally readily available from several sources, except for new oak barrels, which are available from only a more limited number of sources. As we have historically sourced grains from farms with which we have personal relationships, we have few long-term contracts in place with suppliers. However, these raw materials are sometimes affected by weather and other forces that could impact production and quantity.

Competition

The alcoholic beverage industry is highly competitive. We believe the principal areas of competition include, among others, flavor, packaging and positioning innovations, pricing, and distribution locations and shelf space, as well as promotional and marketing strategies. Our products compete with a wide range of other beverages, including spirits, beers and wines, and other alcoholic beverages, and increasingly non-alcoholic beverages designed and marketed to mimic the flavor of alcoholic beverages. Many of these products are produced by a relatively large number of companies, many of which have substantially greater financial, marketing and distribution resources than we do.

Within the craft spirits segment of the market, important factors affecting our ability to compete include speed of innovation, product appeal and differentiation to consumers, brand and product image, taste and flavor of products, trade and consumer promotions, attractive packaging, product placement and distribution, access to capital and other resources, marketing and pricing. We also rely on our distributors to provide stable and reliable distribution and to secure adequate shelf space in retail outlets. Competitive pressures could cause our products to lose market share or experience price erosion, which could materially impact our business and the results of operations. These pressures could include directly competitive innovations, new products that are better aligned with consumer preferences, greater marketing spending, better placements, or a decline in consumer interest in the craft spirits segment overall.

We have experienced, and continue to experience, competition from new entrants in the craft spirits category. According to the American Craft Spirits Association, in 2021 there were approximately 2,600 active craft distilleries in the United States. Leading global participants entering and operating in the craft spirits market through the acquisition of small brands include Rémy Cointreau, William Grant & Sons, Pernod Ricard SA (OTC: PRNDY), Anchor Brewers & Distillers, Diageo PLC (NYSE: DEO) and Rogue Ales & Spirits.

While competition in the craft spirits space is growing, most craft producers attempt to boast about a singular accomplishment, such as a singular product, a special package or a single marketing idea. We believe we offer several advantages relative to our competitors, including: a complete and end-to-end experience and product positioning; superior production methods resulting in award-winning products; a savvy and experienced team; an on-ramp for national distribution growth; a unique go-to-market growth route through the TBN; and creative marketing strategies. We believe few participants in the craft spirits segment can point to a similar collection of assets and opportunities.

Regulatory Matters

Along with our distributors, retail accounts and ingredients and packaging suppliers, we are subject to extensive regulation in the United States by federal, state and local government authorities with respect to registration, production processes, product attributes, packaging, labeling, storage and distribution of the craft spirits, RTD canned cocktails and other products we produce. When we work with tribes, we are also subject to certain tribal requirements.

We are subject to state and local tax requirements in all states in which our products are sold, as well as federal excise taxes on spirits we remove from bond. We monitor the requirements of relevant jurisdictions to maintain compliance with all tax liability and reporting matters. In states in which we maintain distilleries and tasting rooms, we are subject to several governmental authorities, including city and county buildings, land use, licensing and other codes and regulations.

We have contracted with a third party to manage our regulatory licensing and renewal activities. We maintain licenses that enable us to distribute our craft spirits and RTD pre-mixed cocktails in all 50 states plus Washington, D.C., and to sell directly to consumers in 46 states via a three-tier compliant third-party firm. We currently utilize software tools available to the industry and work with our license compliance service provider to navigate and manage the complex state-by-state tax and other regulations that apply to our operations in the alcoholic beverage industry. This has enabled us to expand our operations and to grow our revenue while reducing the administrative burden of tax compliance, reporting and product registration. We plan to leverage our expertise and relationships with third-party service providers in this area to assist tribes participating in the TBN.

Alcohol-related regulation

We are subject to extensive regulation in the United States by federal, state and local laws and regulations regulating the production, distribution and sale of consumable food items, and specifically alcoholic beverages, including by the Alcohol and Tobacco Tax and Trade Bureau (the "TTB") and the Food and Drug Administration (the "FDA"). The TTB is primarily responsible for overseeing alcohol production records supporting tax obligations, issuing spirits labeling guidelines, including input and alcohol content requirements, as well as reviewing and issuing certificates of label approval, which are required for the sale of spirits and alcoholic beverages through interstate commerce. We carefully monitor compliance with TTB rules and regulations, as well as the state laws of each state in which we sell our products. In the states in which our distilleries are located, we are subject to alcohol-related licensing and regulations by many authorities, including the state department of alcohol beverage control or liquor control. State agents and representatives investigate applications for licenses to sell alcoholic beverages, report on the moral character and fitness of alcohol license applicants and the suitability of premises where sales are to be conducted and enforce state alcoholic beverages laws. We are subject to municipal authorities with respect to aspects of our operations, including the terms of our use permits. These regulations may limit the production of alcoholic beverages and control the sale of alcoholic beverages, among other elements.

Employee and occupational safety regulation

We are subject to certain state and federal employee safety and employment practices regulations, including regulations issued pursuant to the U.S. Occupational Safety and Health Act ("OSHA"), and regulations governing prohibited workplace discriminatory practices and conditions, including those regulations relating to COVID-19 virus transmission mitigation practices. These regulations require us to comply with manufacturing safety standards, including protecting our employees from accidents, providing our employees with a safe and non-hostile work environment and being an equal opportunity employer. We are also subject to employment and safety regulations issued by state and local authorities.

Environmental regulation

Due to our distilleries and production activities, we and certain third parties with which we work are subject to federal, state and local environmental laws and regulations. Federal regulations govern, among other things, air emissions, wastewater and stormwater discharges, and the treatment, handling and storage and disposal of materials and wastes. State environmental regulations and authorities intended to address and oversee environmental issues are largely state-level analogs to federal regulations and authorities intended to perform similar purposes.

Privacy and security regulation

We collect personal information from individuals. Accordingly, we are subject to several data privacy and security related regulations, including but not limited to: U.S. state privacy, security and breach notification laws; the General Data Protection Regulation ("GDPR"); and other European privacy laws, as well as privacy laws being adopted in other regions around the world. In addition, the Federal Trade Commission and many state attorneys general have interpreted existing federal and state consumer protection laws to impose evolving standards for the online collection, use, dissemination and security of information about individuals. Certain states have also adopted robust data privacy and security laws and regulations. In response to such data privacy laws and regulations and those in other countries in which we do business, we have implemented several technological safeguards, processes, contractual third-party provisions, and employee trainings to help ensure that we handle information about our employees and customers in a compliant manner. We maintain a global privacy policy and related procedures and train our workforce to understand and comply with applicable privacy laws.

Intellectual Property

We strive to protect the reputation of our brand. We establish, protect and defend our intellectual property in several ways, including through employee and third-party nondisclosure agreements, copyright laws, domestic and foreign trademark protections, intellectual property licenses and social media and information security policies for employees. We have been granted over 75 trademark registrations in the United States for, among others, Heritage Distilling®, Heritage Distilling Co. (Stylized)®, our HDC Logo®, Cask Club®, Tribal Beverage Network® and the individual names and logos of certain of our products and numerous trademark registrations in other countries for the Heritage Distilling®, Heritage Distilling Co. (Stylized)®, HDC Logo® marks and the names and logos of certain Heritage products. We expect to continue to file trademark applications to protect our spirits brands.

We have also been granted copyright registration in the first version of our website located at *www.heritagedistilling.com*. Information contained on or accessible through our website is not incorporated by reference in or otherwise a part of this prospectus. As a copyright exists in a work of art once it is fixed in tangible medium, we intend to continue to file copyright applications to protect newly-developed works of art that are important to our business.

We also rely on, and carefully protect, proprietary knowledge and expertise, including the sources of certain supplies, formulations, production processes, innovation regarding product development and other trade secrets necessary to maintain and enhance our competitive position.

Human Capital

As of June 30, 2024, we had 93 employees, of which 22 worked part-time. Of our 93 employees, we employed 15 in corporate and administrative capacities, five in marketing and sales and e-commerce activities, 50 in retail activities, 22 in production, warehouse and product development activities and one dedicated to TBN activities. None of our employees is covered by a collective bargaining agreement.

We believe our employees are key to achieving our business objectives. Our key human capital measures include employee safety, turnover, absenteeism and productivity. We frequently benchmark our compensation practices and benefit programs against those of companies in comparable industries and in the geographic areas where our facilities are located. We believe our compensation and employee benefits are competitive and allow us to attract and retain skilled and unskilled labor throughout our organization. Our notable health, welfare and retirement benefits include:

- company-subsidized health insurance;
- 401(k) Plan;
- tuition assistance program via FSA savings plan; and
- paid time off.

Employee safety is one of our top priorities. We develop and administer company-wide policies designed to ensure the safety of each team member and compliance with OSHA standards. Throughout the COVID-19 pandemic, we were deemed an essential employer and continued to operate with COVID-19 prevention protocols in place to minimize the risk of the spread of COVID-19 in our workplaces. Many of our administrative staff were required to work from home.

We strive for workforce retention with semi-annual retention bonuses for hourly employees and critical new hires. New and open positions are posted for viewing by our current workforce, and internal promotions are encouraged.

We strive to maintain an inclusive environment free from discrimination of any kind, including sexual or other discriminatory harassment. We require and provide training for our employees covering harassment, discrimination and unconscious bias. This training is tracked and recorded by us and is mandatory for all new hires. Our employees have multiple avenues available through which inappropriate behavior can be reported, including a confidential hotline. Our policies require all reports of inappropriate behavior to be promptly investigated with appropriate action taken.

Seasonality

We experience some seasonality whereby the peak summer months and the winter holidays show a higher level of sales and consumption. However, the structure of our business and range of products in our portfolio are designed to mitigate major fluctuations. Based on historical activities, more than one-third of our annual revenue is earned in the fourth quarter of each year, and absent a major disruption or change in operations, management does not anticipate that to change in the foreseeable future.

Properties

We maintain our principal corporate offices, distribution warehouse and barrel-aging rickhouse in Gig Harbor, Washington. We have production distilleries in both Tumwater, Washington and Eugene, Oregon. We also maintain retail tasting rooms in Gig Harbor, Roslyn and Tumwater, Washington and two tasting rooms in Eugene, Oregon. All of our facilities are leased, and we believe our facilities are adequate for our current needs and that suitable additional space will be available on commercially-acceptable terms as required.

Legal Proceedings

We may be subject to legal disputes and subject to claims that arise in the ordinary course of business. Although the results of such litigation and claims in the ordinary course of business cannot be predicted with certainty, we believe that the final outcome of such matters will not have a material adverse effect on our business, results of operations, cash flows or financial condition. Regardless of outcome, litigation can have an adverse impact on us because of defense costs, diversion of management resources and other factors. Currently, there is no litigation pending against our company that could materially affect our company.

MANAGEMENT

Executive Officers and Directors

The following table provides information regarding our executive officers and directors:

Name	Age	Position(s)
Executive Officers		
Justin Stiefel	49	Chairman, Chief Executive Officer, and Treasurer
Jennifer Stiefel	49	Director, President, and Secretary
Michael Carrosino	63	Executive Vice President of Finance, Acting Chief Financial Officer
Beth Marker	63	Senior Vice President of Retail Operations
Danielle Perkins	35	Senior Vice President of Wholesale Operations
Non-Employee Directors		
Troy Alstead	61	Director Nominee
Christopher (Toby) Smith	85	Director
Eric S. Trevan, Ph.D.	48	Director
Andrew Varga	58	Director Nominee
Jeffery Wensel, M.D., Ph.D.	63	Director

Executive Officers

Justin Stiefel was a co-founder of our company and has been our Chief Executive Officer and a director since 2011 and Treasurer and Chairman of the Board since 2022. Mr. Stiefel is the driving force behind our focus on consumer-friendly products and experiences and is the creator of the TBN concept, having worked in 2018 to secure in Congress the repeal of an 1834 statute that prohibited distilling in Indian country. Prior to our founding, Mr. Stiefel served as a top staff member in the United States Senate, first as Deputy Press Secretary, then Legislative Aide, then Chief Counsel to the senior Senator for Alaska, Ted Stevens. He then become one of the youngest Chiefs of Staff in the history of the U.S. Senate for Lisa Murkowski, the junior Senator for Alaska. In 2004, Mr. Stiefel joined the international law firm of Dorsey and Whitney LLP as Of Counsel. Mr. Stiefel later formed his own consulting firm assisting clients, individual businesses and tribes (American Indian, Alaskan Native and Native Hawaiians), with their needs in advancing legislation, regulations and policy initiatives in Washington, DC. Mr. Stiefel holds a BS in Chemical Engineering from the University of Idaho and a Juris Doctor from Catholic University of America, where he graduated in the top ten in his class, Magna Cum Laude. He has also completed coursework at the United States Naval War College, focused on strategic decision making. He has served as a director for several non-profit organizations and sits on the Milgard Executive Counsel at the Milgard School of Business at the University of Washington. Mr. Stiefel is a member of three bar associations, in Washington State, Alaska and Washington, DC. He is active in advocating for legislative modernization in spirits, liquor laws and regulations, including drafting and negotiating legislative and regulatory changes at the state and federal levels on behalf of the craft spirits industry.

Jennifer Stiefel was a co-founder of our company, has been our President and a director since 2011 and Secretary since 2022. She oversees our brand preservation and consumer experience portions of our operations to ensure consistency and excellence throughout. She also is an instrumental part of the executive team focused on growing the TBN. Prior to our founding, Ms. Stiefel served in the United States Senate as a staff member of the Senate Appropriations Committee. She subsequently taught elementary school in Virginia, acting as team lead for science. In her younger years she worked in her family's manufacturing business in Alaska, growing up to work in all facets of the company. She holds a BA in Elementary Education from the University of Idaho and a Masters in Instructional Education from Central Michigan University. Ms. Stiefel is a director for several non-profit organizations. Ms. Stiefel is the wife of Justin Stiefel, our Chairman and Chief Executive Officer.

Michael Carrosino has served as our Executive Vice President of Finance and Acting Chief Financial Officer since June 2023. He will transition into the office of Chief Financial Officer upon the completion of this offering. Mr. Carrosino is a veteran Finance and Operations executive with over 40 years of experience across multiple public and private industries. Mr. Carrosino's functional experience is broad in the areas of Accounting, FP&A, Human Resources, and Operations and includes multiple acquisitions and divestitures, fundraisings, restructurings and other strategic events. Since January 2017, Mr. Carrosino held several independent fractional/interim chief financial officer consulting roles through CFO Selections, a provider of fractional chief financial officer and controller services, and related recruiting

and placement. While with CFO Selections, Mr. Carrosino provided fractional chief financial officer services for several companies in various industries, including: Foss Maritime (marine services); The Space Needle (tourism and hospitality); Oberto Brands (consumer meat snacks); and, Concure Oncology (cancer treatment). From October 1999 to January 2017, Mr. Carrosino held several senior-level/chief financial officer positions, including: CFO & Co-Founder of Tatoosh Distillery (June 2010 to July 2014); CFO of SASH Senior Home Sale Services (real estate services) (November 2011 to January 2014); VP Finance/CFO of Maxwell IT (outsourced I/EMR IT services) (January 2005 to October 2008); VP Finance/CFO of Hyperion Innovations/ColdHeat (innovative consumer products) (June 2006 to October 2008); CFO & Treasurer of Pacific Biometrics OTC: PBME,OB (lab services) (June 2003 to October 2004); VP Finance/CFO of Inologic, Inc. (start-up biotechnology) (May 2002 to June 2003); CFO & Co-Founder of Vrtise (VPN B2C Information Distribution Network) (January 2001 to June 2003); VP Finance of Classmates.com (online directory) (April 2000 to December 2000); CFO of VacationSpot (vacation rental website) (October 1999 to April 2000 sale to Expedia); VP Finance of Advanced Research Systems (EMR software developer) (January 1999 to September 1999); and, Acting CFO for America Online's Sprynet division (February 1998 acquisition from CompuServe to December 1998 sale to MindSpring). Mr. Carrosino's prior experience includes tenures with Cell Therapeutics, Inc. from 1993 to 1997 where he managed the SEC Form 10 Registration, IPO, and subsequent SEC filings; Esterline Technologies from 1988 to 1993 where his responsibilities included all SEC filings; and, Arthur Andersen from 1981 to 1987. Mr. Carrosino has also served on a number of non-profits Boards, including Treasurer and Director of Festa Italiana (since 1989); Treasurer and Board Member of Whim W'him Dance Company (2009 to 2012); and Trustee of Seattle Yacht Club (2019 to 2022). Mr. Carrosino is a CPA-inactive (State of WA). He received a B.A. degree in Humanities in 1980 and a B.A. degree in Business Administration — Accounting in 1981 from Seattle University.

Beth Marker has served as our Senior Vice President of Retail Operations since February 2024. She joined our company in 2017 to launch the Roslyn, WA location. She recently initiated a Retail Realignment Project that under her new role as SVP of Retail Operations, seeks to drive increasingly robust and cost-effective growth across all retail channels. With decades of experience in field sales, project management and marketing, she built an extensive career launching new products and brand assets on a national level. Prior to joining our company, she held various executive positions within the cosmetic and fragrance industry at both Revlon and Lancôme before joining Nordstrom in product development. After relocating to the Cascade foothills of central Washington, Ms. Marker joined Safeway's store management group where she further honed her skills in product promotion, diversity and retail management. Having grown up on her generational family farm in Indiana, she learned the value of maximizing resources early on. She holds a BS in Fine Arts Administration from Butler University. Ms. Marker has served as a director for various local non-profits.

Danielle Perkins has served as our Senior Vice President of Wholesale Operations since February 2024 and has been with our company since 2018. She brings 14 years of experience in the alcohol industry and oversees wholesale sales and distribution, including managing our wholesale sales team and contractors, setting goals and targets for our sales team and our distribution partners, overseeing the data resulting from wholesale sales and then reporting on the same to management. Ms. Perkins previously held the roles of Regional Vice President of Sales — West and Vice President of Control States. During this time, she has overseen expansion, distribution and sales in over 20 states for our company and our brands. Before joining our company, Ms. Perkins worked as a Sales Manager with New Holland Brewing Company, managing spirit sales and distributor partners in the Midwest. She began her career in the beverage industry working on-premises as a Beverage Director in Chicago, IL. She holds a BA in Musical Theatre from Columbia College Chicago.

Non-Employee Directors

Troy Alstead will join our board of directors upon consummation of this offering. Since 2017, Mr. Alstead has been the founder and proprietor of Ocean5 and Table 47, concepts opened in 2017 for dining, entertainment and events. In February 2016, Mr. Alstead retired from Starbucks Corporation (Nasdaq: SBUX), an American coffee company and coffeehouse chain, after 24 years with the company, having most recently served as Chief Operating Officer. Mr. Alstead served as Chief Operating Officer beginning in 2014. From 2008 to 2014, Mr. Alstead served as that company's Chief Financial Officer and Chief Administrative Officer. Additionally, Mr. Alstead served as Group President from 2013 until his promotion to Chief Operating Officer. Mr. Alstead joined Starbucks in 1992 and over the years served in several operational, general management, and finance roles. Mr. Alstead spent a decade in Starbucks' international business, including roles as Senior Leader of Starbucks International, President Europe/Middle East/Africa headquartered in Amsterdam, and Chief Operating Officer of Starbucks Greater China, headquartered in Shanghai. Mr. Alstead is also a member of the board of directors of Levi Strauss & Co. (NYSE: LEVI), Harley-Davidson, Inc. (NYSE: HOG), Array Technologies Inc. (Nasdaq: ARRY), OYO Global and RASA Indian Grill. Mr. Alstead earned a B.A. in business administration from the University of Washington.

Christopher H. "Toby" Smith has been a director of our company since 2022. Mr. Smith is actively engaged in the practice of law in representing both domestic and international corporate clients. At the outset of his career he was a partner of the New York firm of Whitman & Ransom (now Winston & Strawn LLP.) and later served as Of Counsel to the firm of Foley & Lardner. Mr. Smith is licensed to practice law in New York, Connecticut and Washington, D.C. Mr. Smith founded and, since February 1986 has been, an attorney at Alexander, Smith & Company, Inc., a Connecticut-based legal and financial advisory firm. Mr. Smith has served numerous public and private enterprises, nationally and internationally, as Executive Chairman of the Board, Lead Director, Chief Executive Officer, Chief Financial Officer, and General Counsel. Representative experience includes Puma USA, Sylvania International, Escada, London Fog, Medical Staffing Network, Barnes Engineering, Atkins Nutritionals, Thompson Media, and Oneida, Ltd. Mr. Smith also served as Chief Executive Officer of the Wildlife Conservation Society, which is better known as the Bronx Zoo. Mr. Smith is a graduate of Williams College and the Yale Law School. His post-graduate work included clerkships on the United States Court of Appeals in Washington, D.C. and the Supreme Court of Connecticut. He also served as a Fellow of the Organization of American States and studied comparative law in Venezuela.

Eric S. Trevan, Ph.D. has been a director of our company since 2022. Dr. Trevan has been an Assistant Professor at California State University San Marcos since 2020 and was previously a Visiting Scholar of Innovation, Business and Economic Policy for Tribal Nations at the Evergreen State College from 2016 to 2021. Since January 2019, he has also served as President of Local Solutions, an artificial intelligence (AI) market analytics company. Dr. Trevan is an economist and is regarded as a thought leader on Native economies and economic policy, specializing in complex financial arrangements that mediate public and private regulations, policies and economic resources. Beginning in 2021, Dr. Trevan served as Chairman of Twelve Clans Inc., the sovereign wealth fund of the Ho-Chunk Nation, has served since 2022 on the Boards of Directors of Gun Lake Investments, the non-gaming investment arm of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, has served since 2022 on the board of directors of Northern Initiatives, a non-profit Community Development Financial Institution, has served since 2017 on the board of directors of the Noo-Kayet Development Corporation, the economic development arm of the Port Gamble S'Klallam Tribe, and has served since 2019 on the board of directors of the Cheyenne and Arapaho Business Development Corporation of the Cheyenne and Arapaho Tribes. Dr. Trevan was formerly a Policy Advisor to the Treasury Tribal Advisory Committee at the U.S. Department of Treasury. Dr. Trevan has a PhD from Arizona State University Watts College of Public Solutions, Community Resources and Development (Local and Native Economies), a Master's Degree in Administration (Public Administration) from Central Michigan University, and a Bachelor's Degree in Public Administration/Economics from Western Michigan University. He is a Tribal citizen of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Gun Lake Tribe in Michigan.

Andrew Varga has served as a consultant to our company since April 2023 and will join our board of directors upon consummation of this offering. Since June 2015, Mr. Varga has been the founder and principal of AV Train Consulting, a strategy and marketing consulting firm primarily serving the pizza, wine and bourbon industries. From July 2013 to February 2015, Mr. Varga was the President of Zimmerman Advertising, an advertising firm. From September 2009 to July 2013, Mr. Varga served as Senior Vice President and Chief Marketing Officer of Papa John's International, Inc. (Nasdaq: PZZA). From January 1988 to September 2009, Mr. Varga held various executive positions with Brown-Forman Corporation (NYSE: BF-A; BF-B), a company engaged in the production and distribution of alcoholic beverages, including Jack Daniel's Tennessee Whiskey and its associated brand extensions, Woodford Reserve and Old Forester. Mr. Varga was responsible for the company's Wines and Spirits portfolio in the North American Region, Mr. Varga was Senior Vice President/Managing Director, Wines Marketing, with global responsibility for the wine portfolio, Vice President/Director of Corporate Strategy, leading Brown-Forman's strategic planning process and reporting to the company's Chairman and Chief Executive Officer, and various positions of increasing responsibility for Brown-Forman, including Brand Director for Korbel Champagne. While at Brown-Forman, he helped launch the Woodford Reserve and Old Forester brands. Mr. Varga received a BBA degree from the University of Kentucky and an M.B.A. degree from Queens College.

Jeffery Wensel, M.D., Ph.D. has been a director of our company since 2017. Dr. Wensel is a practicing neuroradiologist and inventor with multiple patents to his name since 1995. Dr. Wensel's fascination with distillation and spirits began years before his medical education. He earned his medical degree from the University of Iowa in 1990. Dr. Wensel completed his residency at the University of Arizona and his Neuroradiology Fellowship at the UCLA Medical Center in Los Angeles. For more than the past five years, Dr. Wensel has engaged in the private practice in radiology in Eugene, Oregon and has consulted for other doctors around the U.S. Dr. Wensel is fluent in a Spanish and has functioning knowledge of nine other languages. He is active in our Eugene operations and is focused on leading our efforts around rum production.

Involvement in Certain Legal Proceedings

To our knowledge, our directors and executive officers have not been involved in any of the following events during the past ten years:

1. any bankruptcy petition filed by or against such person or any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time;
2. any conviction in a criminal proceeding or being subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);
3. being subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from or otherwise limiting his involvement in any type of business, securities or banking activities or to be associated with any person practicing in banking or securities activities;
4. being found by a court of competent jurisdiction in a civil action, the SEC or the CFTC to have violated a Federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated;
5. being the subject of, or a party to, any Federal or state judicial or administrative order, judgment decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of any Federal or state securities or commodities law or regulation, any law or regulation respecting financial institutions or insurance companies, or any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or
6. being the subject of or party to any sanction or order, not subsequently reversed, suspended, or vacated, of any self-regulatory organization, any registered entity or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

Board Composition and Structure; Director Independence

Our business and affairs are managed under the direction of our board of directors. At the closing of this offering, our board of directors will consist of eight members. In accordance with the terms of our amended and restated certificate of incorporation and amended and restated bylaws, our board of directors will be divided into three classes, Class I, Class II and Class III, with each class serving staggered three-year terms. Upon the expiration of the term of a class of directors, directors in that class are eligible to be elected for a new three-year term at the annual meeting of stockholders in the year in which their term expires. Set forth below is information regarding the membership of each class of directors, effective at the closing of this offering.

Director:	Initial Term Expires:
Class I Directors:	At the 2027 annual meeting of stockholders
Justin Stiefel	
Troy Alstead	
Eric S. Trevan, PhD	
Class II Directors:	At the 2026 annual meeting of stockholders
Jennifer Stiefel	
Andrew Varga	
Class III Directors:	At the 2025 annual meeting of stockholders
Jeffrey Wensel, M.D., PhD.	
Christopher (Toby) Smith	

While we do not have a stand-alone diversity policy, in considering whether to recommend any director nominee, including candidates recommended by stockholders, we believe that the backgrounds and qualifications of the directors, considered as a group, should provide a significant mix of experience, knowledge and abilities that will allow our board of directors to fulfill its responsibilities. As set forth in our corporate governance guidelines, when considering whether directors and nominees have the experience, qualifications, attributes or skills, taken as a whole, to enable our board of directors to satisfy its oversight responsibilities effectively in light of our business and structure, the board of directors focuses primarily on each person's background and experience as reflected in the information discussed in each of the directors' individual biographies set forth above. We believe that our directors and director nominees will provide an appropriate mix of experience and skills relevant to the size and nature of our business.

Our board of directors expects a culture of ethical business conduct. Our board of directors encourages each member to conduct a self-review to determine if he or she is providing an effective service to our company and our stockholders. Should it be determined that a member of our board of directors is unable to effectively act in the best interests of our stockholders, such member would be encouraged to resign.

Board Leadership Structure

Our amended and restated bylaws and our corporate governance guidelines provide our board of directors with flexibility to combine or separate the positions of Chairman of the Board and Chief Executive Officer in accordance with its determination that utilizing one or the other structure is in the best interests of our company. Justin Stiefel currently serves as our Chief Executive Officer and Chairman of the Board.

As Chairman of the Board, Mr. Stiefel's key responsibilities will include facilitating communication between our board of directors and management, assessing management's performance, managing board members, preparation of the agenda for each board meeting, acting as chair of board meetings and meetings of our company's stockholders and managing relations with stockholders, other stakeholders and the public.

We will take steps to ensure that adequate structures and processes are in place to permit our board of directors to function independently of management. The directors will be able to request at any time a meeting restricted to independent directors for the purpose of discussing matters independently of management and are encouraged to do so should they feel that such a meeting is required. Further, at the conclusion of each regular or special meeting of the board of directors, the Chairman will enquire of the Lead Director and/or the independent members of the Board if they wish to meet in executive session. Minutes of the executive session will be taken by the Lead Director and filed with the minutes of our company but sealed unless corporate action is taken.

Committees of our Board of Directors

The standing committees of our board of directors consist of an audit committee, a compensation committee and a nominating and corporate governance committee. Each of the committees reports to our board of directors as they deem appropriate and as our board may request. Each committee of our board of directors has a committee charter that will set out the mandate of such committee, including the responsibilities of the chair of such

The composition, duties and responsibilities of these committees are set forth below.

Audit Committee

The audit committee is responsible for, among other matters:

- appointing, retaining and evaluating our independent registered public accounting firm and approving all services to be performed by them;
- overseeing our independent registered public accounting firm's qualifications, independence and performance;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;
- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements;
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters; and
- reviewing and approving related person transactions.

Our audit committee consists of three of our directors, Messrs. Alstead, Smith and Varga, each of whom meets the definition of "independent director" for purposes of serving on an audit committee under Rule 10A-3 under the Exchange Act and the Nasdaq rules. Mr. Alstead serves as chairman of our audit committee. Our board of directors has determined that Mr. Alstead qualifies as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K under the Securities Act. The written charter for our audit committee will be available on our corporate website at *www.HeritageDistilling.com*, upon the completion of this offering. The information on our website is not part of this prospectus.

Compensation Committee

The compensation committee is responsible for, among other matters:

- reviewing key employee compensation goals, policies, plans and programs;
- reviewing and approving the compensation of our directors, chief executive officer and other executive officers;
- producing an annual report on executive compensation in accordance with the rules and regulations promulgated by the SEC;
- reviewing and approving employment agreements and other similar arrangements between us and our executive officers; and
- administering our stock plans and other incentive compensation plans.

Our compensation committee consists of three of our directors, Messrs. Varga and Alstead and Dr. Wensel, each of whom meets the definition of "independent director" under the rules of Nasdaq and the definition of non-employee director under Rule 16b-3 promulgated under the Exchange Act. Mr. Varga serves as chairman of our compensation committee. Our board of directors has adopted a written charter for the compensation committee in connection with this offering, which will be available on our corporate website at *www.HeritageDistilling.com*, upon the completion of this offering. The information on our website is not part of this prospectus.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee will be responsible for, among other matters:

- determining the qualifications, qualities, skills and other expertise required to be a director and developing and recommending to the board for its approval criteria to be considered in selecting nominees for director;
- identifying and screening individuals qualified to become members of our board of directors, consistent with criteria approved by the Committee and our board of directors;
- overseeing the organization of our board of directors to ensure that the duties and responsibilities of the board are discharged properly and efficiently;
- reviewing the committee structure of the board of directors and the composition of such committees and recommending directors for appointment to each committee together with recommendations for the Chairs of such committees; and
- identifying best practices for the board's discharge of its duties and responsibilities including policies and principles that ensure good governance throughout the enterprise.

Our nominating and corporate governance committee consists of three of our directors, Messrs. Smith and Varga and Dr. Trevan, each of whom meets the definition of "independent director" under the rules of Nasdaq. Mr. Smith serves as chairman of our nominating and corporate governance committee. Our board of directors has adopted a written charter for the nominating and corporate governance committee in connection with this offering, which will be available on our corporate website at *www.HeritageDistilling.com*, upon the completion of this offering. The information on our website is not part of this prospectus.

Compensation Committee Interlocks and Insider Participation

None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of another entity that had one or more of its executive officers serving as a member of our board of directors or compensation committee. None of our compensation committee members, when appointed, will have at any time been one of our officers or employees.

Other Committees

Our board of directors may establish other committees as it deems necessary or appropriate.

Director Term Limits

Our board of directors has not adopted policies imposing an arbitrary term or retirement age limit in connection with individuals serving as directors as it does not believe that such a limit is in the best interests of our company. Our nominating and corporate governance committee will annually review the composition of our board of directors, and its collective and individual performance. Our board of directors will strive to achieve a balance between the desirability of its members having a depth of relevant experience, on the one hand, and the need for renewal and new perspectives, on the other hand.

Diversity Policy

Our board of directors is committed to nominating the best individuals to fill director and executive roles. Our board has not adopted policies relating to the identification and nomination of diverse directors and executives as it does not believe that it is necessary in the case of our company to have such written policies at this time. Our board of directors believes that diversity is important to ensure that board members and senior management provide the necessary range of perspectives, experience and expertise required to achieve effective stewardship and management. We have not adopted a target regarding diverse candidates on our board or in executive officer positions as our board believes that such arbitrary targets are not appropriate for our company. We currently have one female director on our board, one Native American director and three women holding an executive position within our company.

Risk Oversight

Our board of directors oversees the risk management activities designed and implemented by our management. Our board of directors executes its oversight responsibility for risk management both directly and through its committees. The full board of directors also considers specific risk topics, including risks associated with our strategic plan, business operations and capital structure. In addition, our board of directors regularly receives detailed reports from members of our senior management and other personnel that include assessments and potential mitigation of the risks and exposures involved with their respective areas of responsibility.

Our board of directors has delegated to the audit committee the principal oversight of our risk management process. Our other board committees, however, also consider and address risks and risk management as they perform their respective committee responsibilities. All committees report to the full board of directors as appropriate, including when a matter rises to the level of a material or enterprise risk.

Code of Ethics

Our board of directors has adopted a Code of Ethics that applies to all of our employees, contractors, and consultants, including our chief executive officer, (acting) chief financial officer and principal accounting officer. Our Code of Ethics will be available on our website at *www.HeritageDistilling.com* by clicking on "Investors." If we amend or grant a waiver of one or more of the provisions of our Code of Ethics, we intend to satisfy the requirements under Item 5.05 of Form 8-K regarding the disclosure of amendments to or waivers from provisions of our Code of Ethics that apply to our principal executive officer, financial and accounting officers by posting the required information on our website at the above address within four business days of such amendment or waiver. The information on our website is not part of this prospectus.

Our board of directors, management and all employees of our company are committed to implementing and adhering to the Code of Ethics. Therefore, it is up to each individual to comply with and follow the Code of Ethics. If an individual is concerned that there has been a violation of the Code of Ethics, he or she will be able to report in good faith to his or her superior. While a record of such reports will be kept confidential by our company for the purposes of investigation, the report may be made anonymously and no individual making such a report will be subject to any form of retribution.

EXECUTIVE COMPENSATION

Summary Compensation Table

The following table provides certain summary information concerning compensation awarded to, earned by or paid to any individual who served as chief executive officer at any time during the year ended December 31, 2023 and each other person who was serving as an executive officer of our company at the end of such year whose total compensation exceeded $100,000. These individuals are referred to in this prospectus as the "named executive officers". For each executive officer who also served as a director of our private company, we have included in such compensation any compensation earned as stock awards and deferred and accrued cash fees for service as a director.

Name and Principal Position	Year	Salary[1]	Bonus[1]	Stock Awards[2]	All Other Compensation[3]	Total
Justin Stiefel	2023	$ 98,653	—	$ —	$ 10,000	$ 108,653
Chief Executive Officer; Treasurer	2022	190,377	—	91,710	10,000	283,087
Jennifer Stiefel	2023	97,962	—	—	10,000	107,962
President; Secretary	2022	176,300	—	91,710	10,000	278,010
Beth Marker[4]	2023	84,917	—	—	—	84,917
SVP Retail Operations	2022	84,990	—	—	—	84,990
Danielle Perkins[4]	2023	150,831	—	—	—	150,831
SVP Wholesale	2022	95,577	—	—	—	95,577

(1) Does not include deferred compensation from 2023 that will be paid upon the closing of this offering, as follows:
- $27,962 to Justin Stiefel;
- $27,692 to Jennifer Stiefel;
- $26,654 to Beth Marker;
- $12,981 to Danielle Perkins.

(2) Represents the aggregate grant date fair value of shares of restricted stock granted to the executive officer during the applicable fiscal year, computed in accordance with FASB ASC Topic 718. These amounts do not reflect the actual value that will eventually be realized by the executive officer at the time the award becomes vested. For additional information regarding the assumptions used in calculating these amounts, see Note 9, "Stockholders Equity" to our consolidated financial statements, and the discussion under the heading "Critical Accounting Policies — Stock-Based Compensation" in "Management's Discussion and Analysis of Financial Condition and Results of Operations," each included elsewhere in this prospectus. Restricted Stock Units (RSUs) issued in 2022 were issued with a value based on a 2022 409A valuation at $91.71 per share. These RSUs were voluntarily cancelled by the recipients in May 2024 and the expenses that we would have incurred as detailed in the table if the awards had settled after this offering will no longer be recognized by our company as an expense.

(3) Other compensation consisted of deferred compensation payable for service as a director. Fees will be paid out following the closing of this offering. Following the closing of this offering, employee directors will not be eligible for additional compensation for service on the board.

(4) These officers were appointed in the first quarter of 2024 and have been added to this table for informational and disclosure purposes.

In addition to our named executive officers, Michael Carrosino's service as our Executive Vice President of Finance and Acting Chief Financial Officer since June 2023 includes compensation at the rate of $80,000 per annum, which will increase to $237,500 per annum upon the closing of this offering when he becomes our Chief Financial Officer. Through June 21, 2024, we had accrued $157,500 in deferred compensation for Mr.Carrosino, which will be paid upon the closing of this offering. For every two-week pay period beyond June 21, 2024 until the closing of this offering, we will accrue an additional $6,058 for his services. When Mr. Carrosino becomes our Chief Financial Officer, we expect to grant to Mr. Carrosino a mix of RSUs and options for approximately 300,000 shares of common stock, assuming a grant value of $5.00 per share at the time of grant, which is the midpoint of the price range for our common stock set forth on the cover page of this prospectus. Such equity will vest over time taking into account the time of service already accrued.

Employment Contracts and Potential Payments Upon Termination or Change in Control

We intend to enter into employment agreements with Justin Stiefel, our Chief Executive Officer, and Jennifer Stiefel, our President, prior to or immediately after the closing of this offering. It is expected that the agreements will contain typical provisions for a public company of our size, including base salaries for each of such officers that are expected to be in the range of $175,000 to $200,000.

We anticipate that as an incentive to continue employment with us, pursuant to such agreements, we will issue to each of them restricted stock awards of common stock or options on vesting schedules to be defined under the 2024 Plan. We also anticipate that under each of these employment agreements, the executive will be entitled to severance in the event we terminate his or her employment without Cause (as defined in the employment agreement), he or she resigns from his or her employment for Good Reason (as defined in the employment agreement), or he or she is terminated as a result of death or disability.

Each of such executives has previously executed agreements with our standard confidentiality restrictions and work-product provisions, as well as customary non-competition covenants and non-solicitation covenants with respect to our employees, consultants and customers.

Equity Compensation Plan Information

The following table provides information as of June 30, 2024, regarding our compensation plans under which equity securities are authorized for issuance:

Plan category[1]	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
	(a)	(b)	(c)
2019 Equity compensation plan approved by security holders	249,253	$ 14.64	7,247
Equity compensation plans not approved by security holders	—	—	—
Total	249,253	$ 14.64	7,247

Of the 116,504 RSUs originally issued under the 2019 Plan at the fair grant value of $157.89 per share, 105,540 RSUs were voluntarily cancelled and 440 RSU's were forfeited by the holders as of May 2024, leaving 11,064 RSUs outstanding with that $157.89 grant value. RSUs that have met the service vesting requirement at the time of the closing of this offering will settle upon the termination of any lock-up agreement executed by the holder in connection with this offering. We expect to recognize $1,746,895 in previously-unrecognized compensation expense for these RSU awards upon the expiration of the lock-up agreements entered into in connection with this offering. In June 2024, the Compensation Committee of our board of directors awarded 232,025 RSUs to employees, directors and consultants with a fair grant value of $4.00 per unit. These RSUs contain a double trigger, and upon grant, were deemed to have met their time-based service requirements for vesting. They will settle on the expiration of the lock-up agreements to be entered into in connection with this offering. Assuming all of the recently-granted RSUs settle into common stock, we would expect to book an expense of $928,100 at the fair grant value of $4.00 per RSU.

Equity Incentive Plans

2019 Equity Incentive Plan.

On April 25, 2019, our board of directors adopted our 2019 Equity Incentive Plan (the "2019 Plan") to provide an additional means to attract, motivate, retain and reward selected employees and other eligible persons. Our stockholders approved the plan on or about April 25, 2019. Employees, officers, directors and consultants that provided services to us or one of our subsidiaries were eligible to receive awards under the 2019 Plan. Awards under the 2019 Plan were issuable in the form of incentive or nonqualified stock options, stock appreciation rights, stock bonuses, restricted stock, stock units and other forms of awards including cash awards.

As of June 30, 2024, stock grants of an aggregate of 243,089 restricted stock units and 6,164 options had been made under the 2019 Plan, and 7,247 shares authorized under the 2019 Plan remained available for award purposes.

Our board of directors may amend or terminate the 2019 Plan at any time. Plan amendments will be submitted to stockholders for their approval as required by applicable law or any applicable listing agency. The 2019 Plan is not exclusive — our board of directors and the Compensation Committee of the board may grant stock and performance incentives or other compensation, in stock or cash, under other plans or authority.

The 2019 Plan will terminate on April25, 2029. However, the plan administrator will retain its authority until all outstanding awards are exercised or terminated. The maximum term of options under the 2019 Plan is seven years after the initial date of the award, unless the options were granted to a stockholder holding stock with more than ten percent of the total combined voting power of all classes of stock of the Company, in which case the maximum term will be five years.

2024 Equity Incentive Plan.

Upon the closing of this offering, our 2024 Equity Incentive Plan (the "2024 Plan") will become effective.

Purpose. The purpose of our 2024 Plan is to encourage and enable our officers, employees, directors and other key persons (including consultants and prospective employees) upon whose judgment, initiative and efforts we largely depend for the successful conduct of our business to acquire a proprietary interest in our company.

Eligibility. Participants in our 2024 Plan may include full or part-time officers, employees, directors and key persons (including advisors and consultants) of our company who are selected to receive awards from time to time by the administrator in its sole discretion.

Administration. Our 2024 Plan is administered by our compensation committee, or, if at any time our compensation committee is not in existence, our board of directors. In addition, to the extent applicable law permits, our board of directors may delegate any of its authority under our 2024 Plan to another committee or one or more officers, and our compensation committee may delegate any of its authority hereunder to one or more officers, except that no such delegation is permitted with respect to awards made to individuals who are subject to Section 16 of the Exchange Act unless the delegation is to another committee consisting entirely of "nonemployee directors" within the meaning of Rule 16b-3 of the Exchange Act. Subject to the provisions of our 2024 Plan, the administrator has the power to administer the plan, including but not limited to, the power to select the eligible officers, employees, directors, and key employees to whom awards are granted; to determine the number of shares to be covered by each award; to determine the terms and conditions of any award and to amend any outstanding award.

Authorized Shares. 2,500,000 shares of our common stock will be authorized for issuance under our 2024 Plan. All authorized shares may be issued as described below under *Types of Awards.* The shares available for issuance may be authorized but unissued shares or shares reacquired by us and held in its treasury. The share reserve under our 2024 Plan is depleted by the maximum number of shares, if any, that may be issuable under an award as determined at the time of grant. However, awards that may only be settled in cash (determined at the time of grant) do not deplete the share reserve.

If (i) an award lapses, expires, terminates or is cancelled without the issuance of shares, (ii) it is determined during or at the conclusion of the term of an award that all or some portion of the shares with respect to which the award was granted will not be issuable on the basis that the conditions for such issuance will not be satisfied, (iii) shares are forfeited under an award, (iv) shares are issued under any award and we subsequently reacquire them pursuant to rights reserved upon the issuance, (v) an award or a portion thereof is settled in cash, or shares are withheld by us in payment of the exercise price or withholding taxes of an award, then such shares will be recredited to the reserve and may again be used for new awards. However, shares recredited to reserve pursuant to clause (iv) in the preceding sentence may be subject to further restrictions as called for in the 2024 Plan. The payment of dividend equivalents in cash in conjunction with any outstanding awards shall not count against the overall share limit in the 2024 Plan.

Adjustments to Shares. If, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in our capital stock, the outstanding shares are increased or decreased or are exchanged for a different number or kind of shares or other securities of our company, or additional shares or new or different shares or other securities of our company or other non-cash assets are distributed with respect to such shares or other securities, or, if, as a result of any merger, consolidation or sale of all or substantially all of our assets, the outstanding shares are converted into or exchanged for a different number or kind of securities of our company or any successor entity (or a parent or subsidiary thereof), the administrator will make an appropriate or proportionate adjustment if allowed or required in (i) the maximum number of shares reserved for issuance under our 2024 Plan; (ii) the number and kind of shares or other securities

subject to any then outstanding awards under our 2024 Plan; and (iii) the exercise price for each share subject to any then outstanding stock options. If required, the administrator also may adjust the number of shares subject to outstanding awards and the exercise price and the terms of outstanding awards to take into consideration material changes in accounting practices or principles, extraordinary dividends, acquisitions or dispositions of stock or property or any other event if it is determined by the administrator that such adjustment is appropriate to avoid distortion in the operation of our 2024 Plan, subject to the limitations described in our 2024 Plan.

Effect of a Sale Event. Unless otherwise provided in an award or other agreement, upon a "sale event," if the successor or surviving corporation (or parent thereof) so agrees, then, without the consent of any holder of an award (or other person with rights in an award), some or all outstanding awards may be assumed, or replaced with the same type of award with similar terms and conditions, subject to adjustments described in our 2024 Plan, by the successor or surviving corporation (or parent thereof) in the sale event. A "sale event" is generally defined for this purpose as (i) any person becoming the beneficial owner of 50% or more of the combined voting power of our then-outstanding securities (subject to exceptions and other limitations scribed in our 2024 Plan), (ii) our stockholders approving a plan of complete liquidation or dissolution of our company, (iii) the consummation of (a) an agreement for the sale or disposition of all or substantially all of our assets (other than to certain excluded persons), (b) a merger, consolidation or reorganization of our company with or involving any other corporation (subject to specified exceptions), or (iv) a change in the majority of our board of directors that is not approved by a supermajority of the existing board. More detailed descriptions and additional information on limitations relating to each of these sale events is in our 2024 Plan.

If, after a sale event in which the awards are assumed or replaced, the award holder experiences a termination event as a result of a termination of service without cause, due to death or disability, or as a result of a resignation for good reason, in each case within 24 months after a sale event, then the award holder's awards will be vested in full or deemed earned in full (assuming target performance, if applicable).

To the extent the awards are not assumed or replaced in the sale event, then, (i) each option will become immediately and fully vested and, unless the administrator determines otherwise, will be canceled on the sale event in exchange for a cash payment equal to the excess of the price paid in the sale event over the exercise price of the option as may be required in the Plan, and all options with an exercise price lower than the price paid in the sale event will be canceled for no consideration, (ii) restricted stock and restricted stock units (not subject to performance goals) will be vested in full and settled, along with any accompanying dividend equivalent units, and (iii) all awards subject to performance goals with outstanding performance periods will be canceled in exchange for a cash payment equal to the amount that would have been due under the award if performance had been satisfied at the better of target or the performance trend through the sale event.

Solely with respect to awards granted on and after the completion of this offering, and except as otherwise expressly provided in any agreement with an award holder, if the receipt of any payment by an award holder under the circumstances described above would result in the payment by the award holder of any excise tax provided for in Section 280G and Section 4999 of the Code, then the amount of such payment shall be reduced to the extent required to prevent the imposition of such excise tax.

Limit on Director Awards. The maximum value of awards granted during a single fiscal year to any non-employee director, taken together with any cash fees paid during the fiscal year to the non-employee director in respect of the director's service as a member of our board of directors during such year (including service as a member or chair of any committees of the board), shall be established by the administrator for any calendar year, although our board of directors may, in its discretion, make exceptions to any such limits in extraordinary circumstances.

Types of Awards. Awards under our 2024 Plan may consist of incentive stock options, non-qualified stock options, restricted stock awards, unrestricted stock awards, restricted stock units, stock appreciation rights or any combination of those awards, or other legal instruments, securities or awards approved by the Compensation Committee of our board of directors. Some provisions of our 2024 Plan relating to these award types are summarized below.

Stock Options. A stock option is an award entitling the recipient to acquire shares, at such exercise price as determined by the administrator (which may not be lower than the fair market value of the underlying shares on the date of grant) and subject to such restrictions and conditions as the administrator may determine at the time of grant. Conditions may be based on continuing employment (or other service relationships) and/or achievement of pre-established performance goals and objectives. Stock options granted under our 2024 Plan may be either non-qualified stock options or incentive stock options. Incentive stock options may be granted only to our employees

or employees of our subsidiaries and must meet certain requirements specified in our 2024 Plan and the Code. Stock options will become exercisable at such time or times as determined by the administrator at or after the grant date and set forth in the stock option agreement. The administrator may at any time accelerate the exercisability of all or any portion of any stock option.

Restricted Stock. A restricted stock award is a grant (or sale, at such purchase price as determined by the administrator) of shares that are subject to such restrictions and conditions as the administrator may determine at the time of grant. Conditions may be based on continuing employment (or other service relationships) or achievement of pre-established performance goals and objectives. The terms and conditions of each such agreement shall be determined by the administrator.

Unrestricted Stock. The administrator may grant (or sell at par value or such higher purchase price determined by the administrator) unrestricted shares, in respect of past services, in exchange for cancellation of a compensation right, as a bonus, or any other valid consideration, or in lieu of any cash compensation due to such individual.

Restricted Stock Units and Dividend Equivalent Units. The administrator may grant restricted stock units representing the right to receive a future payment of cash, the amount of which is determined by reference to our shares, shares or a combination of cash and shares. The administrator will determine all terms and conditions of an award of restricted stock units, including but not limited to the number granted, in what form they will be settled, whether performance goals must be achieved for the restricted stock units to be earned, the length of any vesting or performance period and the date of payment, and whether the grant will include dividend equivalent units. The administrator will determine all terms and conditions of an award of dividend equivalent units, including whether payment will be made in cash or shares. However, no dividend equivalent units may be paid for restricted stock units not earned or that do not become vested.

Stock Appreciation Rights. A stock appreciation right will entitle a participant (or other individual entitled to exercise the stock appreciation right) to receive from us upon exercise of the exercisable portion of the stock appreciation right an amount determined by multiplying the excess, if any, of the awarded fair market value or fair grant value, as applicable, of one share of common stock on the date of exercise over the exercise price of the stock appreciation right by the number of shares with respect to which the stock appreciation right is exercised, subject to any limitations of the 2024 Plan or that the administrator may impose. A stock appreciation right may be payable in cash, shares of common stock valued at fair market value or a combination of the two, as the administrator may determine or provide in the award agreement. The administrator will establish each option's and stock appreciation right's exercise price per share and shall specify the exercise price in the award agreement. Unless otherwise determined by the administrator, the exercise price will not be less than 100% of the awarded fair market value or fair grant value, as applicable, of one share on the grant date of the option or stock appreciation right. In no event shall the option price per share of any option be less than par value per share of our common stock.

Termination of Employment or Service. Except as otherwise provided in any award agreement or an award holder's employment offer letter, severance letter or services agreement, or as determined by administrator at the time of the award holder's termination of employment or service:

- If the termination is for cause, the award holder will forfeit all outstanding awards immediately upon termination and will not be permitted to exercise any stock options following termination.
- If the termination is due to the award holder's death or disability (when the award holder could not have been terminated for cause), the award holder will forfeit the unvested portion of any award, and any vested stock options will remain exercisable until the earlier of the original stock option expiration date or 12 months from the date of termination, subject to calculating the triggering event that begins the tacking period as called for in the 2024 Plan.
- If the termination was for any reason other than cause, death or disability (when the award holder could not have been terminated for cause), the award holder will forfeit the unvested portion of any award, and any vested stock options will remain exercisable until the earlier of the original stock option expiration date or three months from the date of termination, subject to certain restriction in the 2024 Plan.

Term of Plan and Plan Amendments. Our 2024 Plan will continue until all shares reserved for issuance under it are issued, or, if earlier, until the administrator terminates it as described below. No incentive stock options may be granted after the ten (10) year anniversary of the date of stockholder approval of our 2024 Plan unless the stockholders have approved an extension.

Our board of directors may, at any time, amend, terminate or discontinue our 2024 Plan, except that our stockholders must approve any amendment to the extent approval is required by Section 16 of the Exchange Act, the Code, the listing requirements of any principal securities exchange or market on which our shares are then traded or any other applicable law. In addition, stockholders must approve any amendment to our 2024 Plan that would materially increase the number of shares reserved (except as permitted by the adjustment provisions of our 2024 Plan) or that would diminish the protections afforded by the anti-repricing provisions of our 2024 Plan.

Any termination of our 2024 Plan will not affect the authority of our board of directors and the administrator to administer outstanding awards or affect the rights of award holders with respect to awards previously granted to them.

Award Amendments, Cancellation and Disgorgement. Subject to the anti-repricing and other requirements of our 2024 Plan, the administrator may modify, amend or cancel any award. However, except as otherwise provided in our 2024 Plan or an award agreement, the consent of the award holder is required for any amendment that materially diminishes the holder's rights under the award. Our 2024 Plan includes exceptions to the consent requirement for actions necessary to comply with applicable law or the listing requirements of securities exchanges, to preserve favorable accounting or tax treatment of any award for our company or to the extent the administrator determines that an action does not materially and adversely affect the value of the award or is in the best interest of the affected award holder or any other person who has an interest in the award.

The administrator has full power and authority to terminate or cause an award holder to forfeit an award, and require an award holder to disgorge to us, any gains attributable to the award, if the award holder engages in any action constituting, as determined by the administrator in its discretion, cause for termination, or a breach of any award agreement or any other agreement between the award holder and us or one of our affiliates concerning noncompetition, non-solicitation, confidentiality, trade secrets, intellectual property, non-disparagement or similar obligations. In addition, any awards granted pursuant to our 2024 Plan, and any shares issued or cash paid pursuant to an award, will be subject to any recoupment or claw-back policy that is adopted by us from time to time, or any recoupment or similar requirement otherwise made applicable to us by law, regulation or listing standards.

Repricing and Backdating Prohibited. Notwithstanding anything in our 2024 Plan to the contrary, and except for the adjustments provided for in our 2024 Plan, neither the administrator nor any other person may (i) amend the terms of outstanding stock options to reduce the exercise or grant price of such outstanding stock options; (ii) cancel outstanding stock options in exchange for stock options with an exercise or grant price that is less than the exercise or grant price of the original stock options; or (iii) cancel outstanding stock options with an exercise or grant price above the current fair market value of a share in exchange for cash or other securities. In addition, the administrator may not make a grant of a stock option with a grant date that is effective prior to the date the administrator takes action to approve the award.

Incentive Plan Awards

We did not make any stock option grants or other equity awards to our executive officers during the year ended December 31, 2023.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth outstanding equity awards to our named executive officers as of December 31, 2023.

	Option Awards			Stock Awards	
Name (a)	Number of Securities Underlying Unexercised Options (#) Exercisable (b)	Option Exercise Price (e)	Option Expiration Date (f)	Number of Shares or Units of Stock that have not Vested[1] (g)	Market Value of Shares or Units of Stock that have not Vested[2] (h)
Justin Stiefel					
Restricted Stock Unit Award[3]	—	—	—	26,647	$ 4,287,236
Restricted Stock Unit Award[4]	—	—	—	1,140	$ 183,415
Restricted Stock Unit Award[5]	—	—	—	2,174	$ 349,775
Restricted Stock Unit Award[6]	—	—	—	950	$ 152,846
Restricted Stock Unit Award[7]	—	—	—	1,282	$ 206,261
Restricted Stock Unit Award[5]	—	—	—	2,280	$ 366,829
Jennifer Stiefel					
Restricted Stock Unit Award[3]	—	—	—	26,647	$ 4,287,236
Restricted Stock Unit Award[4]	—	—	—	1,140	$ 183,415
Restricted Stock Unit Award[5]	—	—	—	2,469	$ 397,237
Restricted Stock Unit Award[6]	—	—	—	950	$ 152,846
Restricted Stock Unit Award[7]	—	—	—	1,282	$ 206,261
Restricted Stock Unit Award[5]	—	—	—	2,280	$ 366,829

(1) All Restricted Stock Unit Awards outstanding at December 31, 2023 had a "double trigger," including a service-based component and a liquidity-event component (including applicable lock-up periods) must be satisfied prior to an award being settled. The liquidity-event component of these Restricted Stock Unit Awards consisted of (a) a Change of Control (as defined in the related Restricted Stock Unit Award), (b) the expiration of any lock-up in connection with an IPO (as defined in the related Restricted Stock Unit Award), (c) the Sale of a Heritage Brand (as defined in the related Restricted Stock Unit Award) or the sale a subsidiary or any entity in which we have an ownership stake of no less than 10%, or upon the receipt by us of a third-party valuation or outside investment valuing us as a whole or any subsidiary, or any entity in which we have an ownership stake of no less than 10% at $200 million or more, (d) the occurrence of a Qualified Financing (as defined in the related Restricted Stock Unit Award) or (e) the date that is one day prior to the tenth anniversary of the grant date. Upon settlement, the Restricted Stock Unit Awards were to be paid in shares of our common stock. These RSUs were voluntarily cancelled by the recipients in May 2024 and expenses that would have been incurred as detailed in the table if the awards had settled after this offering will no longer be recognized by us as an expense. The following footnotes provide details on the vesting.

(2) The value reflected is based upon the fair market value of a share of our common stock of $160.89 on June 30, 2022 based upon a 409A valuation received by us on such date. These RSUs were voluntarily cancelled by the recipients in May 2024 and the expenses that would have been incurred as detailed in the table if the awards had settled after this offering will no longer be recognized by us as an expense.

(3) As of December 31, 2023, 26,549 of the shares of our common stock granted under this Restricted Stock Unit Award had met the service-based vesting requirement and would have been settleable upon the fulfillment of the liquidity event requirement upon the closing of this offering. The 98 remaining unvested shares met the service-based vesting requirement on January 1, 2024.

(4) As of December 31, 2023, 1,140 of the shares of our common stock granted under this Restricted Stock Unit Award had met the service-based vesting requirement and would have been settleable upon the fulfillment of the liquidity event requirement. As of such date, this Restricted Stock Unit Award had met the service-based vesting requirement and would have been settleable upon the fulfillment of the liquidity event requirement upon the closing of this offering.

(5) As of December 31, 2023, this Restricted Stock Unit Award had met the service-based vesting requirement and would have been settleable upon the fulfillment of the liquidity event requirement upon the closing of this offering.

(6) As of December 31, 2023, 771 of the shares of our common stock granted under this Restricted Stock Unit Award had met the service-based vesting requirement and would have been settleable upon the fulfillment of the liquidity event requirement upon the closing of this offering. The 179 unvested shares of our common stock were subject to a monthly vesting schedule whereby approximately 19 shares of our common stock would have met the service-based vesting requirement monthly until the service-based vesting requirement was met on September 1, 2024.

(7) As of December 31, 2023, 721 of the shares of our common stock granted under this Restricted Stock Unit Award had met the service-based vesting requirement and would have been settleable upon the fulfillment of the liquidity event requirement upon the closing of this offering. The 561 unvested shares were subject to a monthly vesting schedule whereby approximately 26 shares of our common stock would have met the service-based vesting requirement monthly until the service-based vesting requirement was met on September 29, 2025.

In May 2024, the RSUs outstanding as of December 31, 2023 were voluntarily cancelled by the holders. On June 5, 2024, the Compensation Committee of our board of directors granted RSUs to executive officers as follows:

	Stock Awards	
	Number of Shares or Units of Stock that have not	Market Value of Shares or Units of Stock that have not
Name	**Vested[1]**	**Vested[2]**
Justin Stiefel		
Restricted Stock Unit Award	40,000	$ 160,000
Jennifer Stiefel		
Restricted Stock Unit Award	40,000	$ 160,000
Beth Marker		
Restricted Stock Unit Award	1,500	$ 6,000
Danielle Perkins		
Restricted Stock Unit Award	2,500	$ 10,000

(1) All Restricted Stock Unit Awards are “double trigger” and both a service-based component and a liquidity-event component (including applicable lock-up periods) must be satisfied prior to an award being settled. The liquidity-event component of these Restricted Stock Unit Awards consists of (a) a Change of Control (as defined in the related Restricted Stock Unit Award), (b) the expiration of any lock-up in connection with an IPO (as defined in the related Restricted Stock Unit Award), (c) the Sale of a Heritage Brand (as defined in the related Restricted Stock Unit Award) or the sale of any Heritage subsidiary, or any entity in which we have an ownership stake of no less than 10%; or upon our receipt of a third-party valuation or outside investment valuing our company as a whole or any subsidiary at $200 million or more.

(2) The value reflected is based upon the fair grant value of $4.00 per share.

DIRECTOR COMPENSATION

General

The following discussion describes the significant elements of the expected compensation program for members of the board of directors and its committees. The compensation of our directors is designed to attract and retain committed and qualified directors and to align their compensation with the long-term interests of our shareholders. Directors who are also executive officers (each, an "Excluded Director") will not be entitled to receive any compensation for his or her service as a director, committee member or Chair of our board of directors or of any committee of our board of directors.

Director Compensation

We have accrued, but never paid, a cash retainer to directors for their service on the Board. Independent directors who served in 2023 and 2022 agreed to defer cash compensation until this offering is completed. Upon the successful closing of this offering, independent directors will receive $10,000 per year in cash compensation for services rendered in 2023 and 2022, to be calculated pro rata if a full year was not served.

In addition, directors were historically granted incentive options or restricted stock units for annual service on the Board. The granting of these awards annually was disrupted between 2019 and the end of 2022. On December 9, 2022, each director received non-cash restricted stock units in the amount of 570 units for every year of service for the years 2019 through 2022. Newer directors received a pro rata number of restricted stock units relative to the amount of time they had served on the Board. Directors did not incur any travel expenses to attend Board and committee meetings.

The following table sets forth the aggregate non-employee director compensation earned, but agreed to be deferred, for services for the year ended December 31, 2023 (excluding compensation to our executive officers set forth in the summary compensation table above).

Name	Fees Earned or Paid in Cash[1]	Stock Awards	All Other Compensation	Total ($)
Jeffery Wensel, M.D., Ph.D.	$ 10,000	$ —	$ —	$ 10,000
Laura Baumann[2]	10,000	—	—	10,000
Eric S. Trevan, Ph.D.	10,000	—	—	10,000
Christopher (Toby) Smith	10,000	—	—	10,000
Total:	$ 40,000	$ —	$ —	$ 40,000

(1) Represents cash fees payable to the members of our board of directors for the year ended December 31, 2023. Directors have agreed to defer their cash fees until after the closing of this offering.
(2) Ms. Baumann resigned from our board of directors in February 2024.

In May 2024, the RSUs depicted on the previous table that were outstanding as of December31, 2023 were voluntarily cancelled by the holders. On June 5, 2024, the Compensation Committee of our board of directors approved the grant of RSUs to our directors as follows:

	Stock Awards	
	Number of Shares or Units of Stock that have not	Market Value of Shares or Units of Stock that have not
Name	Vested[1]	Vested[2]
Justin Stiefel		
Restricted Stock Unit Award	2,000	$ 8,000
Jennifer Stiefel		
Restricted Stock Unit Award	2,000	$ 8,000
Jeffery Wensel, M.D., Ph.D.		
Restricted Stock Unit Award	2,000	$ 8,000
Christopher (Toby) Smith		
Restricted Stock Unit Award	2,000	$ 8,000
Eric S. Trevan, Ph.D.	2,000	$ 8,000
Restricted Stock Unit Award		

Cash Compensation. Under a new director compensation program adopted in connection with this offering, we will pay each non-employee director a cash fee, payable quarterly, of $40,000 per year for service on our board of directors.

Committee Fees. If a non-employee director is designated to participate on a committee of our board of directors as either a chairperson or non-chairperson member, such director will be entitled to compensation in addition to the quarterly cash fee in accordance with the following table:

	Chair	Member
Audit Committee	$ 5,000/qtr	$ 2,500/qtr
Compensation Committee	$ 5,000/qtr	$ 2,500/qtr
Nominating and Governance Committee	$ 5,000/qtr	$ 2,500/qtr

Equity Awards. Each non-employee director will receive a one-time initial restricted stock unit award for shares of our common stock, which shares shall vest in arrears in two equal tranches on the first and second anniversaries of service on our Board. The amount will be set by the Compensation Committee. Each non-employee director shall also be eligible to receive grants of stock options, each in an amount designated by the Compensation Committee of our board of directors, from any equity compensation plan approved by the Compensation Committee of our Board. Directors who receive such awards for their service on the board will be entitled to keep the vested grants for the year pro rata up to the date of a "qualified event". A "qualified event" includes (i) death, (ii) incapacitation from which the director is not likely to return, (iii) removal other than for cause, (iv) resignation, (v) voluntarily electing not to stand for re-election, or (vi) not being nominated for election to the board for an additional term. In the case of (v) and (vi), the last date shall be the date on which the new director's term begins.

In addition to such compensation, we will reimburse each non-employee director for all preapproved expenses within 30 days of receiving satisfactory written documentation setting out the expense actually incurred by such director. These include reasonable transportation and lodging costs incurred for attendance at any meeting of our Board of Directors.

Additionally, on April 1, 2023, we entered into a consulting agreement with AV Train Consulting, LLC ("AV Train"), an entity wholly owned by Andrew Varga, our director nominee, pursuant to which Mr. Varga agreed to act as our Acting Chief Revenue Officer and provide other related sales, marketing and strategic planning services. In exchange for the provision of such services, we paid AV Train an amount equal to $12,500 per month. The consulting agreement with AV Train expired on April 1, 2024 and AV Train is now consulting and providing such services on a month-to-month basis.

PRINCIPAL STOCKHOLDERS

The following table sets forth certain information regarding the beneficial ownership of our common stock as of October 1, 2024 by:

- each person known by us to be a beneficial owner of more than 5% of our outstanding common stock;
- each of our directors and director nominees;
- each of our named executive officers; and
- all directors and executive officers as a group.

The amounts and percentages of common stock beneficially owned are reported based on regulations of the SEC governing the determination of beneficial ownership of securities. Under the rules of the SEC, a person is deemed to be a "beneficial owner" of a security if that person has or shares "voting power," which includes the power to vote or to direct the voting of such security, or "investment power," which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities of which that person has a right to acquire beneficial ownership within 60 days after October 1, 2024. Under these rules, more than one person may be deemed a beneficial owner of the same securities, and a person may be deemed a beneficial owner of securities as to which he has no economic interest. Except as indicated by footnote, to our knowledge, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them.

In the table below, the percentage of beneficial ownership of our common stock is 3,653,405shares of common stock outstanding as of October 1, 2024, after giving pro forma effect to the exchange by certain stockholders of an aggregate of 2,816,291 shares of common stock for prepaid warrants to purchase 2,816,291 shares of common stock prior to the consummation of this offering. Unless otherwise noted below, the address of the persons listed on the table is c/o Heritage Distilling Holding Company, Inc., 9668 Bujacich Road, Gig Harbor, Washington 98332.

	Shares Beneficially Owned Prior to Offering		Shares Beneficially Owned After Offering	
Name of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percentage of Class (%)[1]	Amount and Nature of Beneficial Ownership	Percentage of Class (%)[1]
Named Executive Officers and Directors				
Justin Stiefel	40,699[2]	1.11%	40,699[2]	*
Jennifer Stiefel	64,844[3]	1.76	64,844[3]	1.25%
Beth Marker	189[4]	*	189[4]	*
Danielle Perkins	—	—	—	—
Troy Alstead	570[5]	*	570[5]	*
Christopher (Toby) Smith	—	—	—	*
Eric S. Trevan, Ph.D.	—	—	—	—
Andrew Varga	—	—	—	—
Jeffrey Wensel, M.D., Ph.D.	26,193	*	26,193	*
Executive Officers and Directors as a Group (9 persons)	132,495	3.63	132,495	2.57
Other 5% Shareholders				
Anson Investments Master Fund LP[6]	367,061[7]	10.05	367,061[7]	7.12
Daniel B. Cathcart[8]	450,000[8]	12.32	512,221[9]	9.82
Douglas A. George[10]	386,502[10]	10.58	386,502[10]	7.50
Tiburon Opportunity Fund, L.P.[11]	380,500[12]	9.99	529,500[13]	9.99

* less than 1%.

(1) The percentages in the table have been calculated on the basis of treating as outstanding for a particular person, all shares of our capital stock outstanding. On October 1, 2024, there were 3,653,405 shares of our common stock outstanding, as described above. After giving effect to the consummation of this offering but assuming no exercise of the underwriters' overallotment option in such offering, there will be 5,153,405 shares of our common stock outstanding assuming the sale of 1,500,000 shares in this offering. To calculate a stockholder's percentage of beneficial ownership, we include in the denominator the common stock outstanding and in the numerator all shares of our common stock issuable to that person in the event of the exercise of outstanding options and other derivative securities owned by that person that are exercisable

or will come into existence within 60 days of October 1, 2024. Common stock options and derivative securities held by other stockholders are disregarded in this calculation. Therefore, the denominator used in calculating beneficial ownership among our stockholders may differ. Unless we have indicated otherwise, each person named in the table has sole voting power and sole investment power for the shares listed opposite such person's name.

(2) Represents 11,962 shares of common stock, 27,000 shares of common stock issuable upon the exchange of warrants upon consummation of this offering, and 1,737 shares of common stock held in Mr. Stiefel's IRA account. Mr. Stiefel disclaims beneficial ownership of the shares held by Ms. Stiefel.

(3) Represents 37,584 shares of common stock, 27,000 shares of common stock issuable upon the exchange of warrants upon consummation of this offering, and 260 shares of common stock held in Ms. Stiefel's IRA account. Ms. Stiefel disclaims beneficial ownership of the shares held by Mr. Stiefel.

(4) Represents five shares of common stock and 184 shares of common stock issuable upon the exercise of options that may be exercised within 60 days of October 1, 2024.

(5) Represents 570 shares of common stock issuable upon the exercise of options that may be exercised within 60 days of October 1, 2024.

(6) Anson Advisors Inc and Anson Funds Management LP, the Co-Investment Advisers of Anson Investments Master Fund LP ("Anson"), hold voting and dispositive power over the shares held by Anson. Tony Moore is the manager of Anson Management GP LLC, which is the general partner of Anson Funds Management LP. Moez Kassam and Amin Nathoo are directors of Anson Advisors Inc. Mr. Moore, Mr. Kassam and Mr. Nathoo each disclaim beneficial ownership of these shares except to the extent of their pecuniary interest therein. The principal business address of Anson is Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

(7) Does not include 243,833 shares of common stock issuable upon the exercise of warrants or 27,700 shares of common stock issuable upon the conversion of the Series A Preferred Stock, neither of which may be exercised or converted, respectively, at any time that the holder beneficially owns 4.99% or more of the outstanding common stock.

(8) Does not include 141,250 shares of common stock issuable upon the exercise of warrants or 62,221 shares of common stock issuable upon the exercise of pre-paid warrants, neither of which may be exercised at any time that the holder beneficially owns 4.99% or more or 9.99% or more of the outstanding common stock, respectively. The principal business address for Daniel B. Cathcart is 2618 Marion Drive, Fort Lauderdale, Florida 33316.

(9) Following this offering, warrants to purchase 62,221 shares of common stock will become exercisable as the exercise of such warrants will not be limited by the 9.99% blocker contained in such warrants.

(10) Does not include 87,208 shares of common stock issuable upon the exercise of warrants that may not be exercised at any time that the holder beneficially owns 4.99% or more of the outstanding common stock. The principal business address for Douglas. A George is 50 East Road, Unit 6A, Delray Beach, Florida 33483.

(11) Bortel Investment Management, LLC is the general partner and the investment adviser of Tiburon Opportunity Fund, L.P. ("Tiburon"). Peter Bortel is the sole manager of Bortel Investment Management, LLC. Bortel Investment Management, LLC and Mr. Bortel disclaim beneficial ownership of the reported securities in reliance on Rule 16a-1(a)(1)(v) and (vii) and disclaim any obligation to file reports under Section 16 other than as directors by deputization. Bortel Investment Management, LLC and Mr. Bortel have no pecuniary interest in the reported securities held in Tiburon's account and disclaim: (a) beneficial ownership thereof for purposes of Rule 16a-1(a)(2), and (b) beneficial ownership securities held by Tiburon for purposes of Rule 16a-1(a)(2), except to the extent of their pecuniary interest therein. The principal business address of Tiburon is 13313 Point Richmond Beach Road NW, Gig Harbor, Washington 98332.

(12) Represents 225,000 shares of common stock and 155,500 shares of common stock issuable upon the exercise of pre-paid warrants that may be exercised at any time that the holder beneficially owns 9.99% or less of the outstanding common stock. Does not include 444,616 shares of common stock issuable upon the exercise of warrants or 27,700 shares of common stock issuable upon the conversion of the Series A Preferred Stock, neither of which may be exercised or converted, respectively, at any time that the holder beneficially owns 4.99% or more, or 2,449,570 shares of common stock issuable upon the exercise of pre-paid warrants that may not be exercised at any time that the holder beneficially owns 9.99% or more of the outstanding common stock.

(13) Following this offering, warrants to purchase 149,000 shares of common stock will become exercisable as the exercise of such warrants will not be limited by the 9.99% blocker contained in such warrants. Does not include 444,616 shares of common stock issuable upon the exercise of warrants or 27,700 shares of common stock issuable upon the conversion of the Series A Preferred Stock, neither of which may be exercised or converted, respectively, at any time that the holder beneficially owns 4.99% or more, or 2,449,570 shares of common stock issuable upon the exercise of pre-paid warrants that may not be exercised at any time that the holder beneficially owns 9.99% or more of the outstanding common stock.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Procedures for Approval of Related Party Transactions

A "related party transaction" is any actual or proposed transaction, arrangement or relationship or series of similar transactions, arrangements or relationships, including those involving indebtedness not in the ordinary course of business, to which we or our subsidiaries were or are a party, or in which we or our subsidiaries were or are a participant, in which the amount involved exceeded or exceeds the lesser of (i) $120,000 or (ii) one percent of the average of our total assets at year-end for the last two completed fiscal years and in which any related party had or will have a direct or indirect material interest. A "related party" includes:

- any person who is, or at any time during the applicable period was, one of our executive officers or one of our directors;
- any person who beneficially owns more than 5% of our common stock;
- any immediate family member of any of the foregoing; or
- any entity in which any of the foregoing is a partner or principal or in a similar position or in which such person has a 10% or greater beneficial ownership interest.

In connection with the consummation of this offering, our board of directors will adopt a written related-party transactions policy. Pursuant to this policy, the Audit Committee of our board of directors will review all material facts of all related-party transactions and either approve or disapprove entry into the related-party transaction. In determining whether to approve or disapprove entry into a related-party transaction, our Audit Committee shall take into account, among other factors, the following: (i) the benefits of the transaction; (ii) the terms of the transaction; and (iii) whether the transaction would impact the independence of a Related Party, as defined in the policy.

Related Party Transactions

With the exception of the compensation arrangements for our named executive officers and directors, which are describe above, and the transactions set forth below, we were not a party to any related party transactions during the year ended December 31, 2023 or since December 31, 2023, and there are no currently proposed related-party transaction that is under consideration by us.

Transactions with Tiburon Opportunity Fund, L.P. Between April 19, 2022 and November 8, 2022, Tiburon Opportunity Fund, L.P., as well as the lead investor in Tiburon Opportunity Fund, L.P. individually (together "Tiburon"), a related party that is a current stockholder of our company that owned more than 10% of our outstanding common stock as of December 31, 2023 and 2022, purchased our unsecured convertible promissory notes in the aggregate principal amount of $6,311,250 that bore interest at the rate of 29% per annum and were to mature on July 31, 2024. In connection with the purchase of such unsecured convertible promissory notes, we issued to Tiburon common stock purchase warrants to purchase up to $2,337,500 shares of common stock after the closing of this offering for a purchase price equal to the purchase price of the shares of common stock to be sold in this offering. In April 2024, we amended the exercise price of such warrants to a fixed price of $6.00 per share, which fixed the number of shares issuable upon the exercise of such warrants at 389,583 shares.

Additionally, in March 2023, Tiburon purchased from us an unsecured convertible promissory note in the principal amount of $1,620,000 that bore interest at the rate of 29% per annum and was to mature on July 31, 2024. Between May 1, 2023 and September 30, 2023, Tiburon (as well as the lead investor in Tiburon) purchased from us unsecured convertible promissory notes in the aggregate principal amount of $2,362,500 that bore interest at the rate of 10% per annum and were to mature on July 31, 2024. Between October 1, 2023 and April 17, 2024, Tiburon purchased from us additional unsecured convertible promissory notes in the aggregate principal amount of $3,247,425 ($2,405,500 of principal before exchange into common stock) that bore interest at the rate of 12.5% per annum and were to mature on August 29, 2026. We did not make any payments of principal or interest on the promissory notes issued to Tiburon (or the lead investor in Tiburon). On November 1, 2023, the convertible promissory notes issued to Tiburon (as well as the lead investor in Tiburon) in 2022 and prior to August 29, 2023 were exchanged (contingent upon the consummation of this offering) for an aggregate of 1,717,559 shares of our common stock. On April18, 2024, the remaining promissory notes issued to Tiburon (as well as the lead investor in Tiburon) were exchanged (contingent upon the consummation of this offering) for an aggregate of 1,203,783 shares of our common stock.

Transactions with Other Related Parties. As of November 1, 2023, Anson Investments Master Fund LP ("Anson"), Daniel B. Cathcart ("Cathcart"), and Douglas A. George ("George"), were each a related party that is a current stockholder of our company that owned more than 5% of our outstanding common stock. Between November 10, 2023 and February 13, 2024, Anson purchased unsecured convertible promissory notes in the aggregate principal amount of $156,244 ($150,000 of principal before exchange into common stock), Cathcart purchased unsecured convertible promissory notes in the aggregate principal amount of $503,000 ($500,000 of principal before exchange into common stock), and George purchased unsecured convertible promissory notes in the aggregate principal amount of $410,650 ($400,000 of principal before exchange into common stock) each that bore interest at the rate of 12.5% per annum and were to mature on August 29, 2026. We did not make any payments of principal or interest on the promissory notes issued to Anson, Cathcart or George. On April 4, 2024, the promissory notes issued to Cathcart were exchanged (contingent upon the consummation of this offering) for an aggregate of 361,600 shares of our common stock. On April9, 2024, the promissory notes issued to George were exchanged (contingent upon the consummation of this offering) for an aggregate of 296,680 shares of our common stock. On April 12, 2024, the promissory notes issued to Cathcart were exchanged (contingent upon the consummation of this offering) for an aggregate of 111,330 shares of our common stock.

Factoring Agreements. On May 3, 2024, we secured $100,000 under the terms of an accounts receivable factoring arrangement with Tiburon for which we paid a $10,000 origination fee and were obligated to pay a fee of $1,000 for every two weeks any payment remained overdue. Payment under the factoring arrangement was due the earlier of: (i) the third day following our receipt of payment under the factored receivable; (ii) our achievement of certain fundraising milestones; or (iii) on June 15, 2024.

As of July 1, 2024, we secured $166,667 under the terms of an accounts receivable factoring arrangement with Tiburon for which we paid a $16,667 origination fee and were obligated to pay a fee of $1,000 for every two weeks any payment remained overdue. Payment under the factoring arrangement was due on the earlier of: (i) the third day following receipt of payment under the factored receivable; (ii) our achievement of certain fundraising milestones; or (iii) August 15, 2024. As of June 30, 2024, the $166,667 had been received pending execution of the factoring agreement on July 1, 2024.

As of July 5, 2024, we secured $250,000 under the terms of an accounts receivable factoring arrangement with Anson for which we paid $27,000 in fees. Our repayment obligations under the factoring arrangement were subsequently exchanged for Series A Preferred Stock.

In August 2024, the $100,000 and $166,667 received from Tiburon under the terms of the factoring arrangement, including accrued fees and related warrants, was exchanged for an aggregate of 29,661 shares of Series A Preferred Stock and 13,333 warrants to purchase shares of common stock at the lesser of (i) $5.00 per share, or (ii) the price per share of the common stock sold in this offering, and warrants to purchase 77,778 shares of common stock at an exercise price of $6.00 per share.

In September 2024, the $250,000 received from Anson and the $27,000 in accrued fees under the terms of the factoring arrangement was exchanged for an aggregate of 27,700 shares of Series A Preferred Stock and 12,500 warrants to purchase shares of common stock at the lesser of (i) $5.00 per share, or (ii) the price per share in this offering. Under the exchange agreement, Anson retained its warrants to purchase 83,333 shares of common stock at an exercise price of $6.00 per share.

For further information, please see Notes 5, 14 and 16 of our unaudited condensed consolidated financial statements for the six months ended June 30, 2024 included elsewhere in this prospectus.

Sale of Common Warrants in Concurrent Private Placement. Concurrently with the sale of common stock in this offering, we will issue and sell to certain existing security holders of our Company that are investors in this offering Common Warrants to purchase up to an aggregate of 500,000 shares of common stock at an exercise price equal to $0.01 per share. The Common Warrants will be sold to such purchasers for a purchase price per Common Warrant equal to the price per share at which the common stock is sold in this offering less $0.01. We have been advised by certain of our stockholders who beneficially own more than 5% of our outstanding common stock that they intend to acquire additional shares of common stock in this offering and Common Warrants in our concurrent private placement. However, the amounts of such shares or Common Warrants cannot currently be determined and there can be no assurance that any of such stockholders will acquire any shares of common stock or Common Warrants in such offerings. Any purchases of common stock or Common Warrants by any such stockholders will be made on the same terms as such shares or Common Warrants are sold to other purchasers in such offerings.

DESCRIPTION OF CAPITAL STOCK

The following is a summary of the rights of our common stock, certain provisions of our amended and restated certificate of incorporation and our amended and restated bylaws as they will be in effect upon completion of this offering and applicable law. This summary does not purport to be complete and is qualified in its entirety by the provisions of our amended and restated certificate of incorporation and amended and restated bylaws, copies of which have been filed as exhibits to the registration statement of which this prospectus is a part.

Our authorized capital stock consists of 75,000,000 shares of capital stock, of which 70,000,000 shares are common stock, par value $0.0001 per share, and 5,000,000 shares are preferred stock, par value $0.0001 per share, of which 500,000 shares have been designated Series A Convertible Preferred Stock.

Common Stock

Voting, Dividend and Other Rights. Each outstanding share of common stock entitles the holder to one vote on all matters presented to the shareholders for a vote. Holders of shares of common stock have no cumulative voting, pre-emptive, subscription or conversion rights. All shares of common stock to be issued pursuant to this registration statement will be duly authorized, fully paid and non-assessable. Our board of directors determines if and when distributions may be paid out of legally available funds to the holders. To date, we have not declared any dividends with respect to our common stock. Our declaration of any cash dividends in the future will depend on the determination of our board of directors as to whether, considering our earnings, financial position, cash requirements and other relevant factors existing at the time, it appears advisable to do so. We do not anticipate paying cash dividends on the common stock in the foreseeable future.

Rights Upon Liquidation. Upon liquidation, subject to the right of any holders of preferred stock to receive preferential distributions, each outstanding share of common stock may participate pro rata in the assets remaining after payment of, or adequate provision for, all our known debts and liabilities.

Majority Voting. The holders of one-third of the outstanding shares of common stock constitute a quorum at any meeting of the stockholders. A plurality of the votes cast at a meeting of shareholders elects our directors. The common stock does not have cumulative voting rights. Therefore, the holders of a majority of the outstanding shares of common stock can elect all of our directors. In general, a majority of the votes cast at a meeting of shareholders must authorize shareholder actions other than the election of directors. Amendments to our certificate of incorporation require the vote of two thirds of all outstanding voting shares.

Preferred Stock

Authority of Board of Directors to Create Series and Fix Rights. Under our amended and restated certificate of incorporation, our board of directors is authorized to issue up to 5,000,000 shares of preferred stock from time to time in one or more series. The board of directors is authorized to fix by resolution as to any series the designation and number of shares of the series, the voting rights, the dividend rights, the redemption price, the amount payable upon liquidation or dissolution, the conversion rights, and any other designations, preferences or special rights or restrictions as may be permitted by law. Unless the nature of a particular transaction and the rules of law applicable thereto require such approval, our board of directors is authorized to issue shares of preferred stock without shareholder approval.

Series A Convertible Preferred Stock

In May 2024, our board of directors designated 500,000 shares of our authorized shares of preferred stock as Series A Convertible Preferred Stock, par value $0.0001 per share (the “Series A Preferred Stock”). The Series A Preferred Stock has a stated value of $12 per share (the “Stated Value”). As of the date of this prospectus, 494,840 shares of Series A Preferred Stock are issued and outstanding.

Dividends. The holders of Series A Preferred Stock are entitled to receive, out of funds legally available therefor, cumulative dividends on the Series A Preferred Stock at the rate of 15% per annum of the Stated Value (or $1.80 per share) payable if and when declared by our board of directors or upon conversion or redemption of the Series A Preferred Stock. Dividends on the Series A Preferred Stock may be paid by us in cash, by delivery of shares of common stock or through a combination of cash and shares of common stock. If paid in common stock, the holder will receive a number of shares of common stock equal to the quotient of 110% of the accrued dividends to

be paid in common stock divided by the Conversion Price (as defined below). We may make payments of dividends in common stock only if the average closing price of our common stock over the five trading days preceding the dividend payment date is at or above the Conversion Price.

Voting Rights. Holders of the Series A Preferred Stock have no voting rights except in connection with a proposed amendment to the terms of the Series A Preferred Stock or as required by law.

Optional Conversion. Each share of Series A Preferred Stock may be converted at any time at the election of the holder into a number of shares of common stock determined by dividing (a) an amount equal to 110% of the sum of (i) the Stated Value plus (ii) the amount of all accrued and unpaid dividends, by (b) the then applicable Conversion Price. The "Conversion Price" shall initially be equal to $5.00 per share, subject to adjustment to the price per share at which our common stock is sold in this offering if lower than the initial Conversion Price. However, a holder (together with its affiliates) may not convert any of such holder's shares of Series A Preferred Stock to the extent that the holder (together with its affiliates) would own more than 4.99% (or, at the election of the holder, 9.99%) of our outstanding shares of common stock immediately after conversion, as such percentage ownership is determined in accordance with the terms of the Series A Preferred Stock.

Mandatory Conversion. Each share of Series A Preferred Stock will automatically be converted on June 15, 2027 into a number of shares of common stock determined by dividing (a) an amount equal to 110% of the sum of (i) the Stated Value plus (ii) the amount of all accrued and unpaid dividends, by (b) the then-applicable Conversion Price. Any time on or after June 15, 2025, we have the right to redeem some or all of the outstanding shares of Series A Preferred Stock from funds legally available therefor, upon at least 30 days prior written notice to the holders of the Series A Preferred Stock, at a redemption price per share equal to 110% of the sum of the Stated Amount plus all accrued and unpaid dividends on such share of Series A Preferred Stock.

Redemption. From and after June 15, 2025, at the option of our board of directors, we may redeem the shares of Series A Preferred Stock at the time outstanding, in whole or in part, out of funds legally available, therefore. The redemption price per share for shares of Series A Preferred Stock redeemed will be an amount equal to 110% of the sum of (i) the Stated Value, plus (ii) the amount of the aggregate dividends then accrued on such share of Series A Preferred Stock and not previously paid. We will provide not less than 30 nor more than 60 days prior notice to the holders of any shares of Series A Preferred Stock to be redeemed.

Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of our company, the holders of shares of Series A Preferred Stock then outstanding will be entitled to be paid out of our assets available for distribution to stockholders before any payment will be made to the holders of any other shares of our capital stock, including our common stock, by reason of their ownership thereof, an amount per share of Series A Preferred Stock equal to the greater of (i) 110% of the sum of (a) the Stated Value, plus (b) the amount of the aggregate dividends then accrued on such share of Series A Preferred Stock and not previously paid, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into common stock immediately prior to such liquidation, dissolution or winding up.

Outstanding Warrants

Excluding the Common Warrants to be sold concurrently with this offering, as of the date of this prospectus, the following warrants are outstanding:

- Warrants to purchase up to 988,430 shares of common stock for a purchase price of $0.001 per share. Such warrants are exercisable by a holder at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and have no expiration date;
- Warrants to purchase up to 2,816,291 shares of common stock for a purchase price of $0.001 per share. Such warrants are exercisable by a holder at any time unless such exercise would cause the holder to beneficially own more than 9.99% of our outstanding shares of common stock and have no expiration date;
- Warrants to purchase up to 991,667 shares of common stock with an exercise price equal to $6.00 per share, which are fixed and non-adjustable for stock splits, stock dividends or any other reason, that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and that expire between August 2028 and August 2029;

- Warrants to purchase up to 762,984 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the volume weighted average price per share ("VWAP") of our common stock over a 10-trading-day period reaches 200% of the price per share at which common stock is sold in this offering provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the second anniversary of the closing of this offering;
- Warrants to purchase up to 1,525,968 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 300% of the price per share at which common stock is sold in this offering, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 42-month anniversary of the closing of this offering;
- Warrants to purchase up to 1,907,460 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 500% of the price per share at which common stock is sold in this offering, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 60-month anniversary of the closing of this offering;
- Warrants to purchase up to 197,013 shares of common stock at an exercise price equal to the lesser of $5.00 per share or the price per share at which our common stock is sold in this offering and are subject to mandatory cashless exercise after June 15, 2027 if the closing price of our common stock for a period of five consecutive trading days equals or exceeds an amount equal to 125% of the exercise price of such warrants. These warrants are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and expire on June 15, 2029.

Pursuant to the terms of such warrants, except as otherwise noted above, the applicable exercise price of such warrants is subject to adjustment in the event of stock splits, combinations or the like of our common stock.

Options

As of the date of this prospectus, we have outstanding options to purchase an aggregate 6,164 shares of our common stock with a weighted-average exercise price of $157.89 per share that expire between June 2025 and November 2026, all of which were issued under the 2019 Plan.

Restricted Stock Units

As of the date of this prospectus, we had 243,089 outstanding restricted stock units, all issued under the 2019 Plan.

Limitation of Liability and Indemnification Matters

Our amended and restated certificate of incorporation, which will be filed immediately prior to the completion of this offering, will limit the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the DGCL. Consequently, our directors will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

- any breach of their duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases, or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated bylaws will also provide that we will indemnify our directors and executive officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law. Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our amended and restated bylaws would permit indemnification. We plan on obtaining directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. Insofar as indemnification for liabilities under the Securities Act may be permitted to directors, 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 may be unenforceable. There is no pending litigation or proceeding naming any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

Indemnification of Officers and Directors

Our amended and restated certificate of incorporation and amended and restated bylaws, which will become effective in connection with the completion of this offering, will provide that we will indemnify each of our directors and officers to the fullest extent permitted by the DGCL. Under the employment agreements for Justin Stiefel and Jennifer Stiefel, we have agreed to indemnify and relieve them jointly and severally from all liabilities that they undertook in the past or will undertake in the future as individuals to underwrite operations of the business. Examples of this include personal guarantees on real estate leases, vehicle leases, company credit cards, revolving accounts, vendor accounts, federal bonds, and tax payment agreements.

To the best of our knowledge, during the past two fiscal years, other than as set forth above, there were no material transactions, or series of similar transactions, or any currently proposed transactions, or series of similar transactions, to which we were or are to be a party, in which the amount involved exceeds the lesser of (A) $120,000 or (B) one percent of our average total assets at year-end for the last two completed fiscal years, and in which any director or executive officer, or any security holder who is known by us to own of record or beneficially more than 5% of any class of our common stock, or any member of the immediate family of any of the foregoing persons, has an interest (other than compensation to our officers and directors in the ordinary course of business).

Anti-Takeover Effects of Certain Provisions of Our Certificate of Incorporation and Bylaws

The provisions of our amended and restated certificate of incorporation, and our amended and restated bylaws, each to be effective upon the consummation of this offering, could make it more difficult to acquire us by means of a merger, tender offer, proxy contest, open market purchases, removal of incumbent directors and otherwise. These provisions, which are summarized below, are expected to discourage types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to first negotiate with us. We believe that the benefits of increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging takeover or acquisition proposals because negotiation of these proposals could result in an improvement of their terms.

Calling of Special Meetings of Stockholders. Our bylaws will provide that special meetings of the stockholders may be called only by the board of directors pursuant to a resolution adopted by the majority of the board of directors.

Supermajority Vote of Stockholders. Our certificate of incorporation will require the affirmative vote of the holders of at least two-thirds of the voting power of all of our outstanding shares of voting stock, voting together as a single class, to amend, alter, change or repeal our bylaws or certain provisions of our certificate of incorporation.

Removal of Directors; Vacancies. Our bylaws will provide that a director may be removed for cause by the affirmative vote of at least two-thirds of the voting power of the issued and outstanding stock entitled to vote; provided, however, that notice of intention to act upon such matter shall have been given in the notice calling such meeting.

Amendment of Bylaws. The bylaws will provide that the bylaws may be altered, amended or repealed at any meeting of the board of directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting.

Preferred Stock. Our certificate of incorporation authorizes the issuance of 4,500,000 additional shares of preferred stock with such rights and preferences as may be determined from time to time by our board of directors in their sole discretion. Our board of directors may, without stockholder approval, issue series of preferred stock with dividends, liquidation, conversion, voting or other rights that could adversely affect the voting power or other rights of the holders of our common stock.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Equiniti Trust Company, LLC. The transfer agent and registrar's address is 48 Wall Street, 23rd Floor, New York, New York 10005 and its telephone number is (800) 468-9716.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there was no public market for our common stock. Future sales of substantial amounts of our common stock in the public market following this offering, or the possibility of such sales occurring, could cause the prevailing market price of our common stock to fall and impede our ability to raise capital through an offering of equity securities.

Upon the completion of this offering, we will have a total of 5,153,405shares of common stock outstanding, assuming an initial public offering price of $5.00 per share of common stock, assuming no exercise by the underwriters' option to purchase additional shares of common stock, and no exercise or conversion of outstanding options, RSUs or warrants to purchase shares of common stock prior to completion of this offering. All the shares sold in this offering will be freely tradable unless held by our "affiliates," as defined in Rule 144 under the Securities Act. Shares purchased by affiliates may generally only be sold pursuant to an effective registration statement under the Securities Act or in compliance with Rule 144.

Lock-Up Agreements

An aggregate of 1,896,455 shares of common stock are held by our stockholders who beneficially own less than 5% of our outstanding shares of common stock. Of these shares, 1,077,664 shares are not subject to any restriction on transfer and will be freely tradeable on the public market immediately after the effectiveness of this registration statement. An additional 818,791 shares will be freely tradeable subject to Rule 144 under the Securities Act, and 313,187 shares are being registered under the Securities Act for resale pursuant to a resale registration statement that will become effective upon the consummation of this offering and thereby become freely tradeable on the public market so long as the related prospectus remains current.

However, we and certain of our executive officers, directors and holders of 5% or more of our outstanding common stock will enter into "lock-up" agreements that will be effective upon the consummation of this offering. As a result of these contractual restrictions and the provisions of Rules 144 and 701 promulgated under the Securities Act, in addition to the shares that may be immediately sold by our non-affiliated stockholders, an aggregate of 1,927,779 shares of common stock (including shares issued upon exercise of currently-exercisable warrants and options or upon conversion of currently-convertible Series A Preferred Stock) will be eligible for sale in the public market upon expiration of the lock-up agreements 180 days after the date of this prospectus, subject, in certain circumstances to the volume, manner of sale and other limitations under Rule 144 and Rule 701. The representative of the underwriters may, in its discretion, release any of the securities subject to these lock-up agreements at any time.

Rule 144

In general, under Rule 144, as amended, a person (or persons whose shares are required to be aggregated) who is not deemed to have been an affiliate of ours at any time during the six months preceding a sale, and who has beneficially owned our common stock for at least six months, including the holding period of any prior owner other than one of our affiliates, is entitled to sell those shares, subject only to the availability of current public information about us and provided that we have been subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale. If such person has held our shares for at least one year, such person can resell such shares under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 90-day public company and current public information requirements.

A person (or persons whose shares are aggregated) who is deemed to be an affiliate of ours and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months would be entitled to sell within any six-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of common stock then outstanding, which will equal approximately 86,138 shares immediately after this offering (assuming a public offering price of $5.00 per share of common stock, the midpoint of the initial public offering price range reflected on the cover page of this prospectus, no exercise of the underwriters' option to purchase additional shares); or
- the average weekly trading volume of our common stock on Nasdaq during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Such sales are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about us.

Rule 701

Under Rule 701 under the Securities Act, shares of our common stock acquired upon the exercise of currently outstanding options or pursuant to other rights granted under our stock plan may be resold, by:

- persons, other than affiliates, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, subject only to the manner-of-sale provisions of Rule 144; and
- our affiliates, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, subject to the manner-of-sale and volume limitations, current public information and filing requirements of Rule 144, in each case, without compliance with the six-month holding period requirement of Rule 144.

Notwithstanding the foregoing, our Rule 701 shares held by our executive officers and directors are subject to lock-up agreements as described above and, in the section, titled "Underwriting" and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

Form S-8 Registration Statement

We intend to file a registration statement on Form S-8 under the Securities Act after the closing of this offering to register the shares of our common stock that are issuable pursuant to the 2019 Plan and the 2024 Plan. The registration statement is expected to be filed and become effective as soon as possible after the completion of this offering. Accordingly, shares registered under the registration statement will be available for sale in the open market following its effective date, subject to Rule 144 volume limitations applicable to affiliates and the lock-up arrangement described above, if applicable.

PRIVATE PLACEMENT TRANSACTION

Concurrently with the sale of common stock in this offering, we will issue and sell to certain existing security holders of our company that are investors in this offering Common Warrants to purchase up to an aggregate of 500,000 shares of common stock at an exercise price equal to $0.01 per share. The Common Warrants will be sold to such purchasers for a purchase price per Common Warrant equal to the price per share at which the common stock is sold in this offering less $0.01.

The Common Warrants and the shares of common stock issuable upon the exercise of such warrants are not being registered under the Securities Act, are not being offered pursuant to this prospectus and are being offered pursuant to the exemption provided in Section 4(a)(2) under the Securities Act and Rule 506(b) promulgated thereunder. Accordingly, purchasers may only sell shares of common stock issued upon exercise of the Common Warrants pursuant to an effective registration statement under the Securities Act covering the resale of those shares, an exemption from registration under Rule 144 under the Securities Act or another applicable exemption under the Securities Act.

In connection with the concurrent private placement, we are obligated to file a registration statement with the SEC to register under the Securities Act the shares of common stock underlying the Common Warrants sold in the private placement not earlier than 180 days nor later than 240 day following the closing of this offering and to have such registration statement declared effective by the SEC as soon as practicable following such filing.

The following is a summary of the material terms and provisions of the Common Warrants that are being offered in the concurrent private placement. This summary is subject to and qualified in its entirety by the form of Common Warrant, which has been filed with the SEC as an exhibit to the registration statement of which this prospectus forms a part.

Duration and Exercise Price. The Common Warrants will have an exercise price of $0.01 per share. The Common Warrants will be immediately exercisable upon issuance and will be exercisable for five years from the date of issuance. The exercise price and number of shares of common stock issuable upon exercise are subject to appropriate adjustment in the event of share dividends, share splits, reorganizations or similar events affecting our shares of common stock. The Common Warrants will be issued in certificated form only.

Exercisability. The Common Warrants will be exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). A holder (together with its affiliates) may not exercise any portion of such holder's warrants to the extent that the holder would own more than 4.99% (or, at the election of the purchaser, 9.99%) of our outstanding shares of common stock immediately after exercise, except that prior to the issuance of the Common Warrants, the holder may elect to increase the amount of ownership of outstanding shares of common stock after exercising the holder's Common Warrants up to 9.99% of the number of shares of common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Common Warrants.

Cashless Exercise. If at the time of exercise of the Common Warrant there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the shares of common stock issuable upon exercise of the Common Warrant, then the Common Warrants will only be exercisable on a "cashless exercise" basis under which the holder will receive upon such exercise a net number of common shares determined according to a formula set forth in the Common Warrants.

Transferability. In accordance with its terms and subject to applicable laws, a Common Warrant may be transferred at the option of the holder upon surrender of the Common Warrant to us together with the appropriate instruments of transfer and payment of funds sufficient to pay any transfer taxes (if applicable).

Fractional Shares. No fractional shares of common stock will be issued upon the exercise of the Common Warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the nearest whole number or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

Trading Market. There is no established trading market for the Common Warrants, and we do not expect a market to develop. We do not intend to apply for a listing for the Common Warrants on any securities exchange or other nationally recognized trading system. Without an active trading market, the liquidity of the Common Warrants will be limited.

Rights as a Shareholder. Except as otherwise provided in the Common Warrants or by virtue of the holder's ownership of shares of our common stock, such holder of Common Warrants does not have the rights or privileges of a holder of our common stock, including any voting rights, until such holder exercises such holder's Common Warrants. The Common Warrants will provide that the holders of the Common Warrants have the right to participate in distributions or dividends paid on our shares of common stock.

UNDERWRITING

Newbridge Securities Corporation (the "Representative") is acting as sole underwriter of this offering. We have entered into an underwriting agreement with Newbridge Securities Corporation, dated [ ], 2024, with respect to the shares of common stock subject to this offering. Subject to the terms and conditions in the underwriting agreement, we have agreed to sell to the underwriter, and the underwriter has agreed to purchase from us on a firm commitment basis, the number of shares of common stock set forth opposite its name in the table below:

Underwriter	Number of Shares of Common Stock
Newbridge Securities Corporation	

The underwriter is committed to purchase all the shares of common stock offered by us other than those covered by the option to purchase additional shares of common stock described below. The underwriter's obligations may be terminated upon the occurrence of certain events specified in the underwriting agreement. Furthermore, pursuant to the underwriting agreement, the underwriter's obligations are subject to customary conditions, representations and warranties contained in the underwriting agreement, such as receipt by the underwriter of officers' certificates and legal opinions.

Discounts and Commissions; Expenses

The underwriter has advised us that it proposes to offer the shares of common stock at the public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession of not more than $ per share. After this offering, the public offering price, concession and reallowance to dealers may be changed by the underwriter. No such change shall change the amount of proceeds to be received by us as set forth on the cover page of this prospectus. The shares of common stock are offered by the underwriter as stated herein, subject to receipt and acceptance by them and subject to their right to reject any order in whole or in part. The underwriter has informed us that it does not intend to confirm sales to any accounts over which it exercises discretionary authority.

The following table shows the public offering price, underwriting discount and commissions and proceeds, before expenses to us.

		Total	
	Per Share	Without Over-Allotment	With Over-Allotment
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to us	$	$	$

We have agreed to reimburse the underwriter for accountable expenses not to exceed $250,000. We estimate that expenses payable by us in connection with this offering, including reimbursement of the underwriter's out-of-pocket expenses, but excluding the underwriting discount referred to above, will be approximately $1,575,000.

Pursuant to the underwriting agreement, we have agreed to indemnify the underwriter against certain liabilities, including liabilities under the Securities Act, or to contribute to payments which the underwriter or other indemnified parties may be required to make in respect of any such liabilities.

Over-allotment Option

We have granted to the underwriter an option exercisable not later than 30 days after the date of this prospectus to purchase up to an additional 225,000 shares of common stock at the public offering price per share set forth on the cover page hereto less the underwriting discounts and commissions. The underwriter may exercise the option solely to cover overallotments, if any, made in connection with this offering. If any additional shares of common stock are purchased pursuant to the over-allotment option, the underwriter will offer these shares on the same terms as those on which the other shares of common stock are being offered.

Placement Agent Cash Fee

We have agreed to pay the underwriter a placement agent fee equal to 8% of the gross proceeds raised from the placement and sale of the 500,000 Common Warrants being privately placed concurrently with this offering.

Stabilization

Until the distribution of shares of common stock is complete, SEC rules may limit the ability of the underwriter to bid for and purchase our shares of common stock. As an exception to these rules, underwriters can engage in certain transactions which stabilize the price of our common stock, which may include short sales, covering transactions and stabilizing transactions. Short sales involve sales of shares of common stock in excess of the number of shares to be purchased by the underwriter in the offering, which creates a short position. "Covered" short sales are sales made in an amount not greater than the underwriter's option to purchase additional shares of common stock from us in the offering. The underwriter may close out any covered short position by either exercising its option to purchase additional shares of common stock or purchasing shares of common stock on the open market. In determining the source of shares of common stock to close out the covered short position, the underwriter will consider, among other things, the price of shares of common stock available for purchase in the open market as compared to the share price at which they may purchase through its option to purchase additional shares. "Naked" short sales are any sales in excess of such option. The underwriter must close out any naked short position by purchasing shares of common stock in the open market. A naked short position is more likely to be created if the underwriter is concerned that there may be downward pressure on the price of the shares of common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of the shares of common stock made by the underwriter in the open market prior to the completion of the offering.

The underwriter may also impose a penalty bid. This occurs when a particular underwriter repays to the other underwriter a portion of the underwriting discount received by it because the Representative has repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Neither we nor the underwriter make any representation or prediction as to the direction or magnitude of any effect that the transactions described above might have on our shares of common stock. Any of these activities may have the effect of preventing or retarding a decline in the market price of our shares of common stock. They may also cause the price of the shares of common stock to be higher than the price that would otherwise exist in the open market in the absence of these transactions. If the underwriter commences any of these transactions, it may discontinue them at any time without notice.

We expect that delivery of the shares will be made to investors on or about [ ], 2024 (such settlement being referred to as "T+1d").

In the ordinary course of their various business activities, the underwriter and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their clients and may at any time hold long and short positions in such securities and instruments. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriter and its affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Lock-Up Agreements

We and our directors and executive officers have entered into lock-up agreements. Under these agreements, these individuals have agreed, subject to specified exceptions, not to sell or transfer any shares of common stock or securities convertible into, or exchangeable or exercisable for, shares of common stock during a period ending 180 days after the date of this prospectus supplement, without first obtaining the written consent of the Representative of the underwriters. Specifically, these individuals have agreed, in part, not to:

- offer, sell, contract to sell, hypothecate, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise), directly or indirectly, of any Ordinary Shares or securities convertible, exchangeable or exercisable into, Ordinary Shares;

- establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act with respect to shares of common stock or securities convertible, exchangeable or exercisable into, shares of common stock; or
- make any demand for or exercise any right or cause to be filed a registration, including any amendments thereto, with respect to the registration of any shares of common stock or any securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time shares of common stock, including, without limitation, any debt, preferred shares, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of common stock; or
- publicly disclose the intention to do any of the foregoing.

Notwithstanding these limitations, these shares of common stock may be transferred under limited customary circumstances, including, without limitation, by gift, will or intestate succession.

Representative's Warrants

We have agreed to issue to the Representative (or its permitted designees) warrants to purchase up to a total of shares of common stock (5.0% of the shares of common stock sold in this offering, including the over-allotment, if any). The warrants will be exercisable at any time, and from time to time, in whole or in part, during the five (5) year period commencing 180 days from the commencement of sales of the common stock in this offering, which is also the effective date of the registration statement of which this prospectus is a part, which period is in compliance with applicable FINRA rules. The warrants are exercisable at a per share price equal to $[ ] per share, or 100% of the public offering price per share of common stock sold in this offering. The registration statement of which this prospectus forms a part registers the issuance of the shares of common stock issuable upon exercise of the Representative's warrants. The warrants have been deemed compensation by FINRA and are therefore subject to a 180-day lock-up pursuant to Rule 5110(e)(1)(A) of FINRA. The Representative (or permitted assignees under Rule 5110(e)(2)) will not sell, transfer, assign, pledge or hypothecate these warrants or the securities underlying these warrants, nor will they engage in any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the warrants or the underlying securities for a period commencing 180 days from the commencement of sales of the common stock in this offering. In addition, the warrants provide for cashless exercise and registration rights upon request, in certain cases. The unlimited piggyback registration rights provided will not be greater than three (3) years from the closing date of this offering in compliance with applicable FINRA rules (provided such registration rights will not apply to any universal shelf registration statement). We will bear all fees and expenses attendant to registering the securities issuable on exercise of the warrants. The exercise price and number of shares issuable upon exercise of the warrants may be adjusted in certain circumstances, including in the event of a stock dividend, extraordinary cash dividend or our recapitalization, reorganization, merger, or consolidation. However, the warrant exercise price or underlying shares will not be adjusted for issuances of shares of common stock at a price below the warrant exercise price.

Electronic Prospectus

This prospectus may be made available in electronic format on Internet sites or through other online services maintained by the underwriter or its affiliates. In those cases, prospective investors may view offering terms online and may be allowed to place orders online. Other than this prospectus in electronic format, any information on the underwriter's or its affiliates' websites and any information contained in any other website maintained by the underwriter or any affiliate of the underwriter is not part of this prospectus supplement, the accompanying prospectus or the registration statement of which this prospectus supplement forms a part, has not been approved and/or endorsed by us or the underwriter and should not be relied upon by investors.

Certain Relationships

The underwriter and its affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The underwriter and its affiliates may provide from time to time in the future in the ordinary course of their business certain commercial banking, financial advisory, investment banking and other services to us for which they will be entitled to receive customary fees and expenses.

Offer Restrictions Outside the United States

This prospectus does not constitute an offer to sell to, or a solicitation of an offer to buy from, anyone in any country or jurisdiction (i) in which such an offer or solicitation is not authorized, (ii) in which any person making such offer or solicitation is not qualified to do so or (iii) in which any such offer or solicitation would otherwise be unlawful. No action has been taken that would, or is intended to, permit a public offer of the securities or possession or distribution of this prospectus or any other offering or publicity material relating to the securities in any country or jurisdiction (other than the United States) where any such action for that purpose is required. Accordingly, the underwriters have undertaken that they will not, directly or indirectly, offer or sell any securities offered hereby or have in its possession, distribute or publish any prospectus, form of application, advertisement or other document or information in any country or jurisdiction except under circumstances that will, to the best of their knowledge and belief, result in compliance with any applicable laws and regulations and all offers and sales of securities by them will be made on the same terms.

United Kingdom

This prospectus has only been communicated or caused to have been communicated and will only be communicated or caused to be communicated as an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act of 2000, or the FSMA, as received in connection with the issue or sale of the ordinary shares in circumstances in which Section 21(1) of the FSMA does not apply to us. All applicable provisions of the FSMA will be complied with in respect to anything done in relation to the ordinary shares in, from or otherwise involving the United Kingdom.

Israel

This document does not constitute a prospectus under the Israeli Securities Law, 5728-1968, and has not been filed with or approved by the Israel Securities Authority. In Israel, this prospectus may be distributed only to, and is directed only at, investors listed in the first addendum, or the Addendum, to the Israeli Securities Law, consisting primarily of joint investment in trust funds; provident funds; insurance companies; banks; portfolio managers, investment advisors, members of the Tel Aviv Stock Exchange Ltd., underwriters, each purchasing for their own account; venture capital funds; entities with equity in excess of NIS 50 million and “qualified individuals,” each as defined in the Addendum (as it may be amended from time to time), collectively referred to as qualified investors. Qualified investors must submit written confirmation that they fall within the scope of the Addendum.

LEGAL MATTERS

Certain legal matters with respect to the shares of common stock offered hereby will be passed upon by Pryor Cashman LLP, New York, New York. Certain other legal matters will be passed upon for the underwriters by Ellenoff Grossman & Schole, New York, New York.

EXPERTS

The consolidated financial statements of Heritage Distilling Holding Company, Inc. as of December 31, 2023 and 2022 and for the years then ended have been audited by Marcum LLP, an independent registered public accounting firm, as stated in their report, which includes an explanatory paragraph regarding our ability to continue as a going concern, appearing herein. Such consolidated financial statements are included in this prospectus and registration statement in reliance upon the report of Marcum LLP appearing elsewhere herein, and upon the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the securities offered in this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all the information set forth in the registration statement and its exhibits and schedules, portions of which have been omitted as permitted by the rules and regulations of the SEC. For further information about us and our common stock, we refer you to the registration statement and to its exhibits and schedules. Statements in this prospectus about the contents of any contract, agreement or other document is not necessarily complete and, in each instance, we refer you to the copy of such contract, agreement or document filed as an exhibit to the registration statement, with each such statement being qualified in all respects by reference to the document to which it refers. You may inspect the registration statement and its exhibits and schedules and other information on SEC's website at *www.sec.gov*.

We also maintain a website at *www.heritagedistilling.com*, at which, following the completion of this offering, you may access our SEC filings free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information contained in, or that can be accessed through, our website is not incorporated by reference in, and is not part of, this prospectus. You may also request a copy of these filings, at no cost, by writing to us at 9668 Bujacich Road, Gig Harbor, Washington 98332, or telephoning us at (253) 509-0008.

HERITAGE DISTILLING HOLDING COMPANY, INC.
CONSOLIDATED FINANCIAL STATEMENTS

Index to Consolidated Financial Statements

Heritage Distilling Holding Company, Inc.
Condensed Consolidated Balance Sheet
(unaudited)

	June 30, 2024	December 31, 2023
ASSETS		
Current Assets		
Cash	$ 151,613	$ 76,878
Accounts Receivable	467,351	721,932
Inventory	3,422,107	2,756,350
Other Current Assets	1,864,175	1,717,650
Total Current Assets	5,905,246	5,272,810
Long Term Assets		
Property and Equipment, net of Accumulated Depreciation	6,184,328	6,428,112
Operating Lease Right-of-Use Assets, net	3,401,023	3,658,493
Investment in Flavored Bourbon LLC	14,285,222	10,864,000
Intangible Assets (Note 10)	830,809	—
Goodwill (Note 10)	636,998	—
Other Long Term Assets	44,818	44,817
Total Long Term Assets	25,383,198	20,995,422
Total Assets	$ 31,288,444	$ 26,268,232
LIABILITIES & STOCKHOLDERS' DEFICIT		
Current Liabilities		
Accounts Payable	$ 5,576,989	$ 5,228,786
Accrued Payroll	1,441,260	1,321,298
Accrued Tax Liability	1,465,388	1,468,994
Other Current Liabilities	2,055,589	1,827,013
Operating Lease Liabilities, Current	1,169,973	1,294,706
Notes Payable, Current	14,783,425	14,270,956
Convertible Notes at fair value-Current (including related party convertible notes of $8,586,763 and $17,220,203 as of June 30, 2024 and December 31, 2023, respectively) (See Notes 5 and 15)	18,067,088	36,283,891
Accrued Interest, Current	1,165,730	1,152,998
Total Current Liabilities	45,725,442	62,848,642
Long Term Liabilities		
Operating Lease Liabilities, net of Current Portion	2,898,569	3,081,924
Notes Payable, net of Current Portion	389,875	—
Convertible Notes (Whiskey Notes) (including a related party convertible note of $5,232,620 and $390,607 as of June 30, 2024 and December 31, 2023, respectively)	13,978,467	1,452,562
Warrant Liabilities (2022 and 2023 Convertible Notes) (including a related party warrant liability of $379,225 and $340,918 as of June 30, 2024 and December 31, 2023, respectively)	884,182	794,868
Warrant Liabilities (Whiskey Notes) (including a related party warrant liability of $6,931 and $406,774 as of June 30, 2024 and December 31, 2023, respectively)	20,378	1,512,692
Other Long Term Liabilities	127,076	—
Total Long Term Liabilities	18,298,547	6,842,046
Total Liabilities	64,023,989	69,690,688
Commitments and Contingencies (Note 10)		
Stockholders' Deficit		
Preferred Shares, par value $0.0001 per share; 5,000,000 shares authorized; 183,000 and 0 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively	18	—
Common Stock, par value $0.0001 per share; 70,000,000 and 10,000,000 shares authorized; 441,935 and 381,484 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively	72	67

Additional Paid-In-Capital	33,249,500	31,421,953
Accumulated Deficit	(65,985,135)	(74,844,476)
Total Stockholders' Deficit	(32,735,545)	(43,422,456)
Total Liabilities & Stockholders' Deficit	$ 31,288,444	$ 26,268,232

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

Heritage Distilling Holding Company, Inc.
Condensed Consolidated Statement of Operations
(unaudited)

	For the Six Months Ended June 30,	
	2024	**2023**
NET SALES		
Products	$ 2,675,858	$ 2,183,521
Services	872,616	1,253,834
Total Net Sales	3,548,474	3,437,355
COST OF SALES		
Products	2,311,463	2,309,796
Services	80,677	452,624
Total Cost of Sales	2,392,140	2,762,420
Gross Profit	1,156,334	674,935
OPERATING EXPENSES		
Sales and Marketing	2,487,650	3,093,568
General and Administrative	3,193,246	4,700,392
Total Operating Expenses	5,680,896	7,793,960
Operating Loss	(4,524,562)	(7,119,025)
OTHER INCOME (EXPENSE)		
Interest Expense	(1,235,656)	(1,205,545)
Gain on investments	3,421,222	—
Change in Fair Value of Convertible Notes	9,044,748	(19,544,020)
Change in Fair Value of Warrant Liabilities	1,705,020	(343,104)
Change in Fair Value of Contingency Liabilities	457,127	—
Other Income	592	—
Total Other Expense	13,393,053	(21,092,669)
Income/(Loss) Before Income Taxes	8,868,491	(28,211,694)
Income Taxes	(9,150)	—
Net Income/(Loss)	$ 8,859,341	$ (28,211,694)
Net Income/(Loss) Per Share, Basic	$ 20.97	$ (73.93)
Weighted Average Common Shares Outstanding, Basic	421,799	381,600
Net Income/(Loss) Per Share, Diluted	$ (2.44)	$ (73.93)
Weighted Average Common Shares Outstanding, Diluted	4,573,063	381,600

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

Heritage Distilling Holding Company, Inc.
Condensed Consolidated Statements of Stockholders' Deficit
(unaudited)

	Common Stock		Preferred Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount	Number of Shares	Amount			
Beginning Balance December 31, 2023	381,484	$ 67		$ —	$ 31,421,953	$ (74,844,476)	$ (43,422,456)
Thinking Tree Spirits Acquisition	50,972	5			(5)		—
Preferred Stock Issued			183,000	18	1,550,982		1,551,000
Shares Repurchased	(14)				(2,430)		(2,430)
Warrants Issued					279,000		279,000
Warrants Exercised	9,493						—
Net Income	—	—	—	—	—	8,859,341	8,859,341
Ending Balance June 30, 2024	441,935	$ 72	183,000	$ 18	$ 33,249,500	$ (65,985,135)	$ (32,735,545)

	Common Stock		Preferred Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount	Number of Shares	Amount			
Beginning Balance December 31, 2022	381,616	$ 67	—	$ —	$ 31,414,698	$ (38,046,058)	$ (6,631,293)
Shares Repurchased	(64)				(10,530)		(10,530)
Share-based Compensation					18,595		18,595
Net Loss	—	—	—	—	—	(28,211,693)	(28,211,693)
Ending Balance June 30, 2023	381,552	$ 67	—	$ —	$ 31,422,763	$ (66,257,751)	$ (34,834,921)

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

Heritage Distilling Holding Company, Inc.
Condensed Consolidated Statements of Cash Flows
(unaudited)

	For the Six Months Ended June 30,	
	2024 (as restated)	2023
Net Income (Loss)	$ 8,859,341	$ (28,211,693)
Adjustments to Reconcile Net Income (Loss) to Net Cash Used in Operating Activities:		
Depreciation and Amortization Expense	655,262	777,311
Amortization of operating lease right-of-use assets	257,470	229,337
Loss on disposal of property and equipment	27,311	31,950
Gain on Investment	(3,421,222)	—
Change in Fair Value of Convertible Notes	(9,044,748)	19,544,020
Change in Fair Value of Warrant Liabilities	(1,705,020)	343,104
Change in Fair Value of Contingency Liabilities	(457,127)	—
Non-cash Interest Expense	163,318	160,062
Non-cash Share-based Compensation	—	18,595
Changes in Operating Assets and Liabilities:		
Accounts Receivable	254,581	(60,121)
Inventory	372,790	334,517
Other Current Assets	112,611	243,310
Other Long Term Assets	—	76,270
Accounts Payable	339,235	944,065
Other Current Liabilities	(593,197)	1,344,433
Operating Lease Liabilities	(308,089)	(360,632)
Net Cash Used in Operating Activities	(4,487,484)	(4,585,472)
Cash Flow from Investing Activities		
Purchase of Property and Equipment	(32,125)	(208,053)
Proceeds from Purchase of Thinking Tree Spirits	5,090	—
Net Cash Used in Investing Activities	(27,035)	(208,053)
Cash Flow from Financing Activities		
Proceeds from Notes Payable	438,914	250,000
Proceeds from Whiskey Notes (including proceeds from related party Whiskey Notes of $1,433,000 and $0 for the six months ended June 30, 2024 and 2023, respectively)	3,655,870	—
Proceeds from Convertible Notes (including proceeds from related party convertible notes of $0 and $2,200,000 for the six months ended June 30, 2024 and 2023, respectively)	—	4,590,000
Repayment of Notes Payable	(85,774)	(108,234)
Common Stock Shares Repurchased	(2,430)	(10,530)
Proceeds from Issuance of Preferred Stock and Warrants	675,000	—
Deferred Transaction Costs associated with S-1 Filing	(92,326)	(130,961)
Deferred Transaction Costs associated with Business Combination	—	—
Net Cash Provided by Financing Activities	4,589,254	4,590,275
Net Increase (Decrease) in Cash	74,735	(203,249)
Cash – Beginning of Period	76,878	223,034
Cash – End of Period	$ 151,613	$ 19,785
Supplemental Cash Flow Information related to Interest Paid & Income Taxes Paid:		
Cash Paid during the Period for:		
Interest Expense	$ 1,072,338	$ 1,045,483
Income Tax	(9,150)	
Supplemental Schedule of Non-cash Investing and Financing Activities:		

Deferred Transaction Costs associated with S-1 Filing in Accounts Payable and Other Current Liabilities	$ 246,308	$ 814,864
Preferred Stock issued in exchange for inventory and barrels	1,155,000	—
Property and Equipment acquired in exchange for Preferred Stock	259,875	—

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

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION

Description of operations — Heritage Distilling Holding Company ("HDHC" or the "Company") is a Delaware corporation, for the purpose of investing in, managing, and/or operating businesses that are engaged in the production, sale, or distribution of alcoholic beverages. The Company is headquartered in Gig Harbor, Washington and has one wholly owned subsidiary, Heritage Distilling Company, Inc., ("HDC") that is included in the consolidated financial statements.

HDC has operated since 2011 as a craft distillery making a variety of whiskeys, vodkas, gins and rums as well as RTDs and operates distillery tasting rooms in Washington and Oregon.

Business Combination Agreement — On December 9, 2022, the Company entered into a business combination agreement (as amended, the "Business Combination Agreement") with a publicly-traded special purpose acquisition company ("SPAC"). On May 18, 2023, the Business Combination Agreement was terminated and deferred expenses related to the transaction were expensed. Subsequent to the termination of the Business Combination, the Company contemplates an initial public offering ("IPO").

Basis of Presentation — The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") and include the Company's wholly-owned subsidiary. All intercompany transactions and balances have been eliminated in the consolidation process. Certain accounts relating to the prior year have been reclassified to conform to the current period's presentation. These reclassifications had no effect on the net loss or net assets as previously reported.

Stock Split — On May 14, 2024, the Board and Shareholders of the Company approved a .57-for-1 reverse stock split. All share and per share numbers included in these Financial Statements as of and for all periods presented reflect the effect of that stock split unless otherwise noted.

Unaudited Interim Financial Information — The accompanying condensed consolidated balance sheet as of June 30, 2024, the condensed consolidated statement of operations and the condensed consolidated statements of stockholders' deficit, for the six months ended June 30, 2024 and 2023, and the condensed consolidated statement of cash flows for the six months ended June 30, 2024 and 2023 are unaudited. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include normal recurring adjustments, necessary for the fair statement of the Company's financial position as of June 30, 2024 and the results of its operations and cash flows for the six months ended June 30, 2024 and 2023. The financial data and other information disclosed in these notes related to the six months ended June 30, 2024 and 2023 are also unaudited. The results for the six-month periods ended June 30, 2024 are not necessarily indicative of results to be expected for the year ending December 31, 2024, any other interim periods, or any future year or period.

The accompanying consolidated balance sheet as of December 31, 2023 has been derived from the Company's audited financial statements for the year ended December 31, 2023. These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited annual consolidated financial statements and notes thereto as of December 31, 2023 and for each of the two years in the period ended December 31, 2023 included elsewhere in this registration statement.

Liquidity and Going Concern — The accompanying condensed consolidated financial statements have been prepared in conformity with U.S. GAAP, which contemplate continuation of the Company as a going concern. The Company's recurring net losses, negative working capital, increased accumulated deficit and stockholders' deficit, raise substantial doubt about its ability to continue as a going concern. During the six months ended June 30, 2024, the Company recorded net income of approximately $8.9 million (of which approximately $11.2 million stemmed from the net increase in fair value of certain convertible notes, warrants and contingencies) and reported net cash used in operations of approximately $4.5 million, and approximately $3.4 million stemmed from the net gain recognized on investments. On June 30, 2024, the accumulated deficit was approximately $66.0 million and the stockholders' deficit was approximately $32.7 million. Excluding the approximately $11.2 million from the

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

six months ended June 30, 2024 increase in fair value ($9.5 million inception to date increase in fair value) of the aforementioned convertible notes, warrants and contingencies: the Company would have incurred a net loss for the six months ended June 30, 2024 of approximately $2.3 million; at June 30, 2024, the accumulated deficit would have been approximately $56.5 million and the stockholders' deficit would have been approximately $23.2 million. In connection with these condensed consolidated financial statements, management evaluated whether there were conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to meet its obligations as they become due within one year from the date of issuance of these financial statements. Management assessed that there were such conditions and events, including a history of recurring operating losses, and negative cash flows from operating activities, and significant current debt obligations. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As of June 30, 2024, the Company believes its current cash balances coupled with anticipated cash flow from operating activities may not be sufficient to meet its working capital requirements for at least one year from the date of the issuance of the accompanying condensed consolidated financial statements. The Company has issued an aggregate principal amount of $22,146,023 in unsecured 2022 and 2023 convertible notes, plus an additional $8,526,245 in the current round of Whiskey Special Ops 2023 Notes (See Notes 5, 14 and 16) to various new and existing investors including a related party, which together, have generated net cash proceeds of $22,960,870 through June 30, 2024.

In October and November 2023, the holders of the unsecured 2022 and 2023 convertible notes agreed to exchange the 2022 and 2023 convertible notes and accrued interest for common stock and prepaid warrants to purchase common stock of the Company. In April 2024, the holders of the Whiskey Notes agreed to exchange the notes and related warrants and accrued interest for common stock and prepaid warrants to purchase common stock of the Company. The aggregate fair value of the 2022 and 2023 convertible notes and the Whiskey Notes will be reclassified from Convertible Notes to equity under the terms of the respective Subscription Exchange Agreements upon the effectiveness of the Company's anticipated IPO. (See Notes 5 and 14.)

In December 2023, the Company entered into an agreement with a wholesaler distributor network in Oklahoma, which purchases products from the Company at wholesale and resells and distributes that product throughout the state through the state's three tier system. Since the beginning of January 2024, the Company has secured new wholesale distributors in Kansas, Kentucky, and portions of Colorado, all of which started distribution between July and September.

On January 31, 2024, we terminated a contract to produce a brand of gin for a large international spirit brand owner as we shift our focus toward putting our resources into higher margin activities under our own core brands and programs and reducing risks associated with hourly labor in certain markets. The termination of this contract is expected to result in decreased production services revenue beginning in the first quarter of 2024 while also helping us to improve our margin as we focus on higher margin activities.

In May 2024, the Company raised $100,000 under the terms of an accounts receivable factoring arrangement with a related party. (See Notes 14 and 16.)

As of July 1, 2024, the Company raised an additional aggregate of $299,667 between two separate investors under the terms of a July 2024 accounts receivable factoring arrangement with the separate investors, including $166,667 from the related party. The Company issued an aggregate of 66,549 five year warrants to purchase common stock at $6.00 per share in conjunction with the July 2024 accounts receivable factoring agreements. As of June 30, 2024, the $299,667 had been received pending execution of the factoring agreement on July 1, 2024. (See Notes 14 and 16.)

In August 2024, the $399,667 received from the two separate investors under the terms of the May 2024 and July 2024 factoring agreements, including accrued fees and related warrants was exchanged for an aggregate of 44,291 shares of Series A Preferred Stock and 19,983 warrants to purchase shares of common stock at the lesser of $5.00 per share or the price per share at which the common stock is sold in the Company's initial public offering. (Including $266,667 received from a related party, which was exchanged for 29,661 shares of Series A Preferred Stock, and 13,333 warrants.)

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

Subsequent to June 30, 2024, in July 2024, the Company raised an additional $250,000 from an investor under the terms of July 2024 accounts receivable factoring arrangement (which was subsequently exchanged for Series A Preferred Stock). The Company issued 83,333 five year warrants to purchase common stock at $6.00 per share in conjunction with the July 2024 accounts receivable factoring arrangement. As of September 2024, the Company recorded a total liability of $277,000 related to this factoring agreement, which was exchanged for 27,700 shares of Series A Preferred Stock, including 12,500 warrants to purchase shares of common stock at the lesser of $5.00 per share or the price per share at which the common stock is sold in the Company's initial public offering. (See Note 16.)

In May 2024, the Company filed a third amendment to its amended and restated certificate of incorporation to increase authorized capital to 75,000,000 shares, including 5,000,000 shares of preferred stock. In May 2024, the Company opened a $5,000,000 round of Series A Preferred Stock. (See Note 16.) As of June 30, 2024, as part of the Series A Preferred Stock offering, the Company had received subscriptions of $1,830,000 of Series A Preferred Stock, including $675,000 in cash, and $1,155,000 in the form of 525 barrels of aged whiskey (with $259,875 allocated to barrel fixed assets and $895,125 allocated to whiskey inventory). In connection with the $1,830,000 of Series A Preferred Stock, the Company also issued 91,500 warrants to purchase common stock at the lesser of $5.00 per share or the price per share at which the common stock is sold in the Company's initial public offering. (See Note 16.)

The accompanying condensed consolidated financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to its ability to continue as a going concern.

Risks and Uncertainties

Global Conflict

Management continues to monitor the changing landscape of global conflicts and their potential impacts on its business. First among these concerns is the ongoing conflict in Ukraine, which has caused disruption in the grain, natural gas and fertilizer markets, and the result of which is uncertainty in pricing for those commodities. Because the Company relies on grains for part of its raw inputs, these disruptions could increase the supply costs. However, since the Company sources all its grain from local or known domestic suppliers, management considers that the impact of the Ukraine war is not significant based on the Company's history and relationship with the existing farmers and growers. The other potential conflict the Company monitors is the threatening military activity between China and Taiwan. The Company used to source its glass bottles from suppliers in China and has recently migrated this production to Taiwan. Although the Company now has what it considers an adequate supply of its glass bottles at the current utilization rate, considering the potential disruption in Taiwan, the Company has started to evaluate new producers who can produce glass bottles in other countries. Finally, most recently the attacks on Israel and the resulting and potentially escalating tensions in the region could feed uncertainty in the oil markets, impacting prices for fuel, transportation, freight and other related items, impacting costs directly and indirectly leading to more inflation.

Inflation

The inflation rate could remain high in the foreseeable future. This could put cost pressure on the Company faster than it can raise prices on its products. In such cases the Company could lose money on products, or its margins or profits could decline. In other cases, consumers may choose to forgo making purchases that they do not deem to be essential, thereby impacting the Company's growth plans. Likewise, labor pressures could continue to increase as employees become increasingly focused on their own standard of living, putting upward labor costs on the Company before the Company has achieved some or all of its growth plans. Management continues to focus on cost containment and is monitoring the risks associated with inflation and will continue to do so for the foreseeable future.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

Interest Rates

Interest rates have been rising lately, and there are no signs that rates will drop soon. If interest rates continue to rise or remain higher than recent history has experienced, there is a risk it will cost more for the Company to conduct its business or to get access to credit. There is also a risk that consumers may feel increased economic pressure and not be willing to spend on the Company's goods or services. Management continues to focus on interest rates and their impact on the business, the cost of borrowing and the potential impacts on its future capital-raising efforts.

U.S. Government Operations

The chance that continued inaction in Congress to secure final passage of annual spending bills puts the Company at risk of a government shutdown, which could impact its ability to secure certain federal permits through the TTB, including transfer in bond permits, and formula or label approvals. Likewise, tribal partners the Company is working with to open HDC branded distilleries and tasting rooms will rely on securing their own TTB permits. Any government shutdown could slow down progress on development, opening or operating those locations.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of estimates — The presentation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses, and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of expenses during the reporting period. Significant estimates and assumptions reflected in these consolidated financial statements include the valuation of common stock, common stock warrants, convertible notes, warrant liabilities, and stock options. Results could differ from those estimates. Estimates are periodically reviewed due to changes in circumstances, facts, and experience. Changes in estimates are recorded in the period in which they become known.

Fair value option — As permitted under ASC Topic 825, *Financial Instruments* ("ASC Topic 825"), the Company has elected the fair value option to account for its convertible notes issued since 2022. In accordance with ASC Topic 825, the Company records the convertible notes at fair value with changes in fair value recorded as a component of other income (expense) in the consolidated statements of operations. As a result of applying the fair value option, direct costs and fees related to the convertible notes are expensed as incurred and are not deferred. The Company concluded it is appropriate to apply the fair value option as they are liabilities not classified as a component of stockholders' equity (deficit). In addition, the convertible notes meet other applicable criteria for electing fair value option under ASC Topic 825.

Fair value measurements — Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. There is a hierarchy based upon the transparency of inputs used in the valuation of an asset or liability. The valuation hierarchy contains three levels:

Level 1 —	Valuation inputs are unadjusted quoted market prices for identical assets or liabilities in active markets.
Level 2 —	Valuation inputs are quoted prices for identical assets or liabilities in markets that are not active, quoted market prices for similar assets and liabilities in active markets and other observable inputs directly or indirectly related to the assets or liabilities being measured.
Level 3 —	Valuation inputs are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize observable inputs and minimize unobservable inputs.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

In determining the appropriate levels, the Company analyzes the assets and liabilities measured and reported on a fair value basis. At each reporting period, all assets and liabilities for which the fair value measurement is based on significant unobservable inputs are classified as Level 3.

The Company's financial instruments consist primarily of cash, accounts receivable, inventory and accounts payable. The carrying amount of such instruments approximates fair value due to their short-term nature. The carrying value of long-term debt approximates fair value because of the market interest rate of the debt. The convertible notes and warrant liabilities associated with the Company's convertible promissory notes are carried at fair value, determined according to Level 3 inputs in the fair value hierarchy described above.

During the six months ended June 30, 2024 and 2023, there were no transfers between Level1, Level 2, and Level 3.

Convertible notes — The Company's convertible promissory notes are recognized initially and subsequently at fair value, inclusive of their respective accrued interest at their stated interest rates, which are included in convertible notes on the Company's consolidated balance sheets. The changes in the fair value of these convertible notes are recorded as "changes in fair value of convertible notes" as a component of other income (expenses) in the consolidated statements of operations. The changes in fair value related to the accrued interest components are also included within the single line of change in fair value of convertible notes on the consolidated statements of operations.

Warrant liabilities — The Company issued certain warrants for the purchase of shares of its common stock in connection with the Company's convertible notes (see Note 7) and classified them as a liability on its consolidated balance sheets. These warrants are classified as a liability under ASC 480 as the Company may settle the warrants by issuing a variable number of its common shares and the monetary value of the obligation is based solely or predominantly on a fixed monetary amount known at inception. The warrant liabilities are initially recorded at fair value on the issuance date of each warrant and are subsequently remeasured to fair value at each reporting date. Changes in the fair value of the warrant liabilities are recognized as a component of other income (expense) in the consolidated statements of operations. Changes in the fair value of the warrant liabilities will continue to be recognized until the warrants are exercised, expire or qualify for equity classification.

Concentrations of credit risk — Financial instruments potentially subjecting the Company to concentrations of credit risk consist primarily of accounts receivable, accounts payable and bank demand deposits that may, from time to time, exceed Federal Depository Insurance Corporation ("FDIC") insurance limits. To mitigate the risks associated with FDIC insured limits the Company recently opened an Insured Cash Swap ("ICS") service account at its primary bank. Under terms of the ICS, when the bank places funds for the Company using ICS, the deposit is sent from the Company's transaction account into deposit accounts at other ICS Network banks in amounts below the standard FDIC insured maximum of $250,000 for overnight settling. If the Company's account exceeds the FDIC limit of $250,000 at the end of the business day, funds are automatically swept out by our bank and spread among partner banks in accounts, each totaling less than $250,000. This makes the Company's funds eligible for FDIC insurance protection each day. The funds are then swept back into the Company's account at the beginning of the next business day. The aggregate limit that can be protected for the Company under this program is approximately $150 million.

The Company considers the concentration of credit risk associated with its accounts receivable to be commercially reasonable and believes that such concentration does not result in the significant risk of near-term severe adverse impacts. As of June 30, 2024 and December 31, 2023, the Company had customers that individually represented 10% or more of the Company's accounts receivable. There were three and two individual customers that represented 78% and 71% of total accounts receivable, as of June 30, 2024 and December 31, 2023, respectively. There were three and three individual customer accounts that represented 58% and 61% of total revenue for the six months ended June 30, 2024 and 2023, respectively. There were three and three individual suppliers that represented 42% and 48% of total accounts payable, as of June 30, 2024 and December 31, 2023, respectively.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

Accounts receivable — Accounts receivable are reported at net realizable value. Receivables consist of amounts due from distributors. In evaluating the collectability of individual receivable balances, the Company considers several factors, including the age of the balance, the customers' historical payment history, its credit worthiness and economic trends. There was no allowance for credit losses to reflect CECL adoption as of June 30, 2024 and December 31, 2023.

Inventories — Inventories are stated at the lower of cost or net realizable value, with cost being determined under the weighted average method, and consist of raw materials, work-in-process, and finished goods. Costs associated with spirit production and other costs related to manufacturing of products for sale, are recorded as inventory. Work-in-process inventory is comprised of all accumulated costs of raw materials, direct labor, and manufacturing overhead to the respective stage of production. Finished goods and raw materials inventory includes the supplier cost, shipping charges, import fees, and federal excise taxes. Management routinely monitors inventory and periodically writes off damaged and unsellable inventory. There was no valuation allowance as of June 30, 2024 and December 31, 2023.

The Company holds volumes of barreled whiskey, which will not be sold within one year due to the duration of the aging process. Consistent with industry practices, all barreled whiskey is classified as work-in-process inventory and is included in current assets.

Goodwill — Goodwill represents the excess of the purchase price over the fair value of the net assets acquired in a business combination. Goodwill is not subject to amortization, and instead, assessed for impairment annually at the end of each fiscal year, or more frequently when events or changes in circumstances indicate that it is more likely than not that the fair value of a reporting unit is less than its carrying amount in accordance with ASC 350 — Intangibles — Goodwill and Other.

The Company has the option to first assess qualitative factors to determine whether events or circumstances indicate it is more likely than not that the fair value of a reporting unit is greater than its carrying amount, in which case a quantitative impairment test is not required.

As provided for by ASU 2017-04, Simplifying the Test for Goodwill Impairment, the quantitative goodwill impairment test is performed by comparing the fair value of the reporting unit with its carrying amount, including goodwill. If the fair value of the reporting unit exceeds its carrying amount, goodwill is not impaired. An impairment loss is recognized for any excess of the carrying amount of the reporting unit over its fair value up to the amount of goodwill allocated to the reporting unit. Income tax effects from any tax-deductible goodwill on the carrying amount of the reporting unit are considered when measuring the goodwill impairment loss, if applicable.

Finite-Lived Intangible Assets — Intangible assets are recorded at cost less any accumulated amortization and any accumulated impairment losses. Intangible assets acquired through business combinations are measured at fair value at the acquisition date.

Intangible assets with finite lives are comprised of customer relationships and intellectual property and are amortized over their estimated useful lives on an accelerated basis over the projected pattern of economic benefits. Finite-lived intangible assets are reviewed for impairment annually, or more frequently when events or changes in circumstances indicate that it is more likely than not that the fair value has been reduced to less than its carrying amount.

Business Combinations — The Company accounts for business combinations under the acquisition method of accounting in accordance with ASC 805 — Business Combinations, by recognizing the identifiable tangible and intangible assets acquired and liabilities assumed, measured at the acquisition date fair value. The determination of fair value involves assumptions, estimates and judgments. The initial allocation of the purchase price is considered preliminary and therefore subject to change until the end of the measurement period (up to one year from the acquisition date). Goodwill as of the acquisition date is measured as the excess of consideration transferred over the net assets acquired. Contingent consideration is included within the purchase price and is initially recognized at

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

fair value as of the acquisition date. Contingent consideration classified as either an asset or liability, is remeasured to fair value each reporting period, until the contingency is resolved. Changes in contingent consideration period-over-period are recognized in earnings.

Acquisition related expenses are recognized separately from the business combination and are expensed as incurred.

Deferred transaction costs — Deferred transaction costs consist of direct legal, accounting, filing and other fees and costs directly attributable to: the proposed Business Combination Agreement that was terminated in May 2023 (see Note 1); and, the Company's contemplated IPO. Deferred transaction costs were approximately $1,556,598 and $1,397,964 as of June 30, 2024 and December 31, 2023, respectively. As of May 18, 2023, the Business Combination Agreement was terminated. Subsequent to the termination of the Business Combination Agreement, the Company is contemplating an initial public offering ("IPO"). Accordingly, the deferred offering costs relating to the Company's contemplated IPO will continue to be deferred and capitalized as incurred. The deferred offering costs relating to the Company's contemplated IPO will be offset against IPO proceeds upon the consummation of the offering. In the event the IPO is terminated, abandoned or significantly delayed, any deferred transaction costs will be immediately recognized in operating expenses.

Property and equipment, net of accumulated depreciation — Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets — generally three to twenty years. Leasehold improvements are amortized on a straight-line basis over the shorter of the asset's estimated useful life or the term of the lease. Construction in progress is related to the construction or development of property and equipment that have not yet been placed in service for their intended use. When the asset is available for use, it is transferred from construction in progress to the appropriate category of property and equipment and depreciation on the item commences.

Upon retirement or sale, the related cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is included in the consolidated statements of operations. Costs of maintenance and repairs are charged to expense as incurred; significant renewals and betterments are capitalized.

Leases — The Company adopted ASC 842, Leases ("ASC 842") as of January 1, 2022. ASC 842 was adopted using the modified retrospective transition approach, with no restatement of prior periods or cumulative adjustments to accumulated deficit. Upon adoption, the operating lease right-of-use ("ROU") asset was measured at cost, which included the initial measurement of the lease liability, prepaid rent and initial direct costs incurred by the Company, less incentives received. The operating lease liability represents the present value of the remaining minimum lease payments as of January 1, 2022. The Company elected the package of three practical expedients, which allowed an entity to carry forward prior conclusions related to whether any expired or existing contracts are or contain leases, the lease classification for any expired or existing leases and initial direct costs for existing leases. The Company elected not to apply the use-of-hindsight to reassess the lease term. The Company elected not to recognize leases with an initial term of 12 months or less within the consolidated balance sheets and to recognize those lease payments on a straight-line basis in the consolidated statements of operations over the lease term. The Company elected the practical expedient to not separate lease and non-lease components for all leases. The new lease accounting standard also provides practical expedients for an entity's ongoing accounting.

The Company has operating leases for corporate offices, warehouses, distilleries and tasting rooms that are accounted for under ASC 842. The Company determines if an arrangement is a lease at inception. Operating lease ROU assets represent the Company's right to use an underlying asset for the lease term and operating lease liabilities represent the Company's obligation to make lease payments arising from a lease. Operating lease ROU assets and lease liabilities are recognized at the commencement date based on the present value of the future minimum lease payments over the lease term. The Company recognizes lease expense for lease payments on a straight-line basis over the term of the lease. Operating lease ROU assets also include the impact of any lease incentives. An amendment to a lease is assessed to determine if it represents a lease modification or a separate contract. Lease modifications are reassessed as of the effective date of the modification. For modified leases, the Company also reassess the lease classification as of the modification's effective date.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

The interest rate used to determine the present value of the future lease payments is the Company's incremental borrowing rate, because the interest rate implicit in the Company's operating leases is not readily determinable. The incremental borrowing rate is estimated to approximate the interest rate on a collateralized basis with similar terms and payments, and in the economic environments where the leased asset is located. The incremental borrowing rate is calculated by modeling the Company's credit rating on its history arm's-length secured borrowing facility and estimating an appropriate credit rating for similar secured debt instruments. The Company's calculated credit rating on secured debt instruments determines the yield curve used. In addition, an incremental credit spread is estimated and applied to reflect the Company's ability to continue as a going concern. Using the spread adjusted yield curve with a maturity equal to the remaining lease term, the Company determines the borrowing rates for all operating leases.

The Company's operating lease terms include periods under options to extend or terminate the operating lease when it is reasonably certain that the Company will exercise that option in the measurement of its operating lease ROU assets and liabilities. The Company considers contractual-based factors such as the nature and terms of the renewal or termination, asset-based factors such as the physical location of the asset and entity-based factors such as the importance of the leased asset to the Company's operations to determine the operating lease term. The Company generally uses the base, non- cancelable lease term when determining the operating lease ROU assets and lease liabilities. The ROU asset is tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be fully recoverable in accordance with Accounting Standards Codification Topic 360, *Property, Plant, and Equipment.*

Operating lease transactions are included in operating lease ROU assets, current operating lease liabilities and operating lease liabilities, net of current portion on the consolidated balance sheets.

Impairment of long-lived assets — All of the Company's long-lived assets held and used are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable. Factors that the Company considers in deciding when to perform an impairment review include significant underperformance of the business in relation to expectations, significant negative industry or economic trends and significant changes or planned changes in the use of the assets. When such an event occurs, future cash flows expected to result from the use of the asset and its eventual disposition is estimated. If the undiscounted expected future cash flows are less than the carrying amount of the asset, an impairment loss is recognized for the difference between the asset's fair value and its carrying value. The Company did not record any impairment losses on long-lived assets for the six months ended June 30, 2024 and 2023.

Investments/Investment in Flavored Bourbon LLC — Non-marketable equity investments of privately held companies are accounted for as equity securities without readily determinable fair value at cost minus impairment, as adjusted for observable price changes in orderly transactions for identical or similar investment of the same issuer pursuant to Accounting Standards Codification ("ASC") Topic 321 Investments — Equity Securities ("ASC 321") as the Company does not exert any significant influence over the operations of the investee company.

The Company performs a qualitative assessment at each reporting period considering impairment indicators to evaluate whether the investment is impaired. Impairment indicators that the Company considers include but are not limited to; i) a significant deterioration in the earnings performance, credit rating, asset quality, or business prospects of the investee, ii) a significant adverse change in the regulatory, economic, or technological environment of the investee, iii) a significant adverse change in the general market condition of either the geographical area or the industry in which the investee operates, iv) a bona fide offer to purchase, an offer by the investee to sell, or a completed auction process for the same or similar investment for an amount less than the carrying amount of that investment; v) factors that raise significant concerns about the investee's ability to continue as a going concern, such as negative cash flows from operations, working capital deficiencies, or noncompliance with statutory capital requirements or debt covenants. If the qualitative assessment indicates that the investment is impaired, a loss is recorded equal to the difference between the fair value and carrying value of the investment.

As of June 30, 2024 and December 31, 2023, the Company had a 12.2% and 15.1% ownership interest in Flavored Bourbon, LLC, respectively, and did not record any impairment charges related to its investment in Flavored Bourbon, LLC for the year ended December 31, 2023. See also Note 5 — Payment Upon Sale of Flavored

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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

Bourbon, LLC. In January 2024, Flavored Bourbon LLC conducted a capital call, looking to raise $12 million from current and new investors at the same valuation as the last raise (which was in 2021). The Company chose not to participate in the raise, but still retained its rights to full recovery of is capital account of $25.3 million, with the Company being guaranteed a pay out of this $25.3 million in the event the brand is sold to a third party, or the Company can block such sale. As of June 30, 2024, a total of $9,791,360 of the $12 million was raised, with the remainder targeted to be raised by the end of 2024. The Company retains 12.2% ownership interest in this entity plus a 2.5% override in the waterfall of distributions. As a result of the January 2024 capital call, which was the first triggering event to perform a review of the fair value of its Investment in Flavored Bourbon, LLC since the prior transaction in 2021, in accordance with adjusting for observable price changes for similar investments of the same issuer pursuant to ASC 321 as noted above, the Company performed a qualitative assessment of its Investment in Flavored Bourbon, LLC. The Company determined that the Class E Units being offered were similar enough to the Company's investment in Class A Units (with differences including the Class A Units' liquidation preference seniority and preferential voting rights related to sale or liquidation) to trigger a reassessment of the value of the Company's Investment in Flavored Bourbon LLC, which was done using the Option Pricing Model Backsolve Valuation Method ("OPM Backsolve Valuation Method"). The Company's analysis determined the fair value of its Investment in Flavored Bourbon, LLC, should be adjusted to $14,285,000 as of June 30, 2024 from $10,864,000 recorded previously, with the resulting increase in fair value of $3,421,000 recorded as gain on increase in value of Flavored Bourbon, LLC on the condensed consolidated statement of operations for the six months ended June 30, 2024.

The OPM Backsolve Valuation Method derives the implied equity value for one type of equity security from a contemporaneous transaction involving another type of security. The recent transaction involving Class E Units was utilized as the reference transaction in the OPM Backsolve Valuation Method analysis to derive a value of our Class A Units. The OPM Backsolve Valuation Method analysis applies the Black-Scholes-Merton option pricing model, which is impacted by the following assumptions:

- Expected Term. The probability weighted expected term incorporates our assumptions about the time necessary for the business to develop and position itself for a potential liquidity event.
- Expected Volatility. As Flavored Bourbon, LLC shares are privately held, the volatility used is based on a benchmark of comparable companies within the distilled spirits industry.
- Expected Dividend Yield. The dividend rate used is zero as Flavored Bourbon, LLC has never paid any cash dividends, and we do not anticipate any in the foreseeable future.
- Risk-Free Interest Rate. The interest rates used are based on the implied yield available on U.S. Treasury zero-coupon issues with an equivalent remaining term equal to the expected term.

The assumptions the Company used in calculating the fair value as of June30, 2024 included: expected term of 5 years; expected volatility of 70%; expected dividends of $0; and, risk-free interest rate of 4.08% (based on the 5-year T-Bill rate). The Company irrevocably elected to measure the Investment in Flavored Bourbon LLC at fair value using the OPM Backsolve Valuation Method only if there is an observable transaction that triggers such revaluation.

Treasury stock — Treasury stock is shares of the Company's own stock that have been issued and subsequently repurchased by the Company. Converting outstanding shares to treasury shares does not reduce the number of shares issued but does reduce the number of shares outstanding. These shares are not eligible to receive dividends.

The Company accounts for treasury stock under the cost method. Upon the retirement of treasury shares, the Company deducts the par value of the retired treasury shares from common stock and allocates the excess of cost over par as a deduction to additional paid-in capital based on the pro-rata portion of additional paid-in-capital, and

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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

the remaining excess as an increase to accumulated deficit. Retired treasury shares revert to the status of authorized but unissued shares. All shares repurchased to date have been retired. For the six months ended June 30, 2024 and 2023, the Company repurchased no shares of common stock.

Segment reporting — The Company operates in a single segment. The segment reflects how the Company's operations are evaluated by senior management and the structure of its internal financial reporting. Both financial and certain non-financial data are reported and evaluated to assist senior management with strategic planning.

Revenue recognition — The Company's revenue consists primarily of the sale of spirits domestically in the United States. Customers consist primarily of direct consumers. The Company's revenue generating activities have a single performance obligation and are recognized at the point in time when control transfers and the obligation has been fulfilled, which is when the related goods are shipped or delivered to the customer, depending upon the method of distribution and shipping terms. Revenue is measured as the amount of consideration the Company expects to receive in exchange for the sale of a product. Revenue is recognized net of any taxes collected from customers, which are subsequently remitted to governmental authorities. Sales terms do not allow for a right of return unless the product is damaged. Historically, returns have not been material to the Company. Amounts billed to customers for shipping and handling are included in sales. The results of operations are affected by economic conditions, which can vary significantly by time of year and can be impacted by the consumer disposable income levels and spending habits.

Direct to Consumer — The Company sells its spirits and other merchandise directly to consumers through spirits club memberships, at the Heritage Distilling tasting rooms and through the internet (e-commerce).

Spirits club membership sales are made under contracts with customers, which specify the quantity and timing of future shipments. Customer credit cards are charged in advance of quarterly shipments in accordance with each contract. The Company transfers control and recognizes revenue for these contracts upon shipment of the spirits to the customer.

Tasting room and internet spirit sales are paid for at the time of sale. The Company transfers control and recognizes revenue for the spirits and merchandise when the product is either received by the customer (on-site tasting room sales) or upon shipment to the customer (internet sales).

The Company periodically offers discounts on spirits and other merchandise sold directly to consumers through spirits club memberships, at the Heritage Distilling tasting rooms and through the internet. All discounts are recorded as a reduction of retail product revenue.

Wholesale — The Company sells its spirits to wholesale distributors under purchase orders. The Company transfers control and recognizes revenue for these orders upon shipment of the spirits from the Company's warehouse facilities. Payment terms to wholesale distributors typically range from 30 to 45 days. The Company pays depletion allowances to its wholesale distributors based on their sales to their customers which are recorded as a reduction of wholesale product revenue. The Company also pays certain incentives to distributors which are reflected net within revenues as variable consideration. The total amount of depletion allowances and sales incentives for six months ended June 30, 2024 and 2023 were $35,489 and $21,077, respectively.

In December 2023, the Company entered into an agreement with a wholesaler distributor network in Oklahoma, which purchases products from the Company at wholesale and resells and distributes that product throughout the state through the state's three tier system. Since the beginning of January 2024, the Company has secured new wholesale distributors in Kansas, Kentucky, and portions of Colorado, all of which started between July and September. This is a significant expansion from the Company's core distribution footprint in the Pacific Northwest.

Third Party — The Company produces and sells barreled spirits to Third Party customers who either hold them for investment or who have a plan to use the product in the future once the spirits are finished aging. Third Party Barreled Spirits are paid with a deposit up front, with the remainder billed at the time of completion

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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

when the finished spirits are then produced and supplied to the customer. In most cases, the barrels are stored during aging for the customer at a fee. As of June 30, 2024 and December 31, 2023, the Company had deferred revenues of $471,272 and $1,214,504, respectively, included in other current liabilities within the consolidated balance sheets. These performance obligations are expected to be satisfied within one year.

Service revenue — Represents fees for distinct value-added services that the Company provides to third parties, which may include production, bottling, marketing consulting and other services aimed at growing and improving brands and sales. Revenue is billed monthly and earned and recognized over-time as the agreed upon services are completed. The Company recorded $872,616 and $1,253,834 in service revenue in the condensed consolidated statements of operations for the six months ended June 30, 2024 and 2023, respectively. There is no contractually committed service revenue that would give rise to an unsatisfied performance obligation at the end of each reporting period.

The following table presents revenue disaggregated by sales channel:

	For the Six Months Ended June 30,	
	2024	**2023**
Direct to Consumer	$ 1,681,613	$ 1,168,695
Wholesale	806,860	786,526
Third Party	187,385	228,301
Total Products Net Sales	2,675,858	2,183,521
Services	872,616	1,253,834
Total Net Sales	$ 3,548,474	$ 3,437,355

Substantially all revenue is recognized from sales of goods or services transferred when contract performance obligations are met. As such, the accompanying consolidated financial statements present financial information in a format which does not further disaggregate revenue, as there are no significant variations in economic factors affecting the nature, amount, timing, and uncertainty of cash flows.

Excise taxes — Excise taxes are levied on alcoholic beverages by governmental agencies. For imported alcoholic beverages, excise taxes are levied at the time of removal from the port of entry and are payable to the U.S. Customs and Boarder Protection (the "CBP"). For domestically produced alcoholic beverages, excise taxes are levied at the time of removal from a bonded production site and are payable to the Alcohol and Tobacco Tax and Trade Bureau (the "TTB"). These taxes are not collected from customers but are instead the responsibilities of the Company. The Company's accounting policy is to include excise taxes in "Cost of Sales" within the consolidated statements of operations, which totaled $93,067 and $77,360 for the six months ended June 30, 2024 and 2023, respectively.

Shipping and handling costs — Shipping and handling costs of $109,444 and $41,725 were included in "Cost of Sales" within the condensed consolidated statements of operations for the six months ended June 30, 2024 and 2023 respectively. Costs are higher in 2024 versus the same time period in 2023 as the Company incurred additional shipping charges from a third party for much of the Company's eCommerce sales.

Stock-based compensation — The Company measures compensation for all stock-based awards at fair value on the grant date and recognizes compensation expense over the service period on a straight-line basis for awards expected to vest.

The fair value of stock options granted is estimated on the grant date using the Black-Scholes option pricing model. The Company uses a third-party valuation firm to assist in calculating the fair value of the Company's stock options. This valuation model requires the Company to make assumptions and judgment about the variables used in the calculation, including the volatility of the Company's common stock and assumed risk-free interest rate,

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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

expected years until liquidity, and discount for lack of marketability. Forfeitures are accounted for and are recognized in calculating net expense in the period in which they occur. Stock-based compensation from vested stock options, whether forfeited or not, is not reversed.

In the past the Company granted stock options to purchase common stock with exercise prices equal to the value of the underlying stock, as determined by the Company's Board of Directors on the date the equity award was granted.

The Board of Directors determines the value of the underlying stock by considering several factors, including historical and projected financial results, the risks the Company faced at the time, the preferences of the Company's stockholders, and the lack of liquidity of the Company's common stock. In June 2024, after reviewing market value analysis presented to it by is underwriter and a separate market analysis from its outside valuation service provider, the Board of Directors determined the fair market value of the underlying stock to be $5.00 per share.

During the six months ended June 30, 2024 and 2023, the Company did not grant any stock option awards. The Company has not granted any stock options since 2019, when the Company's 2018 Plan was terminated in favor of the 2019 Plan, under which the Company has granted RSUs. (See Note 9.) Subsequent to June 30, 2024, the Company has prepared for approval by the Board of Directors and Shareholders, prior to the effective date of this offering, the 2024 Plan (the "2024 Plan"), which would authorize up to 2,500,000 shares of common stock to be issued under the new 2024 Plan upon its adoption and the consummation of Company's planned offering (See Note 16.)

Stock option awards generally vest on time-based vesting schedules. Stock-based compensation expense is recognized based on the value of the portion of stock-based payment awards that is ultimately expected to vest and become exercisable during the period. The Company recognizes compensation expense for all stock-based payment awards made to employees, directors, and non-employees using a straight-line method, generally over a service period of four years.

Advertising — The Company expenses costs relating to advertising either as costs are incurred or the first time the advertising takes place. Advertising expenses totaled $245,187 and $495,542 for the six months ended June 30, 2024 and 2023 respectively and were included in "Sales and marketing" in the condensed consolidated statements of operations. Costs were higher in 2023 as one additional large sponsorship contract existed at that time that was not renewed in 2024.

Income taxes — The Company follows the Financial Accounting Standards Board ("FASB") Accounting Standards Codification 740, "*Income Taxes*" for establishing and classifying any tax provisions for uncertain tax positions. The Company's policy is to recognize and include accrued interest and penalties related to unrecognized tax benefits as a component of income tax expenses. The Company is not aware of any entity level uncertain tax positions.

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the condensed consolidated financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statements and the tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in operations in the period that includes the enacted date.

Net income/(loss) per share attributable to common stockholders — The Company computed basic net income/(loss) per share attributable to common stockholders by dividing net income/(loss) attributable to common stockholders by the weighted-average number of common stock outstanding for the period, without consideration for potentially dilutive securities. The Company computes diluted net income/(loss) per common share after giving consideration to all potentially dilutive common stock, including stock options, restricted stock unit ("RSU") awards,

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NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

and warrants to purchase common stock outstanding during the period determined using the treasurystock method as well as the convertible notes outstanding during the period determined using the if-converted method, except where the effect of including such securities would be antidilutive.

Recently adopted accounting pronouncements standards — In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments — Credit Losses (Topic 326), which establishes a new approach to estimate credit losses on certain financial instruments. The update requires financial assets measured at amortized cost to be presented at the net amount expected to be collected. The amended guidance will also update the impairment model for available-for-sale debt securities, requiring entities to determine whether all or a portion of the unrealized loss on such securities is a credit loss. The standard became effective for interim and annual periods beginning after December 15, 2022. Effective January 1, 2023, the Company adopted the provisions of ASU No. 2016-13 and determined that adoption did not have a material impact on our consolidated financial statements.

NOTE 3 — INVENTORIES

Inventories consisted of the following:

	June 30, 2024	December 31, 2023
Finished Goods	$ 463,850	$ 531,302
Work-in-Process	1,852,436	989,712
Raw Materials	1,105,821	1,235,336
Total Inventory	$ 3,422,107	$ 2,756,350

NOTE 4 — PROPERTY AND EQUIPMENT, NET

Property and equipment, net consisted of the following:

	Estimated Useful Lives (in years)	June 30, 2024	December 31, 2023
Machinery and Equipment	5 to 20	$ 3,779,132	$ 3,469,204
Leasehold Improvements	Lease term	7,378,639	7,378,639
Computer and Office Equipment	3 to 10	2,478,715	2,492,310
Vehicles	5	248,304	248,304
Construction in Progress	N/A	41,874	11,500
Total Property and Equipment		13,926,664	13,599,957
Less: Accumulated Depreciation		(7,742,336)	(7,171,845)
Property and Equipment, net of Accumulated Depreciation		$ 6,184,328	$ 6,428,112

Depreciation expense related to property and equipment for the six months ended June 30, 2024 and 2023 was $636,072 and $777,311 respectively.

NOTE 5 — CONVERTIBLE NOTES

Increased Authorized Capital for Convertible Notes

On October 30, 2023, the Company's Board of Directors and shareholders took certain actions and approved amendments to the Company's amended and restated certificate of incorporation and bylaws in preparation for a planned initial public offering (the "Actions and Amendments"). These Actions and Amendments, among other things: increased the Company's authorized capital from 3,000,000 shares to 10,000,000 shares, including 9,500,000 shares of common stock and 500,000shares of Founders Common Stock (which Founders Common

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NOTE 5 — CONVERTIBLE NOTES (cont.)

Stock has four votes per share). Subsequent to December 31, 2023, the Company filed a second amendment to its amended and restated certificate of incorporation to increase authorized capital to 70,000,000 shares. Further, in May 2024, the Company filed a third amendment to its amended and restated certificate of incorporation to increase authorized capital to 75,000,000 shares, including 5,000,000 shares of preferred stock. Upon approval of the October 30, 2023 increase in authorized shares, the 2022 and 2023 Convertible Notes were exchanged (contingent upon the consummation of this offering) for 3,312,148 shares of common stock and 507,394 prepaid warrants; The actual unconditional exchange of the Convertible Notes and reclassification of the aggregate June 30, 2024 fair value of $18,067,088 in Convertible Notes to equity under the terms of the Subscription Exchange Agreement will occur upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the 2022 and 2023 Convertible Notes for equity. Until such time, the Convertible Notes will remain on our balance sheet and the change in their fair value will also continue to be recognized as Other Income/(Expense) in our Statement of Operations.

2022 Convertible Promissory Notes

During April 2022 through December 2022, the Company issued multiple unsecured convertible promissory notes (the "2022 Notes") with aggregate net cash proceeds of approximately $10,740,000 and aggregate principal sum of $14,599,523 to various new and existing investors, including $4,675,000 in cash proceeds and $6,311,250 in principal to a related party (See Note 14). In February 2023, the Company issued one convertible note to an existing investor under the terms of the 2022 Notes with net cash proceeds of $260,000 and a principal sum of $351,000. In May 2023, the Company agreed with one investor to transfer their 2022 Note with a principal sum of $135,000 to instead be included under their 2023 Round 3 Note (for a total Round 3 Note of $2,160,000 for said investor). Aggregate cash proceeds and principal sum of the 2022 Notes totaled $10,900,000 and $14,815,523, respectively, including $4,675,000 of cash proceeds and $6,311,250 of principal to a related party. The 2022 Notes have a maturity date of July 31, 2024. The 2022 Notes are convertible, in whole or in part, into shares of the Company's common stock at a conversion price of $157.89 per share at the option of the convertible noteholders, at any time and from time to time. If the Company consummates an IPO or a merger with a SPAC (a "deSPAC merger"), the unpaid and accrued balances of the 2022 Notes and the associated interest will automatically convert into the Company's common stock at a discounted conversion price from either the price per share at which the Company's common stock is sold in the IPO or the redemption price per share under a deSPAC merger. The 2022 Notes also contain certain other covenants that, among other things, impose certain restrictions on indebtedness and investments. The 2022 Notes may be used for general corporate purposes, including working capital needs, capital expenditures, and the share repurchase program. In October and November 2023, the holders of the 2022 Notes agreed to exchange the convertible notes and accrued interest under the mandatory conversion provision of the 2022 Notes, for common stock of the Company. (See "Exchange of 2022 and 2023 Convertible Promissory Notes" below.)

2023 Convertible Promissory Notes

Beginning in March 2023 through August 2023, the Company issued multiple convertible promissory notes (collectively the "2023 Convertible Notes") with various terms to various new and existing investors with aggregate net cash proceeds of $5,330,000 and aggregate principal sum of $7,230,500 (of which $2,950,000 in cash proceeds and $3,982,500 in principal was from a related party). In October and November 2023, the holders of the 2023 Convertible Notes agreed to exchange the convertible notes and accrued interest for common stock and prepaid warrants to purchase common stock of the Company. (See "Exchange of 2022 and 2023 Convertible Promissory Notes" below.)

Exchange of 2022 and 2023 Convertible Promissory Notes

In October 2023 the holders of the 2022 and 2023 Convertible Notes entered into a Subscription Exchange Agreement to exchange into equity the value of their 2022 and 2023 Convertible Notes with all accrued interest and fees through, and effective as of, June 30, 2023. In October 2023, in accordance with the Subscription Exchange

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NOTE 5 — CONVERTIBLE NOTES (cont.)

Agreement, and upon approval of an increase in authorized capital to accommodate such exchange, an aggregate fair value of $33,849,109 in convertible notes was exchanged (contingent upon the consummation of this offering) for an aggregate of 3,312,148 shares of common stock (with a previous fair value of $30,344,094 as of September 30, 2023 and a principal amount of $24,795,755, including accrued interest) and 507,394 prepaid warrants to purchase common stock (with a previous fair value of $3,505,015 as of September 30, 2023 and a principal amount of $1,714,574, including accrued interest). As of June 30, 2024, the aggregate fair value of the convertible notes had decreased to $18,067,088 (with $16,205,395 attributable to the 3,312,148 shares of common stock, and $1,861,693 attributable to the 507,394 prepaid warrants to purchase common stock.) As of June 30, 2024, the $18,216,803 decrease in fair value of the 2022 and 2023 Convertible Notes, is included as a gain in the change in fair value of convertible notes in our condensed consolidated statement of operations for the six months ended June 30, 2024. As further discussed below (See Note 8 — Fair Value Measurement) such valuation reflects the fixed number of shares and prepaid warrants exchanged for the convertible notes as impacted by the valuation methodologies and inputs, including an estimated common stock share value of $7.50 ($13.16 post split) per share as of March 31, 2024 as compared to a subsequent share value of $5.00 per share as of June 30, 2024.

The aggregate fair value of the exchanged notes will be reclassified from Convertible Notes to equity under the terms of the Subscription Exchange Agreement upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the 2022 and 2023 Convertible Notes for equity. At which time, the value of the shares and prepaid warrants will be recorded as common stock at the IPO price per share (currently estimated at $5.00 per share), and the remaining fair value of the Convertible Notes will be recognized as a gain in Change in Value of Convertible Notes on our condensed consolidated statement of operations for the six months ended June 30, 2024 (calculated using an assumed IPO price of $5.00 per share as of the anticipated IPO.)

The agreement had a true up provision in the event the eventual IPO price is higher or lower than the conversion rate of $13.16 per share stated in the document. Under the terms of the Subscription Exchange Agreement, the true up provision was eliminated and the strike price of the warrants related to the 2022 Notes was fixed at a negotiated fixed, non-adjustable rate of $6.00 per share. If the Company has not listed the Common Stock on a national or international securities exchange by October 31, 2024, the Holder will have the right to exchange the Common Stock issued under the Subscription Exchange Agreement for promissory notes (the "New Notes") on terms substantially similar to the Notes exchanged (contingent upon the consummation of this offering) in October 2023. When the Subscription Exchange Agreement was executed, the company did not have enough shares of common stock in the authorized capital account to accommodate all shares due. The Note Holders agreed to waive any requirement of the Company to have enough shares in the authorized capital account to account for the exchange for common stock and prepaid warrants.

Payment Upon Sale of Flavored Bourbon, LLC

Under the terms of the 2022 and 2023 Convertible Promissory Notes' Securities Purchase Agreements, upon the sale of the Flavored Bourbon brand to an arm's length third party and the receipt by the Company of any proceeds due to it from such brand sale, the holders of the 2022 and 2023 Convertible Promissory Notes shall receive a one-time payment in an amount equal to 150% of their original subscription amount. Such payment shall be in addition to any other amounts otherwise due and shall survive the conversion or repayment of the 2022 and 2023 Convertible Promissory Notes. Accordingly, the $10,900,000 in 2022 Convertible Promissory Notes subscriptions and $5,430,000 in 2023 Convertible Promissory Notes subscriptions will be due an aggregate of $24,495,000 upon the sale of Flavored Bourbon, LLC to an arm's length third party.

2023 Series — Convertible Whiskey Special Ops 2023 Notes

In September 2023, the Company opened a $5,000,000 round of convertible notes with a 12.5% interest rate and an August 29, 2026 maturity date (the "Whiskey Special Ops 2023 Notes" or the "Whiskey Notes"). In March 2024, the round was increased to $10,000,000. As of June 30. 2024 and December 31, 2023, the Company

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NOTE 5 — CONVERTIBLE NOTES (cont.)

had $8,526,245 and $2,975,000, respectively, in outstanding principal, and $6,630,870 and $2,975,000, respectively, of proceeds of Whiskey Special Ops 2023 Notes with: a fair value for the Notes (separately) of $13,978,467 and $1,452,568, respectively, (of which, $2,405,500 and $800,000, respectively, in principal, $2,233,000 and $800,000, respectively, of proceeds, and $5,232,620 and $390,607, respectively, in Fair Value was with a related party); and a fair value for the related Warrant Liability of $20,378 and $1,512,692, respectively, (of which $6,931 and $406,774, respectively, in Fair Value was with a related party). The Whiskey Special Ops 2023 Notes include warrant coverage equal to the Subscription Amount actually paid by the Holder pursuant to the Securities Purchase Agreement, divided by the Exercise Price, as defined as the price per share of the Company's assumed IPO or, in the event the Company has not consummated the IPO, $10.00 dollars per share. Total warrants outstanding if calculated using an assumed IPO price of $5.00 per share as of June 30, 2024 would be 755,919 (of which 254,562 would be to a related party). The warrants include a mandatory cashless exercise provision whereby any warrants not previously exercised, will be automatically cashlessly exercised, beginning on the third anniversary of their issuance date, on any trading day that the 20-day VWAP of the common stock equals or exceeds a price per share equal to or greater than 125% of the exercise price of the warrant.

The Company agreed to make royalty payments on the Whiskey Special Ops 2023 Notes at the rate of $10 per bottle of a new product offering of Special Forces labelled spirits. As of June 30, 2024, the Company had sold 13,056 bottles of the new product offering of Special Forces labelled spirits, representing more than $1,160,349 in retail shelf value. These royalties were eliminated in conjunction with the exchange of the Whiskey Notes and related Warrants into common stock (contingent upon the consummation of this offering) through April 26, 2024.

The outstanding balance of the Whiskey Special Ops 2023 Notes and accrued interest may, in whole or part, be converted into common stock prior to maturity at the option of the holder so long as the price per share is equal to or greater than the original IPO price. Any principal and accrued interest remaining outstanding upon maturity will be mandatorily converted into common stock of the Company at the rate of $1.25 per $1.00 of outstanding principal and accrued interest at a price per share equal to the then market price per share, but in no case less than 80% of the Company's original IPO price. The aggregate Fair Value of $13,978,467 and $1,452,562, respectively, in Whiskey Notes (separately) and the related Fair Value of the Warrant Liability of $20,378 and $1,512,692, respectively, as of June 30, 2024 and December 31, 2023 will be reclassified from being a liability to equity under the terms of the Subscription Exchange Agreement upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional conversion of the Whiskey Notes into equity.

Exchange of Whiskey Notes

In April 2024, the holders of Whiskey Notes (including 755,919 related Warrants based on a $5.00 per share exercise price) agreed to exchange for common stock (and prepaid warrants). The then outstanding $23,311,063 in aggregate fair value, (including $8,723,321 which was with a related party); $8,678,433 of principal amount, including accrued interest (including $3,247,425 which was with a related party); $6,630,870 of proceeds, (of which $2,233,000 was with a related party) of the Whiskey Notes and related Warrants (Warrant Liability), in accordance with a Subscription Exchange Agreement, exchanged (contingent upon the consummation of this offering) for a total of 2,399,090 shares of our common stock and 546,927 prepaid warrants 4.99% to purchase our common stock (of which 1,203,783 shares were with a related party). Such pre-paid warrants will be eligible for exercise without the payment of additional consideration at any time that the respective holder beneficially owns a number of shares of common stock that is less than 4.99% of our outstanding shares of common stock for a number of shares that would cause the holder to beneficially own 4.99% of our outstanding shares of common, and having no expiration date.

The aggregate fair value of the exchanged Whiskey Notes and related Warrants will be reclassified from liabilities to equity under the terms of the Subscription Exchange Agreement (when the common stock and prepaid warrants are unconditionally issued in exchange for the Whiskey Notes and related Warrants) upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the Whiskey Notes and related Warrants for equity. At which time, the value of the shares and prepaid warrants will be

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NOTE 5 — CONVERTIBLE NOTES (cont.)

recorded as common stock at the IPO price per share (currently estimated at $5.00 per share), and the remaining fair value of the Convertible Notes will be recognized as a gain in Change in Value of Convertible Notes on our condensed consolidated statement of operations. (Calculated using an assumed IPO price of $5.00 per share as of the anticipated IPO.) Until such a time, the Whiskey Notes and related Warrant Liabilities will remain on the Company's balance sheet, and the change in their fair values will also continue to be recognized as Other Income/(Expense) in the Company's Statement of Operations.

Convertible Notes at fair value consisted of the following:

	June 30, 2024	December 31, 2023
2022 Convertible Promissory Notes	$ 9,139,985	$ 18,801,206
2023 Convertible Promissory Notes	8,927,103	17,482,685
Whiskey Special Ops 2023 Notes	13,978,467	1,452,568
Total Convertible Notes Payable	$ 32,045,555	$ 37,736,459
Less: Convertible Notes Payable, Current	(18,067,088)	(36,283,891)
Convertible Notes Payable, net of Current Portion	$ 13,978,467	$ 1,452,568

NOTE 6 — BORROWINGS

Borrowings of the Company, not including the Convertible Notes discussed in Note 5, consisted of the following:

	June 30, 2024	December 31, 2023
Silverview Loan	$ 12,250,000	$ 12,250,000
PPP Loan	2,269,456	2,269,456
COVID19 TTS Loan	39,246	—
City of Eugene	389,875	—
Factoring Notes	399,667	—
Channel Partners Loan	64,050	149,824
Total Notes Payable	15,412,294	14,669,280
Less: Debt Issuance Costs	(238,994)	(398,324)
	15,173,300	14,270,956
Less: Notes Payable, Current	(14,783,425)	(14,270,956)
Notes Payable, net of Current Portion	$ 389,875	$ —

In March and September 2021, the Company executed a secured term loan agreement and an amendment with Silverview Credit Partners, L.P. (the "Silverview Loan") for an aggregate borrowing capacity of $15,000,000. The Silverview Loan originally matured on April 15, 2025, which was extended to October 25, 2026 as part of the Silverview Loan modification executed October 1, 2024. The Silverview Loan accrued interest through the 18-month anniversary of the closing date at (i) a fixed rate of 10.0%, which portion was payable in cash, and (ii) at a fixed rate of 6.5%, which portion was payable in kind and added to the outstanding obligations as principal. Effective on the 19th month anniversary of the closing date, the Silverview Loan accrues interest at a fixed rate of 15.0% through maturity. Interest payable in cash is required to be repaid on the fifteenth day of each calendar month. The Company had an option to prepay the Silverview Loan with a prepayment premium up to 30.0% of the obligations during the first twenty-four months of the loan, after which time the Company can prepay the loan with no premium due.

The Company is now past that initial twenty-four-month window and can prepay all or some of the outstanding balance without penalty. The Silverview Loan also contains certain financial and other debt covenants that, among other things, impose certain restrictions on indebtedness, liens, investments and capital expenditures. The financial covenants require that, at the end of each applicable fiscal period as defined pursuant to the Silverview Loan

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NOTE 6 — BORROWINGS (cont.)

agreement, the Company has either (i) an EBITDA interest coverage ratio up to 2.00 to 1.00, or (ii) a cash interest coverage ratio of not less than 1.25 to 1.00. Commencing with the fiscal quarter ending June 30, 2021, the Company shall maintain liquidity of not less than $500,000. The Silverview Loan may be used for general corporate purposes, including working capital needs and capital expenditures. The Company violated various financial and other debt covenants regarding its failure to comply with the financial covenants and to timely furnish its consolidated financial statements for the year ended December 31, 2023. As the chance of meeting the same or more restrictive covenants at subsequent compliance measurement dates within the following year is remote, the Company determined that the Silverview Loan should be classified as a current liability as of December 31, 2023. As of both June 30, 2024 and December 31, 2023, the outstanding balance of the Silverview Loan was $12,250,000. The lender had previously agreed to waive any existing covenant compliance matters as of December 31, 2022 and to forbear exercising its rights and remedies under the loan agreement through December 31, 2023.

In June 2024, the Company reached an agreement in principal (which was finalized and agreed to in October 2024) with Silverview to complete a loan modification of the Silverview Loan in the following ways, which will go into effect upon the close of the Company's planned offering: 1) extend the maturity date by 18 months to October 25, 2026; 2) recast the amortization schedule to reduce the amount paid each quarter to allow the Company to preserve cash, as follows: $300,000 due 12/31/2024, $700,000 due 6/30/2025 and then $500,000 due every six months thereafter; 3) increase in the coupon rate from 15% to 16.5% in the month starting after the close of the Company's planned offering, with monthly interest payments remaining in effect; 4) waiver of any past missed amortization payments; 5) waiver of any past missed covenant faults; 6) 1% additional exit fee due at loan payoff; 7) an additional 1% exit fee due at payoff if the Company does not refinance or repay the entire debt by July 30, 2025; 8) the elimination of EBITDA coverage and interest coverage ratio tests; and 9) greatly reduced and simplified reporting requirements to match the reporting the Company must make as a public company.

In April 2020, the Company was granted a loan under the Paycheck Protection Program ("PPP") offered by the Small Business Administration (the "SBA") under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), section 7(a)(36) of the Small Business Act for $3,776,100. The proceeds from the PPP loan may only be used to retain workers and maintain payroll or make mortgage interest, lease and utility payments and all or a portion of the loan may be forgiven if the proceeds are used in accordance with the terms of the program within the 8 or 24-week measurement period. The loan terms require the principal balance and 1% interest to be paid back within two years of the date of the note. In June 2021, the Company's bank approved forgiveness of the loan of $3,776,100. During the year ended of December 31, 2021, the forgiveness was partially rescinded by the SBA and the Company recognized $1,506,644 as other income in the consolidated statements of operations, resulting in $2,269,456 in debt. Under the terms of the PPP loan, the Company has also recorded interest on the PPP loan at the rate of 1%, for a total of $5,596 and $84,561 as of June 30, 2024 and December 31, 2023, respectively. The Company is currently in the process of disputing a portion if not all of the difference. The terms of the agreement state that the Company has 18-24 months to repay the PPP loan. Following the date of the forgiveness, the remaining balance of the PPP loan of $2,269,456 is expected to be repaid in the next 12 months with the Company's general assets.

In January 2022, the Company entered into an unsecured business loan and security agreement with Channel Partners Capital, LLC (the "2022 Channel Partners Loan") for an aggregate borrowing capacity of $250,000. The Channel Partners Loan matured on June 26, 2023 and accrued interest at a fixed rate of 13.982%. Principal of $16,528 plus interest is payable monthly. The Company had an option to prepay the Channel Partners Loan with a prepayment discount of 5.0%. As of December 31, 2022, the outstanding balance of the 2022 Channel Partners Loan was $82,887. In April 2023, the Company entered into a new secured business loan and security agreement with Channel Partners Capital, LLC (the "2023 Channel Partners Loan") for an aggregate borrowing capacity of $250,000, of which. $47,104 of proceeds were used to pay off the 2022 Channel Partners Loan. The 2023 Channel Partners Loan will mature on October 5, 2024 and accrues interest at a fixed rate of 13.34%. Payment of $16,944, principal plus interest is payable monthly. The Company has an option to prepay the 2023 Channel Partners Loan with a prepayment discount of 5.0%. As of June 30, 2024 and December 31, 2023, the outstanding balance of the 2023 Channel Partners Loan was $64,050 and $149,824, respectively.

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NOTE 6 — BORROWINGS (cont.)

In February 2024, the Company acquired debt with Thinking Tree Spirits with City of Eugene in the amount of $389,875. The City of Eugene loan will mature on May 1. 2028 with an accrual rate of 0% interest through July 31, 2025, beginning August 1, 2025 the City of Eugene loan begins accruing interest at the rate of 5%. Monthly payments begin September 1, 2025 in the amount of $6,714.

In May 2024, the Company raised $100,000 under the terms of an accounts receivable factoring arrangement with a related party. (See Notes 14 and 16.)

As of July 1, 2024, the Company raised an additional aggregate of $299,667 between two separate investors under the terms of a July 2024 accounts receivable factoring arrangement, including $166,667 from the related party. The Company issued an aggregate of 66,549 five year warrants to purchase common stock at $6.00 per share in conjunction with the July 2024 accounts receivable factoring agreements. As of June 30, 2024, the $299,667 had been received pending execution of the factoring agreement on July 1, 2024. (See Notes 14 and 16.)

In August 2024, the $399,667 received from the two separate investors under the terms of the May 2024 and July 2024 factoring agreements, including accrued fees and related warrants was exchanged for an aggregate of 44,291 shares of Series A Preferred Stock and 19,983 warrants to purchase shares of common stock at the lesser of $5.00 per share or the price per share at which the common stock is sold in the Company's initial public offering. (Including $266,667 received from a related party, which was exchanged for 29,661 shares of Series A Preferred Stock, and 13,333 warrants.)

Subsequent to June 30, 2024, in July 2024, the Company raised an additional $250,000 from an investor under the terms of a July 2024 accounts receivable factoring arrangement. The Company issued 83,333 five year warrants to purchase common stock at $6.00 per share in conjunction with the July 2024 accounts receivable factoring arrangement. In September 2024, this factoring arrangement was exchanged for Series A Preferred Stock. (See Note 16.)

As of June 30, 2024, the principal repayments of the Company's debt measured on an amortized basis of $15,412,294 are expected to be due within five years from the issuance of these condensed consolidated financial statements. The outstanding principal of $15,173,300 and $14,270,956, respectively, net of debt issuance costs of $238,994 and $398,324, respectively, was classified as a current liability on the Company's consolidated balance sheets as of June 30, 2024 and December 31, 2023. The outstanding principal of $389,875 was classified as a long-term liability on the Company's consolidated balance sheet as of June 30, 2024.

The following table represents principal repayments from 2024 and the years through 2028 and thereafter:

Years Ending	Amount
2024	$ 15,022,419
2025	20,466
2026	63,539
2027	66,789
2028	239,082
there after	—
	$ 15,412,294

Liabilities for Deferred Revenue — During 2023, the Company entered into a distilled spirits barreling production agreement with a related party for production of 1,200 barrels of distilled spirits over time. There was a prepayment of $1,000,000 made in January 2023. In March 2024, the agreement was amended to 600 barrels for $500,000, with the then $500,000 excess prepayment used to purchase a Whiskey Note in the principal amount of $672,500, which was subsequently exchanged (contingent upon the consummation of this offering) under the terms of a Subscription Exchange Agreement for common stock in conjunction with the February 29, 2024 exchange of Whiskey Notes for common stock. (See Note 16.)

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NOTE 7 — WARRANT LIABILITIES

2022 and 2023 Convertible Promissory Notes Warrants

During 2022 and 2023, the Company issued warrants to purchase the Company's common stock to the 2022 Notes holders, including a related party, in an amount equal to 50% of the cash proceeds (see Notes 5, 14 and 16). These warrants are exercisable on or after the occurrence of an IPO or a deSPAC merger and expire on July 31, 2027. The warrant exercise price is equal to: (i) if the Company consummates an IPO, 100% of the price per share at which the Company's common stock is sold in the IPO, or (ii) if the Company consummates a deSPAC merger, 100% of the redemption price related to such deSPAC merger. The warrants will automatically be exercised cashlessly if the stock price hits 125% of the IPO price. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. More specifically, ASC 480 requires a financial instrument to be classified as a liability if such financial instrument contains a conditional obligation that the issuer must or may settle by issuing a variable number of its equity securities if, at inception, the monetary value of the obligation is predominantly based on a known fixed monetary amount.

The Company measured the warrant liabilities at fair value at the respective issuance dates of the 2022 Notes, including the notes issued in February 2023, and March 31, 2023, using a probability weighted expected return method and the Monte Carlo Simulation. The fair value of the warrant liabilities at the issuance dates of the 2022 Notes issued in 2022 was approximately $581,364, of which $300,059 was associated with the related party warrant liabilities. The fair value of the warrant liabilities at the issuance dates of the 2022 Notes issued in February 2023 was approximately $12,874. The warrant liabilities are subsequently remeasured to fair value at each reporting date with changes in fair value recognized as a component of total other income (expense) in the consolidated statements of operations. The Company recorded a net loss of $89,314 and a net gain of $343,104 resulting from the change in fair value of the warrant liabilities for the six months ended June 30, 2024 and 2023 respectively, of which $37,958 and $147,184, respectively was related to the change in value of the related party warrant liabilities. On June 30, 2024 and December 31, 2023, the fair value of the warrant liabilities was $884,182 and $794,868, respectively of which $379,225 and $340,918 were associated with the related party warrant liabilities.

In April of 2024,under a Securities Exchange Agreement, the strike price of the warrants became fixed at a negotiated fixed, non-adjustable price of $6.00 per share (as opposed to the previous pricing which was contingent on the IPO price), whereas these 908,334 warrants now have a fixed price and include a cashless exercise provision, and will no longer qualify to be classified as liabilities in accordance with ASC 480, and their fair value that has previously been recorded as warrant liabilities will be reclassified to equity upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional fixing of the strike price at $6.00 per share. (See Note 16.)

2023 Series — Convertible Whiskey Special Ops 2023 Notes Warrants

From August 2023 to April 2024, the Company issued warrants to purchase the Company's common stock to the Whiskey Note holders, including a related party, in an amount equal to the cash proceeds divided by the exercise price. (see Notes 5, 14 and 16). These warrants are exercisable on or after the earlier of (i) occurrence of an IPO, or (ii) August 29, 2024, and expire on August 29, 2028. The warrant exercise price is equal to the lesser of: (i) if the Company consummates an IPO, 100% of the price per share at which the Company's common stock is sold in the IPO, or (ii) $10.00 per share. The warrants will automatically be exercised on a cashless basis after the three-year anniversary of the issuance date if the stock price hits 125% of the warrant exercise price. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. More specifically, ASC 480 requires a financial instrument to be classified as a liability if such financial instrument contains a conditional obligation that the issuer must or may settle by issuing a variable number of its equity securities if, at inception, the monetary value of the obligation is predominantly based on a known fixed monetary amount.

The Company measured the warrant liabilities at fair value at the respective issuance dates of the Whiskey Notes using a probability weighted expected return method and the Monte Carlo Simulation. The fair value of the warrant liabilities at the issuance dates in the six months ended June 30, 2024 and December 31, 2023 was

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NOTE 7 — WARRANT LIABILITIES (cont.)

approximately $302,020 and $1,621,527, respectively, of which $111,112 and $436,041, respectively, was associated with the related party warrant liabilities. The fair value of the warrant liabilities at the issuance dates in April 2024 was approximately $48,889, of which $26,706 was associated with the related party warrant liabilities. The warrant liabilities are subsequently remeasured to fair value at each reporting date with changes in fair value recognized as a component of total other income (expense) in the consolidated statements of operations. The Company recorded a net gain of $1,247,662 (of which $338,890 was to a related party) resulting from the change in fair value of the warrant liabilities to $20,378 (of which $6,931 was to a related party) for the six months ended June 30, 2024.

In April 2024, the Whiskey Notes (including 755,919 related warrants) were exchanged (contingent upon the consummation of this offering) for common stock. The then outstanding $23,311,063 in aggregate fair value ($8,678,433 of principal amount, including accrued interest; $6,630,870 of proceeds) of the Whiskey Notes and related Warrants (Warrant Liability) in accordance with a Subscription Exchange Agreement, exchanged for a total of 2,399,090 shares of our common stock and 546,927 prepaid warrants to purchase our common stock. The Whiskey Notes and related warrants were exchanged (contingent upon the consummation of this offering) for common stock; however, the Whiskey Notes and related Warrant Liabilities remain on our balance sheet until subsequent to June 30, 2024 (upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the outstanding indebtedness and related warrants for equity). (See Note 16.)

As of June 30, 2024, as part of the Series A Preferred Stock offering, the holders of the Series A Preferred Stock received warrants entitling its holder to purchase an aggregate of 91,500 of shares of Common Stock determined by (a) 25% of the Subscription Amount of such Investor divided by (b) $5.00, and shall have an exercise price equal to the lesser of $5.00 or the price per share at which the Common Stock is sold in the Company's Initial Public Offering (the "Exercise Price"), subject to splits, combinations or other like adjustments. The Warrants will expire June 15, 2029. At any time after June 15, 2027, the Warrants shall automatically exercise on a cashless basis if the Common Stock has traded for 5 consecutive trading days at or above 125% of the Exercise Price.

NOTE 8 — FAIR VALUE MEASUREMENT

The following table presents information about the Company's financial liabilities that are measured at fair value on a recurring basis and indicates the fair value hierarchy of the valuation as of June 30, 2024 and December 31, 2023 under Level 3.

	Fair Value Measurement as of	
	June 30, 2024	December 31, 2023
2022 and 2023 Convertible Notes	$ 18,067,088	$ 36,283,891
Whiskey Special Ops 2023 Notes	13,978,467	1,452,562
Warrant Liabilities 2022 and 2023	884,182	794,868
Warrant Liabilities Whiskey Special Ops	20,378	1,512,692
Acquisition Contingency Liabilities	127,076	—
Total Liabilities at Fair Value	$ 33,077,191	$ 40,044,013

In November of 2023, the Convertible Notes were exchanged (contingent upon the consummation of this offering) for common stock and prepaid warrants effective as of June 30, 2023. (See Note 5.) As of June 30, 2024, the $18,216,803 decrease in fair value of the 2022 and 2023 Convertible Notes, is included as a gain in the change in fair value of convertible notes in our condensed consolidated statement of operations. As further discussed below, such valuation reflecting the fixed number of shares and prepaid warrants exchanged for the convertible notes as impacted by the valuation methodologies and inputs, including an estimated common stock share value of $7.50 ($13.16 post split) per share as of March 31, 2024 as compared to a subsequent share value of $5.00 per share as of June 30, 2024.

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NOTE 8 — FAIR VALUE MEASUREMENT (cont.)

As of June 30, 2024, the then outstanding $13,978,467 in aggregate fair value, of the Whiskey Notes and related Warrants (Warrant Liability), in accordance with a Subscription Exchange Agreement, exchanged (contingent upon the consummation of this offering) for a total of 2,399,090 shares of our common stock and 546,927 prepaid warrants to purchase our common stock.

As further discussed in Note 7, the Convertible Notes (and related Warrant Liabilities) remain as liabilities on our balance sheet, and the change in their fair value will continue to be recognized as Other Income/(Expense) in our Statement of Operations, until subsequent to June 30, 2024 (upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional conversion of the outstanding indebtedness and related warrants into equity). At which time, the value of the shares and prepaid warrants will be recorded as common stock at the IPO price per share, and the remaining fair value of the Convertible Notes will be recognized as Change in Value of Convertible Notes on our condensed consolidated statement of operations. (See Note 16.)

Valuation of Acquisition Contingency Liability — In conjunction with the Thinking Tree Spirits acquisition, for the quarter ended March 31, 2024, the Company recorded estimated fair values of $584,203 in estimated future contingent payments. The acquisition was recorded at a fair value probability applied to the contingent earn out payments based on assumptions made at that time. The fair value of the acquisition will be re-measured for each subsequent reporting period until resolution of the contingent earn out payments, and any resulting increases or decreases in fair value, are recorded on the income statement as an operating loss or gain. The recorded fair value of the acquisition was reviewed as of June 30, 2024, with a decrease in valuation for the contingent earn out payments to $127,076, resulting in a decrease in fair value recorded on the income statement as an operating gain of $457,127 for the period ended June 30, 2024. (See Note 10.)

Valuation of Convertible Notes — The fair value of the Convertible Notes at issuance and at each reporting period is estimated based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. The Company used a probability weighted expected return method ("PWERM") and the Discounted Cash Flow ("DCF") method to incorporate estimates and assumptions concerning the Company's prospects and market indications into a model to estimate the value of the notes. The most significant estimates and assumptions used as inputs in the PWERM and DCF valuation techniques impacting the fair value of the 2022 Notes are the timing and probability of an IPO, deSPAC Merger and default scenario outcomes (see the table below). Specifically, the Company discounted the cash flows for fixed payments that were not sensitive to the equity value of the Company at payment by using annualized discount rates that were applied across valuation dates from issuance dates of the Convertible Notes to June 30, 2024 and December 31, 2023. The discount rates were based on certain considerations including time to payment, an assessment of the credit position of the Company, market yields of companies with similar credit risk at the date of valuation estimation, and calibrated rates based on the fair value relative to the original issue price from the Convertible Notes.

The significant unobservable inputs that are included in the valuation of the 2022 and 2023 Convertible Notes as of June 30, 2024 and December 31, 2023, include:

	June 30, 2024		December 31, 2023	
Significant Unobservable Input	**Input Range**	**Weighted Average**	**Input Range**	**Weighted Average**
Discount Rate	25 – 75%	25 – 75%	48.5%	48.5%
Expected Term (in years)	0.83	0.83	0.122 – 1.081	0.122 – 1.081
Probability Scenarios				
IPO	98%		70%	
deSPAC	0%		0%	
Default/Dissolution/Forced Liquidation	1%		20%	
Held to Maturity	1%		10%	

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NOTE 8 — FAIR VALUE MEASUREMENT (cont.)

The significant unobservable inputs that are included in the valuation of the Whiskey Special Ops 2023 Notes as of June 30, 2024 and December 31, 2023 include:

	June 30, 2024		December 31, 2023	
Significant Unobservable Input	**Input Range**	**Weighted Average**	**Input Range**	**Weighted Average**
Discount Rate	50.68%	50.68%	54.0%	91.3%
Expected Term (in years)	0.83	0.83	0.125 – .667	0.125 – .667
Probability Scenarios				
IPO	98%		70%	
deSPAC	0%		0%	
Default/Dissolution/Forced Liquidation	1%		20%	
Held to Maturity	1%		10%	

Valuation of Warrant Liabilities — The fair value of the warrant liabilities at issuance and at each reporting period was estimated based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. The Company used the PWERM and the Monte Carlo Simulation ("MCS") to incorporate estimates and assumptions concerning the Company's prospects and market indications into the models to estimate the value of the warrants. The most significant estimates and assumptions used as inputs in the PWERM and MCS valuation techniques impacting the fair value of the warrant liabilities are the timing and probability of IPO, deSPAC Merger and default scenario outcomes (see the table below). The most significant estimates and assumptions used as inputs in the PWERM and MCS valuation techniques impacting the fair value of the warrant liabilities are those utilizing certain weighted average assumptions such as expected stock price volatility, expected term of the warrants, and risk-free interest rates.

The significant unobservable inputs that are included in the valuation of the 2022 Convertible Promissory Notes warrant liabilities as of June 30, 2024 and December 31, 2023, include:

	June 30, 2024		December 31, 2023	
Significant Unobservable Input	**Input Range**	**Weighted Average**	**Input Range**	**Weighted Average**
Expected Term (in years)	0.122 – 1.081		0.122 – 1.081	
Volatility	70%	70%	70%	70%
Risk-free Rate	74%	74%	74%	74%
Probability scenarios				
IPO	98%		70%	
deSPAC	0%		0%	
Default/Dissolution/Liquidation	1%		20%	
Held to Maturity	1%		10%	

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NOTE 8 — FAIR VALUE MEASUREMENT (cont.)

The significant unobservable inputs that are included in the valuation of the 2023 Series — Convertible Whiskey Special Ops 2023 Notes warrant liabilities as of June 30, 2024 and December 31, 2023 include:

	June 30, 2024		December 31, 2023	
Significant Unobservable Input	**Input Range**	**Weighted Average**	**Input Range**	**Weighted Average**
Expected Term (in years)	.83		0.125 – 4.667	
Volatility	70%	70%	70%	70%
Risk-free Rate	74%	74%	74%	74%
Probability scenarios				
IPO	98%		70%	
deSPAC	0%		0%	
Default/Dissolution/Liquidation	1%		20%	
Held to Maturity	1%		10%	

The following table provides a roll forward of the aggregate fair values of the Company's financial instruments described above, for which fair value is determined using Level 3 inputs:

	2022 and 2023 Convertible Notes	Whiskey Special Ops Notes	2022 Notes Warrant Liabilities	Whiskey Special Ops Notes Warrant Liabilities	Acquisition Contingency Liabilities
Balance as of January 1, 2023	$ 8,041,000	$ —	$ 433,000	$ —	$ —
Initial Fair Value of Instruments	—	—	—	—	—
Issuance	5,577,126	1,353,473	12,874	1,621,527	—
Change in Fair Value	22,665,765	99,089	348,994	(108,835)	—
Balance as of December 31, 2023	$ 36,283,891	$ 1,452,562	$ 794,868	$ 1,512,692	$ —
Issuances	—	3,353,850	—	302,020	584,203
Change in Fair Value	(18,216,803)	9,172,055	89,314	(1,794,334)	(457,127)
Balance as of June 30, 2024	$ 18,067,088	$ 13,978,467	$ 884,182	$ 20,378	$ 127,076

NOTE 9 — STOCKHOLDERS' EQUITY

On May 14, 2024, the Board and Shareholders of the Company approved a .57-for-1 reverse stock split. All share and per share numbers included in these Financial Statements as of and for the six months ended June 30, 2024 and 2023 and the year ended December 31, 2023 all periods presented reflect the effect of that stock split unless otherwise noted.

Common stock — On October 31, 2023, the Company's Board of Directors and shareholders increased the number of shares the Company is authorized to issue from 3,000,000 shares to 10,000,000 shares, including 9,500,000 shares of common stock and 500,000shares of Founders Common Stock, par value of $0.0001 per share. (which Founders Common Stock has four votes per share). The key terms of the common stocks are summarized below:

Dividends — The holders of common stock and Founders Common Stock are entitled to receive dividends if declared by the Board of Directors. No dividends have been declared since the inception of the Company.

Voting rights — The holders of Founders Common Stock are entitled to four votes for each share of Founders Common Stock and general common stockholders are entitled to one vote for each share of general common stock.

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NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

Upon approval of this increase in authorized shares, the 2022 and 2023 Convertible Notes were exchanged (contingent upon the consummation of this offering) for 3,312,148 additional shares of common stock and 507,394 prepaid warrants; The actual unconditional exchange of the Convertible Notes and reclassification of the aggregate fair value of exchanged notes (of $18,067,088 and $36,283,891 as of June 30, 2024 and December 31, 2023, respectively) will be reclassified from Convertible Notes to equity under the terms of the Subscription Exchange Agreement will occur upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the 2022 and 2023 Convertible Notes for equity. (See Note 5.) Upon approval of the April 2024 increase of authorized capital stock, the Whiskey Special Operation Convertible Notes were exchanged (contingent upon the consummation of this offering) for 2,399,090 additional shares of common stock and 546,927 prepaid warrants; The actual unconditional exchange of the Convertible Notes and reclassification of the aggregate fair value of exchanged notes (of $13,978,467 and $1,452,568 as of June 30, 2024 and December 31, 2023, respectively) will be reclassified from Convertible Notes to equity under the terms of the Subscription Exchange Agreement will occur upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the Whiskey Special Operation Convertible Notes for equity. (See Note 5.) As of June 30, 2024, the Company had 441,935 shares of common stock issued and outstanding. As of June 30, 2024, including the 5,711,238 shares of common stock related to the conversion of the Convertible Notes, the Company had 6,153,173 shares of common stock issued and outstanding. During the six months ended June 30, 2024 and year ended December 31, 2023, the Company repurchased 14 and 72 shares of common stock, respectively, and 9,493 and 0 common stock warrants, respectively, were exercised.

In the second quarter of 2024, the Company's Board of Directors and shareholders took certain actions and approved amendments to the Company's amended and restated certificate of incorporation and bylaws in preparation for a planned initial public offering (the "Actions and Amendments"). These Actions and Amendments, included, among other things:

- filing a second amendment to the Company's amended and restated certificate of incorporation on April 1, 2024, to increase the Company's authorized capital stock from 10,000,000 shares to 70,000,000 shares, including 69,500,000 shares of common stock and 500,000 shares of Founders Common Stock. The increase in authorized shares included provision for the additional shares to be issued with the Company's anticipated IPO, including those discussed in the following paragraphs, and other future equity activities not yet known.

- filing a third amendment to the Company's amended and restated certificate of incorporation on May 14, 2024, to further increase the Company's authorized capital stock to 75,000,000 shares, including 5,000,000 shares of preferred stock.

Contingent upon the consummation of this offering, 65,891 of the October 2023 prepaid warrants to purchase common stock were exercised into 65,891 shares of common stock.

Preferred stock — In May 2024, the Company's Board of Directors and Shareholders approved an offering of Series A Convertible Preferred Stock of up to $5,000,000, of which $1,830,000 was issued and outstanding and $3,170,000 remained available for issuance as of June 30, 2024. The shares of Series A Convertible Preferred Stock, par value $0.0001 per share (the "Series A Preferred Stock") were sold at a Subscription Price of $10 per share and have a stated value of $12 per share (the "Stated Value"), and included stock purchase warrants to purchase shares of common stock calculated at 25% of the subscription price then divided by $5.00, with an exercise price equal to the lesser of $5.00 per share or the price per share at which the Common Stock is sold in the Company's initial public offering. The warrants expire June 15, 2029. At any time after June 15, 2027, the Warrants shall be automatically exercised on a cashless basis if the Common Stock has traded for 5 consecutive trading days at or above 125% of the Exercise Price.

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NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

The Series A Preferred Stock is entitled to receive, out of funds legally available therefor, cumulative dividends at the rate of 15% per annum of the Stated Amount (or $1.80 per share) payable if and when declared by the Board of Directors of the Company or upon conversion or redemption of the Series A Preferred Stock. Dividends on the Series A Preferred Stock may be paid by the Company in cash, by delivery of shares of common stock or through a combination of cash and shares of common stock. If paid in common stock, the holder shall receive a number of shares of common stock equal to the quotient of 110% of the accrued dividends to be paid in common stock divided by the Conversion Price (as defined below). The Company may make payments of dividends in common stock only if the average closing price of the common stock over the five trading days preceding the dividend payment date is at or above the Conversion Price. Holders of the Series A Preferred Stock have no voting rights except as required by law.

Each share of Series A Preferred Stock may be converted at any time at the election of the holder into a number of shares of common stock determined by dividing (a) an amount equal to 110% of the sum of (i) the Stated Value plus (ii) the amount of all accrued dividends, by (b) the then applicable Conversion Price. The "Conversion Price" shall initially be equal to $5.00 per share, subject to adjustment to the price per share at which the common stock is sold at the Company's Initial Public Offering if lower than the initial Conversion Price. Each share of Series A Preferred Stock will automatically be converted on June 15, 2027 into a number of shares of common stock determined by dividing (a) an amount equal to 110% of the sum of (i) the Stated Value plus (ii) the amount of all accrued dividends, by (b) the then-applicable Conversion Price.

Any time on or after June 15, 2025, the Company shall have the right to redeem some or all of the outstanding shares of Series A Preferred Stock from funds legally available therefor, upon at least 30 days prior written notice to the holders of the Series A Preferred Stock, at a redemption price per share equal to 110% of the sum of the Stated Amount plus all accrued and unpaid dividends on such shares of Series A Preferred Stock.

As of June 30, 2024, the Company had received subscriptions of $1,830,000 of Series A Preferred Stock, including $675,000 in cash, and $1,155,000 in the form of 525 barrels of aged whiskey at an average price of approximately $2,200 per barrel (with $259,875 allocated to barrel fixed assets and $895,125 allocated to whiskey inventory). In connection with the $1,830,000 of Series A Preferred Stock, the Company also issued 91,500 warrants to purchase common stock at the lesser of $5.00 per share or the price per share at which the common stock is sold in the Company's initial public offering. The Company allocated the net proceeds between the warrants and the Series A Preferred Stock using the relative fair value method.

Subsequent to June 30, 2024, the Company accepted subscriptions for an additional 218,051shares of Series A Preferred Stock (of which 124,121 shares was from a related party) and warrants to purchase an aggregate of 105,513 shares of common stock at $5.00 per share (subject to adjustment to the price per share at which the common stock is sold at the Company's Initial Public Offering if lower) (the "$5.00 Warrants") (of which 60,053 of the $5.00 Warrants were with a related party) for an aggregate purchase price of $2,180,519, of which: $1,350,000 was paid in cash (of which $834,000 was from a related party); $110,600 was paid by the sale of and transfer to the Company by a related party of an aggregate of 50 barrels of premium aged whiskey with an average value of $2,212 per barrel; and, $719,919 was paid by the cancellation of outstanding indebtedness (factoring agreements) during the three months ended September 30, 2024 (of which $296,619 was from a related party). In addition, the Series A Preferred Stock holders who were issued Series A Preferred Stock subsequent to June 30, 2024 received an additional 510,315 warrants with an exercise price of $6.00 per share as part of the Series A Preferred Stock subscriptions (the "$6.00 Warrants") (of which 321,026 of the $6.00 Warrants were issued to a related party). (See Note 16.)

In September 2024, the 510,315 $6.00 Warrants discussed above (including 321,026 $6.00 Warrants from a related party) were exchanged for 93,789 shares of Series A Preferred Stock that did not include any related warrants (including 59,001 shares of Series A Preferred Stock that did not include any related warrants for a related party). The value assigned to the $6.00 Warrants exchanged for Series A preferred Stock that did not include any warrants was negotiated to be $937,959 (including $590,045 from a related party), or $1.838 per $6.00 Warrant using a Black-Scholes Valuation model with an estimated IPO stock price of $5.00 per share and exercise price of $6.00 per share (See Note 16.).

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NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

Stock options — The Company's 2018 Equity Incentive Plan was approved by the HDC Board and the HDC shareholders in March 2018. On April 27, 2019, in anticipation of the Company's reorganization on May 1, 2019, the HDHC Board and the HDHC sole stockholder approved HDHC's 2019 Equity Incentive Plan (the "2019 Plan").

The 2019 Plan allows for the grant of incentive stock options ("ISOs"), nonqualified stock options ("NQSOs"), stock appreciation rights ("SARs"), restricted stock, RSU awards, performance shares, and performance units to eligible participants for ten (10) years (until April 2029). The cost of awards under the 2019 Plan generally is based on the fair value of the award on its grant date. The maximum number of shares that may be utilized for awards under the 2019 Plan is 256,500.

The following sets forth the outstanding ISOs and related activity for the six months ended June 30, 2024:

Options Outstanding	Number of Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2023	6,178	$ 157.89	1.85	$ 0.00
Forfeited	(14)	$ 157.89		
Outstanding at June 30, 2024	6,164	$ 157.89	1.35	$ 0.00
Exercisable at June 30, 2024	6,164	$ 157.89	1.35	$ 0.00

ISOs require a recipient to remain in service to the Company, ISOs generally vest ratably over periods ranging from one to four years from the vesting start date of the grant and vesting of ISOs ceases upon termination of service to the Company. Vested ISOs are exercisable for three months after the date of termination of service. The terms and conditions of any ISO shall comply in all respects with Section 422 of the Code, or any successor provision, and any applicable regulations thereunder. The exercise price of each ISO is the fair market value of the Company's stock on the applicable date of grant. The Company used the mean volatility estimate from Carta's 409A valuation based on the median 5-year volumes of select peer companies. Fair value is estimated based on a combination of shares being sold at $157.89 up through February of 2019 and the most recent 409A completed when these ISOs were issued in April of 2018 valuing the Company's stock at $157.89 per share. No ISOs may be granted more than ten (10) years after the earlier of the approval by the Board, or the stockholders, of the 2019 Plan.

There were no grants in the six months ended June 30, 2024 and the year ended December 31, 2023. As of June 30, 2024, the Company had $0 of unrecognized compensation expense related to ISOs expected to vest over a weighted average period of 0.0 years. The weighted average remaining contractual life of outstanding and exercisable ISOs is 1.35 years.

The following table presents stock-based compensation expense included in the condensed consolidated statements of operations related to ISOs issued under the 2019 Plan:

	For the Six Months Ended June 30,	
	2024	2023
Cost of Sales	$ —	$ —
Sales and Marketing	—	—
General and Administrative	—	18,595
Total Share-based Compensation	$ —	$ 18,595

Restricted stock units — The RSU awards granted in 2019 under the 2019 Plan were granted at the fair market value of the Company's stock on the applicable date of grant. RSU awards generally vest ratably over periods ranging from one to four years from the grant's start date. Upon termination of service to the Company, vesting of RSU awards ceases, and most RSU grants are forfeited by the participant, unless the award agreement

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NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

indicates otherwise. The majority of RSU awards are "double trigger" and both the service-based component, and the liquidity-event component (including applicable lock-up periods) must be satisfied prior to an award being settled. Upon settlement, the RSU awards are paid in shares of the Company's common stock. The Company recognizes the compensation expense for the restricted stock units based on the fair value of the shares at the grant date amortized over the stated period for only those shares that are not subject to the double trigger.

The following table summarizes the RSU activity for the six months ended June 30, 2024:

	Restricted Stock Units		Weighted Average Exercise Price Per Share
Unvested and Outstanding at December 31, 2023	116,944	$	157.89
Granted	232,025	$	4.00
Forfeited/Canceled/Expired	(105,880)	$	157.89
Unvested and Outstanding at June 30, 2024	243,089	$	11.00

During the six months ended June 30, 2024 and 2023, the Company recognized no stock-based compensation expense in connection with RSU awards granted under the plans. Compensation expense for RSU awards is recognized upon meeting both the time-vesting condition and the triggering event condition. During the six months as of June 30, 2024, 440 restricted stock units ("RSUs") were forfeited. In May 2024, 105,360 RSUs were voluntarily terminated, leaving 11,064 issued RSUs to settle at a grant value of $157.89 per unit. In May 2024, the Board of Directors approved awarding 232,025 RSUs to employees, directors and consultants with a fair grant value of $4.00 per unit. These RSUs contain a double trigger and, upon grant, were deemed to have met their time-based service requirements for vesting. They will settle on the expiration of the lock-up agreements that will be entered into in connection with this offering. Assuming all of them settle into common stock we would expect to book an expense of $2,674,995 at the fair grant values per RSU for the total 243,089 awards as of June 30, 2024.

Equity-classified warrants — The Company estimates the fair values of equity warrants using the Black-Scholes option-pricing model on the date of issuance. During the six months ended June 30, 2024 and 2023, the Company issued 91,500 and zero warrants, respectively, to purchase the Company's common stock. As of June 30, 2024 and December 31, 2023, there were outstanding and exercisable warrants to purchase 148,649 and 116,928, respectively, shares of the Company's common stock. As of June 30, 2024, the weighted-average remaining contractual term was 8.47 years for the outstanding and exercisable warrants.

Deferred Compensation — Beginning in May 2023, certain senior level employees elected to defer a portion of their salary until such time as the Company completed a successful public registration of its stock. Upon success of the public registration, each employee will then be paid their deferred salary plus $2 dollars in RSUs or stock options (under the new 2024 Plan noted above) for every $1 dollar of deferred salary. As of June 30, 2024, the Company recorded approximately $624,527 including employer tax obligation of such deferred payroll expense, in accrued liabilities. Accordingly, as of June 30, 2024 the Company has also committed to issue approximately $1,039,863 in equity compensation related to the deferred compensation.

NOTE 10 — ACQUISITION OF THINKING TREE SPIRITS

Business Combinations — On February 21, 2024, the Company purchased all the outstanding stock of Thinking Tree Spirits, Inc. ("TTS"), which was accounted for as a business combination, requiring assets and liabilities assumed to be measured and recorded at their acquisition date fair values as of acquisition date. The resolution of the contingent earn out payments, will be reviewed at each subsequent reporting period, and any increases or decreases in fair value will be recorded in the income statement as an operating gain or loss.

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NOTE 10 — ACQUISITION OF THINKING TREE SPIRITS (cont.)

Under the terms of the stock sale, the Company paid the shareholders of TTS $670,686 (net of $50,000 held back for post-closing accounting true-ups) using shares of common stock of the Company. The $670,686 was paid using common stock of the Company at a negotiated price of $13.16 per share (or 50,972 shares), subject to a true-up provision (to the price per share of the Company's anticipated IPO, if lower — currently $5.00 per share or 134,137 shares) that expired on August 31, 2024.

Subsequent to June 30, 2024, in September 2024, the Company extended the true-up provision under the terms of the TTS stock sale from August 31, 2024 to the date of settlement of the Thinking Tree Spirits Dissenters Rights Process, resulting in the delay in reclassifying the TTS purchase price liability to equity (under ASC-480). (See below and also Note 16).

ASC 480 requires a financial instrument to be classified as a liability if such financial instrument contains a conditional obligation that the issuer must or may settle by issuing a variable number of its equity securities if, at inception, the monetary value of the obligation is predominantly based on a known fixed monetary amount. Subsequent to June 30, 2024, under the terms of the TTS stock sale, the true-up provision for the $670,686 purchase price payment in the form of common stock was extended through the settlement of the Thinking Tree Spirits Dissenters Rights Process (See Note 16), Once the final determination is made on the amount owed to dissenters, if any, that amount will be deducted from the true-up amount and the resulting number of shares of common stock will be issued at the price per share of the common stock in this offering, at which time, the conversion price will become fixed and the purchase price will no longer qualify to be classified as a liability in accordance with ASC 480, and will be reclassified to equity. The estimated fair value of the $584,203 in estimated future contingent values (discussed also below) is recorded as a (long term) liability until such time as their obligation for potential payment becomes established as something more than zero and the payment number of shares is established, at which time, such future contingent payments will likewise be reclassified from liabilities to equity in accordance with ASC 480.

Allocation of the purchase price based on the estimated fair values of the acquired assets and liabilities assumed as of February 21, 2024 are as follows:

	Amounts
Assets:	
Inventory	$ 143,423
Other Current Assets/(Liabilities), net	(3,068)
Property and Equipment	127,600
Intangible Asset – Thinking Tree Trade Name	490,000
Intangible Asset – Thinking Tree Customer Relationships	360,000
Goodwill	636,997
Total Assets	$ 1,754,952
Liabilities:	
Accounts Payable and Other Current Liabilities	42,739
SBA Loan	389,875
Other Non-Current Liabilities	17,449
Total Liabilities	450,063
Total Purchase Consideration	$ 1,304,889

In conjunction with the acquisition, for the quarter ended March 31, 2024, the Company recorded estimated fair values of $1,254,889 for payments in the form of Company common stock (including $670,686 in common stock of the Company and $584,203 in estimated future contingent payments). The acquisition was recorded at estimated fair values, based on the payments made, and a fair value probability applied to the contingent earn out payments. The fair value of the acquisition will be re-measured for each subsequent reporting period until resolution of the contingent earn out payments, and any increases or decreases in fair value will be recorded in the income

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NOTE 10 — ACQUISITION OF THINKING TREE SPIRITS (cont.)

statement as an operating loss or gain. The recorded fair value of the acquisition was reviewed as of June 30, 2024, with a decrease in valuation for the contingent earn out payments to $127,076 and decrease in fair value recorded in the income statement as an operating gain of $457,127.

Under the terms of the TTS acquisition, TTS shareholders will be eligible to receive contingent earn out payments from the Company through February 21, 2027 of:

- Up to $800,000 per year (payable in Company common stock) in each of the first 3 years post acquisition with the final closing date on December 31, 2026 (for an aggregate of up to $2,400,000), calculated as $1.00 worth of Company common stock for every $1.00 of revenue of TTS brands and activities that exceed the previous year's TTS associated revenue. Shortfalls in years 1 and 2 to be caught up in years 2 and/or 3, if revenues are then sufficient.
- $395,000 if TTS is successful in securing an agreement for a new tasting room location, to be branded TTS and Heritage Distilling, or as a Company approved sub-brand or collective brand, within a certain confidential retail location in Portland OR within 3 years, TTS shareholders will receive an additional $395,000, payable at HDHC's election either in cash or in shares of the Company's common stock (based on closing price 30 days post opening of such location).

The fair value of property and equipment was estimated by applying the cost approach, which estimates fair value using replacement or reproduction cost of an asset of comparable utility, adjusted for loss in value due to depreciation and economic obsolescence. The fair value of the contingent earn-out was estimated using a discounted cash flow approach, which included assumptions regarding the probability-weighted cash flows of achieving certain capacity development milestones.

Intangible assets were determined to meet the criterion for recognition apart from tangible assets acquired and liabilities assumed. The fair values of intangible assets were estimated based on various valuation techniques including the use of discounted cash flow analyses, and multi-period excess earnings valuation approaches, which use significant unobservable inputs, or Level 3 inputs, as defined by the fair value hierarchy. These valuation inputs included estimates and assumptions about forecasted future cash flows, long-term revenue growth rates, and discount rates. The fair value of the customer relationships intangible asset was determined using a discounted cash flow model that incorporates the excess earnings method and will be amortized on an accelerated basis over the projected pattern of economic benefits of approximately 6 to 10 years.

As described in more detail above, Intangible Assets and Goodwill related to the TTS acquisition are composed of the following as of June 30, 2024:

	Life	Cost	Accumulated Amortization	Accumulated Impairment Charge	Net
Intangible Assets:					
Thinking Tree Trade Name	6 years	$ 490,000	$ 12,323	$ —	$ 477,677
Thinking Tree Customer Relationships	10 years	360,000	6,867	$ —	$ 353,133
Goodwill – Thinking Tree Acquisition	N/A	636,997	N/A	$ —	$ 636,997
Total		$ 1,486,997	$ 19,190	$ —	$ 1,467,807

There were no intangible assets or goodwill as of December 31, 2023.

Thinking Tree Spirits Dissenters' Rights Process: In July 2024 three Thinking Tree Spirits shareholders served their notice to exercise dissenters' rights under Oregon law. Dissenters' rights statutes allow a party opposed to certain transactions to demand payment in cash for the value of their interests held rather than receive shares in the

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NOTE 10 — ACQUISITION OF THINKING TREE SPIRITS (cont.)

resulting entity. Parties can either agree upon a negotiated value or a dissenter who does not believe they are being fairly compensated for the value of their interests may seek a judicially determined value. In the case of a private entity, or a transaction involving private companies with no public clearing price for their stock, certain methods, models and assumptions are used to attempt to estimate or derive a fair market value. The statutory deadline has passed for any other Thinking Tree Spirits shareholders to claim dissenter's rights.

The amount being sought by the dissenters would consume most, if not all, of the amount in stock paid in the transaction, and management believes the amount of compensation they are seeking is too high.

Because this process creates uncertainty related to how many net Heritage shares are owed to the remaining Thinking Tree Spirits shareholders, management has made the decision to place any Heritage shares of stock that were to go to Thinking Tree Spirits shareholders in escrow until the matter is resolved. Likewise, any make-up shares that we assumed were to be issued at the close of this offering will also be held in escrow until the same final value determination is made. This is to ensure Heritage is not double paying for the company in both shares and cash.

To the extent any amount of cash is due to the three dissenters from Heritage, management will deduct that from the total amount of consideration that had been agreed upon for the Thinking Tree Spirits acquisition, and the remaining amount due to the remaining Thinking Tree Spirits shareholders, if any, will be then paid in Heritage shares at the agreed upon transaction price per share in the original transaction. Any unused Heritage shares will be returned to the treasury and will not be considered outstanding. So long as these shares are held in escrow they will not be eligible for trading or voting.

NOTE 11 — LEASES

The Company adopted ASC Topic 842 on January 1, 2022 using the modified retrospective approach. Comparative information has not been restated and continues to be reported under ASC Topic 840, *Leases*, which was the accounting standard in effect for those periods. The Company has operating leases for corporate offices, warehouses, distilleries, tasting rooms and certain equipment which have been accounted for using the adopted standard. The Company's operating lease terms include periods under options to extend or terminate the operating lease when it is reasonably certain that the Company will exercise that option in the measurement of its operating lease ROU assets and liabilities. The Company considers contractual-based factors such as the nature and terms of the renewal or termination, asset-based factors such as the physical location of the asset and entity-based factors such as the importance of the leased asset to the Company's operations to determine the operating lease term. The Company generally uses the base, non-cancelable lease term when determining the operating lease ROU assets and lease liabilities. The ROU asset is tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be fully recoverable in accordance with Accounting Standards Codification Topic 360, *Property, Plant, and Equipment.*

The following table presents the consolidated lease cost for amounts included in the measurement of lease liabilities for leases for the six months ended June 30, 2024 and 2023, respectively:

	Six Months Ended June 30,	
	2024	**2023**
Lease Cost:		
Amortization of Right-of-Use Assets (finance)	$ 14,304	$ 14,996
Interest on Finance Lease Liabilities	—	267
Operating lease cost[(1)]	743,918	743,826
Total lease cost	$ 758,222	$ 759,089

(1) Included in "Cost of sales", "Sales and Marketing" and "General and Administrative "expenses in the accompanying consolidated statements of operations.

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NOTE 11 — LEASES (cont.)

The following table presents weighted-average remaining lease terms and weighted-average discount rates for the consolidated operating leases as of June 30, 2024 and 2023, respectively:

	June 30,	
	2024	**2023**
Weighted-average remaining lease term – operating leases (in years)	5.8	6.3
Weighted-average discount rate – operating leases	22%	22%

The Company's ROU assets and liabilities for operating leases were $3,401,023 and $4,068.542, respectively, as of June 30, 2024. The ROU assets and liabilities for operating leases were $3,658,493 and $4,376,630, respectively, as of December 31, 2023. The ROU assets for operating leases were included in "Operating Lease Right-of-Use Assets, net" in our accompanying consolidated balance sheets. The liabilities for operating leases were included in the "Operating Lease Liabilities, Current" and "Operating Lease Liabilities, net of Current Portion" in the accompanying consolidated balance sheets.

Maturities of lease liabilities for the remainder of 2024 and the years through 2028 and thereafter are as follows:

	Amounts
Years Ending	
	$ 674,438
2025	1,243,264
2026	1,184,642
2027	1,197,022
2028	1,225,327
thereafter	1,887,779
Total lease payments	$ 7,412,472
Less: Interest	(3,343,930)
Total Lease Liabilities	$ 4,068,542

NOTE 12 — COMMITMENTS AND CONTINGENCIES

As an inducement to obtain financing in 2022 and 2023 through convertible notes, the Company agreed to pay a portion of certain future revenues we may receive from the sale of FBLLC or the Flavored Bourbon brand to the investors in such financings in the amount of 150% of their subscription amount for an aggregate of approximately $24,495,000. See Note 5 — Payment Upon Sale of Flavored Bourbon, LLC.

In July 2024, three Thinking Tree Spirits shareholders served their notice to exercise dissenters' rights under Oregon law Dissenters' rights statutes. (See Note 16.)

The Company maintains operating leases for various facilities. See Note 11, Leases, for further information.

Litigation — From time to time, the Company may become involved in various legal proceedings in the ordinary course of its business and may be subject to third-party infringement claims.

In the normal course of business, the Company may agree to indemnify third parties with whom it enters into contractual relationships, including customers, lessors, and parties to other transactions with the Company, with respect to certain matters. The Company has agreed, under certain conditions, to hold these third parties harmless against specified losses, such as those arising from a breach of representations or covenants, other third-party claims that the Company's products when used for their intended purposes infringe the intellectual property rights of such other third parties, or other claims made against certain parties. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the Company's limited history of prior indemnification claims and the unique facts and circumstances that are likely to be involved in each claim.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 12 — COMMITMENTS AND CONTINGENCIES (cont.)

As of June 30, 2024 and December 31, 2023, the Company has not been subject to any pending litigation claims.

Management Fee — The Company is required to pay a monthly management fee to Summit Distillery, Inc (see Note 14).

NOTE 13 — RETIREMENT PLAN

The Company sponsors a Roth 401(k) and profit-sharing plan (the "Plan"), in which all eligible employees may participate after completing 3 months of employment. No contributions have been made by the Company during the six months ended June 30, 2024 and 2023.

NOTE 14 — RELATED-PARTY TRANSACTIONS

Management Agreement

On October 6, 2014, the Company entered into a management agreement with Summit Distillery, Inc., an Oregon corporation, to open a new Heritage Distilling Company location in Eugene, Oregon. The Company engaged Summit Distillery, Inc., to manage the Eugene location for an annual management fee. The principals and sole owners of Summit Distillery, Inc., are also shareholders of HDHC. For each of the six months ended June 30, 2024 and 2023, the Company expensed a management fee of $90,000 and $90,000 respectively, to Summit Distilling, Inc. The fee is based upon a percentage of the Company's trailing twelve months, earnings before interest, taxes and depreciation expense, as defined in the management agreement.

2022 and 2023 Convertible Notes

During 2022, the Company issued multiple unsecured convertible promissory notes under the terms of the 2022 Notes to a related party who is a current shareholder of the Company and owns more than 10% of the Company's outstanding common stock as of June 30, 2024 and December 31, 2023 and 2022. The aggregate principal sum of the related party convertible 2022 Notes was $6,311,250 with an aggregate cash proceed of $4,675,000 (see Note 5). Concurrent with the execution of the 2022 Notes, the Company issued warrants to the related party in an amount equal to 50% of the cash proceeds from the convertible notes (see Note 7). The Company initially allocated the $4,675,000 aggregate cash proceeds from the related party to the convertible 2022 Notes and the associated warrants on their respective issuance dates in the aggregate amounts of $4,422,379 and $252,621, respectively.

During 2023, the Company issued multiple additional unsecured convertible promissory notes under the terms of the 2023 Notes to the same related party for a principal sum of $3,982,500 with a cash proceed of $2,950,000 (see Note 5).

As of June 30, 2024, the fair value of the related party convertible notes and warrant liabilities was $8,586,763 and $379,225, respectively. As of December 31, 2023, the fair value of the related party convertible notes and warrant liabilities was $17,220,203 and $340,918, respectively.

In October 2023, the related party agreed to exchange its then held 2022 and 2023 Convertible Promissory Notes for 1,717,559 shares of common stock. (See Note 5 —*Exchange of 2022 and 2023 Convertible Promissory Notes*.)

As of June 30, 2024, $3,247,425 of Whiskey Special Ops 2023 Notes were held by the related party, plus 254,562 warrants to purchase common stock, calculated using an estimated IPO price of $5.00 per share. As of December 31, 2023, $800,000 in principal of the Whiskey Special Ops 2023 Notes were held by the related party, plus 91,200 warrants to purchase common stock, calculated using an estimated IPO price of $5.00 per share. On February 29, 2024, the related party agreed to exchange its then held Whiskey Notes and related warrants for 1,203,783 shares of common stock under the terms of the most recent round of 2023 Convertible Notes and the aforementioned warrants were terminated. (See Note 5.)

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 14 — RELATED-PARTY TRANSACTIONS (cont.)

2023 Barrel Production Contract

During 2023, the Company entered into a distilled spirits barreling production agreement with the related party for production of 1,200 barrels of distilled spirits over time. There was a prepayment of $1,000,000 made in January 2023. In March 2024, the agreement was amended to 600 barrels for $500,000, with the then $500,000 excess prepayment used to purchase a Whiskey Note in the principal amount of $672,500 and subsequently exchanged (contingent upon the consummation of this offering) under the terms of a Subscription Exchange Agreement for common stock in conjunction with the February 29, 2024 exchange of Whiskey Notes for common stock.

Factoring Agreement(s)

In May 2024, the Company raised $100,000 under the terms of an accounts receivable factoring arrangement with the related party, with fees of 10% (or $10,000) and $1,000 for every 2 weeks payment remains overdue. Payment under the factoring agreement is due the earlier of: within 3 days of receipt of payment under the factored accounts receivable; the achievement of certain fundraising milestones; or June 15, 2024. As of June 30, 2024 the factoring agreement remained unpaid. In July 2024, the investor agreed to exchange his interest in the factoring agreement of $113,285 into a subscription for the purchase of 11,328 shares of Series A Preferred Stock 5,092 warrants to purchase shares of common stock at the lesser of $5.00 per share or the price per shares at which our common stock is sold in this offering (the "$5.00 Warrants"), and 29,705 warrants at $6.00 per share (the "$6.00 Warrants") and related warrants. (See Note 16.)

As of July 1, 2024, the Company raised an additional aggregate of $299,667 between two separate investors under the terms of a July 2024 accounts receivable factoring arrangement with fees of 10% (or $29,966) and $1,000 (separately, to each of the two investors) for every 2 weeks payment remains overdue. As of June 30, 2024, the $299,667 had been received and was recorded as a deposit liability, pending execution of the factoring agreement on July 1, 2024. Additionally, the two investors received five year warrants to purchase an aggregate of 66,549 shares of common stock at $6.00 per share (or cashlessly following a standard cashless exercise formula). (See Note 16.) Of the total July 2024 accounts receivable factoring agreement, $166,667 and 44,333 of the warrants are with the related party, Payment under the factoring is due the earlier of: within 3 days of receipt of payment under the factored receivable; the achievement of certain fundraising milestones; or August 15, 2024. Effective July 31, 2024, the investors agreed to exchange their interests in the factoring agreement for $329,633, including accrued fees and related warrants for an aggregate of 32,963 shares of Series A Preferred Stock, 14,891 warrants to purchase shares of common stock at the lesser of $5.00 per share or the price per share at which our common stock is sold in this offering (the "$5.00 Warrants"), and 86,864 warrants at $6.00 per share (the "$6.00 Warrants"). (Including $166,667 received from a related party, which was exchanged for 18,333 shares of Series A Preferred Stock, 8,241 related $5.00 Warrants, and 48,073 related $6.00 Warrants.) (See Note 16.)

Subsequent to June 30, 2024, through September 27, 2024, the Company received $1,350,000 in cash subscriptions for an additional 135,000 shares of Series A Preferred Stock and 73,030 related $5.00 Warrants, and 393,746 $6.00 Warrants, (of which $834,000 in subscriptions for 83,400 shares, 41,700 related $5.00 Warrants, and 243,248 $6.00 Warrants was from a related party). (See Note 16.)

In September 2024, 510,315 of the $6.00 Warrants discussed above and in Note 9 (including 321,026 $6.00 Warrants from a related party) were exchanged for 93,789 shares of Series A Preferred Stock that did not include any related warrants (including 59,001 shares of Series A Preferred Stock that did not include any related warrants for a related party). The value assigned to the $6.00 Warrants exchanged for Series A preferred Stock that did not include any warrants was negotiated to be $937,959 (including $590,045 from a related party), or $1.838 per $6.00 Warrant, using a Black-Scholes Valuation model with an estimated IPO stock price of $5.00 per share and exercise price of $6.00 per share.

In September 2024, the Company purchased 50 barrels of premium aged whiskey from related party for $110,600, or $2,212 per barrel (comprised of $495 per barrel and $1,717 of spirits, for an aggregate total of $24,750 to fixed assets and $85,850 to inventory). The $110,600 was paid by the Company in the form of 11,060 shares of Series A Preferred Stock and 5,530 related warrants to purchase common stock at the lesser of $5.00 per share or the price per shares at which our common stock is sold in this offering. (See Note 16.)

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 15 — BASIC AND DILUTED NET LOSS PER SHARE

The Company computes basic net income (loss) per share by dividing net income (loss) for the period by the weighted-average number of common shares outstanding during the period. The Company computes diluted net income (loss) per share by dividing net income (loss) for the period by the weighted-average number of common shares outstanding during the period, plus the dilutive effect of the stock options, RSU awards and exercisable common stock warrants, as applicable pursuant to the treasury stock method, and the convertible notes, as applicable pursuant to the if-converted method. The following table sets forth the computation of basic and diluted net loss per share:

	For the Six Months Ended June 30,	
	2024	**2023**
Basic earnings per share of common stock:		
Net Income (Loss) for the period	$ 8,859,341	$ (28,211,694)
Preferred stock dividend	(13,537)	—
Net income (loss) for the period – basic	$ 8,845,804	$ (28,211,694)
Weighted average number of shares of common stock – basic	421,799	381,600
Net Income (Loss) per share of common stock – basic	$ 20.97	$ (73.93)
Diluted earnings per share of common stock:		
Net income (loss) for the period – basic	$ 8,845,804	$ (28,211,694)
Change in fair value of dilutive convertible notes	(18,216,803)	—
Change in fair value of dilutive warrants	(1,794,334)	—
Net Income (loss) for the period – diluted	$ (11,165,333)	$ (28,211,694)
Weighted average number of shares of common stock – basic	421,799	381,600
Convertible notes	3,819,542	—
Warrants	331,722	—
Weighted average number of shares of common stock – diluted	4,573,063	381,600
Net Income (Loss) per share of common stock – diluted	$ (2.44)	$ (73.93)

Diluted earnings per share reflect the potential dilution of securities that could share in the earnings of an entity. The following number of shares of common stock from the potential exercise or conversion of outstanding potentially dilutive securities were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been antidilutive:

	For the Six Months Ended June 30,	
	2024	**2023**
ISOs	6,164	7,542
RSUs	243,089	117,287
Equity-classified Warrants	148,649	46,747
Liability-classified Warrants 2022 Notes	908,334	59,764
Convertible Notes	3,072,906	131,059
Preferred Stock	486,097	—
Total	4,865,239	362,399

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 16 — SUBSEQUENT EVENTS

For its condensed consolidated financial statements as of June 30, 2024 and for the period then ended, the Company evaluated subsequent events through October 3, 2024, the date on which those financial statements were issued. Other than the items noted below, there were no subsequent events identified for disclosure as of the date the financial statements were available to be issued.

Subsequent to June 30, 2024, the Company has prepared the 2024 Equity Incentive Plan (that would authorize up to 2,500,000 shares of common stock to be issued) (the "2024 Plan") for approval by the Board of Directors and stockholders prior to the effectiveness of the Company's anticipated IPO.

As of July 1, 2024, the Company raised an additional aggregate of $299,667 between two separate investors under the terms of July 2024 accounts receivable factoring arrangements, including $166,667 from a related party. The Company issued an aggregate of 66,549 five year warrants to purchase common stock at $6.00 per share in conjunction with the July 2024 accounts receivable factoring agreements. As of June 30, 2024, the $299,667 had been received and was recorded pending execution of the factoring agreement on July 1, 2024. (See Note 14.)

Subsequent to June 30, 2024, the Company accepted subscriptions for an additional 218,051shares of Series A Preferred Stock (of which 124,121 shares was from a related party) and warrants to purchase an aggregate of 105,513 shares of common stock (at $5.00 per share (subject to adjustment to the price per share at which the common stock is sold at the Company's Initial Public Offering if lower) (of which 60,563 was from a related party) for an aggregate purchase price of $2,180,519, of which: $1,350,000 was paid in cash (of which $834,000 was from a related party); $110,600 was paid by the sale of and transfer to us by a related party of an aggregate of 50 barrels of premium aged whiskey with an average value of $2,212 per barrel; and, $719,919 was paid by the cancellation of outstanding indebtedness (factoring agreements) during the three months ended September 30, 2024 (of which $296,619 was from a related party). In addition, subsequent to June30, 2024 an additional 510,315 warrants with an exercise price of $6 per share were issued as part of the Series A Preferred Stock transactions (of which 321,026 of the warrants were with a related party).

In August 2024, the $100,000 received under a May 2024 factoring agreement, including $13,286 of accrued fees and related warrants (which totaled $113,286 and was from a related party), as well as the $299,667 received from the two separate investors under the terms of the July 2024 factoring agreements, including $29,966 of accrued fees and related warrants (which totaled $329,633, of which $183,333 was from a related party), for an aggregate of $442,919, was exchanged for an aggregate of 44,291 shares of Series A Preferred Stock, warrants to purchase 19,983 shares of common stock at the lesser of $5.00 per share or the price per share at which our common stock is sold in this offering (the "$5.00 Warrants"), and warrants to purchase 116,569 shares of common stock at $6.00 per share (the "$6.00 Warrants"), including $266,667 received from a related party ($296,619 including factoring fees), which was exchanged for 29,661 shares of Series A Preferred Stock, 13,333 related $5.00 Warrants, and 77,778 related $6.00 Warrants.

In September 2024, in addition to the 218,051 shares of Series A Preferred Stock discussed above, 510,315 of the $6.00 Warrants discussed above (including 321,026 $6.00 Warrants from a related party) were exchanged for 93,789 shares of Series A Preferred Stock that did not include any related warrants (including 59,001 shares of Series A Preferred Stock that did not include any related warrants for a related party). The value assigned to the $6.00 Warrants exchanged for Series A Preferred Stock that did not include any warrants was negotiated to be $937,959 (including $590,045 from a related party), or $1.838 per $6.00 Warrant, using a Black-Scholes Valuation model with an estimated IPO stock price of $5.00 per share and exercise price of $6.00 per share.

In July 2024, the Company raised an additional $250,000 from an investor under the terms of July 2024 accounts receivable factoring arrangement (which subsequently converted to Series A Preferred Stock). The Company issued five year warrants to purchase 83,333 shares of common stock at $6.00 per share in conjunction with the July 2024 accounts receivable factoring arrangement. As of September 2024, the Company recorded a total liability of $277,000 related to this factoring agreement, including related fees, which was exchanged for 27,700 shares of Series A Preferred Stock, including 12,500 related $5.00 Warrants.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 16 — SUBSEQUENT EVENTS (cont.)

In December 2023, the Company entered into an agreement with a wholesaler distributor network in Oklahoma, which purchased products from the Company at wholesale and began reselling and distributing them throughout the state through the state's three tier system. Since the beginning of the second quarter of 2024, the Company has secured new wholesale distribution in Kansas, Kentucky and portions of Colorado, all of which started between July and September 2024.

Under the terms of the February 21, 2024 TTS acquisition, the Company paid the shareholders of TTS $670,686 using common stock of the Company at a negotiated price of $13.16 per share (or 50,972 shares), subject to a true-up provision (to the price per share of the Company's anticipated IPO, if lower — currently $5.00, or 134,137 shares) that expired on August 31, 2024. ASC 480 requires a financial instrument to be classified as a liability if such financial instrument contains a conditional obligation that the issuer must or may settle by issuing a variable number of its equity securities if, at inception, the monetary value of the obligation is predominantly based on a known fixed monetary amount. Subsequent to June 30, 2024, in September,2024, the Company extended the true-up provision under the terms of the TTS stock sale from August31, 2024 to the date of settlement of the Thinking Tree Spirits Dissenters Rights Process, resulting in the delay in reclassifying the TTS purchase price liability to equity (under ASC-480). (See below and also Note 10). Once the final determination is made on the amount owed to dissenters, if any, that amount will be deducted from the true-up amount and the resulting number of shares of common stock will be issued at the price per share of the common stock in this offering.

In August 2024, certain holders of shares of common stock agreed to exchange an aggregate of 2,816,291 shares of their common stock into a like number of pre-paid warrants. Such pre-paid warrants will be eligible for exercise without the payment of additional consideration at any time that the respective holder beneficially owns a number of shares of common stock that is less than 9.99% of our outstanding shares of common stock for a number of shares that would cause the holder to beneficially own 9.99% of our outstanding shares of common, and having no expiration date.

In September 2024, the Company purchased 50 barrels of premium aged whiskey from related party for $110,600, or $2,212 per barrel (comprised of $495 per barrel and $1,717 of spirits, for an aggregate total of $24,750 to fixed assets and $85,850 to inventory). The $110,600 was paid by the Company in the form of 11,060 shares of Series A Preferred Stock and 5,530 related $5.00 Warrants.

NOTE 17 — RESTATEMENT OF CONSOLIDATED FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2024

The Company's previously filed interim unaudited Consolidated Financial Statements for the six months ended June 30, 2024 and 2023, as set forth in the Company's Amendment No. 2 to Form S-1 Registration Statement under the Securities Act of 1933 which was filed with the SEC on August 28, 2024 should no longer be relied upon due to an accounting error in connection with cash flow statement presentation for "proceeds from issuance of preferred stock and warrants" between operating, investing, and financing activities and supplemental non-cash activities.

Restatement of the financial information presented was necessary to correct the cash flow presentation.

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 17 — RESTATEMENT OF CONSOLIDATED FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2024 (cont.)

Cash Flow Presentation

The Company corrected its presentation of "proceeds from issuance of preferred stock and warrants" by reclassifying $1,155,000 of preferred stock and warrants issued in exchange for barrels and inventory (of whiskey) from: operating activities (change in inventory); investing activities (purchase of property and equipment); and financing activities (proceeds from preferred stock) cash flow activities, to supplemental non-cash activities as follows:

	For the Six Months Ended June 30, 2024		
	As Reported	**Adjustment**	**As Restated**
	(Unaudited)		**(Unaudited)**
Net Income	$ 8,859,341	$ —	$ 8,859,341
Adjustments to Reconcile Net Income to Net Cash Used in Operating Activities:			
Depreciation and Amortization Expense	655,262	—	655,262
Amortization of operating lease right-of-use assets	257,470	—	257,470
Loss on disposal of property and equipment	27,311	—	27,311
Gain on Investment	(3,421,222)	—	(3,421,222)
Change in Fair Value of Convertible Notes	(9,044,748)	—	(9,044,748)
Change in Fair Value of Warrant Liabilities	(1,705,020)	—	(1,705,020)
Change in Fair Value of Contingency Liabilities	(457,127)	—	(457,127)
Non-cash Interest Expense	163,318	—	163,318
Non-cash Share-based Compensation	—	—	—
Changes in Operating Assets and Liabilities:			
Accounts Receivable	254,581	—	254,581
Inventory	(522,335)	895,125	372,790
Other Current Assets	112,611	—	112,611
Other Long Term Assets	—	—	—
Accounts Payable	339,235	—	339,235
Other Current Liabilities	(593,197)	—	(593,197)
Operating Lease Liabilities	(308,089)	—	(308,089)
Net Cash Used in Operating Activities	(5,382,609)	895,125	(4,487,484)
Cash Flow from Investing Activities			
Purchase of Property and Equipment	(292,000)	259,875	(32,125)
Proceeds from Purchase of Thinking Tree Spirits	5,090	—	5,090
Net Cash Used in Investing Activities	(286,910)	259,875	(27,035)

Heritage Distilling Holding Company, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

NOTE 17 — RESTATEMENT OF CONSOLIDATED FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2024 (cont.)

	For the Six Months Ended June 30, 2024		
	As Reported	**Adjustment**	**As Restated**
	(Unaudited)		**(Unaudited)**
Cash Flow from Financing Activities			
Proceeds from Notes Payable	$ 438,914	$ —	$ 438,914
Proceeds from Whiskey Notes (including proceeds from related party Whiskey Notes of $1,433,000 for the six months ended June 30, 2024)	3,655,870	—	3,655,870
Proceeds from Convertible Notes (including proceeds from related party convertible notes of $0 for the six months ended June 30, 2024)	—	—	—
Repayment of Notes Payable	(85,774)	—	(85,774)
Common Stock Shares Repurchased	(2,430)	—	(2,430)
Proceeds from Issuance of Preferred Stock and Warrants	1,830,000	(1,155,000)	675,000
Deferred Transaction Costs associated with S-1 Filing	(92,326)	—	(92,326)
Deferred Transaction Costs associated with Business Combination	—	—	—
Net Cash Provided by Financing Activities	5,744,254	(1,155,000)	4,589,254
Net Increase (Decrease) in Cash	74,735	—	74,735
Cash – Beginning of Period	76,878	—	76,878
Cash – End of Period	$ 151,613	$ —	$ 151,613
Supplemental Cash Flow Information related to Interest Paid & Income Taxes Paid:			
Cash Paid during the Period for:			
Interest Expense	$ 1,072,338	$ —	$ 1,072,338
Income Tax	(9,150)	—	(9,150)
Supplemental Schedule of Non-cash Investing and Financing Activities:			
Preferred Stock in exchange for barrels and inventory	$ —	$ 1,155,000	$ 1,155,000
Property and Equipment acquired in exchange for Preferred Stock	—	259,875	259,875
Deferred Transaction Costs associated with S-1 Filing in Accounts Payable and Other Current Liabilities	246,308	—	246,308

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of
Heritage Distilling Holding Company, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Heritage Distilling Holding Company, Inc. (the "Company") as of December 31, 2023 and 2022, the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for each of the two years in the period ended December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements were prepared assuming the Company will continue as a going concern. As more fully described in Note 1, the Company has a significant working capital deficiency, has incurred significant losses and needs to raise additional funds to meet its obligations and sustain its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans regarding these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management and the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2022.

Costa Mesa, California
May 13, 2024 (except for the effects of the reverse stock split described in Note1, as to which the date is July 5, 2024)

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Heritage Distilling Holding Company, Inc.
Consolidated Balance Sheet

	As of December 31,	
	2023	**2022**
ASSETS		
Current Assets		
Cash	$ 76,878	$ 223,034
Accounts Receivable	721,932	494,714
Inventory	2,756,350	3,641,895
Other Current Assets	1,717,650	1,089,734
Total Current Assets	5,272,810	5,449,377
Long Term Assets		
Property and Equipment, net of Accumulated Depreciation	6,428,112	7,683,163
Operating Lease Right-of-Use Assets, net	3,658,493	3,841,480
Investment in Flavored Bourbon LLC	10,864,000	10,864,000
Other Long Term Assets	44,817	121,087
Total Long Term Assets	20,995,422	22,509,730
Total Assets	$ 26,268,232	$ 27,959,107
LIABILITIES & STOCKHOLDERS' DEFICIT		
Current Liabilities		
Accounts Payable	$ 5,228,786	$ 3,153,423
Accrued Payroll	1,321,298	989,850
Accrued Tax Liability	1,468,994	1,287,728
Other Current Liabilities	1,827,013	997,363
Operating Lease Liabilities, Current	1,294,706	1,453,456
Notes Payable, Current	14,270,956	13,883,471
Convertible Notes Payable (including related party convertible notes of $17,220,203 and $0 as of December 31, 2023 and 2022, respectively) (See Notes 5 and 15)	36,283,891	—
Accrued Interest, Current	1,152,998	88,065
Total Current Liabilities	62,848,642	21,853,356
Long Term Liabilities		
Operating Lease Liabilities, net of Current Portion	3,081,924	3,285,726
Convertible Notes Payable (2022 and 2023 Convertible Notes) (including a related party convertible note of $0 and $3,476,057 as of December 31, 2023 and 2022, respectively)	—	8,041,000
Convertible Notes Payable (Whiskey Notes) (including a related party convertible note of $390,607 and $0 as of December 31, 2023 and 2022, respectively)	1,452,562	—
Warrant Liabilities (2022 and 2023 Convertible Notes) (including a related party warrant liability of $340,918 and $187,181 as of December 31, 2023 and 2022, respectively)	794,868	433,000
Warrant Liabilities (Whiskey Notes) (including a related party warrant liability of $406,774 and $0 as of December 31, 2023 and 2022, respectively)	1,512,692	—
Accrued Interest, net of Current Portion	—	977,316
Total Long-Term Liabilities	6,842,046	12,737,042
Total Liabilities	69,690,688	34,590,398
Commitments and Contingencies (Note 10)		
Stockholders' Deficit		
Common Stock, par value $0.0001 per share; 10,000,000 and 3,000,000 shares authorized as of December 31, 2023 and 2022 respectively; 381,484 and 381,555 shares issued and outstanding as of December 31, 2023 and 2022, respectively	67	67
Additional Paid-In-Capital	31,421,953	31,414,699
Accumulated Deficit	(74,844,476)	(38,046,057)

Total Stockholders' Deficit	(43,422,456)	(6,631,291)
Total Liabilities & Stockholders' Deficit	$ 26,268,232	$ 27,959,107

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

Heritage Distilling Holding Company, Inc.
Consolidated Statement of Operations

	For the Years Ended December 31,	
	2023	**2022**
NET SALES		
Products	$ 5,136,482	$ 5,228,682
Services	2,834,742	3,080,884
Total Net Sales	7,971,224	8,309,566
COST OF SALES		
Products	4,963,176	5,245,106
Services	857,007	852,034
Total Cost of Sales	5,820,183	6,097,140
Gross Profit	2,151,041	2,212,426
OPERATING EXPENSES		
Sales and Marketing	5,938,315	6,441,449
General and Administrative	7,477,285	7,598,319
Total Operating Expenses	13,415,600	14,039,768
Operating Loss	(11,264,559)	(11,827,342)
OTHER INCOME (EXPENSE)		
Interest Expense	(2,526,740)	(2,611,371)
Change in Fair Value of Convertible Notes	(22,764,854)	2,117,636
Change in Fair Value of Warrant Liabilities	(240,159)	148,364
Other Income	4,892	(87,402)
Total Other Expense	(25,526,860)	(432,773)
Loss Before Income Taxes	(36,791,419)	(12,260,115)
Income Taxes	(7,000)	(8,101)
Net Loss	$ (36,798,419)	$ (12,268,216)
Net Loss Per Share, Basic and Diluted	$ (96.45)	$ (32.18)
Weighted Average Common Shares Outstanding, Basic and Diluted	381,543	381,266

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

Heritage Distilling Holding Company, Inc.
Consolidated Statements of Stockholders' Deficit

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount			
Beginning Balance December 31, 2022	381,555	$ 67	$ 31,414,699	$ (38,046,057)	$ (6,631,291)
Shares Repurchased	(71)	—	(11,340)	—	(11,340)
Share-based Compensation	—	—	18,594	—	18,594
Net Loss	—	—	—	(36,798,419)	(36,798,419)
Ending Balance December 31, 2023	381,484	$ 67	$ 31,421,953	$ (74,844,476)	$ (43,422,456)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount			
Beginning Balance December 31, 2021	381,163	$ 67	$ 30,988,020	$ (25,777,841)	$ 5,210,246
Shares Repurchased	(82)	—	(12,960)	—	(12,960)
Share-based Compensation	—	—	86,659	—	86,659
Warrants Issued	—	—	303,000	—	303,000
Warrants Exercised	474	—	49,980	—	49,980
Net Loss	—	—	—	(12,268,216)	(12,268,216)
Ending Balance December 31, 2022	381,555	$ 67	$ 31,414,699	$ (38,046,057)	$ (6,631,291)

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

Heritage Distilling Holding Company, Inc.
Consolidated Statements of Cash flows

	For the Twelve Months Ended December 31,	
	2023	**2022**
Net Loss	$ (36,798,419)	$ (12,268,216)
Adjustments to Reconcile Net Loss to Net Cash Used in Operating Activities:		
Depreciation Expense	1,430,240	1,512,661
Amortization of operating lease right-of-use assets	492,806	377,169
Loss on disposal of property and equipment	43,290	38,383
Non-cash Warrant Issued	—	303,000
Change in Fair Value of Convertible Notes	22,764,854	(2,117,636)
Change in Fair Value of Warrant Liabilities	240,159	(148,364)
Non-cash Interest Expense	435,373	917,645
Non-cash Share-based Compensation	18,594	86,659
Changes in Operating Assets and Liabilities:		
Accounts Receivable	(227,218)	(270,243)
Inventory	885,547	685,011
Other Current Assets	61,230	875,198
Other Long Term Assets	76,270	—
Accounts Payable	1,078,467	1,359,727
Other Current Liabilities	1,691,432	(42,613)
Operating Lease Liabilities	(672,371)	(604,987)
Net Cash Used in Operating Activities	(8,479,746)	(9,296,606)
Cash Flow from Investing Activities		
Purchase of Property and Equipment	(26,512)	(639,383)
Proceeds from Sale of Asset	2,400	25,000
Net Cash Used in Investing Activities	(24,112)	(614,383)
Cash Flow from Financing Activities		
Proceeds from Notes Payable	250,000	250,000
Proceeds from Whiskey Notes (including proceeds from related party Whiskey Notes of $800,000 for the year ended December 31, 2023)	2,975,000	—
Proceeds from Convertible Notes (including proceeds from related party convertible notes of $2,950,000 and $4,675,000 for the Twelve months ended December 31, 2023 and 2022, respectively)	5,590,000	10,740,000
Debt Issuance Cost	—	(6,250)
Repayment of Notes Payable	(183,062)	(892,622)
Repayment of Finance Lease Obligations		(52,703)
Proceeds from Warrant exercised		49,980
Deferred Transaction Costs associated with S-1 Filing	(262,896)	—
Deferred Transaction Costs associated with Business Combination	—	(146,700)
Common Stock Shares Repurchased	(11,340)	(12,960)
Net Cash Provided by Financing Activities	8,357,702	928,745
Net Increase (Decrease) in Cash	(146,156)	17,756
Cash – Beginning of Period	223,034	205,278
Cash – End of Period	$ 76,878	$ 223,034

Heritage Distilling Holding Company, Inc.
Consolidated Statements of Cash flows — (Continued)

	For the Twelve Months Ended December 31,	
	2023	**2022**
Supplemental Cash Flow Information related to Interest Paid & Income Taxes Paid:		
Cash Paid during the Period for:		
Interest Expense	$ 2,091,366	$ 1,693,726
Income Tax Expense	$ 7,000	$ 8,101
Supplemental Schedule of Non-cash Investing and Financing Activities:		
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 290,060	$ 4,218,649
Deferred Transaction Costs associated with S-1 Filing in Accounts Payable and Other Current Liabilities	$ 1,020,004	$ 562,117
Unpaid property and equipment additions	$ 194,366	$ 3,175

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

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION

Description of operations — Heritage Distilling Holding Company ("HDHC" or the "Company") is a Delaware corporation, for the purpose of investing in, managing, and/or operating businesses that are engaged in the production, sale, or distribution of alcoholic beverages. The Company is headquartered in Gig Harbor, Washington and has one wholly owned subsidiary, Heritage Distilling Company, Inc., ("HDC") that is included in the consolidated financial statements.

HDC has operated since 2011 as a craft distillery making a variety of whiskeys, vodkas, gins and rums as well as RTDs and operates distillery tasting rooms in Washington and Oregon.

Business Combination Agreement — On December 9, 2022, the Company entered into a business combination agreement (as amended, the "Business Combination Agreement") with a publicly-traded special purpose acquisition company ("SPAC"). On May 18, 2023, the Business Combination Agreement was terminated and deferred expenses related to the transaction were expensed. Subsequent to the termination of the Business Combination, the Company contemplates an initial public offering ("IPO").

Basis of Presentation — The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") and include the Company's wholly-owned subsidiary. All intercompany transactions and balances have been eliminated in the consolidation process. Certain accounts relating to the prior year have been reclassified to conform to the current period's presentation. These reclassifications had no effect on the net loss or net assets as previously reported.

Stock Split — On May 14, 2024, the Board and Shareholders of the Company approved a .57-for-1 reverse stock split. All share and per share numbers included in these Financial Statements as of and for the years ended December 31, 2023 and 2022 reflect the effect of that stock split unless otherwise noted.

Liquidity and Going Concern — The accompanying consolidated financial statements have been prepared in conformity with U.S. GAAP, which contemplate continuation of the Company as a going concern. The Company's recurring net losses, negative working capital, increased accumulated deficit and stockholders' deficit, raise substantial doubt about its ability to continue as a going concern. During the year ended December 31, 2023, the Company incurred a net loss of approximately $36.8 million (of which approximately $23.0 million of the net loss stemmed from the increase in fair value of certain convertible notes and warrants) and reported net cash used in operations of approximately $8.3 million. On December 31, 2023, the accumulated deficit was approximately $74.8 million and the stockholders' deficit was approximately $43.4 million. Excluding the approximately $23.0 million from the 2023 increase in fair value ($20.7 inception to date increase in fair value) of the aforementioned convertible notes and warrants: the Company would have incurred a 2023 net loss of approximately $13.8 million; reported net cash used in operations of approximately $8.5 million; at December 31, 2023, the accumulated deficit would have been approximately $51.8 million and the stockholders' deficit would have been approximately $20.4 million. In connection with these consolidated financial statements, management evaluated whether there were conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to meet its obligations as they become due within one year from the date of issuance of these financial statements. Management assessed that there were such conditions and events, including a history of recurring operating losses, and negative cash flows from operating activities, and significant current debt obligations. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As of December 31, 2023, the Company believes its current cash balances coupled with anticipated cash flow from operating activities may not be sufficient to meet its working capital requirements for at least one year from the date of the issuance of the accompanying consolidated financial statements. The Company has issued an aggregate principal amount of $22,146,023 in unsecured 2022 and 2023 convertible notes, plus an additional $2,975,000 in the current round of Whiskey Special Ops 2023 Notes (See Notes 5 and 16) to various new and existing investors including a related party, which together, have generated net cash proceeds of $19,305,000 through December 31, 2023.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

In October and November 2023, the holders of the unsecured 2022 and 2023 convertible notes agreed to exchange the 2022 and 2023 convertible notes and accrued interest for common stock and prepaid warrants to purchase common stock of the Company. In February 2024, the holders of the Whiskey Notes agreed to exchange the notes and related warrants and accrued interest for common stock and prepaid warrants to purchase common stock of the Company. The aggregate fair value of the 2022 and 2023 convertible notes and the Whiskey Notes will be reclassified from Convertible Notes to equity under the terms of the respective Subscription Exchange Agreements upon the effectiveness of the Company's anticipated IPO. (See Notes 5 and 16.) Subsequent to December 31, 2023, the Company continued to issue additional Whiskey Special Ops 2023 Notes. (See Note 16.)

The accompanying consolidated financial statements have been prepared assuming the Company will continue to operate as a going concern, which contemplates the realization of assets and settlement of liabilities in the normal course of business and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from uncertainty related to its ability to continue as a going concern.

Risks and Uncertainties

Global Conflict

Management continues to monitor the changing landscape of global conflicts and their potential impacts on its business. First among these concerns is the ongoing conflict in Ukraine, which has caused disruption in the grain, natural gas and fertilizer markets, and the result of which is uncertainty in pricing for those commodities. Because the Company relies on grains for part of its raw inputs, these disruptions could increase the supply costs. However, since the Company sources all its grain from local or known domestic suppliers, management considers that the impact of the Ukraine war is not significant based on the Company's history and relationship with the existing farmers and growers. The other potential conflict the Company monitors is the threatening military activity between China and Taiwan. The Company used to source its glass bottles from suppliers in China and has recently migrated this production to Taiwan. Although the Company now has what it considers an adequate supply of its glass bottles at the current utilization rate, considering the potential disruption in Taiwan, the Company has started to evaluate new producers who can produce glass bottles in other countries. Finally, most recently the attacks on Israel and the resulting and potentially escalating tensions in the region could feed uncertainty in the oil markets, impacting prices for fuel, transportation, freight and other related items, impacting costs directly and indirectly leading to more inflation.

Inflation

The inflation rate could remain high in the foreseeable future. This could put cost pressure on the Company faster than it can raise prices on its products. In such cases the Company could lose money on products, or its margins or profits could decline. In other cases, consumers may choose to forgo making purchases that they do not deem to be essential, thereby impacting the Company's growth plans. Likewise, labor pressures could continue to increase as employees become increasingly focused on their own standard of living, putting upward labor costs on the Company before the Company has achieved some or all of its growth plans. Management continues to focus on cost containment and is monitoring the risks associated with inflation and will continue to do so for the foreseeable future.

Interest Rates

Interest rates have been rising lately, and there are no signs that rates will drop soon. If interest rates continue to rise or remain higher than recent history has experienced, there is a risk it will cost more for the Company to conduct its business or to get access to credit. There is also a risk that consumers may feel increased economic pressure and not be willing to spend on the Company's goods or services. Management continues to focus on interest rates and their impact on the business, the cost of borrowing and the potential impacts on its future capital-raising efforts.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 1 — DESCRIPTION OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

U.S. Government Operations

The chance that continued inaction in Congress to secure final passage of annual spending bills puts the Company at risk of a government shutdown, which could impact its ability to secure certain federal permits through the TTB, including transfer in bond permits, and formula or label approvals. Likewise, tribal partners the Company is working with to open HDC branded distilleries and tasting rooms will rely on securing their own TTB permits. Any government shutdown could slow down progress on development, opening or operating those locations.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of estimates — The presentation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, and expenses, and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of expenses during the reporting period. Significant estimates and assumptions reflected in these consolidated financial statements include the valuation of common stock, common stock warrants, convertible notes, warrant liabilities, and stock options. Results could differ from those estimates. Estimates are periodically reviewed due to changes in circumstances, facts, and experience. Changes in estimates are recorded in the period in which they become known.

Fair value option — As permitted under ASC Topic 825, *Financial Instruments* ("ASC Topic 825"), the Company has elected the fair value option to account for its convertible notes issued in 2022 and 2023. In accordance with ASC Topic 825, the Company records the convertible notes at fair value with changes in fair value recorded as a component of other income (expense) in the consolidated statements of operations. As a result of applying the fair value option, direct costs and fees related to the convertible notes are expensed as incurred and are not deferred. The Company concluded it is appropriate to apply the fair value option as they are liabilities not classified as a component of stockholders' equity (deficit). In addition, the convertible notes meet other applicable criteria for electing fair value option under ASC Topic 825.

Fair value measurements — Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. There is a hierarchy based upon the transparency of inputs used in the valuation of an asset or liability. The valuation hierarchy contains three levels:

Level 1 —	Valuation inputs are unadjusted quoted market prices for identical assets or liabilities in active markets.
Level 2 —	Valuation inputs are quoted prices for identical assets or liabilities in markets that are not active, quoted market prices for similar assets and liabilities in active markets and other observable inputs directly or indirectly related to the assets or liabilities being measured.
Level 3 —	Valuation inputs are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize observable inputs and minimize unobservable inputs.

In determining the appropriate levels, the Company analyzes the assets and liabilities measured and reported on a fair value basis. At each reporting period, all assets and liabilities for which the fair value measurement is based on significant unobservable inputs are classified as Level 3.

The Company's financial instruments consist primarily of cash, accounts receivable, inventory and accounts payable. The carrying amount of such instruments approximates fair value due to their short-term nature. The carrying value of long-term debt approximates fair value because of the market interest rate of the debt. The convertible notes and warrant liabilities associated with the Company's convertible promissory notes are carried at fair value, determined according to Level 3 inputs in the fair value hierarchy described above.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

During the years ended December 31, 2023 and 2022, there were no transfers between Level 1, Level 2, and Level 3.

Convertible notes — The Company's convertible promissory notes are recognized initially and subsequently at fair value, inclusive of their respective accrued interest at their stated interest rates, which are included in convertible notes on the Company's consolidated balance sheets. The changes in the fair value of these convertible notes are recorded as "changes in fair value of convertible notes" as a component of other income (expenses) in the consolidated statements of operations. The changes in fair value related to the accrued interest components are also included within the single line of change in fair value of convertible notes on the consolidated statements of operations.

Warrant liabilities — The Company issued certain warrants for the purchase of shares of its common stock in connection with the Company's convertible notes (see Note 7) and classified them as a liability on its consolidated balance sheets. These warrants are classified as a liability under ASC 480 as the Company may settle the warrants by issuing a variable number of its common shares and the monetary value of the obligation is based solely or predominantly on a fixed monetary amount known at inception. The warrant liabilities are initially recorded at fair value on the issuance date of each warrant and are subsequently remeasured to fair value at each reporting date. Changes in the fair value of the warrant liabilities are recognized as a component of other income (expense) in the consolidated statements of operations. Changes in the fair value of the warrant liabilities will continue to be recognized until the warrants are exercised, expire or qualify for equity classification.

Concentrations of credit risk — Financial instruments potentially subjecting the Company to concentrations of credit risk consist primarily of accounts receivable, accounts payable and bank demand deposits that may, from time to time, exceed Federal Depository Insurance Corporation ("FDIC") insurance limits. To mitigate the risks associated with FDIC insured limits the Company recently opened an Insured Cash Swap ("ICS") service account at its primary bank. Under terms of the ICS, when the bank places funds for the Company using ICS, the deposit is sent from the Company's transaction account into deposit accounts at other ICS Network banks in amounts below the standard FDIC insured maximum of $250,000 for overnight settling. If the Company's account exceeds the FDIC limit of $250,000 at the end of the business day, funds are automatically swept out by our bank and spread among partner banks in accounts, each totaling less than $250,000. This makes the Company's funds eligible for FDIC insurance protection each day. The funds are then swept back into the Company's account at the beginning of the next business day. The aggregate limit that can be protected for the Company under this program is approximately $150 million.

The Company considers the concentration of credit risk associated with its accounts receivable to be commercially reasonable and believes that such concentration does not result in the significant risk of near-term severe adverse impacts. As of December 31, 2023 and 2022, the Company had customers that individually represented 10% or more of the Company's accounts receivable. There were two and three individual customers that represented 71% and 57% of total accounts receivable, as of December 31, 2023 and 2022, respectively. There were four and three individual customer accounts that represented 64% and 57% of total revenue for the years ended December 31, 2023 and 2022, respectively. There were three and one individual suppliers that represented 48% and 19% of total accounts payable, as of December 31, 2023 and 2022, respectively.

Accounts receivable — Accounts receivable are reported at net realizable value. Receivables consist of amounts due from distributors. In evaluating the collectability of individual receivable balances, the Company considers several factors, including the age of the balance, the customers' historical payment history, its credit worthiness and economic trends. There was no allowance for credit losses to reflect CECL adoption as of December 31, 2023 and 2022.

Inventories — Inventories are stated at the lower of cost or net realizable value, with cost being determined under the weighted average method, and consist of raw materials, work-in-process, and finished goods. Costs associated with spirit production and other costs related to manufacturing of products for sale, are recorded as inventory. Work-in-process inventory is comprised of all accumulated costs of raw materials, direct labor, and manufacturing overhead to the respective stage of production. Finished goods and raw materials inventory includes the supplier cost, shipping charges, import fees, and federal excise taxes. Management routinely monitors inventory and periodically writes off damaged and unsellable inventory. There was no valuation allowance as of December 31, 2023 and 2022.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

The Company holds volumes of barreled whiskey, which will not be sold within one year due to the duration of the aging process. Consistent with industry practices, all barreled whiskey is classified as work-in-process inventory and is included in current assets.

Deferred transaction costs — Deferred transaction costs consist of direct legal, accounting, filing and other fees and costs directly attributable to the proposed Business Combination Agreement that (see Note 1). Deferred transaction costs were approximately $1,397,964 and $708,817 as of December 31, 2023 and 2022, respectively. As of May 18, 2023, the Business Combination Agreement was terminated. Accordingly, the related balance of deferred transaction costs related to the Business Combination in the amount of $423,869 were expensed to general and administrative expense during the period ended June 30, 2023, deferred transaction costs expensed related to the Business Combination Agreement portion were $208,682 and $215,187 as of June 30, 2023 and December 31, 2022, respectively. Subsequent to the termination of the Business Combination Agreement, the Company is contemplating an initial public offering ("IPO"). Accordingly, the deferred offering costs relating to the Company's contemplated IPO will continue to be deferred and capitalized as incurred, and were $1,397,964 and $493,630 as of December 31, 2023 and 2022, respectively. The deferred offering costs relating to the Company's contemplated IPO will be offset against IPO proceeds upon the consummation of the offering. In the event the IPO is terminated, abandoned or significantly delayed, any deferred transaction costs will be immediately recognized in operating expenses.

Liabilities for Deferred Revenue — During 2023, the Company entered into a distilled spirits barreling production agreement with Tiburon Opportunity Fund, L.P. This agreement is for production of 1,200 barrels of distilled spirits over time. There was a prepayment of $1,000,000 made in January 2023. Subsequent to December 31, 2023, this agreement was amended in March 2024 to a reduced number of 600 barrels for $500,000. The then $500,000 excess prepayment was then used to purchase a Whiskey Note in the principal amount of $672,500 and subsequently exchanged (contingent upon the consummation of this offering) under the terms of a Subscription Exchange Agreement for common stock in conjunction with the February 29, 2024 exchange of Whiskey Notes for common stock. (See Note 16.).

Property and equipment, net of accumulated depreciation — Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets — generally three to twenty years. Leasehold improvements are amortized on a straight-line basis over the shorter of the asset's estimated useful life or the term of the lease. Construction in progress is related to the construction or development of property and equipment that have not yet been placed in service for their intended use. When the asset is available for use, it is transferred from construction in progress to the appropriate category of property and equipment and depreciation on the item commences.

Upon retirement or sale, the related cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is included in the consolidated statements of operations. Costs of maintenance and repairs are charged to expense as incurred; significant renewals and betterments are capitalized.

Leases — The Company adopted ASC 842, Leases ("ASC 842") as of January 1, 2022. ASC 842 was adopted using the modified retrospective transition approach, with no restatement of prior periods or cumulative adjustments to accumulated deficit. Upon adoption, the operating lease right-of-use ("ROU") asset was measured at cost, which included the initial measurement of the lease liability, prepaid rent and initial direct costs incurred by the Company, less incentives received. The operating lease liability represents the present value of the remaining minimum lease payments as of January 1, 2022. The Company elected the package of three practical expedients, which allowed an entity to carry forward prior conclusions related to whether any expired or existing contracts are or contain leases, the lease classification for any expired or existing leases and initial direct costs for existing leases. The Company elected not to apply the use-of-hindsight to reassess the lease term. The Company elected not to recognize leases with an initial term of 12 months or less within the consolidated balance sheets and to recognize those lease payments on a straight-line basis in the consolidated statements of operations over the lease term. The Company elected the practical expedient to not separate lease and non-lease components for all leases. The new lease accounting standard also provides practical expedients for an entity's ongoing accounting.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

The Company has operating leases for corporate offices, warehouses, distilleries and tasting rooms that are accounted for under ASC 842. The Company determines if an arrangement is a lease at inception. Operating lease ROU assets represent the Company's right to use an underlying asset for the lease term and operating lease liabilities represent the Company's obligation to make lease payments arising from a lease. Operating lease ROU assets and lease liabilities are recognized at the commencement date based on the present value of the future minimum lease payments over the lease term. The Company recognizes lease expense for lease payments on a straight-line basis over the term of the lease. Operating lease ROU assets also include the impact of any lease incentives. An amendment to a lease is assessed to determine if it represents a lease modification or a separate contract. Lease modifications are reassessed as of the effective date of the modification. For modified leases, the Company also reassess the lease classification as of the modification's effective date.

The interest rate used to determine the present value of the future lease payments is the Company's incremental borrowing rate, because the interest rate implicit in the Company's operating leases is not readily determinable. The incremental borrowing rate is estimated to approximate the interest rate on a collateralized basis with similar terms and payments, and in the economic environments where the leased asset is located. The incremental borrowing rate is calculated by modeling the Company's credit rating on its history arm's-length secured borrowing facility and estimating an appropriate credit rating for similar secured debt instruments. The Company's calculated credit rating on secured debt instruments determines the yield curve used. In addition, an incremental credit spread is estimated and applied to reflect the Company's ability to continue as a going concern. Using the spread adjusted yield curve with a maturity equal to the remaining lease term, the Company determines the borrowing rates for all operating leases.

The Company's operating lease terms include periods under options to extend or terminate the operating lease when it is reasonably certain that the Company will exercise that option in the measurement of its operating lease ROU assets and liabilities. The Company considers contractual-based factors such as the nature and terms of the renewal or termination, asset-based factors such as the physical location of the asset and entity-based factors such as the importance of the leased asset to the Company's operations to determine the operating lease term. The Company generally uses the base, non- cancelable lease term when determining the operating lease ROU assets and lease liabilities. The ROU asset is tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be fully recoverable in accordance with Accounting Standards Codification Topic 360, *Property, Plant, and Equipment.*

Operating lease transactions are included in operating lease ROU assets, current operating lease liabilities and operating lease liabilities, net of current portion on the consolidated balance sheets.

Impairment of long-lived assets — All of the Company's long-lived assets held and used are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amounts may not be recoverable. Factors that the Company considers in deciding when to perform an impairment review include significant underperformance of the business in relation to expectations, significant negative industry or economic trends and significant changes or planned changes in the use of the assets. When such an event occurs, future cash flows expected to result from the use of the asset and its eventual disposition is estimated. If the undiscounted expected future cash flows are less than the carrying amount of the asset, an impairment loss is recognized for the difference between the asset's fair value and its carrying value. The Company did not record any impairment losses on long-lived assets for the years ended December31, 2023 and 2022.

Investments/Investment in Flavored Bourbon LLC — Non-marketable equity investments of privately held companies are accounted for as equity securities without readily determinable fair value at cost minus impairment, as adjusted for observable price changes in orderly transactions for identical or similar investment of the same issue pursuant to Accounting Standards Codification ("ASC") Topic 321 Investments — Equity Securities ("ASC 321") as the Company does not exert any significant influence over the operations of the investee company.

The Company performs a qualitative assessment at each reporting period considering impairment indicators to evaluate whether the investment is impaired. Impairment indicators that the Company considers include but are not limited to; i) a significant deterioration in the earnings performance, credit rating, asset quality, or business prospects of the investee, ii) a significant adverse change in the regulatory, economic, or technological environment

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

of the investee, iii) a significant adverse change in the general market condition of either the geographical area or the industry in which the investee operates, iv) a bona fide offer to purchase, an offer by the investee to sell, or a completed auction process for the same or similar investment for an amount less than the carrying amount of that investment; v) factors that raise significant concerns about the investee's ability to continue as a going concern, such as negative cash flows from operations, working capital deficiencies, or noncompliance with statutory capital requirements or debt covenants. If the qualitative assessment indicates that the investment is impaired, a loss is recorded equal to the difference between the fair value and carrying value of the investment.

As of December 31, 2023 and 2022, the Company had a 15.1% ownership interest in Flavored Bourbon, LLC. and did not record any impairment charges related to its investments. See also Note 5 — Payment Upon Sale of Flavored Bourbon, LLC. In January 2024, Flavored Bourbon LLC conducted a capital call, successfully raising $12 million from current and new investors at the same valuation as the last raise. The Company chose not to participate in the raise, but still retained its rights to full recovery of is capital account of $25.3 million, with the Company being guaranteed a pay out of this $25.3 million in the event the brand is sold to a third party, or the Company can block such sale. The Company retains 11.2071% ownership interest in this entity plus a 2.5% override in the waterfall of distributions. The valuation and accounting for this event will be recorded in the Company's financial statements for the quarter ended March 31, 2024. See Note 16.

Treasury stock — Treasury stock is shares of the Company's own stock that have been issued and subsequently repurchased by the Company. Converting outstanding shares to treasury shares does not reduce the number of shares issued but does reduce the number of shares outstanding. These shares are not eligible to receive dividends.

The Company accounts for treasury stock under the cost method. Upon the retirement of treasury shares, the Company deducts the par value of the retired treasury shares from common stock and allocates the excess of cost over par as a deduction to additional paid-in capital based on the pro-rata portion of additional paid-in-capital, and the remaining excess as an increase to accumulated deficit. Retired treasury shares revert to the status of authorized but unissued shares. All shares repurchased to date have been retired. For the years ended December 31, 2023 and 2022, the Company repurchased 71 and 82 shares of common stock at a price of $157.89 per share, respectively.

Segment reporting — The Company operates in a single segment. The segment reflects how the Company's operations are evaluated by senior management and the structure of its internal financial reporting. Both financial and certain non-financial data are reported and evaluated to assist senior management with strategic planning.

Revenue recognition — The Company's revenue consists primarily of the sale of spirits domestically in the United States. Customers consist primarily of direct consumers. The Company's revenue generating activities have a single performance obligation and are recognized at the point in time when control transfers and the obligation has been fulfilled, which is when the related goods are shipped or delivered to the customer, depending upon the method of distribution and shipping terms. Revenue is measured as the amount of consideration the Company expects to receive in exchange for the sale of a product. Revenue is recognized net of any taxes collected from customers, which are subsequently remitted to governmental authorities. Sales terms do not allow for a right of return unless the product is damaged. Historically, returns have not been material to the Company. Amounts billed to customers for shipping and handling are included in sales. The results of operations are affected by economic conditions, which can vary significantly by time of year and can be impacted by the consumer disposable income levels and spending habits.

Direct to Consumer — The Company sells its spirits and other merchandise directly to consumers through spirits club memberships, at the Heritage Distilling tasting rooms and through the internet (e-commerce).

Spirits club membership sales are made under contracts with customers, which specify the quantity and timing of future shipments. Customer credit cards are charged in advance of quarterly shipments in accordance with each contract. The Company transfers control and recognizes revenue for these contracts upon shipment of the spirits to the customer.

Tasting room and internet spirit sales are paid for at the time of sale. The Company transfers control and recognizes revenue for the spirits and merchandise when the product is either received by the customer (on-site tasting room sales) or upon shipment to the customer (internet sales).

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

The Company periodically offers discounts on spirits and other merchandise sold directly to consumers through spirits club memberships, at the Heritage Distilling tasting rooms and through the internet. All discounts are recorded as a reduction of retail product revenue.

Wholesale — The Company sells its spirits to wholesale distributors under purchase orders. The Company transfers control and recognizes revenue for these orders upon shipment of the spirits from the Company's warehouse facilities. Payment terms to wholesale distributors typically range from 30 to 45 days. The Company pays depletion allowances to its wholesale distributors based on their sales to their customers which are recorded as a reduction of wholesale product revenue. The Company also pays certain incentives to distributors which are reflected net within revenues as variable consideration. The total amount of depletion allowances and sales incentives for years ended December 31, 2023 and 2022 were $66,271 and $44,591, respectively.

Third Party — The Company produces and sells barreled spirits to Third Party customers who either hold them for investment or who have a plan to use the product in the future once the spirits are finished aging. Third Party Barreled Spirits are paid with a deposit up front, with the remainder billed at the time of completion when the finished spirits are then produced and supplied to the customer. In most cases, the barrels are stored during aging for the customer at a fee. As of December 31, 2023 and 2022, the Company had deferred revenues of $1,039,863 and $244,248, respectively, included in other current liabilities within the consolidated balance sheets. These performance obligations are expected to be satisfied within one year.

Service revenue — Represents fees for distinct value-added services that the Company provides to third parties, which may include production, bottling, marketing consulting and other services aimed at growing and improving brands and sales. Revenue is billed monthly and earned and recognized over-time as the agreed upon services are completed. The Company recorded $2,834,742 and $3,080,884 in service revenue in the consolidated statements of operations for the years ended December 31, 2023 and 2022, respectively. There is no contractually committed service revenue that would give rise to an unsatisfied performance obligation at the end of each reporting period.

The following table presents revenue disaggregated by sales channel:

	For the Years Ended December 31,	
	2023	**2022**
Direct to Consumer	$ 3,183,664	$ 3,473,326
Wholesale	1,657,851	1,643,356
Third Party	294,967	112,000
Total Products Net Sales	5,136,482	5,228,682
Services	2,834,742	3,080,884
Total Net Sales	$ 7,971,224	$ 8,309,566

Substantially all revenue is recognized from sales of goods or services transferred when contract performance obligations are met. As such, the accompanying consolidated financial statements present financial information in a format which does not further disaggregate revenue, as there are no significant variations in economic factors affecting the nature, amount, timing, and uncertainty of cash flows.

Excise taxes — Excise taxes are levied on alcoholic beverages by governmental agencies. For imported alcoholic beverages, excise taxes are levied at the time of removal from the port of entry and are payable to the U.S. Customs and Boarder Protection (the "CBP"). For domestically produced alcoholic beverages, excise taxes are levied at the time of removal from a bonded production site and are payable to the Alcohol and Tobacco Tax and Trade Bureau (the "TTB"). These taxes are not collected from customers but are instead the responsibilities of the Company. The Company's accounting policy is to include excise taxes in "Cost of Sales" within the consolidated statements of operations, which totaled $230,230 and $258,706 for the years ended December 31, 2023 and 2022, respectively.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

Shipping and handling costs — Shipping and handling costs of $165,961 and $184,712 were included in "Cost of Sales" within the consolidated statements of operations for the years ended December 31, 2023 and 2022, respectively. Costs are lower in 2023 versus the same time period in 2022 as the Company transferred fulfillment and shipping responsibility for much of the Company's eCommerce sales to consumers to a third party.

Stock-based compensation — The Company measures compensation for all stock-based awards at fair value on the grant date and recognizes compensation expense over the service period on a straight-line basis for awards expected to vest.

The fair value of stock options granted is estimated on the grant date using the Black-Scholes option pricing model. The Company uses a third-party valuation firm to assist in calculating the fair value of the Company's stock options. This valuation model requires the Company to make assumptions and judgment about the variables used in the calculation, including the volatility of the Company's common stock and assumed risk-free interest rate, expected years until liquidity, and discount for lack of marketability. Forfeitures are accounted for and are recognized in calculating net expense in the period in which they occur. Stock-based compensation from vested stock options, whether forfeited or not, is not reversed.

In the past the Company granted stock options to purchase common stock with exercise prices equal to the value of the underlying stock, as determined by the Company's Board of Directors on the date the equity award was granted.

The Board of Directors determines the value of the underlying stock by considering several factors, including historical and projected financial results, the risks the Company faced at the time, the preferences of the Company's stockholders, and the lack of liquidity of the Company's common stock.

During the years ended December 31, 2023 and 2022, the Company did not grant any stock option awards. The Company has not granted any stock options since 2019, when the Company's 2018 Plan was terminated in favor of the 2019 Plan, under which, the Company has granted RSUs. See Note 9.

Stock option awards generally vest on time-based vesting schedules. Stock-based compensation expense is recognized based on the value of the portion of stock-based payment awards that is ultimately expected to vest and become exercisable during the period. The Company recognizes compensation expense for all stock-based payment awards made to employees, directors, and non-employees using a straight-line method, generally over a service period of four years.

Advertising — The Company expenses costs relating to advertising either as costs are incurred or the first time the advertising takes place. Advertising expenses totaled $920,879 and $1,223,985 for the years ended December 31, 2023 and 2022, respectively and were included in "Sales and marketing" in the consolidated statements of operations. Costs were higher in 2022 as one additional large sponsorship contract existed at that time that was not renewed in 2023.

Income taxes — The Company follows the Financial Accounting Standards Board ("FASB") Accounting Standards Codification 740, "*Income Taxes*" for establishing and classifying any tax provisions for uncertain tax positions. The Company's policy is to recognize and include accrued interest and penalties related to unrecognized tax benefits as a component of income tax expenses. The Company is not aware of any entity level uncertain tax positions.

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial statements and the tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in operations in the period that includes the enacted date.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

Net loss per share attributable to common stockholders— The Company computed basic net loss per share attributable to common stockholders by dividing net loss attributable to common stockholders by the weighted-average number of common stock outstanding for the period, without consideration for potentially dilutive securities. The Company computes diluted net loss per common share after giving consideration to all potentially dilutive common stock, including stock options, restricted stock unit ("RSU") awards, and warrants to purchase common stock outstanding during the period determined using the treasury-stock method as well as the convertible notes outstanding during the period determined using the if-converted method, except where the effect of including such securities would be antidilutive.

Recently adopted accounting pronouncements standards — In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments — Credit Losses (Topic 326), which establishes a new approach to estimate credit losses on certain financial instruments. The update requires financial assets measured at amortized cost to be presented at the net amount expected to be collected. The amended guidance will also update the impairment model for available-for-sale debt securities, requiring entities to determine whether all or a portion of the unrealized loss on such securities is a credit loss. The standard became effective for interim and annual periods beginning after December 15, 2022. Effective January 1, 2023, the Company adopted the provisions of ASU No. 2016-13 and determined that adoption did not have a material impact on our consolidated financial statements.

NOTE 3 — INVENTORIES

Inventories consisted of the following:

	As of December 31,	
	2023	**2022**
Finished Goods	$ 531,302	$ 877,847
Work-in-Process	989,712	1,233,462
Raw Materials	1,235,336	1,530,586
Total Inventory	$ 2,756,350	$ 3,641,895

NOTE 4 — PROPERTY AND EQUIPMENT, NET

Property and equipment, net consisted of the following:

	Estimated Useful Lives (in years)	**December 31, 2023**	**December 31, 2022**
Machinery and Equipment	5 to 20	$ 3,469,204	$ 3,270,528
Leasehold Improvements	Lease term	7,378,639	7,350,908
Computer and Office Equipment	3 to 10	2,492,310	2,492,310
Vehicles	5	248,304	171,629
Construction in Progress	N/A	11,500	128,598
Total Property and Equipment		13,599,957	13,413,973
Less: Accumulated Depreciation		(7,171,845)	(5,730,810)
Property and Equipment, net of Accumulated Depreciation		$ 6,428,112	$ 7,683,163

Depreciation expense related to property and equipment for the years ended December31, 2023 and 2022 was $1,430,240 and $1,512,661 respectively.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 5 — CONVERTIBLE NOTES

Increased Authorized Capital for Convertible Notes

On October 30, 2023, the Company's Board of Directors and shareholders took certain actions and approved Amendments to the Company's certificate of incorporation and bylaws in preparation for a planned initial public offering (the "Actions and Amendments"). These Actions and Amendments, among other things: increased the Company's authorized capital from 3,000,000 shares to 10,000,000 shares, including 9,500,000 shares of common stock and 500,000shares of Founders Common Stock (which Founders Common Stock has four votes per share). Subsequent to December 31, 2023, the Company is in process filing a Second Amendment to its Amended and Restated Certificate of Incorporation to increase authorized capital to 70,000,000 shares. (See Note 16.). Upon approval of the October 30, 2023 increase in authorized shares, the 2022 and 2023 Convertible Notes were exchanged (contingent upon the consummation of this offering) for 3,312,148 additional shares of common stock and 507,394 prepaid warrants; The actual unconditional exchange of the Convertible Notes and reclassification of the aggregate fair value of $36,283,890 in Convertible Notes to equity (of Common Stock Par Value and Paid-in-capital of $387 and $36,283,504, respectively) under the terms of the Subscription Exchange Agreement will occur upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the 2022 and 2023 Convertible Notes for equity. Until such time, the Convertible Notes will remain on our balance sheet and the change in their fair value will also continue to be recognized as Other Income/(Expense) in our Statement of Operations.

2020 Convertible Promissory Note

In March and August 2020, the Company issued multiple unsecured convertible promissory notes (the "March 2020 Notes" and "August 2020 Notes", respectively) with an aggregate principal sum of $1,120,000 with a maturity date of December 31, 2021. The outstanding amounts plus accrued and unpaid interest could be converted into shares of the Company's common stock at the conversion price. Unless earlier converted into shares, the August 2020 Notes could automatically convert if upon the closing of a private offering of common stock or one of its subsidiaries of at least $5,000,000, the note plus any accrued and unpaid interest could automatically convert into common stock at the lesser of $143.20, or a 20% discount off the price per share of common stock sold in private offering. In 2021, all but one of the notes were converted into shares of the Company at a discounted conversion price of $75.00 per share. As of December 31, 2021, the Company had one investor that did not elect to convert, with a convertible note balance of $450,000 and accrued interest of $49,425. This remaining note plus accrued interest were paid in full in 2022.

2022 Convertible Promissory Notes

During April 2022 through December 2022, the Company issued multiple unsecured convertible promissory notes (the "2022 Notes") with aggregate net cash proceeds of approximately $10,740,000 and aggregate principal sum of $14,599,523 to various new and existing investors, including $4,675,000 in cash proceeds and $6,311,250 in principal to a related party (See Note 14). In February 2023, the Company issued one convertible note to an existing investor under the terms of the 2022 Notes with net cash proceeds of $260,000 and a principal sum of $351,000. In May 2023, the Company agreed with one investor to transfer their 2022 Note with a principal sum of $135,000 to instead be included under their 2023 Round 3 Note (for a total Round 3 Note of $2,160,000 for said investor). As of December 31, 2023, the cash proceeds and principal sum of the 2022 Notes totaled $10,900,000 and $14,815,523, respectively, including $4,675,000 of cash proceeds and $6,311,250 of principal to a related party. The 2022 Notes have a maturity date of July 31, 2024. The 2022 Notes are convertible, in whole or in part, into shares of the Company's common stock at a conversion price of $157.89 per share at the option of the convertible noteholders, at any time and from time to time. If the Company consummates an IPO or a merger with a SPAC (a "deSPAC merger"), the unpaid and accrued balances of the 2022 Notes and the associated interest will automatically convert into the Company's common stock at a discounted conversion price from either the price per share at which the Company's common stock is sold in the IPO or the redemption price per share under a deSPAC merger. The 2022 Notes also contain certain other covenants that, among other things, impose certain restrictions on indebtedness and investments. The 2022 Notes may be used for general corporate purposes, including working capital needs, capital

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 5 — CONVERTIBLE NOTES (cont.)

expenditures, and the share repurchase program. In October and November 2023, the holders of the 2022 Notes agreed to exchange the convertible notes and accrued interest under the mandatory conversion provision of the 2022 Notes, for common stock of the Company. (See below.)

2023 Convertible Promissory Notes

Beginning in March 2023 through August 2023, the Company issued multiple convertible promissory notes (collectively the "2023 Convertible Notes") with various terms to various new and existing investors with aggregate net cash proceeds of $5,330,000 and aggregate principal sum of $7,230,500 (of which $2,950,000 in cash proceeds and $3,982,500 in principal was from a related party). In October and November 2023, the holders of the 2023 Convertible Notes agreed to exchange the convertible notes and accrued interest for common stock and prepaid warrants to purchase common stock of the Company. (See below.)

Exchange of 2022 and 2023 Convertible Promissory Notes

In October 2023 the holders of the 2022 and 2023 Convertible Notes entered into a Subscription Exchange Agreement to exchange into equity the value of their 2022 and 2023 Convertible Notes with all accrued interest and fees through, and effective as of, June 30, 2023. In October 2023, in accordance with the Subscription Exchange Agreement, and upon approval of an increase in authorized capital to accommodate such exchange, an aggregate fair value of $33,849,109 in convertible notes was exchanged (contingent upon the consummation of this offering) for an aggregate of 3,312,148 shares of common stock (with a previous fair value of $30,344,094 as of September 30, 2023 and a principal amount of $24,795,755, including accrued interest) and 507,394 prepaid warrants to purchase common stock (with a previous fair value of $3,505,015 as of September 30, 2023 and a principal amount of $1,714,574, including accrued interest). The aggregate fair value of the exchanged notes will be reclassified from Convertible Notes to equity under the terms of the Subscription Exchange Agreement upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the 2022 and 2023 Convertible Notes for equity. As of December 31, 2023, the aggregate fair value of the convertible notes had increased to $36,283,891 (with $31,665,014 attributable to the 3,312,148 shares of common stock, and $4,618,876 attributable to the 507,394 prepaid warrants to purchase common stock.) The agreement had a true up provision in the event the eventual IPO price is higher or lower than the conversion rate of $13.16 per share stated in the document. Under the terms of the Subscription Exchange Agreement, the true up provision was eliminated and the strike price of the warrants related to the 2022 Notes was fixed at a negotiated fixed, non-adjustable rate of $6.00 per share. If the Company has not listed the Common Stock on a national or international securities exchange by October 31, 2024, the Holder will have the right to exchange the Common Stock issued under the Subscription Exchange Agreement for promissory notes (the "New Notes") on terms substantially similar to the Notes exchanged (contingent upon the consummation of this offering) in October 2023. When the Subscription Exchange Agreement was executed, the company did not have enough shares of common stock in the authorized capital account to accommodate all shares due. The Note Holders agreed to waive any requirement of the Company to have enough shares in the authorized capital account to account for the exchange for common stock and prepaid warrants.

Payment Upon Sale of Flavored Bourbon, LLC

Under the terms of the 2022 and 2023 Convertible Promissory Notes' Securities Purchase Agreements, upon the sale of the Flavored Bourbon brand to an arm's length third party and the receipt by the Company of any proceeds due to it from such brand sale, the holders of the 2022 and 2023 Convertible Promissory Notes shall receive a one-time payment in an amount equal to 150% of their original subscription amount. Such payment shall be in addition to any other amounts otherwise due and shall survive the conversion or repayment of the 2022 and 2023 Convertible Promissory Notes. Accordingly, the $10,900,000 in 2022 Convertible Promissory Notes subscriptions and $5,430,000 in 2023 Convertible Promissory Notes subscriptions will be due an aggregate of $24,495,000 upon the sale of Flavored Bourbon, LLC to an arm's length third party.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 5 — CONVERTIBLE NOTES (cont.)

2023 Series — Convertible Whiskey Special Ops 2023 Notes

In September 2023, the Company opened a $5,000,000 Round of convertible notes with a 12.5% interest rate and an August 29, 2026 maturity date (the "Whiskey Special Ops 2023 Notes" or the "Whiskey Notes"). Subsequent to December 31, 2023, the Round was increased to $10,000,000.

As of December 31, 2023, the Company had $2,975,000 in outstanding principal of Whiskey Special Ops 2023 Notes with: a fair value for the Notes (separately) of $1,452,562 (of which, $800,000 in principal and $390,607 in Fair Value was with a related party); and a fair value for the related Warrant Liability of $1,512,692 (of which $406,774 in Fair Value was with a related party). The Whiskey Special Ops 2023 Notes include warrant coverage equal to the Subscription Amount actually paid by the Holder pursuant to the Securities Purchase Agreement, divided by the Exercise Price, as defined as the price per share of the Company's assumed IPO or, in the event the Company has not consummated the IPO, $10.00 dollars per share. Total warrants outstanding if calculated using an assumed IPO price of $5.00 per share as of December 31, 2023 would be 595,000 (of which 160,000 would be to a related party). The warrants include a mandatory cashless exercise provision whereby any warrants not previously exercised, will be automatically cashlessly exercised, beginning on the third anniversary of their issuance date, on any trading day that the 20-day VWAP of the common stock equals or exceeds a price per share equal to or greater than 125% of the exercise price of the warrant.

The Company agreed to make royalty payments on the Whiskey Special Ops 2023 Notes at the rate of $10 per bottle of a new product offering of Special Forces labelled spirits. As of December 31, 2023, the Company had sold 4,680 bottles of the new product offering of Special Forces labelled spirits, representing more than $465,274 in retail shelf value, and recorded $46,800 of royalties due to the Whiskey Special Ops Noteholders. These royalties were eliminated in conjunction with the exchange of the Whiskey Notes and related Warrants into common stock subsequent to December 31, 2023.

The outstanding balance of the Whiskey Special Ops 2023 Notes and accrued interest may, in whole or part, be converted into common stock prior to maturity at the option of the holder so long as the price per share is equal to or greater than the original IPO price. Any principal and accrued interest remaining outstanding upon maturity will be mandatorily converted into common stock of the Company at the rate of $1.25 per $1.00 of outstanding principal and accrued interest at a price per share equal to the then market price per share, but in no case less than 80% of the Company's original IPO price. The aggregate Fair Value of $1,452,562 in Whiskey Notes (separately) and the related Fair Value of the Warrant Liability of $1,512,692 will be reclassified from being a liability to equity under the terms of the Subscription Exchange Agreement upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional conversion of the Whiskey Notes into equity.

Subsequent to December 31, 2023, through April 26, 2024 the Whiskey Notes (including 884,116 related Warrants based on a $7.50 per share exercise price) agreed to exchange for common stock. The then outstanding $26,797,284 (including $10,895,111 which was with a related party) in aggregate fair value ($8,678,433 of principal amount, including accrued interest; $6,630,870 of proceeds), of which $3,247,425 was with a related party) of the Whiskey Notes and related Warrants (Warrant Liability), in accordance with a Subscription Exchange Agreement, exchanged (contingent upon the consummation of this offering) for a total of 2,399,090 shares of our common stock and 546,927 prepaid warrants to purchase our common stock (of which 2,111,900 shares were with a related party). The aggregate fair value of the exchanged Whiskey Notes and related Warrants will be reclassified from liabilities to equity under the terms of the Subscription Exchange Agreement upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the Whiskey Notes for equity.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 5 — CONVERTIBLE NOTES (cont.)

Convertible Notes at fair value consisted of the following:

	December 31, 2023	December 31, 2022
2022 Convertible Promissory Notes	$ 18,801,206	$ 8,041,000
2023 Convertible Promissory Notes	17,482,685	—
Whiskey Special Ops 2023 Notes	1,452,562	—
Total Convertible Notes Payable	$ 37,736,453	$ 8,041,000
Less: Convertible Notes Payable, Current	(36,283,891)	—
Convertible Notes Payable, net of Current Portion	$ 1,452,562	$ 8,041,000

NOTE 6 — BORROWINGS

Borrowings of the Company, not including the Convertible Notes discussed in Note 5, consisted of the following:

	December 31, 2023	December 31, 2022
Silverview Loan	$ 12,250,000	$ 12,250,000
PPP Loan	2,269,456	2,269,456
Channel Partners Loan (January 2022)	—	82,887
Channel Partners Loan (April 2023)	149,824	—
Total Notes Payable	14,669,280	14,602,343
Less: Debt Issuance Costs	(398,324)	(718,872)
	$ 14,270,956	$ 13,883,471

In March and September 2021, the Company executed a secured term loan agreement and an amendment with Silverview Credit Partners, L.P. (the "Silverview Loan") for an aggregate borrowing capacity of $15,000,000. The Silverview Loan matures on April 15, 2025. The Silverview Loan accrued interest through the 18-month anniversary of the closing date at (i) a fixed rate of 10.0%, which portion was payable in cash, and (ii) at a fixed rate of 6.5%, which portion was payable in kind and added to the outstanding obligations as principal. Effective on the 19th month anniversary of the closing date, the Silverview Loan accrues interest at a fixed rate of 15.0% through maturity. Interest payable in cash is required to be repaid on the fifteenth day of each calendar month. The Company had an option to prepay the Silverview Loan with a prepayment premium up to 30.0% of the obligations during the first twenty-four months of the loan, after which time the Company can prepay the loan with no premium due.

The Company is now past that initial twenty-four-month window and can prepay all or some of the outstanding balance without penalty. The Silverview Loan also contained certain financial and other debt covenants that, among other things, impose certain restrictions on indebtedness, liens, investments and capital expenditures. The financial covenants required that, at the end of each applicable fiscal period as defined pursuant to the Silverview Loan agreement, the Company either had (i) an EBITDA interest coverage ratio up to 2.00 to 1.00, or (ii) a cash interest coverage ratio of not less than 1.25 to 1.00. Commencing with the fiscal quarter ending June 30, 2021, the Company was to maintain liquidity of not less than $500,000. The Silverview Loan may be used for general corporate purposes, including working capital needs and capital expenditures.

The Company violated various financial and other debt covenants regarding its failure to comply with the financial covenants and to timely furnish its consolidated financial statements for the year ended December 31, 2023. As the chance of meeting the same or more restrictive covenants at subsequent compliance measurement dates within the following year is remote, the Company determined that the Silverview Loan should be classified as a current liability as of December 31, 2023. As of both December31, 2023 and 2022, the outstanding balance of the Silverview Loan was $12,250,000. The lender had previously agreed to waive any existing covenant compliance matters as of December 31, 2022 and to forbear exercising its rights and remedies under the loan agreement through December 31, 2023.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 6 — BORROWINGS (cont.)

In April 2020, the Company was granted a loan under the Paycheck Protection Program ("PPP") offered by the Small Business Administration (the "SBA") under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), section 7(a)(36) of the Small Business Act for $3,776,100. The proceeds from the PPP loan may only be used to retain workers and maintain payroll or make mortgage interest, lease and utility payments and all or a portion of the loan may be forgiven if the proceeds are used in accordance with the terms of the program within the 8 or 24-week measurement period. The loan terms require the principal balance and 1% interest to be paid back within two years of the date of the note. In June 2021, the Company's bank approved forgiveness of the loan of $3,776,100. During the year ended of December 31, 2021, the forgiveness was partially rescinded by the SBA and the Company recognized $1,506,644 as other income in the consolidated statements of operations, resulting in $2,269,456 in debt. Under the terms of the PPP loan, the Company has also recorded interest on the PPP loan at the rate of 1%, for a total of $84,561 as of December 31, 2023. The Company is currently in the process of disputing a portion if not all of the difference. The terms of the agreement state that the Company has 18-24 months to repay the PPP loan. Following the date of the forgiveness, the remaining balance of the PPP loan of $2,269,456 is expected to be repaid in the next 12 months with the Company's general assets.

In January 2022, the Company entered into an unsecured business loan and security agreement with Channel Partners Capital, LLC (the "2022 Channel Partners Loan") for an aggregate borrowing capacity of $250,000. The Channel Partners Loan matured on June 26, 2023 and accrued interest at a fixed rate of 13.982%. Principal of $16,528 plus interest is payable monthly. The Company had an option to prepay the Channel Partners Loan with a prepayment discount of 5.0%. As of December 31, 2023 and 2022, the outstanding balance of the 2022 Channel Partners Loan was $0 and $82,887, respectively. In April 2023, the Company entered into a new secured business loan and security agreement with Channel Partners Capital, LLC (the "2023 Channel Partners Loan") for an aggregate borrowing capacity of $250,000, of which. $47,104 of proceeds were used to pay off the 2022 Channel Partners Loan. The 2023 Channel Partners Loan will mature on October 5, 2024 and accrues interest at a fixed rate of 13.34%. Payment of $16,944, principal plus interest is payable monthly. The Company has an option to prepay the 2023 Channel Partners Loan with a prepayment discount of 5.0%. As of December 31, 2023 and 2022, the outstanding balance of the 2023 Channel Partners Loan was $149,824 and $0, respectively.

As of December 31, 2023, the principal repayments of the Company's debt measured on an amortized basis of $14,669,280 are expected to be due within one year from the issuance of these consolidated financial statements. The outstanding principal of $14,270,956, net of debt issuance costs of $398,324, was classified as a current liability on the Company's consolidated balance sheets as of December 31, 2023.

NOTE 7 — WARRANT LIABILITIES

2022 and 2023 Convertible Promissory Notes Warrants

During 2022 and 2023, the Company issued warrants to purchase the Company's common stock to the 2022 Notes holders, including a related party, in an amount equal to 50% of the cash proceeds (see Note 5 and Note 14). These warrants are exercisable on or after the occurrence of an IPO or a deSPAC merger and expire on July 31, 2027. The warrant exercise price is equal to: (i) if the Company consummates an IPO, 100% of the price per share at which the Company's common stock is sold in the IPO, or (ii) if the Company consummates a deSPAC merger, 100% of the redemption price related to such deSPAC merger. The warrants will automatically be exercised cashlessly if the stock price hits 125% of the IPO price. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. More specifically, ASC 480 requires a financial instrument to be classified as a liability if such financial instrument contains a conditional obligation that the issuer must or may settle by issuing a variable number of its equity securities if, at inception, the monetary value of the obligation is predominantly based on a known fixed monetary amount.

The Company measured the warrant liabilities at fair value at the respective issuance dates of the 2022 Notes, including the note issued in February 2023, and March 31, 2023 using a probability weighted expected return method and the Monte Carlo Simulation. The fair value of the warrant liabilities at the issuance dates of the 2022 Notes issued in 2022 was approximately $581,364, of which $300,059 was associated with the related party warrant

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 7 — WARRANT LIABILITIES (cont.)

liabilities. The fair value of the warrant liabilities at the issuance dates of the 2022 Notes issued in February 2023 was approximately $12,874. The warrant liabilities are subsequently remeasured to fair value at each reporting date with changes in fair value recognized as a component of total other income (expense) in the consolidated statements of operations. The Company recorded a net loss of $348,994 and a net gain of $148,364 resulting from the change in fair value of the warrant liabilities for the years ended December 31, 2023 and 2022, respectively, of which $149,710 and $68,635, respectively was related to the change in value of the related party warrant liabilities. On December 31, 2023 and 2022, the fair value of the warrant liabilities was $794,868 and $433,000, respectively of which $340,918 and $188,480 were associated with the related party warrant liabilities.

In April of 2024,under a Securities Exchange Agreement, the strike price of the warrants became fixed at a negotiated fixed, non-adjustable price of $6.00 per share (as opposed to the previous pricing which was contingent on the IPO price), whereas these 908,334 warrants now have a fixed price and include a cashless exercise provision, and will no longer qualify to be classified as liabilities in accordance with ASC 480, and their fair value that has previously been recorded as warrant liabilities will be reclassified to equity. (See Note 16.)

2023 Series — Convertible Whiskey Special Ops 2023 Notes Warrants

During 2023, the Company issued warrants to purchase the Company's common stock to the Whiskey Note holders, including a related party, in an amount equal to the cash proceeds divided by the exercise price. (see Note 5 and Note 14). These warrants are exercisable on or after the earlier of (i) occurrence of an IPO, or (ii) August 29, 2024, and expire on August 29, 2028. The warrant exercise price is equal to the lesser of: (i) if the Company consummates an IPO, 100% of the price per share at which the Company's common stock is sold in the IPO, or (ii) $10.00 per share. The warrants will automatically be exercised cashlessly after the three-year anniversary of the issuance date if the stock price hits 125% of the warrant exercise price. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. More specifically, ASC 480 requires a financial instrument to be classified as a liability if such financial instrument contains a conditional obligation that the issuer must or may settle by issuing a variable number of its equity securities if, at inception, the monetary value of the obligation is predominantly based on a known fixed monetary amount.

The Company measured the warrant liabilities at fair value at the respective issuance dates of the Whiskey Notes using a probability weighted expected return method and the Monte Carlo Simulation. The fair value of the warrant liabilities at the issuance dates in 2023 was approximately $1,621,527, of which $436,041 was associated with the related party warrant liabilities. The warrant liabilities are subsequently remeasured to fair value at each reporting date with changes in fair value recognized as a component of total other income (expense) in the consolidated statements of operations. The Company recorded a net gain of $108,835 (of which $29,267 was to a related party) resulting from the change in fair value of the warrant liabilities to $1,512,692 (of which $406,774 was to a related party) for the year ended December 31, 2023.

Subsequent to December 31, 2023 and through April 26, 2024, the Whiskey Notes (including 884,116 related warrants) were exchanged (contingent upon the consummation of this offering) for common stock. The then outstanding $26,797,284 in aggregate fair value ($8,678,433 of principal amount, including accrued interest; $6,630,870 of proceeds) of the Whiskey Notes and related Warrants (Warrant Liability) in accordance with a Subscription Exchange Agreement, exchanged (contingent upon the consummation of this offering) for a total of 2,399,090 shares of our common stock and 546,927 prepaid warrants to purchase our common stock. The Whiskey Notes and related warrants were exchanged (contingent upon the consummation of this offering) for common stock; however, the Whiskey Notes and related Warrant Liabilities remain on our balance sheet until subsequent to December 31, 2023 (upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the outstanding indebtedness and related warrants for equity). (See Note 16.)

The following table presents information about the Company's financial liabilities that are measured at fair value on a recurring basis and indicates the fair value hierarchy of the valuation as of December 31, 2023 and 2022 under Level 3.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 8 — FAIR VALUE MEASUREMENT

	Fair Value Measurement as of	
	December 31, 2023	December 31, 2022
2022 and 2023 Convertible Notes	$ 36,283,891	$ 8,041,000
Whiskey Special Ops 2023 Notes	1,452,562	—
Warrant Liabilities 2022 and 2023	794,868	433,000
Warrant Liabilities Whiskey Special Ops	1,512,692	—
Total Liabilities at Fair Value	$ 40,044,013	$ 8,474,000

In November of 2023, the aggregate fair value of the Convertible Notes (which was $33,849,109 as of September 30, 2023 and $36,283,891 as of December 31, 2023) was exchanged (contingent upon the consummation of this offering) for common stock and prepaid warrants effective as of June 30, 2023. (See Note 5.).

As further discussed in Note 7, the Convertible Notes (and related Warrant Liabilities) remain on our balance sheet, and the change in their fair value will continue to be recognized as Other Income/(Expense) in our Statement of Operations, until subsequent to December 31, 2023 (upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional conversion of the outstanding indebtedness and related warrants into equity). (See Note 16.)

Valuation of Convertible Notes — The fair value of the Convertible Notes at issuance and at each reporting period is estimated based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. The Company used a probability weighted expected return method ("PWERM") and the Discounted Cash Flow ("DCF") method to incorporate estimates and assumptions concerning the Company's prospects and market indications into a model to estimate the value of the notes. The most significant estimates and assumptions used as inputs in the PWERM and DCF valuation techniques impacting the fair value of the 2022 Notes are the timing and probability of an IPO, deSPAC Merger and default scenario outcomes (see the table below). Specifically, the Company discounted the cash flows for fixed payments that were not sensitive to the equity value of the Company at payment by using annualized discount rates that were applied across valuation dates from issuance dates of the Convertible Notes to December 31, 2023 and 2022. The discount rates were based on certain considerations including time to payment, an assessment of the credit position of the Company, market yields of companies with similar credit risk at the date of valuation estimation, and calibrated rates based on the fair value relative to the original issue price from the Convertible Notes.

The significant unobservable inputs that are included in the valuation of the 2022 and 2023 Convertible Notes as of December 31, 2023 and 2022, include:

	December 31, 2023		December 31, 2022	
Significant Unobservable Input	Input Range	Weighted Average	Input Range	Weighted Average
Discount Rate	48.5%	48.5%	47.2% – 52.2%	48.7%
Expected Term (in years)	0.122 – 1.081	0.122 – 1.081	0.250 – 1.197	0.565
Probability Scenarios				
IPO	70%		5% – 20%	
deSPAC	0%		20% – 25%	
Default/Dissolution/Forced Liquidation	20%		45% – 60%	
Held to Maturity	10%		0%	

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 8 — FAIR VALUE MEASUREMENT (cont.)

The significant unobservable inputs that are included in the valuation of the Whiskey Special Ops 2023 Notes as of December 31, 2023 include:

	December 31, 2023	
Significant Unobservable Input	**Input Range**	**Weighted Average**
Discount Rate	54%	91.3%
Expected Term (in years)	0.125 – .667	0.125 – .667
Probability Scenarios		
IPO	70%	
deSPAC	0%	
Default/Dissolution/Forced Liquidation	20%	
Held to Maturity	10%	

Valuation of Warrant Liabilities — The fair value of the warrant liabilities at issuance and at each reporting period was estimated based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. The warrants are free-standing instruments and determined to be liability-classified in accordance with ASC 480. The Company used the PWERM and the Monte Carlo Simulation ("MCS") to incorporate estimates and assumptions concerning the Company's prospects and market indications into the models to estimate the value of the warrants. The most significant estimates and assumptions used as inputs in the PWERM and MCS valuation techniques impacting the fair value of the warrant liabilities are the timing and probability of IPO, deSPAC Merger and default scenario outcomes (see the table below). The most significant estimates and assumptions used as inputs in the PWERM and MCS valuation techniques impacting the fair value of the warrant liabilities are those utilizing certain weighted average assumptions such as expected stock price volatility, expected term of the warrants, and risk-free interest rates.

The significant unobservable inputs that are included in the valuation of the 2022 Convertible Promissory Notes warrant liabilities as of December 31, 2023 and 2022, include:

	December 31, 2023		December 31, 2022	
Significant Unobservable Input	**Input Range**	**Weighted Average**	**Input Range**	**Weighted Average**
Expected Term (in years)	0.122 – 1.081		0.250 – 0.700	
Volatility	70%	70%	70.0%	70.0%
Risk-free Rate	74%	74%	2.9% – 4.4%	3.7%
Probability scenarios				
IPO	70%		5% – 20%	
deSPAC	0%		20% – 25%	
Default/Dissolution/Liquidation	20%		45% – 60%	
Held to Maturity	10%		0%	

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 8 — FAIR VALUE MEASUREMENT (cont.)

The significant unobservable inputs that are included in the valuation of the 2023 Series — Convertible Whiskey Special Ops 2023 Notes warrant liabilities as of December 31, 2023 include:

	December 31, 2023	
Significant Unobservable Input	**Input Range**	**Weighted Average**
Expected Term (in years)	0.125 – 4.667	
Volatility	70%	70%
Risk-free Rate	3.8% – 3.87%	3.8% – 3.87%
Probability scenarios		
IPO	70%	
deSPAC	0%	
Default/Dissolution/Liquidation	20%	
Held to Maturity	10%	

The following table provides a roll forward of the aggregate fair values of the Company's financial instruments described above, for which fair value is determined using Level 3 inputs:

	2022 and 2023 Convertible Notes	Whiskey Special Ops Notes	2022 Notes Warrant Liabilities	Whiskey Special Ops Notes Warrant Liabilities
Balance as of January 1, 2022	$ —	$ —	$ —	$ —
Initial Fair Value of Instruments	—	—	581,364	—
Issuance	10,158,636	—	—	—
Change in Fair Value	(2,117,636)	—	(148,364)	—
Balance as of December 31, 2022	$ 8,041,000	$ —	$ 433,000	$ —
Issuances	5,577,125	1,353,473	12,874	1,621,527
Change in Fair Value	22,665,765	99,089	348,994	(108,835)
Balance as of December 31, 2023	$ 36,283,891	$ 1,452,562	$ 794,868	$ 1,512,692

NOTE 9 — STOCKHOLDERS' EQUITY

Common stock — On October 31, 2023, the Company's Board of Directors and shareholders increased the number of shares the Company is authorized to issue from 3,000,000 shares to 10,000,000 shares, including 9,500,000 shares of common stock and 500,000shares of Founders Common Stock, par value of $0.0001 per share. Subsequent to December 31, 2023, the Company is in process filing a Second Amendment to its Amended and Restated Certificate of Incorporation to increase authorized capital to 70,000,000 shares. (See Note 16.) The key terms of the common stocks are summarized below:

Dividends — The holders of common stock and Founders Common Stock are entitled to receive dividends if declared by the Board of Directors. No dividends have been declared since the inception of the Company.

Voting rights — The holders of Founders Common Stock are entitled to four votes for each share of Founders Common Stock and general common stockholders are entitled to one vote for each share of general common stock.

Upon approval of this increase in authorized shares, the 2022 and 2023 Convertible Notes were exchanged (contingent upon the consummation of this offering) for 3,312,148 additional shares of common stock and 507,394 prepaid warrants; The actual unconditional exchange of the Convertible Notes and reclassification of the aggregate fair value of exchanged notes (of $36,283,891 as of December 31, 2023) will be reclassified from Convertible Notes to equity (of Common Stock Par Value of $331 and Paid-in-capital of $36,283,560) under the terms of the Subscription Exchange Agreement will occur upon the effectiveness of the Company's anticipated IPO — which is

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

the remaining prerequisite for the unconditional exchange of the 2022 and 2023 Convertible Notes for equity. (See Note 5.) As of December 31, 2023, the Company had 381,484 shares of common stock issued and outstanding. As of December 31, 2023, including the 3,312,148 shares of common stock related to the conversion of the 2022 and 2023 Convertible Notes, the Company had 3,693,632 shares of common stock issued and outstanding. During the year ended December 31, 2023, the Company repurchased 126 shares of common stock and no common stock warrants were exercised.

Stock options — The Company's 2018 Equity Incentive Plan was approved by the HDC Board and the HDC shareholders in March 2018. On April 27, 2019, in anticipation of the Company's reorganization on May 1, 2019, the HDHC Board and the HDHC sole stockholder approved HDHC's 2019 Equity Incentive Plan (the "2019 Plan").

The 2019 Plan allows for the grant of incentive stock options ("ISOs"), nonqualified stock options ("NQSOs"), stock appreciation rights ("SARs"), restricted stock, RSU awards, performance shares, and performance units to eligible participants for ten (10) years (until April 2029). The cost of awards under the 2019 Plan generally is based on the fair value of the award on its grant date. The maximum number of shares that may be utilized for awards under the 2019 Plan is 450,000.

The following sets forth the outstanding ISOs and related activity for the years ended December31, 2023 and 2022:

Options Outstanding	Number of Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2021	8,470	$ 157.89	3.82	$ 0.00
Forfeited	(333)	$ 157.89		
Outstanding at December 31, 2022	8,137	$ 157.89	2.78	$ 0.00
Exercisable at December 31, 2022	7,847	$ 157.89	2.76	$ 0.00
Forfeited	(1,959)	$ 157.89		
Outstanding at December 31, 2023	6,178	$ 157.89	1.86	$ 0.00
Exercisable at December 31, 2023	6,178	$ 157.89	1.86	$ 0.00
Remaining unvested at December 31, 2023	—	$ 157.89		

ISOs require a recipient to remain in service to the Company, ISOs generally vest ratably over periods ranging from one to four years from the vesting start date of the grant and vesting of ISOs ceases upon termination of service to the Company. Vested ISOs are exercisable for three months after the date of termination of service. The terms and conditions of any ISO shall comply in all respects with Section 422 of the Code, or any successor provision, and any applicable regulations thereunder. The exercise price of each ISO is the fair market value of the Company's stock on the applicable date of grant. The Company used the mean volatility estimate from Carta's 409A valuation based on the median 5-year volumes of select peer companies. Fair value is estimated based on a combination of shares being sold at $157.89 up through February of 2019 and the most recent 409A completed when these ISOs were issued in April of 2018 valuing the Company's stock at $157.89 per share. No ISOs may be granted more than ten (10) years after the earlier of the approval by the Board, or the stockholders, of the 2019 Plan.

There were no grants in the years ended December31, 2023 and 2022. As of December31, 2023, the Company had $0 of unrecognized compensation expense related to ISOs expected to vest over a weighted average period of 0.0 years. The weighted average remaining contractual life of outstanding and exercisable ISOs is 1.86 years.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

The following table presents stock-based compensation expense included in the consolidated statements of operations related to ISOs issued under the 2019 Plan:

	For the Twelve Months Ended December 31,	
	2023	**2022**
Cost of Sales	$ —	$ 12,215
Sales and Marketing	—	21,361
General and Administrative	18,595	53,083
Total Share-based Compensation	$ 18,595	$ 86,659

Restricted stock units — The RSU awards granted in 2019 under the 2019 Plan were granted at the fair market value of the Company's stock on the applicable date of grant. RSU awards generally vest ratably over periods ranging from one to four years from the grant's start date. Upon termination of service to the Company, vesting of RSU awards ceases, and most RSU grants are forfeited by the participant, unless the award agreement indicates otherwise. The majority of RSU awards are "double trigger" and both the service-based component, and the liquidity-event component (including applicable lock-up periods) must be satisfied prior to an award being settled. Upon settlement, the RSU awards are paid in shares of the Company's common stock. The Company recognizes the compensation expense for the restricted stock units based on the fair value of the shares at the grant date amortized over the stated period for only those shares that are not subject to the double trigger.

The following table summarizes the RSU activity for the years ended December31, 2023 and 2022:

	Restricted Stock Units	Weighted Average Exercise Price Per Share
Unvested and Outstanding at December 31, 2021	105,727	$ 157.89
Granted	14,015	$ 157.89
Forfeited/Canceled/Expired	(734)	$ 157.89
Unvested and Outstanding at December 31, 2022	119,008	$ 157.89
Granted	—	$ 157.89
Forfeited/Canceled/Expired	(2,020)	$ 157.89
Unvested and Outstanding at December 31, 2023	116,988	$ 157.89

During the years ended December 31, 2023 and 2022, the Company recognized no stock-based compensation expense in connection with RSU awards granted under the plans. Compensation expense for RSU awards is recognized upon meeting both the time-vesting condition and the triggering event condition. As of December 31, 2023, based upon the grant date fair value of such RSU awards of $157.89 per share, we would expect to recognize $18,471,789 of previously unrecognized compensation expense for RSU awards upon the settling of those RSUs and the expiration any associated lock up agreements entered into in connection with this offering.

Equity-classified warrants — During the year ended 2022, the Company issued 8,166 warrants to purchase the Company's common stock to certain broker companies as part of consideration for services performed related to funding purposes. The warrants are exercisable, in whole or in part, into shares of the Company's common stock at an exercise price of $90 per share at the option of the warrant holders, at any time. The Company determined that warrants are equity instruments in accordance with ASC 815 — *Derivatives and Hedging*. The fair value of the warrants at the date of the issuance was $303,000 and was recorded as part of "General and Administrative" expense in the consolidated statements of operations and an increase in additional paid in capital in the consolidated balance sheets.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 9 — STOCKHOLDERS' EQUITY (cont.)

The Company estimates the fair values of equity warrants using the Black-Scholes option-pricing model on the date of issuance. During the year ended December 31, 2023, the Company did not issue any warrants to purchase the Company's common stock. During the years ended December 31, 2023 and 2022, the assumptions used in the Black-Scholes option pricing model were as follows:

	For the Years Ended December 31,	
	2023	2022
Weighted Average Expected Volatility	—	44.32%
Expected Dividends	—	0.00%
Weighted Average Expected Term (in years)	—	5.00
Risk-Free Interest Rate	—	2.14%

As of December 31, 2023, 35,720 warrants were added for previous variable warrants. As of December 31, 2023 and 2022, there were outstanding and exercisable warrants to purchase 116,928 and 81,208, respectively, shares of the Company's common stock, As of December 31, 2023, the weighted-average remaining contractual term was 1.56 years for the outstanding and exercisable warrants.

Deferred Compensation — Beginning in May 2023, certain senior level employees elected to defer a portion of their salary until such time as the Company completed a successful public registration of its stock. Upon success of the public registration, each employee will then be paid their deferred salary plus $2 dollars in RSUs or stock options (under the new 2024 Plan — See Note 16) for every $1 dollar of deferred salary. As of December 31, 2023, the Company recorded about $407,963 including employer tax obligation of such deferred payroll expense, included in accrued liabilities. Accordingly, as of December 31, 2023 the Company has also committed to issue approximately $650,138 in equity compensation related to the deferred compensation.

NOTE 10 — INCOME TAXES

The tax effects of significant items comprising the Company's deferred taxes as of December 31 are as follows:

	December 31,	
	2023	2022
Deferred Tax Assets		
Reserves	$ 74,283	$ 83,134
Deferred Wages	93,745	—
Lease Liability	1,005,696	1,072,236
Net Operating Loss Carryforwards	11,250,985	8,973,639
Credit Carryforwards	164,796	91,614
Fixed Asset Basis	1,016,323	517,435
Other Carryforwards	55,583	16,616
Allowance for Bad Debts	—	16,969
Total Deferred Tax Assets	13,661,412	10,771,642
Less: Valuation Allowance	(10,309,361)	(7,429,810)
Deferred Tax Liabilities		
Investment in Flavored Bourbon LLC	(2,511,373)	(2,472,700)
Right-of-Use Assets	(840,677)	(869,132)
Total Deferred Tax Liabilities	(3,352,050)	(3,341,831)
Net Deferred Tax Assets	$ —	$ —

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 10 — INCOME TAXES (cont.)

ASC 740 requires that the tax benefit of net operating losses, temporary differences and credit carryforwards be recorded as an asset to the extent that management assesses that realization is "more likely than not." Realization of the future tax benefits is dependent on the Company's ability to generate sufficient taxable income within the carryforward period. Because of the Company's recent history of operating losses, management believes that recognition of the deferred tax assets arising from the above-mentioned future tax benefits is currently not likely to be realized and, accordingly, has provided a valuation allowance. The change in the valuation allowance for the period ended December 31, 2023 was an increase of $2,879,551 and change in the valuation allowance for the period ended December 31, 2022 was an increase of $3,229,449.

At December 31, 2023 and 2022, the Company has federal net operating loss carryforwards of $49,287,572 and $40,443,870 respectively, which have an indefinite carryforward period. Under Sections 382 and 383 of the Code, substantial changes in our ownership may limit the amount of net operating loss and research that could be used annually in the future to offset taxable income. The tax benefits related to future utilization of federal net operating loss carryforwards, credit carryovers, and other deferred tax assets may be limited or lost if the cumulative changes in ownership exceeds 50% within any three-year period. The Company has not completed a formal Section 382/383 analysis under the Code regarding the limitation of net operating loss and tax credit carryforwards. If a change in ownership were to have occurred, the annual limitation may result in a reduction of available tax attributes in a given tax year.

The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. Due to its operating loss carry forward, the U.S. federal statute of limitations remains open for 2018 and onward. The Company has no ongoing or recently closed income tax examinations. The Company recognizes tax benefits from an uncertain position only if it is more likely than not that the position is sustainable, based on its technical merits. Interest and penalties related to uncertain tax positions are classified as income tax expense.

The effective tax rate of the Company's provision (benefit) for income taxes differs from the federal statutory rate as follows:

	For the Years Ended December 31,	
	2023	**2022**
Effective Tax Rate Reconciliation		
Statutory Rate	21.0%	21.0%
State Taxes	0.72%	1.84%
Permanent Items	(13.26)%	3.43%
Change in Valuation Allowance	(7.83)%	(26.34)%
Tax Credits	0.0%	0.0%
True-ups/Other	(0.64)%	0.0%
Total	(0.00)%	(0.07)%

The benefit from and provision for income taxes differs from the amount computed by applying the statutory federal income tax rate of 21% to earnings before taxes, primarily because of the valuation allowance, nondeductible items, state taxes, fair value adjustments, true-up adjustments.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 11 — LEASES

The Company adopted ASC Topic 842 on January 1, 2022 using the modified retrospective approach. Comparative information has not been restated and continues to be reported under ASC Topic 840, *Leases*, which was the accounting standard in effect for those periods. The Company has operating leases for corporate offices, warehouses, distilleries, tasting rooms and certain equipment which have been accounted for using the adopted standard. The Company's operating lease terms include periods under options to extend or terminate the operating lease when it is reasonably certain that the Company will exercise that option in the measurement of its operating lease ROU assets and liabilities. The Company considers contractual-based factors such as the nature and terms of the renewal or termination, asset-based factors such as the physical location of the asset and entity-based factors such as the importance of the leased asset to the Company's operations to determine the operating lease term. The Company generally uses the base, non-cancelable lease term when determining the operating lease ROU assets and lease liabilities. The ROU asset is tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be fully recoverable in accordance with Accounting Standards Codification Topic 360, *Property, Plant, and Equipment.*

The following table presents the consolidated lease cost for amounts included in the measurement of lease liabilities for operating leases for the years ended December 31, 2023, and 2022, respectively:

	Years Ended December 31,	
	2023	**2022**
Lease Cost:		
Amortization of Right-of-Use Assets	$ 29,299	$ 49,395
Interest on Lease Liabilities	275	2,177
Operating lease cost[(1)]	1,495,846	1,512,015
Total lease cost	$ 1,525,420	$ 1,563,587

(1) Included in "Cost of sales", "Sales and Marketing" and "General and Administrative "expenses in the accompanying consolidated statements of operations.

The following table presents weighted-average remaining lease terms and weighted-average discount rates for the consolidated operating leases as of December 31, 2023 and 2022, respectively:

	December 31,	
	2023	**2022**
Weighted-average remaining lease term – operating leases (in years)	6	6.5
Weighted-average discount rate – operating leases	22%	22%

The Company's ROU assets and liabilities for operating leases were $3,658,493 and $4,376,630, respectively, as of December 31, 2023. The ROU assets and liabilities for operating leases were $3,841,480 and $4,739,182, respectively, as of December 31, 2022. The ROU assets for operating leases were included in "Operating Lease Right-of-Use Assets, net" in our accompanying consolidated balance sheets. The liabilities for operating leases were included in the "Operating Lease Liabilities, Current" and "Operating Lease Liabilities, net of Current Portion" in the accompanying consolidated balance sheets.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 11 — LEASES (cont.)

Maturities of lease liabilities for the years through 2028 and thereafter are as follows:

	Amounts
Years Ending	
2024	$ 1,449,504
2025	1,245,614
2026	1,187,039
2027	1,199,467
2028	1,227,821
thereafter	1,892,919
Total lease payments	$ 8,202,364
Less: Interest	(3,825,734)
Total Lease Liabilities	$ 4,376,630

NOTE 12 — COMMITMENTS AND CONTINGENCIES

As an inducement to obtain financing in 2022 and 2023 through convertible notes, the Company agreed to pay a portion of certain future revenues we may receive from the sale of FBLLC or the Flavored Bourbon brand to the investors in such financings in the amount of 150% of their subscription amount for an aggregate of approximately $24,495,000. See Note 5 — Payment Upon Sale of Flavored Bourbon, LLC.

The Company maintains operating leases for various facilities. See Note 11, Leases, for further information.

Litigation — From time to time, the Company may become involved in various legal proceedings in the ordinary course of its business and may be subject to third-party infringement claims.

In the normal course of business, the Company may agree to indemnify third parties with whom it enters into contractual relationships, including customers, lessors, and parties to other transactions with the Company, with respect to certain matters. The Company has agreed, under certain conditions, to hold these third parties harmless against specified losses, such as those arising from a breach of representations or covenants, other third-party claims that the Company's products when used for their intended purposes infringe the intellectual property rights of such other third parties, or other claims made against certain parties. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the Company's limited history of prior indemnification claims and the unique facts and circumstances that are likely to be involved in each claim.

As of December 31, 2023 and 2022, the Company has not been subject to any pending litigation claims.

Management Fee — The Company is required to pay a monthly management fee to Summit Distillery, Inc (see Note 14).

NOTE 13 — RETIREMENT PLAN

The Company sponsors a Roth 401(k) and profit-sharing plan (the "Plan"), in which all eligible employees may participate after completing 3 months of employment. No contributions have been made by the Company during the years ended of December 31, 2023 and 2022.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 14 — RELATED-PARTY TRANSACTIONS

Management Agreement

On October 6, 2014, the Company entered into a management agreement with Summit Distillery, Inc., an Oregon corporation, to open a new Heritage Distilling Company location in Eugene, Oregon. The Company engaged Summit Distillery, Inc., to manage the Eugene location for an annual management fee. The principals and sole owners of Summit Distillery, Inc., are also shareholders of HDHC. For each of the years ended December 31, 2023 and 2022, the Company expensed a management fee of $180,000 and $180,000 respectively, to Summit Distilling, Inc. The fee is based upon a percentage of the Company's trailing twelve months, earnings before interest, taxes and depreciation expense, as defined in the management agreement.

2022 and 2023 Convertible Notes

During 2022, the Company issued multiple unsecured convertible promissory notes under the terms of the 2022 Notes to a related party who is a current shareholder of the Company and owns more than 10% of the Company's outstanding common stock as of December 31, 2022 and 2023. The aggregate principal sum of the related party convertible 2022 Notes was $6,311,250 with an aggregate cash proceed of $4,675,000 (See Note 5). Concurrent with the execution of the 2022 Notes, the Company issued warrants to the related party in an amount equal to 50% of the cash proceeds from the convertible notes (see Note 7). The Company initially allocated the $4,675,000 aggregate cash proceeds from the related party to the convertible 2022 Notes and the associated warrants on their respective issuance dates in the aggregate amounts of $4,422,379 and $252,621, respectively.

During 2023, the Company issued multiple additional unsecured convertible promissory notes under the terms of the 2023 Notes to the same related party for a principal sum of $3,982,500 with a cash proceed of $2,950,000 (See Note 5).

As of December 31, 2022, the fair value of the related party convertible notes and warrant liabilities was $3,476,057 and $187,181, respectively. As of December 31, 2023, the fair value of the related party convertible notes and warrant liabilities was $17,220,203 and $340,918, respectively.

2023 Series — Convertible Whiskey Special Ops 2023 Notes

As of December 31, 2023, $800,000 in principal of the Whiskey Special Ops 2023 Notes were held by the related party, plus 106,667 warrants to purchase common stock, calculated using an estimated IPO price of $7.50 per share. Subsequent to December 31, 2023, the Company issued an additional $1,433,000 of Whiskey Special Ops 2023 Notes with a similarly calculated 191,067 warrants to the same related party.

On February 29, 2024, the related party agreed to exchange its then held Whiskey Notes and related warrants for equity under the terms of the most recent round of 2023 Convertible Notes and the aforementioned warrants were terminated. (See Note 16.)

2023 Barrel Production Contract

During 2023, the Company entered into a distilled spirits barreling production agreement with Tiburon Opportunity Fund, L.P. This agreement is for production of 1,200 barrels of distilled spirits over time. There was a prepayment of $1,000,000 made in January 2023. Subsequent to December 31, 2023, this agreement was amended in March 2024 to a reduced number of 600 barrels for $500,000. The then $500,000 excess prepayment was then used to purchase a Whiskey Note in the principal amount of $672,500 and subsequently exchanged (contingent upon the consummation of this offering) under the terms of a Subscription Exchange Agreement for common stock in conjunction with the February 29, 2024 exchange of Whiskey Notes for common stock. (See Note 16.).

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 15 — BASIC AND DILUTED NET LOSS PER SHARE

The Company computes basic net income (loss) per share by dividing net income (loss) for the period by the weighted-average number of common shares outstanding during the period. The Company computes diluted net income (loss) per share by dividing net income (loss) for the period by the weighted-average number of common shares outstanding during the period, plus the dilutive effect of the stock options, RSU awards and exercisable common stock warrants, as applicable pursuant to the treasury stock method, and the convertible notes, as applicable pursuant to the if-converted method. The following table sets forth the computation of basic and diluted net loss per share:

	For the Years Ended December 31,	
	2023	**2022**
Numerator:		
Net Loss	$ (36,798,419)	$ (12,268,216)
Denominator:		
Weighted Average Common Shares Outstanding, Basic and Diluted	381,543	381,266
Net Loss Per Share, Basic and Diluted	$ (96.45)	$ (32.18)

Diluted earnings per share reflect the potential dilution of securities that could share in the earnings of an entity. The following outstanding shares of potentially dilutive securities were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been antidilutive:

	For the Years Ended December 31,	
	2023	**2022**
ISOs	6,178	8,137
Equity-classified Warrants	116,928	81,208
Liability-classified Warrants	2,020,139	—
Convertible Notes	431,276	183,939
RSU Awards	116,988	119,008
Total	2,691,509	392,292

NOTE 16 — SUBSEQUENT EVENTS

For its consolidated financial statements as of December 31, 2023 and for the period then ended, the Company evaluated subsequent events through the date on which those financial statements were issued. Other than the item noted below, there were no subsequent events identified for disclosure as of the date the financial statements were available to be issued.

On May 14, 2024, the Board and Shareholders of the Company approved a .57-for-1 reverse stock split. All share and per share numbers included in these Financial Statements as of and for the years ended December 31, 2023 and 2022 reflect the effect of that stock split unless otherwise noted.

The Company's Board of Directors and shareholders took certain actions and approved Amendments to the Company's certificate of incorporation and bylaws in preparation for a planned initial public offering (the "Actions and Amendments"), and have begun the process of filing of the Second Amendment to Amended and Restated Certificate of Incorporation of Heritage Distilling Holding Company, Inc. These Actions and Amendments, among other things: will increase the Company's authorized capital from 10,000,000 shares to 70,000,000 shares, including 69,500,000 shares of common stock and 500,000shares of Founders Common Stock. The increase in authorized shares will include provision for the additional shares to be issued with the Company's anticipated IPO, including those discussed in the following paragraphs, and other future equity activities not yet known.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 16 — SUBSEQUENT EVENTS (cont.)

In March 2024, the Company increased the $5,000,000 Round of convertible notes with a 12.5% interest rate and an August 29, 2026 maturity date (the "Whiskey Special Ops 2023 Notes") to $10,000,000.

Subsequent to $2,975,000 raised through December 31, 2023, the Company raised additional proceeds under the terms of the Whiskey Special Ops 2023 Notes ("Whiskey Notes") of $767,000 in January 2024, $718,110 in February 2024, $1,630,760 in March 2024, and $540,000 in April 2024, through April 26, 2024, for aggregate total principal of $6,803,370 and proceeds of $6,630,870 (of which, $2,405,500 of principal and $2,233,000 of proceeds was with a related party). Beginning in January 2024, the Company offered holders of the Whiskey Notes an option to exchange their Whiskey Notes and related warrants for equity under the terms of the most recent round of 2023 Convertible Notes. Subsequent to December 31, 2023 and through April 26, 2024, the Whiskey Notes (including 884,116 related warrants) agreed to exchange for common stock. The then-outstanding $26,797,284 in aggregate fair value of the Whiskey Notes and related Warrants (Warrant Liability) were exchanged (contingent upon the consummation of this offering) for a total of 2,399,090 shares of our common stock and prepaid warrants for 546,927 shares of common stock under a negotiated Subscription Exchange Agreement. The actual unconditional exchange of the Whiskey Notes and related warrants and reclassification to equity (of Common Stock Par Value and Paid-in-capital of $517 and $27,591,635, respectively) under the terms of the Subscription Exchange Agreement will occur upon the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional exchange of the Whiskey Notes and related warrants for equity. Until such a time, the Whiskey Notes and related Warrant Liabilities will remain on our balance sheet, and the change in their fair values will also continue to be recognized as Other Income/(Expense) in our Statement of Operations. (See Note 5.)

In December 2023, the Company entered into an agreement with a wholesaler distributor network in Oklahoma, which will purchase products from the Company at wholesale and resell and distribute that product throughout the state through the state's three tier system. The Company entered into contracts with wholesale distributors for distribution of its products into Kansas, Kentucky, Colorado and portion of Texas with a goal of completing those negotiations by the end of the second quarter of 2024.

In May 2024, 105,360 RSUs were voluntarily terminated and 80 RSUs were forfeited, leaving 11,064 issued RSUs to settle at a grant value of $157.89 per share. The Company had previously anticipated recognizing $18,394,817 of previously unrecognized compensation expense for those RSU awards upon the expiration of lock up agreements entered into in connection with this offering. As a result of the termination of the aforementioned RSUs, the Company now expects to recognize an expense of $1,746,895 upon the expiration of any lock ups for the remaining. In April 2024, certain holders of common stock and prepaid warrants received from the 2023 October Subscription Exchange Agreements agreed to amend those agreements as they relate to the exercise price for warrants offered as part of the 2022 Convertible Notes. Under the terms of a Subscription Exchange Agreement, the strike price of the warrants related to the 2022 Notes was fixed at a negotiated fixed, non-adjustable $6.00 per share and include a cashless exercise provision. Accordingly, these 908,334 warrants will no longer qualify to be classified as liabilities in accordance with ASC 480, and their fair value that has previously been recorded as warrant liabilities will be reclassified to equity.

In April 2024 all holders of Whiskey Notes agreed to exchange their notes and warrants for common stock under a Subscription Exchange Agreement. Under the terms of a Subscription Exchange Agreements, the Whiskey Notes and related 755,919 warrants were exchanged (contingent upon the consummation of this offering) for 2,399,090 shares of common stock and 546,927 prepaid warrants. Accordingly, those warrants will no longer qualify to be classified as liabilities in accordance with ASC 480, and their fair value that has previously been recorded as warrant liabilities will be reclassified to equity. (See Note 7.) The Whiskey Notes and related warrants were exchanged (contingent upon the consummation of this offering) for common stock; however, the Whiskey Notes and related Warrant Liabilities remain on our balance sheet until the effectiveness of the Company's anticipated IPO — which is the remaining prerequisite for the unconditional conversion of the outstanding indebtedness and related warrants into equity.

Heritage Distilling Holding Company, Inc.
Notes to Consolidated Financial Statements

NOTE 16 — SUBSEQUENT EVENTS (cont.)

The Underwriting Agreement and the related warrants granted to the Underwriter equal to 5% of the total proceeds raised in the offering at an exercise price equal to the offering price. This number of warrants may increase by up to 15% if the Underwriter elects to utilize the overallotment rights of the Offering.

In February 2024, the Company purchased all the outstanding stock of Thinking Tree Spirits, Inc. ("TTS"). Under the terms of the stock sale, the Company paid the shareholders of TTS $670,686 (net of $50,000 held back for post-closing accounting true-ups) using shares of common stock of the Company, and assumed $364,500 of debt. The $670,686 was paid using common stock of the Company at a negotiated price of $13.16 per share (or 50,972 shares), subject to a true-up provision that expires August 31, 2024 to the price per share of the Company's anticipated IPO, if lower, (currently $5.00, or 134,137 shares). The acquisition will be recorded at a fair value, based on the $670,686 initial payment, and a fair value probability applied to the contingent earn out payments. The valuation and accounting for this acquisition will be recorded in the Company's financial statements for the quarter ended March 31, 2024. The fair value of the acquisition will be remeasured for each subsequent reporting period until resolution of the contingent earn out payments, and any increases or decreases in fair value will be recorded in the income statement as an operating loss or gain. Under the terms of the TTS acquisition, TTS shareholders will be eligible to receive contingent earn out payments from the Company through February 17, 2027 of:

- Up to $800,000 per year (payable in Company common stock) in each of the first 3 years post acquisition (for an aggregate of up to $2,400,000), calculated as $1.00 worth of Company common stock for every $1.00 of revenue of TTS brands and activities that exceed the previous year's TTS associated revenue. Shortfalls in years 1 and 2 to be caught up in years 2 and/or 3, if revenues are then sufficient.
- $395,000 if TTS is successful in securing an agreement for a new tasting room location, to be branded TTS and Heritage Distilling, or as a Company approved sub-brand or collective brand, within a certain confidential retail location in Portland OR within 3 years, TTS shareholders will receive an additional $395,000, payable at HDHC's election either in cash or in shares of the Company's common stock (based on closing price 30 days post opening of such location).

See Note 10 related to the treatment of the shares owed to TTS shareholders related to recently asserted dissenters' rights related to that transaction.

On January 31, 2024, we terminated a contract to produce a world-class gin for a large international spirit brand owner as we shift our focus toward putting our resources into higher margin activities under our own core brands and programs and reducing risks associated with hourly labor in certain markets. The termination of this contract is expected to result in decreased production services revenue beginning in the first quarter of 2024 while also helping us to improve our margin as we focus on higher margin activities.

Subsequent to December 31, 2023, Flavored Bourbon LLC conducted a capital call, successfully raising $12 million from current and new investors at the same valuation as the last raise. The Company chose not to participate in the raise, but still retained its rights to full recovery of is capital account of $25.3 million, with the Company being guaranteed a pay out of this $25.3 million in the event the brand is sold to a third party, or the Company can block such sale. The Company retains 11.2071% ownership interest in this entity plus a 2.5% override in the waterfall of distributions. The valuation and accounting for this event will be recorded in the Company's financial statements for the quarter ended March 31, 2024.

1,500,000 Shares

Heritage Distilling Holding Company, Inc.

PRELIMINARY PROSPECTUS

, 2024

Common Stock

Newbridge Securities Corporation

Through and including , 2025 (90 days after the date of this prospectus), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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The information in this preliminary 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 preliminary 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.

SUBJECT TO COMPLETION, DATED OCTOBER [ ], 2024

PRELIMINARY PROSPECTUS

313,187 Shares

HERITAGE DISTILLING Co

Heritage Distilling Holding Company, Inc.

Common Stock

This prospectus relates to the resale of 313,187 shares of common stock, par value $0.0001 per share, purchased by the selling stockholders identified in this prospectus (the "Selling Stockholders"), including their pledgees, assignees, donees, transferees or their respective successors-in-interest, in a series of private placement transactions that closed between April 2022 and April 2024.

On , 2024, a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), with respect to our initial public offering of common stock was declared effective by the Securities and Exchange Commission (the "SEC"). We received approximately $ million in net proceeds from the offering (assuming no exercise of the underwriters' over-allotment option) after payment of underwriting discounts and commissions and estimated expenses of the offering.

Prior to our initial public offering of common stock, there has been no public market for our common stock. We have applied for our common stock to be listed on The Nasdaq Capital Market ("Nasdaq") under the symbol "CASK". This resale offering is contingent upon approval of Nasdaq for the listing of the common stock and no shares of our common stock will be sold by the Selling Stockholders under this prospectus unless our initial public offering of common stock is consummated and our common stock is listed for trading on Nasdaq. On [ ], 2024, the closing sale price of our common stock on Nasdaq was $.

Any Selling Stockholder may sell all or a portion of these shares from time to time in market transactions through any market on which the common stock is then traded, in negotiated transactions or otherwise, and at prices and on terms that will be determined by the then prevailing market price or at negotiated prices directly or through a broker or brokers, who may act as agent or as principal or by a combination of such methods of sale. The Selling Stockholders will receive all proceeds from such sales of common stock. For additional information on the methods of sale of the common stock, you should refer to the section entitled "Plan of Distribution." We will not receive any proceeds from the sale of shares by the Selling Stockholders.

The distribution of securities offered hereby may be effected in one or more transactions that may take place in ordinary brokers' transactions, privately negotiated transactions or through sales to one or more dealers for resale of such securities as principals. Usual and customary or specifically negotiated brokerage fees or commissions may be paid by the Selling Stockholders.

Investing in our common stock involves a high degree of risk, including the risk of losing your entire investment. See "*Risk Factors*" beginning on page 14 of the primary offering prospectus contained in the registration statement of which this prospectus forms a part, to read about factors you should consider before investing in our common stock.

Neither the SEC nor any state securities commission nor any other regulatory body has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is [ ], 2024

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THE OFFERING

Common stock offered by Selling Stockholders	313,187 shares of common stock
Shares of common stock outstanding after this offering	5,153,405 shares of common stock, after giving effect to the consummation of our initial public offering of common stock but assuming no exercise of the underwriters' overallotment option in such offering.
Concurrent offering	Concurrently with this offering, we are registering 1,500,000 shares of common stock (plus 225,000 additional shares of common stock for the underwriters' over-allotment option) for sale in our initial public offering of common stock. Sales by stockholders who purchase shares of common stock in our initial public offering may reduce the price of and demand for our common stock and, as a result, the liquidity of your investment.
Use of proceeds	We will not receive any proceeds from the sale of common stock held by the Selling Stockholders being registered in this prospectus.
Risk Factors	An investment in our common stock involves a high degree of risk and could result in a loss of your entire investment. Further, the issuance to, or sale by, the Selling Stockholders of a significant amount of shares being registered in the registration statement, of which this prospectus forms a part, at any given time could cause the market price of our common stock to decline and to be highly volatile, and we do not have the right to control the timing and amount of any sales by the Selling Stockholders of such shares. Prior to making an investment decision, you should carefully consider all of the information in this Prospectus and, in particular, you should evaluate the risk factors set forth under the caption "Risk Factors" beginning on page 14.
Proposed Nasdaq trading symbol	We have applied to list our common stock on the Nasdaq Capital Market under the symbol "CASK". We believe that upon the completion of our initial public offering of common stock, we will meet the standards for listing on the Nasdaq Capital Market. The closing of our initial public offering of common stock is contingent upon the successful listing of our common stock on the Nasdaq Capital Market. This resale offering will not proceed unless our initial public offering of common stock is closed.

The number of shares of our common stock to be outstanding after this offering is based on 441,935 shares of common stock outstanding as of June 30, 2024, and gives effect to (i) the issuance of 1,500,000shares of common stock in our initial public offering of common stock, (ii) the issuance of 5,961,870 shares of common stock subsequent to June 30, 2024 upon the exchange of certain promissory notes (including accrued interest) and certain warrants, (iii) the exchange by certain investors of 2,816,291 shares of common stock for prepaid warrants to purchase 2,816,291 shares of common stock prior to the consummation of our initial public offering of common stock, and (iv) the net exercise subsequent of June 30, 2024 of 65,891 prepaid warrants into common stock, and excludes:

- Up to 991,667 shares of common stock issuable upon the exercise of warrants with an exercise price of $6.00 per share that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock and that expire between August 2028 and August 2029;
- 4,304,721 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $0.001 per share and the Common Warrants with an exercise price of $0.01 per share that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% (or, in certain warrants, 9.99%) of our outstanding shares of common stock;

- 6,164 shares of common stock issuable upon the exercise of outstanding stock options issued under our 2019 Equity Incentive Plan with an exercise price of $157.89 per share that expire between June 2025 and November 2026;
- 243,089 shares of common stock issuable upon the settlement of outstanding restricted stock units issued under our 2019 Equity Incentive Plan that will settle upon the expiration of the lock-up described in the "Underwriting" section of the prospectus for our initial public offering;
- Up to 762,984 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the volume weighted average price per share ("VWAP") of our common stock over a 10-trading-day period reaches 200% of the price per share at which common stock is sold in our initial public offering of common stock, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the second anniversary of the closing of this offering;
- Up to 1,525,968 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 300% of the price per share at which common stock is sold in our initial public offering of common stock, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 42-month anniversary of the closing of this offering;
- Up to 1,907,460 shares of common stock issuable upon the exercise of warrants to be issued upon the closing of this offering to our common stockholders of record as of May 31, 2023, that will be exercisable, if at all, when the VWAP of our common stock over a 10-trading-day period reaches 500% of the price per share at which common stock is sold in our initial public offering of common stock, provided the warrant holder continuously holds the shares such holder owned on May 31, 2023 through the date the warrant is exercised, and that will expire on the 60-month anniversary of the closing of this offering;
- Up to 197,013 shares of common stock issuable upon the exercise of warrants issued in conjunction with our Series A Preferred Stock offering (calculated using an assumed $5.00 per share exercise price) that are exercisable at an exercise price equal to the lesser of $5.00 per share or the price per shares at which the common stock is sold in this offering that expire on June 15, 2029, that are exercisable at any time unless such exercise would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock, and are subject to mandatory cashless exercise after June 15, 2027 if the closing price of our common stock for a period of five consecutive trading days equals or exceeds an amount equal to 125% of the exercise price of such warrants;
- Up to 1,306,392 shares of common stock issuable upon conversion of our 494,840 outstanding shares of Series A Preferred Stock (assuming an offering price of $5.00 per share in our initial public offering of common stock, which is the midpoint of the price range reflected on the cover of the prospectus for our initial public offering of common stock, but excluding any dividends accrued prior to such conversion), which shares are convertible at any time unless such conversion would cause the holder to beneficially own more than 4.99% of our outstanding shares of common stock;
- Up to 83,165 shares of common stock in connection with our acquisition of Thinking Tree Spirits (assuming an offering price of $5.00 per share in our initial public offering of common stock, which is the midpoint of the price range reflected on the cover of the prospectus for our initial public offering of common stock);
- Up to [ ] shares of common stock ([ ] shares if the underwriters' overallotment option in our initial public offering is exercised in full) issuable upon the exercise of the Representative's Warrants at an exercise price equal to the price per share at which our common stock is sold in in our initial public offering; and
- Up to 2,500,000 shares of our common stock reserved for future issuance under our 2024 Equity Incentive Plan and up to 7,247 shares of our common stock reserved for future issuance under our 2019 Equity Incentive Plan.

Except as otherwise noted, all information in this prospectus gives effect to the 0.57-for-one reverse stock split of our outstanding shares of common stock that occurred on May 14, 2024.

USE OF PROCEEDS

The Selling Stockholders will receive all of the proceeds of the sale of shares of common stock offered from time to time pursuant to this prospectus. Accordingly, we will not receive any proceeds from the sale of shares of common stock that may be sold from time to time pursuant to this prospectus.

We will bear the out-of-pocket costs, expenses and fees incurred in connection with the registration of the shares of common stock registered hereby, which may be resold by the Selling Stockholders pursuant to this prospectus. Other than registration expenses, such as SEC fees and legal and accounting expenses, which we will bear, the Selling Stockholders will bear any underwriting discounts, commissions, placement agent fees or other similar expenses payable with respect to sales by them of the shares of common stock offered hereby.

SELLING STOCKHOLDERS

This prospectus relates to the sale or other disposition of up to 313,187shares of our common stock by the Selling Stockholders and their donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a Selling Stockholder as a gift, pledge, partnership distribution or other transfer.

We issued all of the outstanding shares of common stock that may be sold hereunder in April 2024 in connection with the following transactions:

- **Private Placement of Convertible Notes and Warrants.** Between August 29, 2023 and April 19, 2024, we sold to 48 accredited investors an aggregate amount of convertible notes (the "Notes") and warrants (the "Warrants") to purchase shares of common stock for aggregate cash proceeds of $6,803,370. The Notes bore interest at the rate of 12% per annum, were convertible into shares of our common stock at an initial conversion price of $7.50 per share and matured on August 29, 2026. The Warrants had a term of five years and an original exercise price equal to the price per share at which our common stock is sold in our initial public offering of common stock, or if such offering was not consummated at the time of exercise, $10.00 per share. The Warrants included a mandatory cashless exercise provision whereby any Warrants not previously exercised will be automatically exercised on a cashless basis, beginning on the third anniversary of the date of issuance of the Warrant, on any trading day that the 20-day VWAP of our common stock equals or exceeds a price per share equal to or greater than 125% of the exercise price of the Warrant. In connection with the issuance of the Notes and the Warrants, we also agreed to pay to the investors royalty payments on the Notes at the rate of $10.00 per bottle of a new product offering of *Special Forces* labelled spirits. The Notes and Warrants were sold in a transaction that was exempt from the registration requirements of the Securities Act pursuant to Section 4(2) of the Securities Act and Regulation D promulgated thereunder.
- **Exchange of Notes and Warrants for Common Stock.** In April 2024, we entered into a series of exchange agreements with the holders of the Notes and Warrants pursuant to which such holders exchanged, contingent upon the consummation of our initial public offering, the then-outstanding $8,688,573 aggregate principal amount of the Notes, and an aggregate of $1,885,203 of accrued interest thereon, and all of the Warrants for an aggregate of 2,399,090 shares of our common stock and warrants to purchase an aggregate of 546,927 shares of common stock for a purchase price of $0.001 per share. Such warrants, which have no expiration date, are eligible for exercise by the holder thereof only at such time as the holder beneficially owns a number of shares of common stock that is less than 4.99% of our outstanding shares of common stock for a number of shares of common stock that would cause the holder to beneficially own no more than 4.99% of our outstanding shares of common stock.

The table below sets forth information, to our knowledge based on information provided by the Selling Stockholders in registration statement questionnaires, regarding the Selling Stockholders and other information regarding the beneficial ownership (as determined under Section 13(d) of the Exchange Act and the rules and regulations thereunder) of the shares of common stock held by the Selling Stockholders. The second column lists the number of shares of common stock beneficially owned by the Selling Stockholders as of October 1, 2024. The third column lists the maximum number of shares of common stock that may be sold or otherwise disposed of by the Selling Stockholders pursuant to the registration statement of which this prospectus forms a part. The fourth and fifth columns list the number and percentage of shares of common stock beneficially owned by the Selling Stockholders assuming the sale by the Selling Stockholders of shares of common stock covered by this prospectus. The Selling Stockholders may sell or otherwise dispose of some, all or none of their shares of common stock. Pursuant to Rules 13d-3 and 13d-5 of the Exchange Act, beneficial ownership includes any shares of our common stock as to which a stockholder has sole or shared voting power or investment power, and also any shares of our common stock which the stockholder has the right to acquire within 60 days of October 1, 2024.

None of the Selling Stockholders has had any material relationship with us within the past three years.

The shares of common stock being covered hereby may be sold or otherwise disposed of from time to time during the period the registration statement of which this prospectus is a part remains effective, by or for the account of the Selling Stockholders. After the date of effectiveness of the registration statement of which this prospectus forms a part, the Selling Stockholders may have sold or transferred, in transactions covered by this prospectus, some or all of their common stock.

Information about the Selling Stockholders may change over time. Any changed information will be set forth in an amendment to the registration statement or supplement to this prospectus, to the extent required by law.

Name	Shares of Common Stock Beneficially Owned Prior to the Offering of Shares for Resale	Maximum Number of Shares of Common Stock to be Offered for Resale Pursuant to this Prospectus	Shares of Common Stock Beneficially Owned After the Offering of Shares for Resale	Percentage of Outstanding Common Stock Beneficially Owned after the Offering[1][2]
Anson Investments Master Fund LP	367,061[3]	31,729	335,332	6.51%
C. James and Karan Bergstrom	42,567	21,283	21,284	*
Daniel B. Cathcart	512,221[4]	103,056	409,165	7.84%
Douglas A. George	386,502[5]	83,698	302,804	5.88%
Francis A. Hagan Jr. and Roxlyn R. Hagan	10,928	5,263	5,665	*
Ganet Burr	11,370	5,273	6,097	*
Jamaka Partners, Ltd.	15,384	7,375	8,009	*
James and Carla Huegli	42,658	21,329	21,329	*
James Peters	2,265	1,053	1,212	*
Robert A. Falgout and Sandra Falgout	2,421	1,052	1,369	*
Stephen and Gayl Skibbs	17,765	8,397	9,368	*
Susan S. Falgout	2,421	1,052	1,369	*
Tilman J Falgout IV	4,530	2,107	2,423	*
Thomas Thiel	94,220[6]	20,520	73,700	1.42%

* less than 1%

(1) Assumes an offering price of $5.00 per share in our initial public offering of common stock.

(2) To calculate a stockholder's percentage of beneficial ownership, we include in the denominator 5,153,405 shares of common stock outstanding, after giving effect to the consummation of our initial public offering of common stock but assuming no exercise of the underwriters' overallotment option in such offering. In the numerator, we include all shares of our common stock issuable to that person in the event of the exercise of outstanding options and other derivative securities owned by that person which are exercisable or will come into existence. Common stock options and derivative securities held by other stockholders are disregarded in this calculation. Therefore, the denominator used in calculating beneficial ownership among our stockholders may differ.

(3) Beneficial ownership includes 367,061 shares of common stock, of which 31,729 shares are being registered. Does not include 148,000 shares of common stock issuable upon the exercise of warrants or 27,700 shares of common stock issuable upon the conversion of Series A Preferred Stock, neither of which may be exercised or converted, respectively, at any time that the holder beneficially owns 4.99% or more of the outstanding common stock.

(4) Beneficial ownership includes 450,000 shares of common stock, of which 103,056 shares are being registered, and includes 62,221 shares of common stock issuable upon the exercise of pre-paid warrants that may be exercised at any time that the holder beneficially owns 9.99% or less of the outstanding common stock.

(5) Beneficial ownership includes 386,502 shares of common stock, of which 83,698 shares are being registered. Does not include 87,208 shares of common stock issuable upon the exercise of warrants that may not be exercised at any time that the holder beneficially owns 4.99% or more of the outstanding common stock.

(6) Beneficial ownership includes 70,970 shares of common stock, of which 20,520 shares are being registered, and 23,250 shares of common stock issuable upon the exercise of outstanding warrants that may be exercised at any time that the holder beneficially owns 4.99% or less of the outstanding common stock.

PLAN OF DISTRIBUTION

The offering and sale of common stock by the Selling Stockholders pursuant to this prospectus is contingent upon the approval of the listing of our common stock on Nasdaq and the consummation of our initial public offering of common stock and no shares of our common stock will be sold by the Selling Stockholders under this prospectus unless our common stock is listed for trading on Nasdaq and our initial public offering is consummated.

Each Selling Stockholder of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of common stock covered hereby through Nasdaq or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 under the Securities Act, if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

If sales of shares offered under this prospectus are made to broker-dealers as principals, we would be required to file a post-effective amendment to the registration statement of which this prospectus is a part. In the post-effective amendment, we would be required to disclose the names of any participating broker-dealers and the compensation arrangements relating to such sales.

In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such

sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed us that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

We are required to pay certain fees and expenses incurred by us incident to the registration of the securities. We have agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

Any securities covered by this prospectus which qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than under this prospectus.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for us to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) the date on which all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of our common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

LEGAL MATTERS

The validity of the shares of common stock offered hereby will be passed upon for us by Pryor Cashman LLP, New York, New York.

313,187 Shares

Heritage Distilling Holding Company, Inc.

PRELIMINARY PROSPECTUS

, 2024

Common Stock

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the Nasdaq listing fee.

	Amount to be Paid
SEC registration fee	$ 1,980
FINRA filing fee	2,207
Nasdaq initial listing fee	50,000
Printing and engraving expenses	50,000
Accounting fees and expenses	250,000
Legal fees and expenses	1,025,000
Transfer agent and registrar fees	7,500
Miscellaneous fees and expenses	188,313
Total	$ 1,575,000

Item 14. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except for breaches of the director's duty of loyalty to the corporation or its stockholders, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of a law, authorizations of the payments of a dividend or approval of a stock repurchase or redemption in violation of Delaware corporate law or for any transactions from which the director derived an improper personal benefit. Our certificate of incorporation will provide that no director will be liable to us or our stockholders for monetary damages for breach of fiduciary duties as a director, subject to the same exceptions as described above. We also expect to maintain standard insurance policies that provide coverage (1) to our directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments we may make to such officers and directors.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with a threatened, pending, or completed action, suit or proceeding to which he or she is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with defense or settlement of such action or suit and no indemnification shall be made with respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. In addition, to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding described above (or claim, issue, or matter therein), such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit, or proceeding may be advanced by the corporation upon receipt of an undertaking by such person to repay such amount if it is ultimately determined that such person

is not entitled to indemnification by the corporation under Section 145 of the General Corporation Law of the State of Delaware. Our amended and restated certificate of incorporation will provide that we will, to the fullest extent permitted by law, indemnify any person made or threatened to be made a party to an action or proceeding by reason of the fact that he or she (or his or her testators or intestate) is or was our director or officer or serves or served at any other corporation, partnership, joint venture, trust or other enterprise in a similar capacity or as an employee or agent at our request, including service with respect to employee benefit plans maintained or sponsored by us, against expenses (including attorneys'), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend, or defense of such action, suit, proceeding, or claim. However, we are not required to indemnify or advance expenses in connection with any action, suit, proceeding, claim, or counterclaim initiated by us or on behalf of us. Our amended and restated bylaws will provide that we will indemnify and hold harmless each person who was or is a party or threatened to be made a party to any action, suit, or proceeding by reason of the fact that he or she is or was our director or officer, or is or was serving at our request in a similar capacity of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (whether the basis of such action, suit, or proceeding is an action in an official capacity as a director or officer or in any other capacity while serving as a director of officer) to the fullest extent authorized by the Delaware General Corporation Law against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes, or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection with such action, suit or proceeding, and this indemnification continues after such person has ceased to be an officer or director and inures to the benefit of such person's heirs, executors and administrators. The indemnification rights also include the right generally to be advanced expenses, subject to any undertaking required under Delaware General Corporation Law, and the right generally to recover expenses to enforce an indemnification claim or to defend specified suits with respect to advances of indemnification expenses.

Item 15. Recent Sales of Unregistered Securities.

The following is a description of the securities we sold within the past three years that were not registered under the Securities Act. The number of shares of common stock issued or issuable in each transaction, and the price per share of common stock in each transaction, has been adjusted to give effect to the 0.57-for-one reverse stock split of the common stock that was effected on May 14, 2024.

In March 2022, we issued warrants to purchase an aggregate of 4,653shares of our common stock, with an exercise price of $157.89 per share, as a fee for placement agent services in connection with the execution of the Silverview Loan.

Between April 2022 and February 2023, we issued to 13 new and existing investors unsecured convertible promissory notes in the aggregate principal amount of $14,815,523, and warrants to purchase an aggregate of up to 908,334 shares of our common stock (based upon a March 2024 amendment to the warrants to have a new exercise price fixed at $6.00 per share). Previously the warrants had an exercise price equal to the price per share at which our common stock was to be sold in this offering. In March 2023, we agreed with one investor to exchange its 2022 convertible promissory note with a principal sum of $135,000 for a convertible promissory note having the terms of the convertible promissory notes issued between March 2023 and June 2023 discussed below. On October 31, 2023, all of the unsecured convertible promissory notes were exchanged (contingent upon the consummation of this offering) for 1,962,595 shares of our common stock.

Between March 2023 and April 1, 2023, we issued to nine new and existing investors unsecured convertible promissory notes in the aggregate principal amount of $2,470,500 (including the $135,000 plus accrued fees and interest transferred from the notes issued between April 2022 and February 2023). On November 1, 2023, all of the unsecured convertible promissory notes were exchanged (contingent upon the consummation of this offering) for 408,324 shares of our common stock.

Between May 2023 and August 2023, we issued to four existing investors unsecured convertible promissory notes in the aggregate principal amount of $4,860,000. On October 31, 2023, all of the unsecured convertible promissory notes were exchanged (contingent upon the consummation of this offering) for 941,229 shares of common stock and prepaid warrants to purchase 22,264shares of our common stock.

Between August 2023 and December 31, 2023, we issued to 16 existing and new investors unsecured convertible promissory notes in the aggregate principal amount of $2,975,000 and warrants to purchase 595,000 shares of our common stock, with an exercise price equal to the price per share at which our common stock is sold in this offering that are exercisable from time to time and that will also mandatorily exercise on a cashless basis when the volume weighted average price per share of our common stock over a 20-day period reaches 125% of the exercise price.

Between January 2024 and April 2024, we issued to 33 investors promissory notes with accompanying warrants raising a total of $6,630,870. As of April 26, 2024, all the promissory notes were exchanged (contingent upon the consummation of this offering) for 2,399,090 shares of common stock, of which 1,203,783 shares were to a related party, and 546,927 prepaid warrants that will convert into common stock in the future so long as the holder holds less than 4.99% of our outstanding stock. The warrants accompanying the promissory notes were terminated as a result of the negotiated exchange.

In February 2024, we issued to the 25 stockholders of Thinking Tree Spirits, Inc. an aggregate of 50,972 shares of common stock in connection with our acquisition of Thinking Tree Spirits (based on a negotiated price of $13.16 per share, which is subject to a true-up provision that expired on August 31, 2024, but was subsequently extended in September 2024, to the price per share of our initial public offering, if lower, net of any amounts paid to dissenters who exercised their dissenters rights, if any amount is paid).

On June 15, 2024, we completed a private placement to six accredited investors of an aggregate of 183,000 shares of our Series A Convertible Preferred Stock and warrants to purchase an aggregate of 91,500 shares of common stock for an aggregate purchase price of $1,830,000, of which $675,000 was paid in cash and $1,155,000 was paid by the sale and transfer to us of an aggregate of 525 barrels of premium aged whiskey with an average value of $2,200 per barrel.

In June 2024, the Compensation Committee of our board of directors awarded 232,025 restricted stock units to an aggregate of 36 employees, directors and consultants with a fair grant value of $4.00 per unit. Such restricted stock units were issued pursuant to our 2019 Equity Incentive Plan.

Between June 15, 2024 and September 27, 2024, we completed a private placement to nine accredited investors of an aggregate of 494,840 shares of our Series A Convertible Preferred Stock and warrants to purchase an aggregate of 197,013 shares of common stock for an aggregate purchase price of $4,948,478 of which $2,025,000 was paid in cash, $1,155,000 was paid by the sale and transfer to us of an aggregate of 525 barrels of premium aged whiskey with an average value of $2,200 per barrel, $110,600 was paid by the sale and transfer to us of an aggregate of 50 barrels of premium aged whiskey with an average value of $2,212 per barrel, and $719,919 was paid to us by the cancellation of outstanding indebtedness.

The offers, sales and issuances of securities listed above were deemed exempt from registration under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder in that the issuance of securities did not involve a public offering. The recipients of such securities in each of these transactions represented their intention to acquire the securities for investment purposes only and not with a view to or for sale in connection with any distribution thereof. The offers, sales and issuances of securities listed above, were deemed exempt from registration in reliance on Section 4(a)(2) of the Securities Act or Rule 701 promulgated thereunder as transactions pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of such securities were our employees, directors or bona fide consultants and received the securities under our equity inventive plans. All the foregoing securities are deemed restricted securities for the Securities Act purposes, and appropriate legends were affixed to the securities issued in such transactions.

Item 16. Exhibits and Financial Statement Schedules.

(a) *Exhibits.*

The exhibits to the registration statement are listed in the Exhibit Index attached hereto and are incorporated by reference herein.

(b) *Financial Statement Schedules*.

All other schedules are omitted because they are not required, are not applicable, or the information is included in the financial statements or the notes related to financial statements thereto.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, 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.

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 of 1933;

(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 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(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;

(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 securities being registered which remain unsold at the offering's termination.

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

(i) 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

(ii) 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 the 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 that 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.

(5) That, for the purpose of determining liability of the registrant under the Securities Act 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 the undersigned registrant; and

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

(6) Provide the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(7) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a 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 this registration statement as of the time it was declared effective.

(8) 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.

EXHIBIT INDEX

In reviewing the agreements included as exhibits to this registration statement, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about us, our subsidiaries or other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- *should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;*
- *have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;*
- *may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and*
- *were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.*

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. We acknowledge that, notwithstanding the inclusion of the foregoing cautionary statements, we are responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this registration statement not misleading. Additional information about us may be found elsewhere in the prospectus included in this registration statement.

Exhibit Number	Description of Exhibits
1.1*	Form of Underwriting Agreement
3.1***	Amended and Restated Certificate of Incorporation
3.2***	Articles of Amendment to Amended and Restated Certificate of Incorporation
3.3***	Bylaws, as currently in effect
3.4***	Form of Second Amended and Restated Certificate of Incorporation to be in effect upon the completion of this offering
3.5*	Form of Amended and Restated Bylaws, to be in effect upon the completion of this offering
3.6***	Second Amendment to Amended and Restated Certificate of Incorporation dated April 1, 2024
3.7***	Third Amendment to Amended and Restated Certificate of Incorporation dated May 13, 2024
3.8*	Certificate of Designation relating to Series A Convertible Preferred Stock
4.1***	Specimen common stock certificate
4.2*	Form of Representative's Warrant (included in Exhibit 1.1)
4.3***	Form of outstanding restricted stock units issued under the 2019 Plan prior to January 1, 2024
4.4***	Form of outstanding restricted stock units issued under the 2019 Plan after January 1, 2024
4.5***	Form of outstanding warrants that expire in August 2028
4.6***	Form of outstanding prepaid warrants
4.7***	Form of outstanding warrants that expire in June 2029
4.8***	Form of outstanding warrants that expire between September 2026 and July 2029
4.9*	Form of Common Warrant
5.1*	Opinion of Pryor Cashman LLP
10.1***	Loan Agreement, dated as of March 29, 2021, by and among Silverview Credit Partners, LP, as agent for the lenders, the financial institutions and other institutional investors from time-to-time party thereto as lenders, Heritage Distilling Company, Inc., as borrower, and Heritage Distilling Holding Company, Inc.
10.2***	Amendment No. 1 to Loan Agreement, dated as of September 9, 2021, by and among Silverview Credit Partners, LP, as agent for the lenders, the financial institutions and other institutional investors from time-to-time party thereto as lenders, Heritage Distilling Company, Inc., as borrower, and Heritage Distilling Holding Company, Inc.

Exhibit Number	Description of Exhibits
10.3***	Consulting Agreement, dated as of April 1, 2023, by and between Heritage Distilling Company, Inc. and AV Train Consulting, LLC
10.4***	2019 Equity Incentive Plan#
10.5***	2024 Equity Incentive Plan#
10.6*	Form of October 2023 Exchange Agreement
10.7*	Form of Amendment to October 2023 Exchange Agreement
10.8*	Form of April 2024 Exchange Agreement
10.9*	Amendment No. 2 to Loan Agreement, dated as of September 9, 2021, by and among Silverview Credit Partners, LP, as agent for the lenders, the financial institutions and other institutional investors from time-to-time party thereto as lenders, Heritage Distilling Company, Inc., as borrower, and Heritage Distilling Holding Company, Inc.
10.10*	Form of Subscription Agreement for the Common Warrants
21.1***	Subsidiaries of the Registrant
23.1*	Consent of Marcum LLP, independent registered public accounting firm
23.2*	Consent of Pryor Cashman LLP (included in Exhibit 5.1)
24.1***	Power of Attorney (included on initial signature page to this registration statement)
99.1***	Consent of Troy Alstead
99.2***	Consent of Andrew Varga
107***	Filing Fee Table

* Filed herewith.
** To be filed by amendment.
*** Previously filed
# Indicates a management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Gig Harbor, State of Washington, on this 3rd day of October, 2024.

	HERITAGE DISTILLING HOLDING COMPANY, INC.
	By: /s/ Justin Stiefel Justin Stiefel Chief Executive Officer

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

Signature	**Title**	**Date**
/s/ Justin Stiefel Justin Stiefel	Chairman and Chief Executive Officer *(Principal Executive Officer, Principal Financial and Accounting Officer)*	October 3, 2024
/s/ * Jennifer Stiefel	President, Director	October 3, 2024
/s/ * Christopher (Toby) Smith	Director	October 3, 2024
/s/ * Eric S. Trevan, Ph.D.	Director	October 3, 2024
/s/ * Jeffery Wensel, M.D., Ph.D.	Director	October 3, 2024

*By: /s/ Justin Stiefel Justin Stiefel, Attorney-in-Fact

Exhibit 1.1

_____ SHARES OF COMMON STOCK

HERITAGE DISTILLING HOLDING COMPANY, INC.

UNDERWRITING AGREEMENT

____, 2024

Newbridge Securities Corporation
1200 N Federal Hwy, Suite 400
Boca Raton, Florida 33432
As the Representative of the
Several underwriters, if any, named in Schedule I hereto

Ladies and Gentlemen:

The undersigned, Heritage Distilling Holding Company, Inc., a company incorporated under the laws of Delaware (collectively with its subsidiaries and affiliates, including, without limitation, all entities disclosed or described in the Registration Statement as being subsidiaries or affiliates of Heritage Distilling Holding Company, Inc., the "Company"), hereby confirms its agreement (this "Agreement") with the several underwriters (such underwriters, including the Representative (as defined below), the "Underwriters" and each an "Underwriter") named in Schedule I hereto for which Newbridge Securities Corporation is acting as representative to the several Underwriters (the "Representative" and if there are no Underwriters other than the Representative, references to multiple Underwriters shall be disregarded and the term Representative as used herein shall have the same meaning as Underwriter) on the terms and conditions set forth herein.

It is understood that the several Underwriters are to make a public offering of the Public Shares as soon as the Representative deems it advisable to do so. The Public Shares are to be initially offered to the public at the initial public offering price set forth in the Prospectus.

It is further understood that you will act as the Representative for the Underwriters in the offering and sale of the Closing Shares and, if any, the Option Shares in accordance with this Agreement.

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Action" shall have the meaning ascribed to such term in Section 3.1(m).

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such Person as such terms are used in and construed under Rule 405 under the Securities Act.

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

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

"Closing" means the closing of the purchase and sale of the Closing Shares pursuant to Section 2.1.

"Closing Date" means the hour and the date on the Trading Day on which all conditions precedent to (i) the Underwriters' obligations to pay the Closing Purchase Price and (ii) the Company's obligations to deliver the Closing Shares, in each case, have been satisfied or waived, but in no event later than 10:00 a.m. (New York City time) on the first (1^{st}) Trading Day (or second (2^{nd}) Trading Day if this Agreement is executed after 4:00 p.m. (New York City Time) but prior to 11:59 p.m. (New York City Time)) following the date hereof or at such earlier time as shall be agreed upon by the Representative and the Company.

"Closing Purchase Price" shall have the meaning ascribed to such term in Section 2.1(b), which aggregate purchase price shall be net of the underwriting discounts and commissions.

"Closing Shares" shall have the meaning ascribed to such term in Section 2.1(a).

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Auditor" means Marcum, LLP, with offices located at 730 3rd Avenue, Floor 11, New York, NY 10017.

"Company Counsel" means Pryor Cashman LLP, with offices located at 7 Times Square, New York, NY 10036-6569.

"Effective Date" shall have the meaning ascribed to such term in Section 3.1(f).

"EGS" means Ellenoff Grossman & Schole LLP, with offices located at 1345 Avenue of the Americas, New York, New York 10105.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Execution Date" shall mean the date on which the parties execute and enter into this Agreement.

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, consultants, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) the Representative's Warrant and Representative's Warrant Shares in connection with the transaction pursuant to this agreement and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities or to extend the term of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the prohibitive period set forth in Section 4.20 hereof, and provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities and (d) shares of Preferred Stock of the Company, provided that such shares of Preferred Stock shall not either by their terms or by contract be convertible into shares of Common Stock during the prohibitive period set forth in Section 4.20.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"FINRA" means the Financial Industry Regulatory Authority.

"GAAP" shall have the meaning ascribed to such term in Section 3.1(i).

"General Disclosure Package" shall have the meaning ascribed to such term in Section 3.1(bb).

"Indebtedness" means (a) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (c) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP.

"Issuer-Represented Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 under the Securities Act, relating to the Shares that (A) is required to be filed with the Commission by the Company, or (B) is exempt from filing pursuant to Rule 433(d)(5)(i) under the Securities Act because it contains a description of the Shares or of the Offering that does not reflect the final terms or pursuant to Rule 433(d)(8)(ii) because it is a "bona fide electronic road show," as defined in Rule 433 under the Securities Act, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act; *provided, however*, that a Written Testing-the-Waters Communication shall be deemed not to be an Issuer Free Writing Prospectus.

"Issuer-Represented General Free Writing Prospectus" means any Issuer-Represented Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Annex I to this Agreement.

"Issuer-Represented Limited-Use Free Writing Prospectus" means any Issuer-Represented Free Writing Prospectus that is not an Issuer-Represented General Free Writing Prospectus. The term Issuer-Represented Limited-Use Free Writing Prospectus also includes any "bona fide electronic road show," as defined in Rule 433 under the Securities Act, that is made available without restriction pursuant to Rule 433(d)(8)(ii), even though not required to be filed with the Commission.

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Lock-Up Agreements" means the lock-up agreements that are delivered on the date hereof by each of the Company's officers and directors and certain holders of Common Stock and Common Stock Equivalents as agreed upon between the Underwriters and the Company, in the form of Exhibit A attached hereto.

"Material Adverse Effect" means (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

"Offering" shall have the meaning ascribed to such term in Section 2.1(c).

"Option Closing Date" shall have the meaning ascribed to such term in Section 2.2(c).

"Option Closing Purchase Price" shall have the meaning ascribed to such term in Section 2.2(b), which aggregate purchase price shall be net of the underwriting discounts and commissions.

"Option Shares" shall have the meaning ascribed to such term in Section 2.2(a).

"Over-Allotment Option" shall have the meaning ascribed to such term in Section 2.2.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock

company, government (or an agency or subdivision thereof) or other entity of any kind.

"Preferred Stock" means the preferred stock of the Company, par value $0.0001 per share, or any class or series thereof, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Preliminary Prospectus" means, if any, any preliminary prospectus relating to the Public Shares included in the Registration Statement or any amendment thereto.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Prospectus" means the final prospectus related to the Offering filed for the Registration Statement.

"Public Shares" means, collectively, the Closing Shares and, if any, the Option Shares.

"Registration Statement" means, collectively, the various parts of the registration statement prepared by the Company on Form S-1 (File No. 333-279382) with respect to the Public Shares, each as amended as of the date hereof, including the Prospectus and Prospectus Supplement, if any, the Preliminary Prospectus, if any, and all exhibits filed with or incorporated by reference into such registration statement, and includes any Rule 462(b) Registration Statement.

"Representative's Warrant" shall have the meaning ascribed to such term in Section 2.3(iii).

"Representative's Warrant Shares" shall have the meaning ascribed to such term in Section 2.3(iii).

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 462(b) Registration Statement" means any registration statement prepared by the Company registering additional Public Shares, which was filed with the Commission on or prior to the date hereof and became automatically effective pursuant to Rule 462(b) promulgated by the Commission pursuant to the Securities Act.

"Securities" means collectively the Public Shares, the Representative's Warrant and the Representative's Warrant Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Purchase Price" shall have the meaning ascribed to such term in Section 2.1(b).

"Statutory Prospectus" as of any time means the prospectus related to the Offering that is included in the Registration Statement immediately prior to that time. For purposes of this definition, information contained in a form of prospectus that is deemed retroactively to be a part of the Registration Statement pursuant to Rule 430A or 430B under the Securities Act shall be considered to be included in the Statutory Prospectus as of the actual time that form of prospectus is filed with the Commission pursuant to Rule 424(b) under the Securities Act.

"Subsidiary" means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Testing-the-Waters Communication" means any oral or written communication with potential investors in reliance on Section 5(d) of the Securities Act.

"Time of Sale" means [___] (Eastern time) on the date hereof.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Lock-Up Agreements, the Representative's Warrant and any other documents or agreements executed by the Company and delivered to the Representative or the Underwriters in connection with the transactions contemplated hereunder.

"Transfer Agent" means Equinity Trust Company, LLC, with offices located at 48 Wall Street, 23rd Floor, New York, New York 10005, and any successor transfer agent of the Company.

"Written Testing-the-Waters Communication" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing.

(a) Upon the terms and subject to the conditions set forth herein, the Company agrees to sell in the aggregate _____ shares of Common Stock, and each Underwriter agrees to purchase, severally and not jointly, at the Closing, the number of shares of Common Stock (the "Closing Shares") set forth opposite the name of such Underwriter on Schedule I hereof;

(b) The aggregate purchase price for the Closing Shares shall equal the sum of the amounts set forth opposite the names of the Underwriters on Schedule I hereto (the "Closing Purchase Price"). The purchase price for one Share shall be $_____ per Share (the "Share Purchase Price"); and

(c) On the Closing Date, each Underwriter shall deliver or cause to be delivered to the Company, via wire transfer, immediately available funds equal to such Underwriter's portion of the Closing Purchase Price as set forth opposite the name of such Underwriter on Schedule I hereto and the Company shall deliver to, or as directed by, such Underwriter its respective Closing Shares and the Company shall deliver the other items required pursuant to Section 2.3 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.3 and 2.4, the Closing shall occur at the offices of EGS or such other location as the Company and Representative shall mutually agree. The Public Shares are to be offered initially to the public at the offering price set forth on the cover page of the Prospectus (the "Offering").

2.2 Over-Allotment Option.

(a) For the purposes of covering any over-allotments in connection with the distribution and sale of the Closing Shares, the Representative is hereby granted an option (the "Over-Allotment Option") to purchase, in the aggregate, up to _____ shares of Common Stock (the "Option Shares") at the Share Purchase Price.

(b) In connection with an exercise of the Over-Allotment Option, the purchase price to be paid for the Option Shares is equal to the product of the Share Purchase Price multiplied by the number of Option Shares to be purchased (the aggregate purchase price to be paid on an Option Closing Date, the "Option Closing Purchase Price").

(c) The Over-Allotment Option granted pursuant to this Section 2.2 may be exercised by the Representative as to all (at any time) or any part (from time to time) of the Option Shares within 30 days after the Execution Date. An Underwriter will not be under any obligation to purchase any Option Shares prior to the exercise of the Over-Allotment Option by the Representative. The Over-Allotment Option granted hereby may be exercised by the giving of oral notice to the Company from the Representative, which must be confirmed in writing by overnight mail or other electronic transmission setting forth the number of Option Shares to be purchased and the date and time for delivery of and payment for the Option Shares (each, an "Option Closing Date"), which will not be later than two (2) full Business Days after the date of the notice or such other time as shall be agreed upon by the Company and the Representative, at the offices of EGS or at such other place (including remotely by other electronic transmission) as shall be agreed upon by the Company and the Representative. If such delivery and payment for the Option Shares does not occur on the Closing Date, each Option Closing Date will be as set forth in the notice. Upon exercise of the Over-Allotment Option, the Company will become obligated to convey to the Underwriters, and, subject to the terms and conditions set forth herein, the Underwriters will become obligated to purchase, the number of Option Shares specified in such notice. The Representative may cancel the Over-Allotment Option at any time prior to the expiration of the Over-Allotment Option by written notice to the Company.

2.3 Deliveries. The Company shall deliver or cause to be delivered to each Underwriter (if applicable) the following:

(i) At the Closing Date, the Closing Shares and, as to each Option Closing Date, if any, the applicable Option Shares, which shares shall be delivered via The Depository Trust Company Deposit or Withdrawal at Custodian system for the accounts of the several Underwriters;

(ii) At the Closing Date and each Option Closing Date, if any, a legal opinion of Company Counsel addressed to the Underwriters, including, without limitation, a negative assurance letter addressed to the Underwriters, in form and substance reasonably satisfactory to the Representative;

(iii) At the Closing Date and on each Option Closing Date, as applicable, to the Representative or its permitted designees, a Common Stock purchase warrant (the "Representative's Warrant") to purchase up to a number of shares of Common Stock (the "Representative's Warrant Shares") equal to five percent (5%) of the Closing Shares or Option Shares (as the case may be) issued on the Closing Date or such Option Closing Date, which Representative's Warrant shall have an exercise price of $_____[1], subject to adjustment therein.

1 100% of the public offering price

(iv) Contemporaneously herewith, a cold comfort letter, addressed to the Underwriters and in form and substance satisfactory in all respects to the Representative from the Company Auditor dated, respectively, as of the date of this Agreement and a bring-down letter dated as of the Closing Date and each Option Closing Date, if any;

(v) On the Closing Date and on each Option Closing Date, the duly executed and delivered Officer's Certificate, in form and substance reasonably satisfactory to the Representative;

(vi) On the Closing Date and on each Option Closing Date, the duly executed and delivered Secretary's Certificate, in form and substance reasonably satisfactory to the Representative; and

(vii) Contemporaneously herewith, the duly executed and delivered Lock-Up Agreements.

2.4 Closing Conditions. The respective obligations of each Underwriter hereunder in connection with the Closing and each Option Closing Date are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on the date in question (other than representations and warranties of the Company already qualified by materiality, which shall be true and correct in all respects) of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the date in question shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.3 of this Agreement;

(iv) the Registration Statement shall be effective on the date of this Agreement and at each of the Closing Date and each Option Closing Date, if any, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or shall be pending or contemplated by the Commission and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representative;

(v) by the Execution Date, if required by FINRA, the Underwriters shall have received clearance from FINRA as to the amount of compensation allowable or payable to the Underwriters as described in the Registration Statement;

(vi) the Closing Shares, the Option Shares and the Representative's Warrant Shares have been approved for listing on the Trading Market; and

(vii) prior to and on each of the Closing Date and each Option Closing Date, if any: (i) there shall have been no material adverse change or development involving a prospective material adverse change in the condition or prospects or the business activities, financial or otherwise, of the Company from the latest dates as of which such condition is set forth in the Registration Statement, the General Disclosure Package and the Prospectus; (ii) no action suit or proceeding, at law or in equity, shall have been pending or threatened against the Company or any Affiliate of the Company before or by any court or federal or state commission, board or other administrative agency wherein an unfavorable decision, ruling or finding may materially adversely affect the business, operations, prospects or financial condition or income of the Company, except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus; (iii) no stop order applicable to the Registration Statement shall have been issued under the Securities Act and no proceedings therefor shall have been initiated or threatened by the Commission; and (iv) the Registration Statement, the General Disclosure Package and the Prospectus and any amendments or supplements thereto shall contain all material statements which are required to be stated therein in accordance with the Securities Act and shall conform in all material respects to the requirements of the Securities Act, and neither the Registration Statement, the General Disclosure Package and the Prospectus nor any amendment or supplement thereto shall 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, in light of the circumstances under which they were made, not misleading.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company represents and warrants to the Underwriters as of the Execution Date, as of the Closing Date and as of each Option Closing Date, if any, as follows:

(a) Subsidiaries. All of the direct and indirect Subsidiaries of the Company are set forth on Exhibit 21.1 of the Registration Statement. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted, except that no representation is made regarding any jurisdiction in which the failure to be in good standing could not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents to which it is a party by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which the Company is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law or public policy considerations.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Public Shares and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than those that have already been obtained or made and are still in full force and effect and: (i) the filing with the Commission of the Prospectus, (ii) such filings as are required to be made under applicable state securities laws or the rules and regulations of FINRA, and (iii) certain post-closing notice filings to state liquor authorities (collectively, the "Required Approvals").

(f) Registration Statement. The Company has filed with the Commission the Registration Statement, including any related Preliminary Prospectus or Prospectus, for the registration of the Closing Shares and the Option Shares under the Securities Act, which Registration Statement has been prepared by the Company in all material respects in conformity with the requirements of the Securities Act and the rules and regulations of the Commission under the Securities Act. The Registration Statement has been declared effective by the Commission on the date hereof (the "Effective Date") prior to the Time of Sale. The Company has filed with the Commission a Form 8-A (File Number 001-[___]) providing for the registration under the Exchange Act of the Common Stock. The registration of the Common Stock under the Exchange Act has been declared effective by the Commission on the date hereof.

(g) Issuance of Shares and Representative's Warrants. The Public Shares are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Representative's Warrant Shares, when issued in accordance with the terms of the Representative's Warrant, respectively, will be validly issued, fully paid and nonassessable, free and clear of all Liens. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement and the Representative's Warrant. The holder of the Public Shares will not be subject to personal liability by reason of being such holders. The Public Shares are not and will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company. All corporate action required to be taken for the authorization, issuance and sale of the Public Shares and Representative's Warrant has been duly and validly taken. The Public Shares and Representative's Warrant conform in all material respects to all statements with respect thereto contained in the Registration Statement.

(h) Capitalization. As of the dates indicated in the Registration Statement and the Prospectus, the authorized, issued and outstanding shares of capital stock of the Company were as set forth in the Registration Statement, the General Disclosure Package and the Prospectus in the column headed "Actual" under the section thereof captioned "Capitalization" and, after giving effect to the Offering and the other transactions contemplated by this Agreement, the Registration Statement, the General Disclosure Package and the Prospectus (excluding the sale of the Option Shares, if any), will be as set forth in the column headed "Pro Forma As Adjusted" in such section. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or the capital stock of any Subsidiary. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, (i) the issuance and sale of the Public Shares will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Underwriters), (ii) there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary, and (iii) there are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. The authorized shares of the Company conform in all material respects to all statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus. The offers and sales of the Company's securities were at all relevant times either registered under the Securities Act and the applicable state securities or Blue Sky laws or, based in part on the representations and warranties of the purchasers, exempt from such registration requirements. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Public Shares. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders other than such agreements that will terminate pursuant to their terms upon the closing of this Offering.

(i) Financial Statements. The financial statements, including the notes thereto, included in the Registration Statement, the General Disclosure Package and the Prospectus comply in all material respects with the requirements of the Securities Act and the Exchange Act, and present fairly the financial position as of the dates indicated and the cash flows and results of operations for the periods specified of the Company and its consolidated Subsidiaries. Except as otherwise stated in the Registration Statement, the General Disclosure Package and the Prospectus, said financial statements have been prepared in conformity with United States generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved, except in the case of unaudited financials, which remain subject to certain year-end adjustments and do not contain certain footnotes. The supporting schedules, if any, included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly the information required to be stated therein. No other financial statements, notes thereto or supporting schedules are required to be included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus. The other financial and data included in the Registration Statement, the General Disclosure Package and the Prospectus present fairly 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, the General Disclosure Package and the Prospectus and the books and records of the respective entities presented therein. There are no pro forma or as adjusted financial statements which are required to be included in the Registration Statement, the General Disclosure Package and the Prospectus in accordance with Regulation S-X which have not been included as so required. The pro forma and pro forma as adjusted financial information included in the Registration Statement, the General Disclosure Package and the Prospectus has been properly compiled and prepared in accordance with the applicable requirements of the Securities Act and the rules and regulations thereunder and include all adjustments necessary to present fairly in accordance with GAAP 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 pro forma as adjusted financial information included in the Registration Statement, the General Disclosure Package 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.

(j) Sarbanes-Oxley; Internal Accounting and Disclosure Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the Execution Date, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the Execution Date and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance 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 GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports to be filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

(k) Agreements, etc. The agreements, contracts and documents of the Company and its Subsidiaries described in the Registration Statement, the General Disclosure Package and the Prospectus conform in all material respects to the descriptions thereof contained therein. There are no agreements, contracts or other documents required by the Securities Act and the rules and regulations thereunder to be described in the Registration Statement, the General Disclosure Package and the Prospectus or to be filed with the Commission as exhibits to the Registration Statement that have not been so described or filed. Each agreement, contract or other document (however characterized or described) to which the Company or any Subsidiary is a party or by which it is or may be bound or affected and (i) that is referred to in the Registration Statement, any Preliminary Prospectus, the General Disclosure Package and the Prospectus, or (ii) is material to the Company's business, has been duly authorized and validly executed by the Company, is in full force and effect in all material respects and is enforceable against the Company and, to the Company's knowledge, the other parties thereto, in accordance with its terms, except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, (y) as enforceability of any indemnification or contribution provision may be limited under the federal and state securities laws, and (z) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. None of such agreements, contracts or documents has been assigned by the Company, and neither the Company or its Subsidiaries nor, to the best of the Company's knowledge, any other party is in default thereunder and, to the best of the Company's knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a default thereunder. To the best of the Company's knowledge, performance by the Company of the material provisions of such agreements, contracts or documents will not result in a violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its Subsidiaries, assets or businesses, except in each case, as would not reasonably be expected to have a Material Adverse Effect.

(l) Material Changes; Undisclosed Events, Liabilities or Developments. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, since the date of the latest audited financial statements included within the Registration Statement, the General Disclosure Package and the Prospectus, except as disclosed in the Registration Statement and the Prospectus: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans and (vi) no officer or director of the Company has resigned from any position with the Company. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, since January 1, 2022, the Company has not: (i) issued any securities or incurred any liability or obligation, direct or contingent, for borrowed money; or (ii) declared or paid any dividend or made any other distribution on or in respect to its capital stock.

(m) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Public Shares or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(n) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Compliance. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(p) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the Registration Statement, General Disclosure Package and Prospectus, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (each, a "Material Permit"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit. The disclosures in the Registration Statement concerning the effects of Federal, State, local and all foreign regulation on the Company's business as currently contemplated are correct in all material respects.

(q) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to, or have valid and marketable rights to lease or otherwise use, all real property and all personal property that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made in accordance with GAAP, and the

payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(r) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the Registration Statement, the General Disclosure Package and the Prospectus and which the failure to do so could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the Registration Statement, the General Disclosure Package and the Prospectus, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(s) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage. Neither the Company nor any Subsidiary has any 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 without a significant increase in cost that could reasonably be expected to have a Material Adverse Effect.

(t) Transactions With Affiliates and Employees. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, none of the executive officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from, any executive officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an executive officer, director, trustee, stockholder, member or partner, in each case that would be required by the Securities Act to be described in the Registration Statement, the General Disclosure Package and the Prospectus.

(u) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance 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 GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

(v) Certain Fees. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, no brokerage or finder's fees or commissions are or will be payable by the Company, any Subsidiary or Affiliate of the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. To the Company's knowledge, except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, there are no other arrangements, agreements or understandings of the Company or, to the Company's knowledge, any of its stockholders that may affect the Underwriters' compensation, as determined by FINRA. The Company has not made any direct or indirect payments (in cash, securities or otherwise) to: (i) any person, as a finder's fee, consulting fee or otherwise, in consideration of such person raising capital for the Company or introducing to the Company persons who raised or provided capital to the Company; or (ii) any FINRA member participating in the Offering as defined in FINRA Rule 5110(j)(15) ("Participating Member"), including any person or entity that has any direct or indirect affiliation or association with a Participating Member, within the twelve months prior to the Execution Date, other than the prior payments to the Representative in connection with the Offering. None of the net proceeds of the Offering will be paid by the Company to any Participating Member or its affiliates, except as specifically authorized herein or in connection with the concurrent offering of warrants as described in the Registration Statement, the General Disclosure Package and the Prospectus.

(w) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Public Shares will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(x) Registration Rights. No Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(y) Listing. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has been approved for listing on the Trading Market. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees of the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(z) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the

Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable as a result of the Underwriters and the Company fulfilling their obligations or exercising their rights under the Transaction Documents.

(aa) Disclosure; 10b-5. The Registration Statement (and any further documents to be filed with the Commission) contains all exhibits and schedules as required by the Securities Act. Each of the Registration Statement and any post-effective amendment thereto, if any, at the time it became effective, complied in all material respects with the Securities Act and the applicable rules and regulations under the Securities Act and did not and, as amended or supplemented, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and the Preliminary Prospectus, each as of its respective date, comply in all material respects with the Securities Act and the applicable rules and regulations. Each of the Prospectus and the Preliminary Prospectus, as amended or supplemented, did not and will not contain as of the date thereof any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. No post-effective amendment to the Registration Statement reflecting any facts or events arising after the date thereof which represent, individually or in the aggregate, a fundamental change in the information set forth therein is required to be filed with the Commission. There are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (x) have not been filed as required pursuant to the Securities Act or (y) will not be filed within the requisite time period. There are no contracts or other documents required to be described in the Prospectus or Preliminary Prospectus, or to be filed as exhibits or schedules to the Registration Statement, which have not been described or filed as required.

(bb) Free-Writing Prospectuses, etc. Neither: (i) any Issuer-Represented General Free Writing Prospectus(es) issued at or prior to the Time of Sale and the Statutory Prospectus, all considered together (collectively, the "General Disclosure Package"), nor (ii) any Issuer-Represented Free Writing Prospectus(es), when considered together with the General Disclosure Package, nor (iii) any Written Testing-the-Waters Communication, when considered together with the General Disclosure Package, includes or included as of the Time of Sale any untrue statement of a material fact or omits or omitted as of the Time of Sale to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Each Issuer-Represented Free Writing Prospectus, as of its issue date and at all subsequent times until the Closing Date or until any earlier date that the Company notified or notifies the Representative as described in Section 4.2(a), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the then-current Registration Statement, Statutory Prospectus or Prospectus.

(cc) Offering Materials. The Company has not distributed and will not distribute any prospectus or other offering material in connection with the Offering other than the General Disclosure Package, any Issuer-Represented Free Writing Prospectus, the Prospectus, any Testing-the-Waters Communication made in compliance with the terms hereof or other materials permitted by the Securities Act to be distributed by the Company. Unless the Company obtains the prior consent of the Representative, the Company has not made and will not make any offer relating to the Public Securities that would constitute an "issuer free writing prospectus," as defined in Rule 433 under the Securities Act, or that would otherwise constitute a "free writing prospectus," as defined in Rule 405 under the Securities Act, required to be filed with the Commission; provided that the prior written consent of the Representative shall be deemed to have been given in respect of any free writing prospectus referenced on Annex I attached hereto. The Company has complied and will comply with the requirements of Rules 164 and 433 under the Securities Act applicable to any Issuer-Represented Free Writing Prospectus as of its issue date and at all subsequent times through the Closing Date, including timely filing with the Commission where required, legending and record keeping. To the extent an electronic road show is used, the Company has satisfied and will satisfy the conditions in Rule 433 under the Securities Act to avoid a requirement to file with the Commission any electronic road show.

(dd) Statistical Information. The statistical, industry-related and market-related data included in the Registration Statement, the General Disclosure Package and the Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data agree in all material respects with the sources from which they are derived, and the Company has obtained the written consent to the use of such data from such sources, to the extent required.

(ee) Forward-Looking Statements. The Company had a reasonable basis for, and made in good faith, each "forward-looking statement" (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(ff) No Integrated Offering. Neither the Company, nor to the knowledge of the Company any of its Affiliates, nor to the knowledge of the Company any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Public Shares to be integrated with prior offerings by the Company for purposes of the Securities Act.

(gg) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Public Shares hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. The Registration Statement, the General Disclosure Package and the Prospectus sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(hh) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(ii) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. Except as set forth in the Registration Statement, the General Disclosure Package and the Prospectus, there are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim. The provisions for taxes payable, if any, shown on the financial statements filed with or as part of the Registration Statement are sufficient for all accrued and unpaid taxes, whether or not disputed, and for all periods to and including the dates of such consolidated financial statements. The term "taxes" mean all federal, state, local, foreign, and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatsoever, together with any interest and any penalties, additions to tax, or additional amounts with respect thereto. The term "returns" means all returns, declarations, reports, statements, and other documents required to be filed in respect to taxes.

(jj) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated in any material respect any provision of FCPA. The Company has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company to comply in all material respects with the FCPA.

(kk) Accountants. To the knowledge and belief of the Company, the Company Auditor (i) is an independent registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the annual financial statements to be included in the Company's Preliminary Prospectus, Prospectus, or to be filed as exhibits or schedules to the Registration Statement. The Company Auditor has not, during the periods covered by the financial statements included in the Prospectus, provided to the Company any non-audit services, as such term is used in Section 10A(g) of the Exchange Act.

(ll) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department.

(mm) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon the Representative's request.

(nn) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(oo) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(pp) D&O Questionnaires. To the Company's knowledge, all information contained in the questionnaires completed by each of the Company's directors and officers in connection with the Offering as well as in the Lock-Up Agreement provided to the Underwriters is true and correct in all respects and the Company has not become aware of any information which would cause the information disclosed in such questionnaires become inaccurate and incorrect.

(qq) FINRA Affiliation. No executive officer, director or any beneficial owner of 5% or more of the Company's unregistered securities has any direct or indirect affiliation or association with any FINRA member (as determined in accordance with the rules and regulations of FINRA) that is participating in the Offering. The Company will advise the Representative and EGS if it learns that any executive officer, director or owner of 5% or more of the Company's outstanding shares of Common Stock or Common Stock Equivalents is or becomes an affiliate or associated person of a FINRA member firm.

(rr) Officers' Certificate. Any certificate signed by any duly authorized officer of the Company and delivered to the Representative or EGS shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

(ss) Board of Directors. The Board of Directors is comprised of the persons set forth under the heading of the Prospectus captioned "Management." The qualifications of the persons serving as board members and the overall composition of the Board of Directors comply with the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder applicable to the Company and the rules of the Trading Market. Immediately following the closing of the Offering, at least one member of the Board of Directors qualifies as a "financial expert" as such term is defined under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder and the rules of the Trading Market. In addition, immediately following the closing of the Offering, at least a majority of the persons serving on the Board of Directors will qualify as "independent" as defined under the rules of the Trading Market.

(tt) Cybersecurity. (i)(x) There has been no security breach or other compromise of or relating to any of the Company's or any Subsidiary's information technology and computer systems, networks, hardware, software, data (including the data of its respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of it), equipment or technology (collectively, "IT Systems and Data") and (y) the Company and the Subsidiaries have not been notified of, and has no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to its IT Systems and Data; (ii) the Company and the Subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, individually or in the aggregate, have a Material Adverse Effect; (iii) the Company and the Subsidiaries have implemented and maintained commercially reasonable safeguards to maintain and protect its

material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and Data; and (iv) the Company and the Subsidiaries have implemented backup and disaster recovery technology consistent with industry standards and practices.

(uu) Compliance with Data Privacy Laws. (i) The Company and the Subsidiaries are, and at all times during the last three (3) years were, in compliance in all material respects with all applicable state, federal and foreign data privacy and security laws and regulations, including, without limitation, the European Union General Data Protection Regulation ("GDPR") (EU 2016/679) (collectively, "Privacy Laws"); (ii) the Company and the Subsidiaries have in place, comply with, and take appropriate steps reasonably designed to ensure compliance with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling and analysis of Personal Data (as defined below) (the "Policies"); (iii) the Company provides accurate notice of its applicable Policies to its customers, employees, third party vendors and representatives as required by the Privacy Laws; and (iv) applicable Policies provide accurate and sufficient notice of the Company's then-current privacy practices relating to its subject matter, and do not contain any material omissions of the Company's then-current privacy practices, as required by Privacy Laws. "Personal Data" means (i) a natural person's name, street address, telephone number, email address, photograph, social security number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by GDPR; and (iv) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any identifiable data related to an identified person's health or sexual orientation. (i) None of such disclosures made or contained in any of the Policies have been inaccurate, misleading, or deceptive in violation of any Privacy Laws and (ii) the execution, delivery and performance of the Transaction Documents will not result in a breach of any Privacy Laws or Policies. Neither the Company nor the Subsidiaries (i) to the knowledge of the Company, has received written notice of any actual or potential liability of the Company or the Subsidiaries under, or actual or potential violation by the Company or the Subsidiaries of, any of the Privacy Laws; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation or other corrective action pursuant to any regulatory request or demand pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement by or with any court or arbitrator or governmental or regulatory authority that imposed any obligation or liability under any Privacy Law.

(vv) Environmental Laws. The Company and its Subsidiaries (i) are in compliance in all material respects with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Amendments to Registration Statement. The Company has delivered, or will as promptly as practicable deliver, to the Underwriters complete conformed copies of the Registration Statement and of each consent and certificate of experts, as applicable, filed as a part thereof, and conformed copies of the Registration Statement (without exhibits), the Prospectus and any Preliminary Prospectus, as amended or supplemented, in such quantities and at such places as an Underwriter reasonably requests. Neither the Company nor any of its directors and officers has distributed and none of them will distribute, prior to the Closing Date, any offering material in connection with the offering and sale of the Public Shares other than the Prospectus, any Preliminary Prospectus, the Registration Statement, the General Disclosure Package and copies of the documents incorporated by reference therein. The Company shall not file any such amendment or supplement to the Registration Statement or the Prospectus to which the Representative shall reasonably object in writing.

4.2 Federal Securities Laws.

(a) Compliance. During the time when a Prospectus is required to be delivered under the Securities Act, the Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act and the rules and regulations thereunder and the Exchange Act and the rules and regulations thereunder, as from time to time in force, so far as necessary to permit the continuance of sales of or dealings in the Public Shares in accordance with the provisions hereof and the Prospectus. If at any time when a Prospectus relating to the Public Shares is required to be delivered under the Securities Act, any event shall have occurred as a result of which, in the opinion of counsel for the Company or counsel for the Underwriters, the Prospectus, as then amended or supplemented, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Prospectus to comply with the Securities Act, the Company will notify the Underwriters promptly and prepare and file with the Commission, subject to Section 4.1 hereof, an appropriate amendment or supplement in accordance with Section 10 of the Securities Act.

(b) Filing of Final Prospectus. The Company will file the Prospectus (in form and substance satisfactory to the Representative) with the Commission pursuant to the requirements of Rule 424.

(c) Exchange Act Registration. For a period of three (3) years from the Execution Date, the Company will use its best efforts to maintain the registration of the Common Stock under the Exchange Act., and during such period, the Company will not deregister the Common Stock under the Exchange Act without the prior written consent of the Representative.

(d) Free Writing Prospectuses. The Company represents and agrees that it has not made and will not make any offer relating to the Public Shares that would constitute an issuer free writing prospectus, as defined in Rule 433 of the rules and regulations under the Securities Act, without the prior written consent of the Representative. Any such free writing prospectus consented to by the Representative is herein referred to as a **"**Permitted Free Writing Prospectus." The Company represents that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus" as defined in rule and regulations under the Securities Act, and has complied and will comply with the applicable requirements of Rule 433 of the Securities Act, including timely Commission filing where required, legending and record keeping.

4.3 Delivery to the Underwriters of Prospectuses. The Company will deliver to the Underwriters, without charge, from time to time during the period when the Prospectus is required to be delivered under the Securities Act or the Exchange Act such number of copies of each Prospectus as the Underwriters may reasonably request.

4.4 Effectiveness and Events Requiring Notice to the Underwriters. The Company will use its best efforts to cause the Registration Statement to remain effective with a current prospectus until nine (9) months from the Execution Date, and will notify the Representative immediately and confirm the notice in writing: (i) of the effectiveness of the Registration Statement and any amendment thereto; (ii) of the issuance by the Commission of any stop order or of the initiation, or the threatening, of any proceeding for

that purpose; (iii) of the issuance by any state securities commission of any proceedings for the suspension of the qualification of the Public Shares for offering or sale in any jurisdiction or of the initiation, or the threatening, of any proceeding for that purpose; (iv) of the mailing and delivery to the Commission for filing of any amendment or supplement to the Registration Statement, the General Disclosure Package and the Prospectus; (v) of the receipt of any comments or request for any additional information from the Commission; and (vi) of the happening of any event during the time when a Prospectus is required to be delivered under the Securities Act that, in the judgment of the Company, makes any statement of a material fact made in the Registration Statement, the General Disclosure Package or the Prospectus untrue or that requires the making of any changes in the Registration Statement, the General Disclosure Package or the Prospectus in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Commission or any state securities commission shall enter a stop order or suspend such qualification at any time, the Company will make every reasonable effort to obtain promptly the lifting of such order.

4.5 Review of Financial Statements. For a period of five (5) years from the Execution Date, the Company, at its expense, shall cause its regularly engaged independent registered public accountants to review (but not audit) the Company's financial statements for each of the first three (3) fiscal quarters prior to the announcement of quarterly financial information.

4.6 Expenses of the Offering. The Company hereby agrees to pay on each of the Closing Date and each Option Closing Date, if any, to the extent not paid at the Closing Date, all expenses incident to the performance of the obligations of the Company under this Agreement, including, but not limited to: (a) all filing fees and communication expenses relating to the registration of the Public Shares to be sold in the Offering with the Commission, (b) all filing fees and other expenses incurred in connection with qualification of the Public Shares for sale under the laws of such jurisdictions as the Representative designates, (c) costs and expenses related to the review of the Offering by FINRA, including all filing fees and the reasonable fees and disbursements of counsel to the Representative relating to such review not to exceed $10,000, (d) costs and expenses relating to investor presentations or any "road show" in connection with the Offering, including, without limitation, the costs of recording and hosting on the internet of the Company's road show presentation and any travel expenses of the Company's officers and employees and any other expenses of the Company, (e) fees and expenses incident to listing of the Public Shares on such stock exchanges as the Company determines, (f) the fees, disbursements and expenses of the Company's counsel, accountants and other advisors in connection with the Offering, (g) expenses incurred in preparing, printing and distributing preliminary and the preliminary and final prospectus (including any amendments and supplements thereto) to the Representative and the other underwriters in the Offering, if any, and for expenses incurred for preparing, printing and distributing any issuer free writing prospectuses or advertisements to investors or prospective investors, (h) reasonable fees, disbursements and expenses of the Representative's counsel up to an aggregate of $200,000, (i) the costs and expenses of an investor relations firm selected by the Company in its sole discretion, if any, (j) the costs of preparing, printing and delivering certificates representing the Public Shares, (k) fees and expenses of the transfer agent, (l) stock transfer and/or stamp taxes, if any, payable upon the transfer of securities from the Company to the underwriters, (m) to the extent approved by the Company in writing, the costs associated with post-closing advertising of the Offering in the national editions of the Wall Street Journal and New York Times, and (n) fees, expenses and disbursements relating to background checks of the Company's officers and directors in connection with the Offering; provided, however, that the maximum amount of fees, costs and expenses incurred by the Representative with respect to subparagraphs (a) through (n) above, on its own behalf and on behalf of any other underwriters in the Offering, including, without limitation, the reasonable fees, disbursements and expenses of counsel to the Representative, that the Company shall be required to pay shall be up to a maximum of $250,000. The Underwriters may also deduct from the net proceeds of the Offering payable to the Company on the Closing Date, or each Option Closing Date, if any, the expenses set forth herein to be paid by the Company to the Underwriters.

4.7 Application of Net Proceeds. The Company will apply the net proceeds from the Offering received by it in a manner consistent with the application described under the caption "Use of Proceeds" in the Prospectus.

4.8 Delivery of Earnings Statements to Security Holders The Company will make generally available to its security holders as soon as practicable, but not later than the first day of the fifteenth full calendar month following the Execution Date, an earnings statement (which need not be certified by independent public or independent certified public accountants unless required by the Securities Act or the Rules and Regulations under the Securities Act, but which shall satisfy the provisions of Rule 158(a) under Section 11(a) of the Securities Act) covering a period of at least twelve consecutive months beginning after the Execution Date.

4.9 Stabilization. Neither the Company, nor, to its knowledge, any of its employees, directors or shareholders (without the consent of the Representative) has taken or will take, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result in, under the Exchange Act, or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Public Shares.

4.10 Internal Controls. The Company will maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary in order to permit preparation of financial statements in accordance with GAAP 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 accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

4.11 Accountants. The Company shall continue to retain a nationally recognized independent certified public accounting firm for a period of at least three years after the Execution Date. The Underwriters acknowledge that the Company Auditor is acceptable to the Underwriters.

4.12 FINRA. The Company shall advise the Underwriters (who shall make an appropriate filing with FINRA) if it is aware that any 5% or greater shareholder of the Company becomes an affiliate or associated person of an Underwriter.

4.13 No Fiduciary Duties. The Company acknowledges and agrees that the Underwriters' responsibility to the Company is solely contractual and commercial in nature, based on arms-length negotiations and that neither the Underwriters nor their affiliates or any selected dealer shall be deemed to be acting in a fiduciary capacity, or otherwise owes any fiduciary duty to the Company or any of its affiliates in connection with the Offering and the other transactions contemplated by this Agreement. Notwithstanding anything in this Agreement to the contrary, the Company acknowledges that the Underwriters may have financial interests in the success of the Offering that are not limited to the difference between the price to the public and the purchase price paid to the Company by the Underwriters for the shares and the Underwriters have no obligation to disclose, or account to the Company for, any of such additional financial interests. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any breach or alleged breach of fiduciary duty.

4.14 Board Composition and Board Designations. The Company shall ensure that: (i) the qualifications of the persons serving as board members and the overall composition of the Board of Directors comply with the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder and with the listing requirements of the Trading Market and (ii) if applicable, at least one member of the Board of Directors qualifies as a "financial expert" as such term is defined under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder.

4.15 Securities Laws Disclosure; Publicity. At the request of the Representative, by 9:00 a.m. (New York City time) on the Business Day immediately following the date hereof, the Company shall issue a press release disclosing the material terms of the Offering. The Company and the Representative shall consult with each other in issuing any other press releases with respect to the Offering, and neither the Company nor any Underwriter shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of such Underwriter, or without the prior consent of such Underwriter, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. The Company will not issue press releases or engage in any other publicity, without the Representative's prior written consent, for a period ending at 5:00 p.m. (New York City time) on the first business day following the 30th day following the Closing Date, other than normal and customary releases issued in the ordinary course of the Company's business.

4.16 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Underwriter of the Public Shares is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Underwriter of Public Shares could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Public Shares.

4.17 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Option Shares pursuant to the Over-Allotment Option and the Representative's Warrant Shares pursuant to the exercise of the Representative's Warrant.

4.18 Listing of Common Stock. The Company hereby agrees to use best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which the Common Stock has been approved for listing. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application all of the Closing Shares and Option Shares, and will take such other action as is necessary to cause all of the Closing Shares and Option Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.19 Reserved.

4.20 Subsequent Equity Sales. From the date hereof until six (6) months after the Closing Date, neither the Company nor any Subsidiary shall, without the prior written consent of the Representative, (a) offer, sell, or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company or (b) file or cause to be filed any registration statement with the Commission relating to the offering of any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company. Notwithstanding the foregoing, this Section 4.20 shall not apply in respect of an Exempt Issuance.

4.21 Research Independence. The Company acknowledges that each Underwriter's research analysts and research departments, if any, are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriter's research analysts may hold and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of its investment bankers. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against such Underwriter with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriter's investment banking divisions. The Company acknowledges that the Representative is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short position in debt or equity securities of the Company.

ARTICLE V.
DEFAULT BY UNDERWRITERS

If on the Closing Date or any Option Closing Date, if any, any Underwriter shall fail to purchase and pay for the portion of the Closing Shares or Option Shares, as the case may be, which such Underwriter has agreed to purchase and pay for on such date (otherwise than by reason of any default on the part of the Company), the Representative, or if the Representative is the defaulting Underwriter, the non-defaulting Underwriters, shall use their reasonable efforts to procure within 36 hours thereafter one or more of the other Underwriters, or any others, to purchase from the Company such amounts as may be agreed upon and upon the terms set forth herein, the Closing Shares or Option Shares, as the case may be, which the defaulting Underwriter or Underwriters failed to purchase. If during such 36 hours the Representative shall not have procured such other Underwriters, or any others, to purchase the Closing Shares or Option Shares, as the case may be, agreed to be purchased by the defaulting Underwriter or Underwriters, then (a) if the aggregate number of Closing Shares or Option Shares, as the case may be, with respect to which such default shall occur does not exceed 10% of the Closing Shares or Option Shares, as the case may be, covered hereby, the other Underwriters shall be obligated, severally, in proportion to the respective numbers of Closing Shares or Option Shares, as the case may be, which they are obligated to purchase hereunder, to purchase the Closing Shares or Option Shares, as the case may be, which such defaulting Underwriter or Underwriters failed to purchase, or (b) if the aggregate number of Closing Shares or Option Shares, as the case may be, with respect to which such default shall occur exceeds 10% of the Closing Shares or Option Shares, as the case may be, covered hereby, the Company or the Representative will have the right to terminate this Agreement without liability on the part of the non-defaulting Underwriters or of the Company except to the extent provided in Article VI hereof. In the event of a default by any Underwriter or Underwriters, as set forth in this Article V, the applicable Closing Date may be postponed for such period, not exceeding seven days, as the Representative, or if the Representative is the defaulting Underwriter, the non-defaulting Underwriters, may determine in order that the required changes in the Prospectus or in any other documents or arrangements may be effected. The term "Underwriter" includes any person substituted for a defaulting Underwriter. Any action taken under this Section shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

ARTICLE VI.
INDEMNIFICATION

6.1 Indemnification of the Underwriters. Subject to the conditions set forth below, the Company agrees to indemnify and hold harmless the Underwriters, and each dealer selected by each Underwriter that participates in the offer and sale of the Public Shares (each a "Selected Dealer") and each of their respective directors, officers and employees and each Person, if any, who controls such Underwriter or any Selected Dealer ("Controlling Person") within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all loss, liability, claim, damage and expense whatsoever (including but not limited to any and all legal or other expenses reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, whether arising out of any action between such Underwriter and the Company or between such Underwriter and any third party or otherwise) to which they or any of them may become subject under the Securities Act, the Exchange Act or any other statute or at common law or otherwise or under the laws of foreign countries, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in (i) any Preliminary Prospectus, the Registration Statement, the General Disclosure Package or the Prospectus (as from time to time each may be amended and supplemented); (ii) any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Public Shares, including any "road show" or investor presentations made to investors by the Company (whether in person or electronically); or

(iii) any application or other document or written communication (in this Article VI, collectively called "application") executed by the Company or based upon written information furnished by the Company in any jurisdiction in order to qualify the Public Shares under the securities laws thereof or filed with the Commission, any state securities commission or agency, Trading Market or any securities exchange; or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, unless such statement or omission was made in reliance upon and in conformity with written information furnished to the Company with respect to the applicable Underwriter by or on behalf of such Underwriter expressly for use in any Preliminary Prospectus, the Registration Statement, the General Disclosure Package or Prospectus, or any amendment or supplement thereto, or in any application, as the case may be, it being agreed that such information so furnished shall consist solely of: (i) the names of the Underwriters appearing in the Prospectus and (ii) the "Stabilization" and "Electronic Prospectus" sections of the "Underwriting" section of the Prospectus (the **"**Underwriter Information**"**). With respect to any untrue statement or omission or alleged untrue statement or omission made in the Preliminary Prospectus, if any, the indemnity agreement contained in this Section 6.1 shall not inure to the benefit of an Underwriter to the extent that any loss, liability, claim, damage or expense of such Underwriter results from the fact that a copy of the Prospectus was not given or sent to the Person asserting any such loss, liability, claim or damage at or prior to the written confirmation of sale of the Public Shares to such Person as required by the Securities Act and the rules and regulations thereunder, and if the untrue statement or omission has been corrected in the Prospectus, unless such failure to deliver the Prospectus was a result of non-compliance by the Company with its obligations under this Agreement. The Company agrees promptly to notify each Underwriter of the commencement of any litigation or proceedings against the Company or any of its officers, directors or Controlling Persons in connection with the issue and sale of the Public Shares or in connection with the Registration Statement, the General Disclosure Package or Prospectus.

6.2 Procedure. If any action is brought against an Underwriter, a Selected Dealer or a Controlling Person in respect of which indemnity may be sought against the Company pursuant to Section 6.1, such Underwriter, such Selected Dealer or Controlling Person, as the case may be, shall promptly notify the Company in writing of the institution of such action and the Company shall assume the defense of such action, including the employment and fees of counsel (subject to the reasonable approval of such Underwriter or such Selected Dealer, as the case may be) and payment of actual expenses. Such Underwriter, such Selected Dealer or Controlling Person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter, such Selected Dealer or Controlling Person unless (i) the employment of such counsel at the expense of the Company shall have been authorized in writing by the Company in connection with the defense of such action, or (ii) the Company shall not have employed counsel to have charge of the defense of such action, or (iii) such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to the Company (in which case the Company shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events the reasonable fees and expenses of not more than one additional firm of attorneys selected by such Underwriter (in addition to local counsel), Selected Dealer and/or Controlling Person shall be borne by the Company. Notwithstanding anything to the contrary contained herein, if any Underwriter, Selected Dealer or Controlling Person shall assume the defense of such action as provided above, the Company shall have the right to approve the terms of any settlement of such action which approval shall not be unreasonably withheld.

6.3 Indemnification of the Company. Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, its directors, officers and employees and agents who control the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the foregoing indemnity from the Company to such Underwriter, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions made in any Preliminary Prospectus, if any, the Registration Statement or Prospectus or any amendment or supplement thereto or in any application, in reliance upon, and in strict conformity with, written information furnished to the Company with respect to such Underwriter by or on behalf of such Underwriter expressly for use in such Preliminary Prospectus, if any, the Registration Statement or Prospectus or any amendment or supplement thereto or in any such application, it being agreed that such information provided by or on behalf of any Underwriter consists solely of the Underwriter Information. In case any action shall be brought against the Company or any other Person so indemnified based on any Preliminary Prospectus, if any, the Registration Statement or Prospectus or any amendment or supplement thereto or any application, and in respect of which indemnity may be sought against such Underwriter, such Underwriter shall have the rights and duties given to the Company, and the Company and each other Person so indemnified shall have the rights and duties given to such Underwriter by the provisions of this Article VI. Notwithstanding the provisions of this Section 6.3, no Underwriter shall be required to indemnify the Company for any amount in excess of the underwriting discounts and commissions applicable to the Public Shares purchased by such Underwriter. The Underwriters' obligations in this Section 6.3 to indemnify the Company are several in proportion to their respective underwriting obligations and not joint.

6.4 Contribution.

(a) Contribution Rights. In order to provide for just and equitable contribution under the Securities Act in any case in which (i) any Person entitled to indemnification under this Article VI makes a claim for indemnification pursuant hereto but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Article VI provides for indemnification in such case, or (ii) contribution under the Securities Act, the Exchange Act or otherwise may be required on the part of any such Person in circumstances for which indemnification is provided under this Article VI, then, and in each such case, the Company and each Underwriter, severally and not jointly, shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by said indemnity agreement incurred by the Company and such Underwriter, as incurred, in such proportion as is appropriate to reflect not only the relative benefits to such party but also the relative fault of the Company, on the one hand, and the Underwriters, as the case may be, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Public Shares pursuant to this Agreement shall be deemed to be in such proportions that such Underwriter is responsible for that portion represented by the percentage that the underwriting discount appearing on the cover page of the Prospectus bears to the initial offering price appearing thereon and the Company is responsible for the balance; provided, that, no Person guilty of a fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. For purposes of this Section, each director, officer and employee of such Underwriter or the Company, as applicable, and each Person, if any, who controls such Underwriter or the Company, as applicable, within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as such Underwriter or the Company, as applicable. Notwithstanding the provisions of this Section 6.4, no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Public Shares purchased by such Underwriter. The Underwriters' obligations in this Section 6.4 to contribute are several in proportion to their respective underwriting obligations and not joint.

(b) Contribution Procedure. Within fifteen days after receipt by any party to this Agreement (or its representative) of notice of the commencement of any action, suit or proceeding, such party will, if a claim for contribution in respect thereof is to be made against another party ("contributing party"), notify the contributing party of the commencement thereof, but the failure to so notify the contributing party will not relieve it from any liability which it may have to any other party other than for contribution hereunder. In case any such action, suit or proceeding is brought against any party, and such party notifies a contributing party or its representative of the commencement thereof within the aforesaid fifteen days, the contributing party will be entitled to participate therein with the notifying party and any other contributing party similarly notified. Any such contributing party shall not be liable to any party seeking contribution on account of any settlement of any claim, action or proceeding affected by such party seeking contribution without the written consent of such contributing party. The contribution provisions contained in this Section 6.4 are intended to supersede, to the extent permitted by law, any right to contribution under the Securities Act, the Exchange Act or otherwise available.

ARTICLE VII.
MISCELLANEOUS

7.1 Termination.

(a) Termination Right. The Representative shall have the right to terminate this Agreement at any time prior to any Closing Date, (i) if any domestic or international event or act or occurrence has materially disrupted, or in its opinion will in the immediate future materially disrupt, general securities markets in the United States; or (ii) if trading on any Trading Market shall have been suspended or materially limited, or minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required by FINRA or by order of the Commission or any other government authority having jurisdiction, or (iii) if the United States shall have become involved in a new war or an increase in major hostilities, or (iv) if a banking moratorium has been declared by a New York State or federal authority, or (v) if a moratorium on foreign exchange trading has been declared which materially adversely impacts the United States securities markets, or (vi) if the Company shall have sustained a material loss by fire, flood, accident, hurricane, earthquake, theft, sabotage or other calamity or malicious act which, whether or not such loss shall have been insured, will, in the Representative's opinion, make it inadvisable to proceed with the delivery of the Public Shares, or (vii) if the Company is in material breach of any of its representations, warranties or covenants hereunder, or (viii) if the Representative shall have become aware after the date hereof of such a material adverse change in the conditions or prospects of the Company, or such adverse material change in general market conditions as in the Representative's judgment would make it impracticable to proceed with the offering, sale and/or delivery of the Public Shares or to enforce contracts made by the Underwriters for the sale of the Public Shares.

(b) Expenses. In the event this Agreement shall be terminated pursuant to Section 7.1(a), within the time specified herein or any extensions thereof pursuant to the terms herein, the Company shall be obligated to pay to the Representative its actual and accountable out of pocket expenses related to the transactions contemplated herein then due and payable, including the fees and disbursements of EGS, up to $100,000 (provided, however, that such expense cap in no way limits or impairs the indemnification and contribution provisions of this Agreement).

(c) Indemnification. Notwithstanding any contrary provision contained in this Agreement, any election hereunder or any termination of this Agreement, and whether or not this Agreement is otherwise carried out, the provisions of Article VI shall not be in any way effected by such election or termination or failure to carry out the terms of this Agreement or any part hereof.

7.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, the Preliminary Prospectus and the Prospectus, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. Notwithstanding anything herein to the contrary, the Engagement Agreement, dated September 14, 2023, as amended ("Engagement Agreement"), by and between the Company and the Representative, shall continue to be effective and the terms therein shall continue to survive and be enforceable by the Representative in accordance with its terms, provided that, in the event of a conflict between the terms of the Engagement Agreement and this Agreement, the terms of this Agreement shall prevail.

7.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via e-mail attachment at the email address set forth below at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via e-mail attachment at the e-mail address as set forth below that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, (c) the second (2^{nd}) Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth below:

(a) if sent to the Representative or any Underwriter, shall be delivered personally, by e-mail, or sent by a nationally recognized overnight courier service to:

Newbridge Securities Corporation
1200 N Federal Hwy, Suite 400
Boca Raton, Florida 33432
Attention: [___]
Email: [___]

with a copy to Underwriters' Counsel (which shall not constitute notice) at:

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas, 11^{th} Floor
New York, New York 10105
Attention: Matthew Bernstein, Esq.
Email: mbernstein@egsllp.com

(b) if sent to the Company, shall be mailed, delivered, emailed or faxed to the Company and its counsel (with notice to such counsel notice shall be courtesy notice only) at the addresses set forth in the Registration Statement.

7.4 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Representative. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

7.5 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

7.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

7.7 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether

brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Article VI, the prevailing party in such Action or Proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

7.8 Survival. The representations and warranties contained herein shall survive the Closing and the Option Closing, if any, and the delivery of the Public Shares.

7.9 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such ".pdf" signature page were an original thereof.

7.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

7.11 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Underwriters and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

7.12 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

7.13 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

7.14 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVE FOREVER ANY RIGHT TO TRIAL BY JURY.**

(Signature Pages Follow)

If the foregoing correctly sets forth the understanding between the Underwriters and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among the Company and the several Underwriters in accordance with its terms.

Very truly yours,

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____
Name:
Title:

Accepted on the date first above written.

NEWBRIDGE SECURITIES CORPORATION

As the Representative of the several
Underwriters listed on Schedule I

By: _____
Name:
Title:

SCHEDULE I

Schedule of Underwriters

Underwriters	Closing Shares	Closing Purchase Price
Total		

Exhibit A

Form of Lock-Up Agreement

Exhibit 3.5

Amended and Restated Bylaws

of

Heritage Distilling Holding Company, Inc.

(a Delaware corporation)

Effective [ ], 2024

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(continued)

Amended and Restated
Bylaws
of
Heritage Distilling Holding Company, Inc.

Article I - Corporate Offices

1.1 Registered Office.

The address of the registered office of Heritage Distilling Holding Company, Inc. (the "Corporation") in the State of Delaware, and the name of its registered agent at such address, shall be as set forth in the Corporation's certificate of incorporation, as the same may be amended and/or restated from time to time (the "Certificate of Incorporation").

1.2 Other Offices.

The Corporation may have additional offices and places of business at any place or places, within or outside the State of Delaware, as the Corporation's board of directors (the "Board") may from time to time determine or as the affairs of the Corporation may require.

Article II - Meetings of Stockholders

2.1 Place of Meetings.

Meetings of stockholders shall be held at any place within or outside the State of Delaware, designated by the Board, provided that the Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 Annual Meeting.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 of these bylaws may be transacted. The Board may postpone or reschedule any previously scheduled annual meeting of stockholders.

2.3 Special Meeting.

Subject to the rights of the holders of any outstanding series of the preferred stock of the Corporation and to the requirements of applicable law, special meetings of the stockholders for any purpose or purposes may be called, postponed, rescheduled or cancelled only by the Board pursuant to a resolution adopted by a majority of the Board and may not be called by any other person. Special meetings shall be held at such place, either within or without the State of Delaware, and at such time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 211(a)(2) of the DGCL.

No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting.

2.4 Notice of Business to be Brought before a Meeting

(i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action and must be (a) specified in a notice of meeting given by or at the direction of the Board of Directors or any duly authorized committee thereof, (b) if not specified in a notice of meeting, otherwise brought before the meeting by the Board of Directors or any duly authorized committee thereof, the Executive Chairman of the Board or Chairperson of the Board or (c) otherwise properly brought before the meeting by a stockholder present in person who (A) (1) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (2) is entitled to vote at the meeting, and (3) has complied with this Section 2.4 in all applicable respects or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"). The foregoing clause (c) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. For purposes of this Section 2.4, "present in person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 2.5 and Section 2.6, and this Section 2.4 shall not be applicable to nominations except as expressly provided in Section 2.5 and Section 2.6.

(ii) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (a) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (b) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than the close of business on the 90th day nor more than the opening of business on the 120th day prior to the one-year anniversary of the immediately preceding year's annual meeting of the stockholders; provided, however, that if the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the close of business on the 120th day before the meeting and not later than the later of (x) the close of business on the 90th day prior to such annual meeting or(y) the close of business on the 10th day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(iii) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the Secretary shall set forth:

(a) As to each Proposing Person (as defined below), (1) the name and record address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records) and the name and address of the beneficial owner, if any, on whose behalf the proposal is made; and (2) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (1) and (2) are referred to as "Stockholder Information");

(b) As to each Proposing Person, (1) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (2) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (3) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (4) any other material relationship between such Proposing Person, on the one hand, and the Corporation, or any of its officers or directors, or any affiliate of the Corporation, on the other hand, (5) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (6) a representation that such Proposing Person is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, (7) a representation that such Proposing Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal and (8) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (1) through (8) are referred to as "Disclosable Interests"); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(c) As to each item of business that the Proposing Person proposes to bring before the annual meeting, (1) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment), and (3) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder(s) or persons(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation or any other person or entity (including their names) in connection with the proposal of such business by such stockholder; and (4) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this paragraph (c) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

For purposes of this Section 2.4, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(iv) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(v) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Without limiting the foregoing, in advance of any meeting of stockholders, the Board of Directors shall also have the power to determine whether any proposed business was made in accordance with the provisions of this Section 2.4.

(vi) This Section 2.4 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(vii) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service, in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act or by such other means as is reasonably designed to inform the public or securityholders of the Corporation in general of such information including, without limitation, posting on the Corporation's investor relations website.

2.5 Notice of Nominations for Election to the Board of Directors

(i) Subject in all respects to the provisions of the Certificate of Incorporation, nominations of any person for election to the Board of Directors at an annual

meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (x) by or at the direction of the Board of Directors, including by any committee or persons authorized to do so by the Board of Directors or these bylaws, or (y) by a stockholder present in person (A) who was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.5 and Section 2.6 as to such notice and nomination. For purposes of this Section 2.5, "present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. The foregoing clause (y) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

(ii) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (1) provide Timely Notice (as defined in Section 2.4) thereof in writing and in proper form to the Secretary of the Corporation, (2) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.5 and Section 2.7 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5 and Section 2.6.

(a) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting in accordance with the Certificate of Incorporation, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (1) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, (2) provide the information with respect to such stockholder and its candidate for nomination as required by this Section 2.5 and Section 2.6 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the later of (x) close of business on the 90th day prior to such special meeting or (y) the close of business on the 10th day following the day on which public disclosure (as defined in Section 2.4) of the date of such special meeting was first made.

(b) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) In no event may a Nominating Person provide Timely Notice with respect to a greater number of director candidates than are subject to election by shareholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (1) the conclusion of the time period for Timely Notice, (2) the date set forth in Section 2.5(ii)(a), or (3) the tenth day following the date of public disclosure (as defined in Section 2.4) of such increase.

(iii) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the Secretary shall set forth:

(a) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(iii)(a), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(a));

(b) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(iii)(b), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(iii)(b) and the disclosure with respect to the business to be brought before the meeting in Section 2.4(iii)(b) shall be made with respect to the election of directors at the meeting); and

(c) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (1) all information with respect to such candidate for nomination that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 and Section 2.6 if such candidate for nomination were a Nominating Person, (2) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (3) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (1) through (3) are referred to as "Nominee Information"), and (4) a completed and signed questionnaire, representation and agreement as provided in Section 2.6(i).

For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any other participant in such solicitation.

(iv) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(v) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

2.6 Additional Requirements for Valid Nomination of Candidates to Serve as Director and, if Elected, to be Seated as Directors

(i) To be eligible to be a candidate for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in Section 2.5 and the candidate for nomination, whether nominated by the Board of Directors or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board of Directors) to the Secretary at the principal executive offices of the Corporation (a) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, and such additional information with respect to such proposed nominee as would be required to be provided by the Corporation pursuant to Schedule 14A if such proposed nominee were a participant in the solicitation of proxies by the Corporation in connection with such annual or special meeting and (b) a written representation and agreement (in form provided by the Corporation) that such candidate for nomination (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") or (2) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed therein or to the Corporation, (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect), (D) if elected as director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election and (E) consents to being named as a nominee in the Corporation's proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

(ii) The Board of Directors may also require any proposed candidate for nomination as a Director to furnish such other information as may reasonably be requested by the Board of Directors in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon in order for the Board of Directors to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines.

(iii) A candidate for nomination as a director shall further update and supplement the materials delivered pursuant to this Section 2.6, if necessary, so that the information provided or required to be provided pursuant to this Section 2.6 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(iv) No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with Section 2.5 and this Section 2.6, as applicable. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with Section 2.5 and this Section 2.6, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(v) Notwithstanding anything in these bylaws to the contrary, no candidate for nomination shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with Section 2.5 and this Section 2.6.

2.7 Notice of Stockholders' Meetings.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with Section 8.1 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.8 Quorum.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the holders of one-third of the voting power of the stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (i) the person presiding over the meeting or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to recess the meeting or adjourn the meeting from time to time in the manner provided in Section 2.9 of these bylaws until a quorum is present or represented. At any recessed or adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.9 Adjourned Meeting; Notice.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such meeting as of the record date so fixed for notice of such adjourned meeting.

2.10 Conduct of Business.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter of business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.11 Voting.

Except as may be otherwise provided in the Certificate of Incorporation or the DGCL, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise provided in the Certificate of Incorporation, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided in the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority in voting power of the votes cast (excluding abstentions and broker non-votes) on such matter.

2.12 Record Date for Stockholder Meetings and Other Purposes.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than 60 days nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the day immediately preceding the day on which notice is first given, or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting; and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purposes of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.13 Proxies.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission that sets forth or is submitted with information from which it can be determined that the transmission was authorized by the stockholder.

2.14 List of Stockholders Entitled to Vote.

The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.14 or to vote in person or by proxy at any meeting of stockholders.

2.15 Inspectors of Election.

Before any meeting of stockholders, the Board may, and shall if required by law, appoint an inspector or inspectors of election to act at the meeting or its adjournment and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If any person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the person presiding over the meeting shall appoint a person to fill that vacancy.

Such inspectors shall:

(i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the validity of any proxies and ballots;

(ii) count all votes or ballots;

(iii) count and tabulate all votes;

(iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and

(v) certify its or their determination of the number of shares represented at the meeting and its or their count of all votes and ballots.

Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspection with strict impartiality and according to the best of such inspector's ability. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. The inspectors of election may appoint such persons to assist them in performing their duties as they determine. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

2.16 Delivery to the Corporation.

Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by this Article II.

Article III - Directors

3.1 Powers.

Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these bylaws required to be exercised or done by the stockholders.

3.2 Number of Directors.

Subject to the Certificate of Incorporation, the total number of directors constituting the Board shall initially be five directors and shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Chairperson of the Board; Vice Chairperson of the Board; Executive Chairman.

The Board may appoint, in its discretion, from its members a Chairperson of the Board and a Vice Chairperson of the Board, neither of whom need be an employee or officer of the Corporation. The Board may appoint, in its discretion, from its members an Executive Chairman who shall not be an employee or officer of the Corporation. If the Board appoints a Chairperson of the Board, such Chairperson shall perform such duties and possess such powers as are assigned by the Board. If the Board appoints an Executive Chairman, the Executive Chairman shall be delegated the primary responsibility for overseeing and advising the senior management of the Corporation and shall perform such other duties and possess such powers as are assigned by the Board; provided that notwithstanding anything to the contrary herein, the Executive Chairman shall not have charge over the non-delegable duties of the Board. If the Board of Directors appoints a Vice Chairperson of the Board, such Vice Chairperson shall perform such duties and possess such powers as are assigned by the Board. Unless otherwise provided by the Board of Directors, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors.

3.4 Election, Qualification and Term of Office of Directors.

Except as provided in Section 3.5 of these bylaws, and subject to the Certificate of Incorporation, each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term of the class, if any, for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification, retirement or removal in accordance with the Certificate of Incorporation and applicable law. Directors need not be stockholders. The Certificate of Incorporation or these bylaws may prescribe qualifications for directors.

3.5 Resignation and Vacancies.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in Section 3.4.

Unless otherwise provided in the Certificate of Incorporation or these bylaws, vacancies resulting from the death, resignation, disqualification, retirement or removal of any director, and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office,

even if less than a quorum, or by a sole remaining director.

3.6 Place of Meetings; Meetings by Telephone.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to these bylaws shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

3.7 Regular Meetings.

Regularly scheduled, periodic meetings of the Board may be held within or outside the State of Delaware and at such time and at such place as which has been designated by the Board and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, or by electronic mail or other means of electronic transmission. No further notice shall be required for regular meetings of the Board.

3.8 Special Meetings; Notice.

Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the Executive Chairman of the Board, the Chief Executive Officer, a President, or the Secretary.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile or electronic mail;

(iv) sent by other means of electronic transmission; or

(v) sent by a nationally recognized overnight delivery service,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, or other address for electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or electronic mail, or (iii) sent by other means of electronic transmission, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by a nationally recognized overnight delivery service, at least two days before the time of the holding of the meeting. If the notice is sent by U.S. mail, it shall be deposited in the U.S. mail at least five days before the time of the holding of the meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these bylaws, the notice or the waiver of notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 7.13.

3.9 Quorum.

At all meetings of the Board, unless otherwise provided by the Certificate of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 Board Action without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained. Such action by written consent or consent by electronic transmission shall have the same force and effect as a unanimous vote of the Board.

3.11 Fees and Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity, subject to any applicable limit set forth in the Corporation's equity compensation plan as in effect from time to time.

Article IV - Committees

4.1 Committees of Directors.

The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation and shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee. The Board may designate one or more directors as alternate members of any committee, who

may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it. However, no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required by the resolution designating such committee. Meetings and Actions of Committees.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.6 (Place of Meetings; Meetings by Telephone);

(ii) Section 3.7 (Regular Meetings);

(iii) Section 3.8 (Special Meetings; Notice);

(iv) Section 3.10 (Board Action without a Meeting); and

(v) Section 7.13 (Waiver of Notice),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members*However*:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board or the chairperson of the applicable committee; and

(iii) the Board may adopt rules for the governance of any committee to override the provisions that would otherwise apply to the committee pursuant to this Section 4.2, provided that such rules do not violate the provisions of the Certificate of Incorporation or applicable law.

4.2 Subcommittees.

Unless otherwise provided in the Certificate of Incorporation, these bylaws, the resolutions of the Board designating the committee or the charter of such committee adopted by the Board, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Article V - Officers

5.1 Officers.

The officers of the Corporation shall include a Chief Executive Officer, one or more Presidents and a Secretary. The Corporation may also have, at the discretion of the Board, a Chief Financial Officer, a Treasurer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person. No officer need be a stockholder or director of the Corporation.

5.2 Appointment of Officers.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws.

5.3 Subordinate Officers.

The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, a President, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

5.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices.

Any vacancy occurring in any office of the Corporation shall be filled as provided in Section 5.2 or Section 5.3, as applicable.

5.6 Representation of Shares of Other Corporations.

The Chairperson of the Board, the Chief Executive Officer or a President of this Corporation, or any other person authorized by the Board, the Chief Executive Officer or a President, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares or voting securities of any other corporation or other person standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so

by proxy or power of attorney duly executed by such person having the authority.

5.7 Chief Executive Officer.

The Chief Executive Officer shall, subject to the provisions of these by-laws, any employment agreement, any employee plan and the control of the Board of Directors, have general supervision, direction and control over the business of the Corporation and over its officers, employees and agents and shall have full authority to execute all documents and take all actions that the Corporation may legally take. The Chief Executive Officer shall perform all duties incident to the office of the Chief Executive Officer, and any other duties as may be from time to time assigned to the Chief Executive Officer by the Board of Directors, in each case subject to the control of the Board of Directors.

5.8 Other Officers.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

5.9 Compensation.

The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

Article VI - Records

A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the Corporation shall be recorded in accordance with Section 224 of the DGCL and shall be administered by or on behalf of the Corporation. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as adopted in the State of Delaware.

Article VII - General Matters

7.1 Execution of Corporate Contracts and Instruments.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances.

7.2 Stock Certificates.

The shares of the Corporation shall be represented by certificates, provided that the Board by resolution may provide that some or all of the shares of any class or series of stock of the Corporation shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The Executive Chairman, Chairperson or Vice Chairperson of the Board, Chief Executive Officer, a President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile or other electronic means. In case any officer, transfer agent or registrar who has signed or whose facsimile or other electronic signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.3 Special Designation of Certificates.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or on the back of the certificate that the Corporation shall issue to represent such class or series of stock (or, in the case of uncertificated shares, set forth in a notice provided pursuant to Section 151 of the DGCL); provided, however, that except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face of back of the certificate that the Corporation shall issue to represent such class or series of stock (or, in the case of any uncertificated shares, included in the aforementioned notice) a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.4 Lost Certificates.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.5 Shares Without Certificates

The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

7.6 Construction; Definitions.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

7.7 Dividends.

The Board, subject to any restrictions contained in either (i) the DGCL or (ii) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart, out of any of the funds of the Corporation available for dividends, a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.8 Fiscal Year.

The fiscal year of the Corporation shall be the calendar year unless otherwise fixed by resolution of the Board, and may be changed by the Board.

7.9 Seal.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile or other electronic version thereof to be impressed or affixed or in any other manner reproduced.

7.10 Transfer of Stock.

Shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

7.11 Stock Transfer Agreements.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL or other applicable law.

7.12 Registered Stockholders.

The Corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

7.13 Waiver of Notice.

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. All such waivers shall be kept with the books of the Corporation. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these bylaws.

Article VIII - Notice

8.1 Delivery of Notice; Notice by Electronic Transmission

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provisions of the DGCL, the Certificate of Incorporation, or these bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given (1) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (3) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom

the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Corporation. Notwithstanding the provisions of this paragraph, the Corporation may give a notice by electronic mail in accordance with the first paragraph of this section without obtaining the consent required by this paragraph.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iii) if by any other form of electronic transmission, when directed to the stockholder.

Notwithstanding the foregoing, a notice may not be given by an electronic transmission (including electronic mail) from and after the time that (1) the Corporation is unable to deliver by such electronic transmission two consecutive notices given by the Corporation and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice, provided, however, the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Article IX - Indemnification

9.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation

Subject to Section 9.3 and Section 9.11, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to or is otherwise involved (as a witness or otherwise) in 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 the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another enterprise, against 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 if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

9.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation

Subject to Section 9.3 and Section 9.11, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to or is otherwise involved (as a witness or otherwise) in any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity by the Corporation for such expenses which the Court of Chancery or such other court shall deem proper.

9.3 Authorization of Indemnification.

Any indemnification under this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

9.4 Good Faith Defined.

For purposes of any determination under Section 9.3, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 9.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 9.1 or 9.2, as the case may be.

9.5 Indemnification by a Court.

Notwithstanding any contrary determination in the specific case under Section 9.3, and notwithstanding the absence of any determination thereunder, any director or

officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 9.1 or 9.2; provided, that if no determination has been made pursuant to Section 9.3, no such application shall be permitted unless and until thirty (30) days shall have elapsed from the date such director or officer shall have notified the Corporation in writing requesting such determination. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2, as the case may be. Neither a contrary determination in the specific case under Section 9.3 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Article IX shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

9.6 Expenses Payable in Advance.

Subject to Section 9.11, expenses (including without limitation attorneys' fees) incurred by a current or former director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding to which such person is a party or is threatened to be made a party or otherwise involved as a witness or otherwise by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another enterprise, shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such current or former director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article IX.

9.7 Nonexclusivity of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action on another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 9.1 or 9.2 shall be made to the fullest extent permitted by law. The provisions of this Article IX shall not be deemed to preclude the indemnification of any person who is not specified in Section 9.1 or Section 9.2 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

9.8 Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article IX.

9.9 Certain Definitions.

For purposes of this Article IX, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article IX with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article IX shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article IX, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article IX.

9.10 Survival of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

9.11 Limitation on Indemnification.

Notwithstanding anything contained in this Article IX to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 9.5) or advancement of expenses (which shall be governed by Section 9.6), the Corporation shall not be obligated to indemnify any current or former director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person or in defending any counterclaim, cross-claim, affirmative defense, or like claim by the Corporation in such proceeding unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

9.12 Indemnification of Employees and Agents.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article IX to directors and officers of the Corporation.

9.13 Primacy of Indemnification.

Notwithstanding that a director or officer (or, to the extent authorized pursuant to Section 9.12 from time to time, an employee or agent) of the Corporation (collectively, the "Covered Persons") may have certain rights to indemnification, advancement of expenses and/or insurance provided by other persons (collectively, the 'Other Indemnitors"), with respect to the rights to indemnification, advancement of expenses and/or insurance set forth herein, the Corporation: (i) shall be the indemnitor of first resort (i.e., its obligations to Covered Persons are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or

liabilities incurred by Covered Persons are secondary); and (ii) shall be required to advance the full amount of expenses incurred by Covered Persons and shall be liable for the full amount of all liabilities, without regard to any rights Covered Persons may have against any of the Other Indemnitors. No advancement or payment by the Other Indemnitors on behalf of Covered Persons with respect to any claim for which Covered Persons have sought indemnification from the Corporation shall affect the immediately preceding sentence, and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Covered Persons against the Corporation. Notwithstanding anything to the contrary herein, the obligations of the Corporation under this Section 9.13 shall only apply to Covered Persons in their capacity as Covered Persons.

Article X - Amendments

The Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; *provided, however*, that such action by stockholders shall require, in addition to any other vote required by the Certificate of Incorporation or applicable law, the affirmative vote of the holders of at least two-thirds of the voting power of all the then-outstanding shares of voting stock of the Corporation with the power to vote generally in an election of directors, voting together as a single class.

Article XI - Definitions

As used in these bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

An "electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files and information).

An "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered.

The term "person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

* * * * *

Adopted as of: [●], 2024

Last amended as of: N/A

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF THE SERIES A CONVERTIBLE PREFERRED STOCK OF HERITAGE DISTILLING HOLDING COMPANY, INC.

Heritage Distilling Holding Company, Inc. (the "Corporation"), a corporation organized and validly existing under the General Corporation Law of the State of Delaware, hereby certifies that this Certificate of Designation containing the following resolutions has been duly adopted by the Company's Board of Directors by written consent dated May 17, 2024 pursuant to authority conferred upon the Board of Directors by the Company's Amended and Restated Certificate of Incorporation:

WHEREAS, the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate"), authorizes a class of stock designated as Preferred Stock (the "Preferred Stock"), comprising 5,000,000 shares, par value $0.0001 per share, provides that such Preferred Stock may be issued from time to time in one or more series, and vests authority in the Board of Directors, within the limitations and restrictions stated in the Certificate, to fix or alter the voting powers, designations, preferences and relative participating, optional or other special rights, rights and terms of redemption, the redemption price or prices and the liquidation preferences of any series of Preferred Stock within the limitations set forth in the General Corporation Law of the State of Delaware;

WHEREAS, it is the desire of the Board of Directors to designate one new series of Preferred Stock and to fix the voting powers, designations, preferences and rights, and the qualifications, limitations or restrictions thereof, as provided herein.

NOW, THEREFORE, BE IT RESOLVED, that the Corporation does hereby designate 500,000 shares of the authorized but unissued Preferred Stock as Series A Convertible Preferred Stock (the "Series A Preferred Stock") and does hereby fix the powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions of the Series A Preferred Stock to be as follows:

SERIES A CONVERTIBLE PREFERRED STOCK

1. Designation. 500,000 shares of the authorized, but undesignated preferred stock, $.0001 par value per share, of the Corporation are hereby constituted as a series of the preferred stock designated as "Series A Convertible Preferred Stock" ("Series A Preferred Stock"). The date on which the Corporation initially issues any share of Series A Preferred Stock shall be deemed to be its "Original Issuance Date" or "date of issuance" regardless of the number of times transfer of such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share. The Series A Preferred Stock shall have rights and preferences relative to all other classes and series of the capital stock of the Corporation as set forth herein.

2. Dividends.

2.1 Dividend Rights. Commencing on June 15, 2024, cumulative dividends ("Class A Dividends") shall accrue on each share of Class A Preferred Stock, at the rate of fifteen percent (15%) (the "Dividend Rate") of the Series A Stated Amount (as defined below) per annum (accrued daily, from but not including the next preceding Dividend Payment Date (as defined in Section 2.2 below), or, in the case of the first Dividend Payment Date, from June 15, 2024, to and including the respective Dividend Payment Date, on the basis of a 360-day year consisting of twelve (12) 30-day months). The "Series A Stated Amount" shall mean an amount equal to the sum of $12.00 per share plus the amount, if any, of Class A Dividends that have been added to the Series A Stated Amount on any Stated Amount Adjustment Date (as defined below) pursuant to Section 2.2 hereof, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock.

2.2 Dividend Payment Dates. The Class A Dividends shall be payable when and if declared by the board of directors of the Corporation, on such date or dates as the board of directors shall determine (each a "Dividend Payment Date"), to holders of record as of the fifth (5^{th}) business day next preceding the applicable Dividend Payment Date. The Class A Dividends shall accrue and accumulate whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. Notwithstanding the foregoing, on each June 15, commencing on June 15, 2025 (each such day, a "Stated Amount Adjustment Date"), the amount of all accrued and unpaid Class A Dividends on each outstanding share of Series A Preferred Stock shall be deemed to be paid and shall be added to the Stated Amount of such share of Series A Preferred Stock. Each Stated Amount Adjustment Date shall be deemed to be a Dividend Payment Date. Class A Dividends shall also be payable as set forth in Subsections 3.1 and 5.1 hereof.

2.3 Method of Payment of Accrued Class A Dividends Accrued Class A Dividends on the Series A Preferred Stock that have not been added to the Stated Amount pursuant to Section 2.2 may be paid (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and Common Stock. If the Corporation elects to make any such payment, or any portion thereof, in shares of Common Stock, the holder shall be issued a number of shares of Common Stock equal to the quotient of 110% of the amount of accrued dividends to be paid in Common Stock divided by the Series A Conversion Price (as defined below). The Corporation may make payments of Class A Dividend declared pursuant to Section 1.2 (but not Class A Dividends added to the Stated Amount or payable pursuant to Subsections 3.1 and 5.1 hereof) only if the closing price of the Common Stock on a national securities exchange over the five trading days preceding the dividend payment date is at or above the Series A Conversion Price.

3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales

3.1 Payments to Holders of Series A Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of any other shares of capital stock of the Corporation, including the Common Stock, by reason of their ownership thereof, an amount per share of Series A Preferred Stock equal to the greater of (i) 110% of the sum of (a) the Series A Stated Amount, plus (b) the amount of the aggregate Class A Dividends then accrued on such share of Series A Preferred Stock and not previously paid, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 5 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to this sentence is hereinafter referred to as the "Series A Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Subsection 3.1, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2 Payments to Holders of Other Classes of Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed first among the holders of each other class of preferred stock pursuant to the terms of each such class of preferred stock and, thereafter, among the holders of all shares of outstanding Common Stock, pro rata based on the number of shares held by each such holder.

4. Voting. Except as provided by law or by the other provisions of the Certificate or this Certificate of Designation, holders of Series A Preferred Stock shall have no

voting rights.

5. Optional Conversion.

The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

5.1 Right to Convert.

5.1.1 Conversion Ratio. Subject to Section 5.1.2, each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (a) an amount equal to 110% of the sum of (i) the Series A Stated Amount, plus (ii) the amount of all accrued and unpaid Series A Dividends of such share of Series A Preferred Stock, by (b) the Series A Conversion Price (as defined below) in effect at the time of conversion. The "Series A Conversion Price" shall initially be equal to the lesser of (i) $5.00 and (ii) the price per share of the Common Stock in the first underwritten offering of Common Stock of the Corporation following the Original Issuance Date. The Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

5.1.2 Conversion Limitations. The Corporation shall not affect any conversion of the Series A Preferred Stock, and a holder shall not have the right to convert shares of Series A Preferred Stock, pursuant to this Section 5 to the extent that after giving effect to the proposed conversion, the holder (together with the holder's affiliates and any persons acting as a group together with the holder or any of the holder's affiliates) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the holder and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series A Preferred Stock owned by the holder or any of its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Subsection 5.1.2, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Subsection 5.1.2 applies, the determination of whether any share of Series A Preferred Stock is convertible shall be in the sole discretion of the holder thereof, and the submission of a notice of conversion shall be deemed to be the holder's determination of whether the share of Series A Preferred Stock may be converted, in each case subject to the Beneficial Ownership Limitation. For purposes of this Subsection 5.1.2, in determining the number of outstanding shares of Common Stock, the holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Securities and Exchange Commission, as the case may be, (ii) a more recent public announcement by the Corporation, or (iii) a more recent written notice by the Corporation or the transfer agent for the Common Stock setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a holder of Series A Preferred Stock, the Corporation shall within one trading day confirm orally and in writing to the holder the number of shares of Common Stock then outstanding. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the Series A Preferred Stock held by the holder. The holder, upon not less than 61 days' prior notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Subsection 5.1.2, provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of the Series A Preferred Stock held by the holder and the Beneficial Ownership Limitation provisions of this Subsection 5.1.2 shall continue to apply. Any such increase or decrease will not be effective until the 61st day after such notice is delivered to the Corporation. The Beneficial Ownership Limitation provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Subsection 5.1.2 to correct this paragraph (or any portion hereof) that may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this Subsection 5.1.2 shall apply to a successor holder of the Series A Preferred Stock.

5.1.3 Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series A Preferred Stock.

5.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the board of directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

5.3 Mechanics of Conversion.

5.3.1 Notice of Conversion. In order for a holder of Series A Preferred Stock to voluntarily convert shares of Series A Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series A Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series A Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "Conversion Time"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Series A Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, and (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion.

5.3.2 Reservation of Shares. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but

unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate. Before taking any action which would cause an adjustment reducing the Series A Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price.

5.3.3 Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 5.2. Any shares of Series A Preferred Stock so converted shall be retired and cancelled, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock accordingly.

5.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price shall be made for any declared but unpaid dividends on the Series A Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

5.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes, except the income taxes of recipient Holder, that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

5.4 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series A Original Issue Date effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series A Original Issue Date combine the outstanding shares of Common Stock, the Applicable Series A Conversion in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

5.5 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series A Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

5.6 Adjustment for Merger or Reorganization, etc. If there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the board of directors of the Corporation) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

5.7 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 5, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock, including the date through which Series A Dividends have been accrued for purposes of such calculation.

5.8 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation or any reclassification of the Common Stock of the Corporation; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series A Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

6. Mandatory Conversion.

6.1 Trigger Events. At the close of business at the office of the transfer agent for the Series A Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) on June 15, 2027 (the "Mandatory Conversion Time"), all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the then effective conversion rate.

6.2 Procedural Requirements. All holders of record of shares of Series A Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series A Preferred Stock pursuant to this Section 6. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series A Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series A Preferred Stock converted pursuant to Section 6.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 6.2. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series A Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 5.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion. Such converted Series A Preferred Stock shall be retired and cancelled.

7. Redemption.

7.1 Optional Redemption. From and after June 15, 2025, the Corporation, at the option of its board of directors or any duly authorized committee of the board of directors, may redeem the shares of Series A Preferred Stock at the time outstanding, in whole or in part, out of funds legally available therefor. The redemption price per share for shares of Series A Preferred Stock redeemed pursuant to the preceding sentence shall be an amount equal to 110% of the sum of (i) the Series A Stated Amount, plus (ii) the amount of the aggregate Class A Dividends then accrued on such share of Series A Preferred Stock and not previously paid.

7.2 Notice of Redemption. Notice of every redemption of shares of Series A Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 7.2 shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series A Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates for such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date.

7.3 Partial Redemption. In case of any redemption of only part of the shares of Series A Preferred Stock at the time outstanding, the shares of Series A Preferred Stock to be redeemed shall be selected either pro rata from the holders of record of Series A Preferred Stock in proportion to the number of shares of Series A Preferred Stock held by such holders or by lot. Subject to the provisions of this Section 6, the board of directors of the Corporation or any duly authorized committee of the board of directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series A Preferred Stock shall be redeemed from time to time.

7.4 Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the board of directors or any duly authorized committee of the Board of Directors (the "Depositary Company") in trust for the pro rata benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depositary Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

8. Amendment; Waiver. Except as otherwise required by law, this Certificate of Designation may be amended by the Corporation with the written consent or affirmative vote of the holders of a majority of the shares of Series A Preferred Stock then outstanding. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the written consent or affirmative vote of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

9. Notices. Any notice required or permitted by the provisions hereof to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

10. Record Holders. The Corporation and its transfer agent may deem and treat the record neither the Corporation nor its transfer agent shall be affected by any notice to the contrary.

11. No Maturity or Sinking Fund. The Series A Preferred Stock has no stated maturity date, and no sinking fund has been established for the retirement or redemption of the Series A Preferred Stock.

12. Exclusion of Other Rights. The Series A Preferred Stock shall not have any preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption other than expressly set forth in the Certificate and this Certificate of Designations.

13. Headings of Subdivisions. The headings of the various subdivisions of this Certificate of Designations are for convenience of reference only and shall not affect the interpretation of any of the provisions of this Certificate of Designations.

14. Severability of Provisions. If any preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series A Preferred Stock set forth in the Certificate and this Certificate of Designations are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of Series A Preferred Stock set forth in the Certificate that can be given effect without the invalid, unlawful or unenforceable provision thereof shall, nevertheless, remain in full force and effect and no preferences or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series A Preferred Stock set forth in this Certificate of Designations shall be deemed dependent upon any other provision thereof unless so expressed therein.

15. No Preemptive Rights. No holder of shares of Series A Preferred Stock shall be entitled to any preemptive rights to subscribe for or acquire any unissued shares of capital stock of the Corporation (whether now or hereafter authorized) or securities of the Corporation convertible into or carrying a right to subscribe to or acquire shares of capital stock of the Corporation.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Certificate of Designations to be signed on behalf of Heritage Distilling Holding Company, Inc. this 27th day of September, 2024.

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: /s/ Justin Stiefel
Name: Justin Stiefel
Title: Chief Executive Officer

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

HERITAGE DISTILLING HOLDING COMPANY, INC.

Warrant Shares: [●] Issue Date: [●], 2024

THIS COMMON STOCK PURCHASE WARRANT (this "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the date that is the fifth (5th) anniversary of the Issue Date (the "Termination Date") but not thereafter, to subscribe for and purchase from Heritage Distilling Holding Company, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Subscription Agreement (the "Subscription Agreement"), dated [●], 2024, among the Company and the original purchaser of this Warrant.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days (as defined in Section 2(c) herein) and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be $0.01 subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading

Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the reasonable fees and expenses of which shall be paid by the Company.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the OTC Markets (or any successors to any of the foregoing).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the reasonable fees and expenses of which shall be paid by the Company.

(d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants), and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be

issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any Warrants, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person (excluding a merger effected solely to change the Company's name), (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (or any of its Subsidiaries) is a party, any sale or transfer of all or substantially all of its assets, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice (unless such information is filed with the Commission, in which case a notice shall not be required)stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(g) Voluntary Adjustment By Company. The Company may at any time during the term of this Warrant, with the prior written consent of the Holder, reduce the then current Exercise Price to any amount for any period of time deemed appropriate by the Board of Directors of the Company unless such reduction would result in the Company violating any rules of its principal trading market.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to

compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the original Issue Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, make usual and customary representations as to investment intent to the Company.

(e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event including if the Company is for any reason unable to issue and deliver Warrant Shares upon exercise of the this Warrant as required pursuant to the terms hereof, shall the Company be required to net cash settle an exercise of this Warrant or cash settle in any other form.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then such action may be taken or such right may be exercised on the next succeeding Trading Day.

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

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

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

(e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the laws of the State of Delaware as they are applied to contracts executed, delivered and to be wholly performed within the State of Washington.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Subscription Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

Notices. Any notice, request or other document required or permitted to be given or delivered to the either party to the other shall be delivered in by recognized overnight courier, facsimile or email as follows:

If to the Holder:
[___]

Attn: [___]
Email: [___]

If to the Company:

Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, WA 98332
Attn: Chief Executive Officer
Email: stockholder.info@heritagedistilling.com

(h) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

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

(j) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

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

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

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

****

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: HERITAGE DISTILLING HOLDING COMPANY, INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____
Signature of Authorized Signatory of Investing Entity: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____
Date: _____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____
Email Address: _____

Dated: _____ __, _____

Holder's Signature: _____

Holder's Address:_____

PRYOR CASHMAN LLP
New York | Los Angeles | Miami
7 Times Square, New York, NY 10036-6569 Tel: 212-421-4100 Fax: 212-326-0806
www.pryorcashman.com

October 3, 2024

Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, WA 98332

Re: Securities Being Registered under Registration Statement on Form S-1 (Registration No. 333-279382)

Ladies and Gentlemen:

We have acted as counsel to Heritage Distilling Holding Company, Inc., a Delaware corporation (the "***Company***"), in connection with the preparation of the Company's registration statement on Form S-1, Registration No. 333-279382 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "***Securities Act***"), initially filed by the Company with the Securities and Exchange Commission (the "***Commission***") on May 13, 2024, as thereafter amended or supplemented. The Registration Statement relates to the registration of the proposed offer and sale of (i) a proposed maximum aggregate offering price of $8,625,000 of shares of the Company's common stock, par value $0.0001 per share (the "***Common Stock***" and each such share of Common Stock, a "***Share***" and collectively, the "***Shares***"), (ii) a proposed maximum aggregate offering price of $431,250 of warrants (the "***Warrants***") to purchase shares of Common Stock (the "***Warrant Shares***") to be issued to Newbridge Securities Corporation (the "***Representative***"), or its designees, as compensation for its services pursuant to an underwriting agreement to be entered into by and between the Company, the Representative and the other underwriters named therein, substantially in the form filed as Exhibit 1.1 to the Registration Statement (the "***Underwriting Agreement***"), and (iii) 313,187 shares of Common Stock held by the selling stockholders (the "***Selling Stockholders***") named in the Registration Statement (the "***Selling Stockholder Shares***"). The Shares, the Warrants, the Warrant Shares and the Selling Stockholder Shares are collectively referred to as the "***Securities***."

In rendering the opinion set forth herein, we have examined the originals, or photostatic or certified copies, of (i) the Amended and Restated Certificate of Incorporation (the "***Charter***") and the Amended and Restated Bylaws of the Company, each as amended to date, (ii) certain resolutions of the Board of Directors of the Company related to the filing of the Registration Statement, the authorization and issuance of the Securities and related matters (the "***Resolutions***"), (iii) the Registration Statement and all exhibits thereto, (iv) the form of Underwriting Agreement, (v) the form of the Warrants, and (vi) such other records, documents and instruments as we deemed relevant and necessary for purposes of the opinion stated herein. In making the foregoing examination we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as photostatic or certified copies, and the authenticity of the originals of such copies. As to all questions of fact material to this opinion, where such facts have not been independently established, we have relied, to the extent we have deemed reasonably appropriate, upon representations or certificates of officers of the Company or governmental officials.

PRYOR CASHMAN LLP

With regard to our opinion regarding the Warrants and the Warrant Shares, we express no opinion to the extent that, notwithstanding its current reservation of Warrant Shares, future issuances of securities of the Company, including the Warrant Shares, or anti-dilution adjustments to outstanding securities of the Company, including the Warrants, cause the Warrants to be exercisable for more shares of Common Stock than the number that then remain authorized but unissued under the Charter.

Our opinions expressed herein are subject to the following qualifications and exceptions: (i) the effect of bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, including, without limitation, laws relating to fraudulent transfers or conveyances, preferences, and equitable subordination; and (ii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law). We express no opinion as to the enforceability of any indemnification provision, or as to the enforceability of any provision that may be deemed to constitute liquidated damages.

This opinion is limited in all respects to the General Corporation Law of the State of Delaware and, with respect to the Warrants constituting valid and legally binding obligations of the Company, the laws of the State of New York, and we express no opinion as to the laws, statutes, rules or regulations of any other jurisdictions. The reference and limitation to the "General Corporation Law of the State of Delaware" includes all applicable Delaware statutory provisions of law and reported judicial decisions interpreting these laws. Our opinion is based on these laws as in effect on the date hereof. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation. Where our opinions expressed herein refer to events to occur at a future date, we have assumed that there will have been no changes in the relevant law or facts between the date hereof and such future date. Our opinions expressed herein are limited to the matters expressly stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. Not in limitation of the foregoing, we are not rendering any opinion as to the compliance with any other federal or state law, rule or regulation relating to securities, or to the sale or issuance thereof.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) execution and delivery by the Company of the Underwriting Agreement, (ii) effectiveness of the Registration Statement, (iii) issuance of the Securities pursuant to the terms of the Underwriting Agreement and the Warrants, as applicable, and (iv) receipt by the Company of the consideration for the Securities specified in the Resolutions:

1. The issuance and sale of the Shares to be issued and sold by the Company in the Offering pursuant to the Underwriting Agreement have been duly authorized by the Company and, when such Shares are issued and paid for in accordance with the terms of the Underwriting Agreement, will be validly issued, fully paid and non-assessable;

2. The Selling Stockholder Shares to be offered and sold by the Selling Stockholders have been and are validly issued, fully paid and non-assessable;

3. The Warrants have been duly authorized and, upon delivery of the consideration as provided in the Underwriting Agreement, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms; and

4. The Warrant Shares issuable upon exercise of the Warrants have been duly authorized and, when issued and delivered against payment therefor upon exercise of the Warrants in accordance with the terms therein, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. We further consent to the reference to our firm under the caption "Legal Matters" in the prospectus constituting a part of the Registration Statement. In giving this consent, we are not admitting that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission. This opinion is given as of the date hereof and we assume no obligation to update or supplement such opinion after the date hereof to reflect any facts or circumstances that may thereafter come to our attention or any changes that may thereafter occur.

Very truly yours,

/s/ PRYOR CASHMAN LLP

HERITAGE DISTILLING HOLDING COMPANY, INC.

EXCHANGE SUBSCRIPTION AGREEMENT

9668 Bujacich Road
Gig Harbor, WA 98332

Ladies and Gentlemen:

The undersigned holder(s) (the "Holder") of Unsecured Subordinated Convertible Promissory Note(s) Due July 31, 2024 (the "Notes") of Heritage Distilling Holding Company, Inc. (the "Company") in the aggregate principal amount as shown on Exhibit A to this Agreement, does hereby certify to, and agree with, the Company as follows:

1. The Holder is the owner of (i) the Notes, in the aggregate principal amount set forth on Exhibit A, including all original issue discount and fees payable pursuant to the subscription agreement for such Notes (collectively, "Issuance Fees") and, if applicable, (ii) warrant(s) to purchase shares of Common Stock (defined below) that were issued in connection with the Notes (the "2022 Warrants").

2. The Company has offered the Holder the opportunity to exchange the Notes for a pre-paid warrant exercisable for shares of Common Stock, par value $.0001 per share (the "Common Stock"), of the Company in the form attached hereto as Exhibit B (the "Warrant") in exchange for all of the Notes, including the accrued interest thereon through the Effective Date, as defined below. See Exhibit A hereto.

3. The Holder shall be deemed to have surrendered the Note and no further interest shall accrue thereunder as of June 30, 2023 (the "Effective Date"). Upon the execution of this Agreement, the Holder shall receive a pre-paid Warrant, which Warrant shall be deemed to have been executed concurrently with the execution of this Exchange Subscription Agreement, for the number of shares of Common Stock due under this Agreement (the "Exchange Amount"). The Exchange Amount owed as of the Effective Date shall be reflected on the Company's books as "Paid In Capital Subject to Issuance of Equity" until such time as the Warrant is exercised, or this Agreement terminates. If the Company has not listed the Common Stock on a national or international securities exchange by October 31, 2024, the Holder will have the right to exchange the Warrant and any Common Stock issued upon exercise of the Warrant for promissory notes (the "New Notes") on terms substantially similar to the Notes exchanged hereunder; provided, however, that the New Notes shall have provisions allowing for persons or entities holding a majority of the amount of the New Notes to amend the terms of the New Notes and any accompanying documents for the New Notes on behalf of all holders of New Notes. The principal amount of the New Notes will be equal to the principal amount of the Notes (after giving effect to original issue discount and Issuance Fees) and interest will be deemed to have accrued as if the New Notes were issued on the same day as the Notes. For the avoidance of doubt, the accrued interest under the New Notes will include interest that would have accrued between the Effective Date and the issuance of the New Notes as if the Notes had remained outstanding during the entirety of such period. The New Notes shall have provisions allowing for parties representing a majority in the interest of the New Notes and any accompanying documents to effect amendments upon such New Notes and their accompanying documents from time to time. In addition to the forgoing, terms contained under the Notes that survive the conversion or exchange of the Notes into Common Stock of the Company may be altered or amended at any time by a vote of the persons or entities holding a majority of the securities covered by the Notes or the Common Stock that resulted from the conversion or exchange of the Notes into Common Stock.

4. The Holder does hereby irrevocably exchange the Notes for the Warrant exercisable for shares of Common Stock, as described above and as indicated on Exhibit A hereto. Upon the filing of an amendment to the Company's Amended and Restated Articles of Incorporation increasing the number of the Company's authorized shares of Common Stock to a number that will permit the exercise of all Warrants issued in exchange for the Notes in full, the Warrant shall automatically convert to Common Stock pursuant to the terms hereof; *provided however*, if a Note contained a blocker right that was not previously waived, the amount of the Warrant to be exercised herein shall be the maximum amount permission under such blocker right provision. At such time as the Holder's amount of Common Stock owned in the Company falls below the blocker threshold, the remaining unexercised amount under the Warrant shall be exercised as described herein.

5. Notwithstanding the exchange pursuant to paragraph (3) above, the Holder and the Company agree that the aggregate number of shares of Common Stock issuable upon exercise of the Warrant assumes that the price per share of the Common Stock to be issued in the Company's initial public offering (the "IPO") will be $7.50 per share.

6. If the price per share of the Common Stock in the IPO is less than $7.50 per share (subject to adjustment for stock splits, stock dividends and the like after the date hereof and prior to the IPO), the Company shall issue to the Holder within five (5) business days of the closing of the IPO, at the election of the Holder, either a number of shares of Common Stock or a warrant having terms substantially identical to the Warrant for a number of shares of Common Stock, or a combination thereof, equal to the difference between (i) the aggregate number of shares of Common Stock issuable upon exercise of the Warrant and (ii) the number of shares that would have been issued to the Holder if the exchange had been calculated at the price per share of the Common Stock in the IPO.

7. If the price per share of the Common Stock in the IPO is greater than $7.50 per share (subject to adjustment for stock splits, stock dividends and the like after the date hereof and prior to the IPO), the Holder shall transfer to the Company, for no consideration and as an adjustment to the purchase price for the shares of Common Stock issuable under the Warrant, within five (5) business days of the closing of the IPO, at the election of the Holder, either a number of shares of Common Stock, or if the Warrant remains outstanding under the terms of this Agreement, a surrender of the number of shares of Common Stock issuable under that Warrant shall be reduced to equal the difference between (i) the aggregate number of shares of Common Stock issuable to the Holder for the Exchange Amount and (ii) the number of shares that would have been issued to the Holder hereunder for the Exchange Amount if the subscription and exchange had been calculated at the price per share of the Common Stock in the IPO.

8. For so long as the Agreement and the 2022 Warrant(s) are outstanding, the Holder hereby irrevocably waives any requirement that the Company reserve, or have reserved, any number of shares of Common Stock for issuance under this Agreement and the 2022 Warrant(s), it being understood and agreed that the Company shall seek to increase the number of the Company's authorized shares of Common Stock to a number that will permit the terms of this Agreement to be effectuated and the 2022 Warrant(s) to be exercised to acquire shares of Common Stock, but that nothing herein shall require the Company to increase the number of the Company's authorized shares of Common Stock, or reserve any such shares of Common Stock for issuance under the terms of this Agreement, upon exercise of the Warrant, or the 2022 Warrants.

9. The Holder hereby acknowledges, represents, warrants and agrees as follows:

(a) None of the shares of Common Stock to be issued to the Holder upon exercise of the Warrant are registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws;

(b) The Holder has received all documents related to the Company requested by the Holder, has carefully reviewed them and understands the information

contained therein;

(c) Neither the Securities and Exchange Commission nor any state securities commission has approved the Common Stock to be issued hereunder, or passed upon or endorsed the merits of the offering of such Common Stock;

(d) The Holder has had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of the Company concerning the business, financial condition, results of operations and prospects of the Company, and all such questions have been answered to the full satisfaction of the Holder;

(e) In evaluating the suitability of an investment in the Company, the Holder has not relied upon any representation or other information (oral or written) other than as contained in documents or answers to questions so furnished to the Holder by the Company;

(f) The Holder is acquiring the Warrant and the Common Stock issuable upon exercise of the Warrant solely for the Holder's own account for investment and not with a view to resale or distribution thereof, in whole or in part; the Holder has no agreement or arrangement, formal or informal, with any person to sell or transfer all or any part of such Common Stock or Warrant; and the Holder has no plans to enter into any such agreement or arrangement; and

(g) The Holder meets the requirements of at least one of the suitability standards for an "accredited investor" as such term is defined the Securities Act.

(h) The Holder understands that the Company does not currently have, and may never have, enough shares of Common Stock authorized for issuance under its governing documents to permit the exercise of the Warrant, and that the Company is not reserving any of its current or future authorized shares of Common Stock for issuance upon exercise of the Warrant.

10. Until the earlier of (i) the date of the closing of the IPO, and (ii) October 31, 2024 (the "Term"), the Holder hereby irrevocably constitutes and appoints each of Justin Stiefel and Jennifer Stiefel (each a "Proxyholder"), or either of them, or a designee as indicated in a writing signed by either of Justin Stiefel or Jennifer Stiefel, as the Holder's true and lawful attorney, agent and proxy for and in the Holder's name, place and stead, with the exclusive right to vote the Holder's shares of Common Stock, in such Proxyholder's sole and absolute discretion, at any meeting of stockholders of the Company, at any and all adjournments thereof, and on any other occasion in respect of which the consent of the Holder may be given or may be requested or solicited by the board of directors of Company, and the Holder hereunder hereby ratifies and confirms all that a Proxyholder may do by virtue hereof. The Holder agrees with the Proxyholders that, without the prior written consent of a Proxyholder, the Holder will not, during the Term, take any action with respect to the voting rights of the Holder with respect to such shares of Common Stock, appoint any person other than the Proxyholders as the Holder's attorney, agent or proxy with respect to such voting rights, or take any action inconsistent with the appointment of the Proxyholders as the Holder's lawful attorney, agent and proxy, or the exercise by the Proxyholders of the powers granted to them, hereunder. Shareholder. The powers granted pursuant to this paragraph (10), and the proxy granted pursuant hereto, are coupled with an interest and shall be irrevocable during the Term. Notwithstanding the foregoing, the Proxyholders shall **not** be entitled to exercise any right and powers of the Holder except as permitted under and in accordance with the terms of this paragraph (10). Except as expressly set forth in this paragraph (10), nothing contained herein shall be deemed to vest in either Proxyholder any direct or indirect ownership or incidence of ownership of or with respect to any Common Stock owned by the Holder.

11. All questions concerning the construction, validity, enforcement and interpretation of this Exchange Subscription Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated hereunder (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in Tacoma, Washington (the "Washington Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Washington Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Washington Courts, or such Washington Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under the Notes and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Exchange Subscription Agreement or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Exchange Subscription Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

12. (a) This Exchange Subscription Agreement constitutes the entire agreement between the Holder and the Company with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings, if any, relating to the subject matter hereof. No provision of this Exchange Subscription Agreement may be waived, modified, supplemented or amended except in a written instrument signed by the Company and the Holders holding at least a majority of the principal amount of the Notes exchanged hereunder.

(b) The Holder's representations and warranties made in this Exchange Subscription Agreement shall survive the execution and delivery hereof and the delivery of the Common Stock contemplated hereby.

(c) Each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Exchange Subscription Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated.

(d) This Exchange Subscription Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

(e) Each provision of this Exchange Subscription Agreement shall be considered separable and if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity or illegality shall not impair the operation of or affect the remaining portions of this Exchange Subscription Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Holder has executed this Exchange Subscription Agreement to be effective as of _____.

If the Holder is an INDIVIDUAL, and if purchased as JOINT TENANTS, as TENANTS IN COMMON, or as COMMUNITY PROPERTY:

Print Name(s) | Social Security Number(s)

Signature(s) of Holder(s)

Address

If the Holder is a PARTNERSHIP, CORPORATION, or TRUST:

Name of Partnership, Corporation or Trust | Federal Taxpayer Identification Number

By:
Name: | State of Organization

Title:

Address

SUBSCRIPTION ACCEPTED AND AGREED TO AND MADE EFFECTIVE AS OF _____.

Heritage Distilling Holding Company, Inc.

By:
Name: Justin Stiefel
Title: Chief Executive Officer

[Signature Page – Exchange Subscription Agreement]

EXHIBIT A

Holder Aggregate Principal Amount(s)

Holder	Date(s) of Notes(s)	Aggregate Principal Amount	Warrant Shares

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EXHIBIT B

Form of Warrant

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

PRE-FUNDED COMMON STOCK PURCHASE WARRANT
HERITAGE DISTILLING HOLDING COMPANY, INC.

Warrant Shares: Initial Exercise Date: [ ]

THIS PRE-FUNDED COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, [_____] or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and until this Warrant is exercised in full (the "Termination Date") but not thereafter, to subscribe for and purchase from Heritage Distilling Holding Company, Inc., a Delaware corporation (the "Company"), up to [_____] shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock

under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Common Stock of the Company, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"IPO" means the consummation of the first underwritten public offering of Common Stock under the Securities Act.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Subsidiary" means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

Trading Day" means a day on which the Common Stock is traded on a TradingMarket. "

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transfer Agent" means American Stock Transfer & Trust Company, LLC, the current transfer agent of the Company, with a mailing address of 6201 15th Avenue, Brooklyn, New York, 11219, and any successor transfer agent of the Company.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the reasonable and documented fees and expenses of which shall be paid by the Company.

"Warrants" means this Warrant.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this

Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 4:00 p.m. (New York City time) on the Trading Date prior to the Initial Exercise Date the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The aggregate exercise price of this Warrant, except for a nominal exercise price of $0.001 per Warrant Share, was pre-funded to the Company on or prior to the Initial Exercise Date and, consequently, no additional consideration (other than the nominal exercise price of $0.001 per Warrant Share) shall be required to be paid by the Holder to any Person to effect any exercise of this Warrant. The Holder shall not be entitled to the return or refund of all, or any portion, of such pre-paid aggregate exercise price under any circumstance or for any reason whatsoever, including in the event this Warrant shall not have been exercised prior to the Termination Date. The remaining unpaid exercise price per share of Common Stock under this Warrant shall be $0.001, subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the third Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the

Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy- In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round down to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercises of this Warrant that are not in compliance with the Beneficial Ownership Limitation, provided this limitation of liability shall not apply if the Holder has detrimentally relied on outstanding share information provided by the Company or the Transfer Agent. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercises of the Warrant that are not in compliance with the Beneficial Ownership Limitation, except to the extent the Holder relies on the number of outstanding shares of Common Stock that was provided by the Company. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 1(g), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 1(g) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(g) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Equity Sales. If, at any time following to the IPO, while this Warrant is outstanding, the Company sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Exercise Price (such lower price, the "Base Exercise Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the then Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the Dilutive Issuance), then the Exercise Price shall be reduced to equal the Base Exercise Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 2(b) in respect of an Exempt Issuance. The Company shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 2(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, exercise price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 2(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Warrant Shares based upon the Base Exercise Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Exercise Price in the Notice of Exercise.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, upon the exercise of this Warrant, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time following the IPO while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination)(each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 2(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock

(excluding treasury shares, if any) issued and outstanding.

(g) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 10 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that, following the closing of the IPO, any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(iii) Notwithstanding the provisions of Section 2(a) through 2(g) above, whenever any event requiring an adjustment to the Exercise Price or the number of shares issuable upon exercise of this Warrant shall occur prior to the date on which the Exercise Price or the number of shares issuable upon exercise of this Warrant shall be determined pursuant to the terms of this Warrant, such adjustment shall be effected upon the determination of the Exercise Price or number of shares, as the case may be, and any notice thereof to the Holder required by Section 2(g) shall thereafter be promptly provided to the Holder pursuant to Section 2(g).

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with any applicable securities laws, and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of- sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, make usual and customary representations as to investment intent to the Company.

(e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Authorized Shares.

(i) Nothing herein shall require the Company to reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. However, the Company covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

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

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

(e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the laws of the State of Delaware as they are applied to contracts executed, delivered and to be wholly performed within the State of Washington.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and if the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any notice, request or other document required or permitted to be given or delivered to the either party to the other shall be delivered in by recognized overnight courier, facsimile or email as follows:

If to the Holder:

Name: _____
Address: _____
_____
Attn: _____
Email: _____

If to the Company:

Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, WA 98332
Attn: Chief Executive Officer
Email: stockholder.info@heritagedistilling.com

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(k) Amendment. No provision of this Warrant may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Holders holding at least a majority in interest of the Securities then outstanding or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. No waiver of any default with respect to any provision, condition or requirement of this Warrant shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

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

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

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer

NOTICE OF EXERCISE

TO: HERITAGE DISTILLING HOLDING COMPANY, INC.

(1) The undersigned hereby elects to purchase Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below: The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing

Entity: _____

Name of Authorized

Signatory:_____

Title of Authorized

Signatory:_____

Date: _____

ASSIGNMENT FORM

(*To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.*)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____
Email Address: _____

Dated:

Holder's Signature: _____

Holder’s Address: _____

Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, WA 98332

Ladies and Gentlemen:

Reference is hereby made to (i) that certain Exchange Subscription Agreement, dated on or about October 30, 2023 (the "***Exchange Agreement***"), by and among, *inter alia*, Heritage Distilling Holding Company, Inc., a Delaware corporation (the "***Company***"), and the undersigned (each, a "***Holder***" and, collectively, the "***Holders***") and (ii) the applicable Securities Purchase Agreements, including any Warrants attached to such Agreements, dated between April 19, 2022 and August 28, 2023 (each, a "***Subscription Agreement***" and, collectively, the "***Subscription Agreements***"), by and among, *inter alia*, the Company and the applicable Holders, pursuant to which the Holders purchased from the Company, as applicable, Notes and Warrants (in each case, as defined in the Subscription Agreements). Any capitalized terms used but not defined in this letter agreement (this "***Agreement***") will have the meanings ascribed thereto in the Exchange Agreement and the Subscription Agreements, as applicable.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Holders hereby agree as follows:

1. Waiver of Rights to Securities. Each Holder hereby irrevocably waives, with respect to the shares of the Company's common stock received by such Holder pursuant to the Exchange Agreement, any and all rights that it might have, whether under the Exchange Agreement, applicable law or otherwise, to receive securities of the Company, including but not limited to common stock purchase warrants, issued by the Company following the date hereof to its stockholders of record as of May 31, 2023. Notwithstanding the foregoing, this Section 1 shall not effect a Holder's right to receive any such securities of the Company with respect to shares of the Company's common stock owned by such Holder as of May 31, 2023.

2. Exchange Agreement True-Up. Each Holder hereby agrees that Sections 6 and 7 of the Exchange Agreement shall be null and void and of no effect whatsoever, and the parties hereto shall have no obligations pursuant thereto.

3. Amendment to Warrants. Each Holder hereby agrees as follows:

(a) Section 1(c) of the Warrant is hereby replaced in its entirety with the following:

"(c) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be $6.00."

(b) Section 2(a) of the Warrant shall be amended to remove subsections (ii) and (iii), and such subsections shall be null and void and of no effect whatsoever and the parties hereto shall have no obligations pursuant thereto.

4. Payment Upon Sale of [Flavored Bourbon]. Upon a sale of the [Flavored Bourbon] brand to an arm's length third party, and the receipt by Company of any proceeds due to it from such brand sale, each Holder shall be due a one-time payment from the Company in an amount equal to 150% of such Holder's aggregate original Subscription Amount set forth on such Holder's signature page hereto, such payment being made within ten (10) business days from the Company's receipt of the proceeds of such sale of the [Flavored Bourbon] brand. Solely by way of illustration, if a Holder's aggregate Subscription Amount is $1,000,000, upon a sale of the [Flavored Bourbon] brand to an arm's length third party and the Company's receipt of proceeds from such sale, such Holder would be due a one-time payment equal to $1,500,000. Nothing in this Section 3 gives the Holders any right in the Company's ownership of [Flavored Bourbon]. Notwithstanding the foregoing, in the event that the payment that would otherwise be owed to each of the Holders pursuant to the terms hereof and each of the parties party to those certain Exchange Subscription Agreements, dated on or around the date hereof, by and between the Company and the parties thereto (the "Exchange Agreements"), exceeds the amount of the proceeds received by the Company from such brand sale, each Holder shall be entitled to receive from the Company a *pro rata* portion of such proceeds based on the proportion that such Holder's aggregate Subscription Amount bears to the aggregate Subscription Amount of all Holders and the Subscription Amounts (as defined in the Exchange Agreements) of all parties to the Exchange Agreements. This Section shall only apply to Holders who executed Exchange Agreements for Common Stock in October and November 2023, and it shall not apply to any other Common Stock held, even if the Holder owns other Common Stock in the Company or enters into another subsequent exchange agreement with the Company.

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5. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and supersedes all prior understandings, agreements, or representations by or among the parties hereto, written or oral, to the extent they relate in any way to the subject matter hereof.

(b) Amendment; Waiver. This Agreement may not be changed, amended, modified or waived as to any particular provision, except by a written instrument executed by the Company and holders of a majority in interest of the shares of the Company's common stock issued pursuant to the Exchange Agreement. No failure or delay by a party in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.

(c) Assignment; No Third Party Beneficiaries. No party hereto may assign either this Agreement or any of its rights or obligations hereunder without the prior written consent of the other parties hereto, and any purported assignment without such consent shall be null and void ab initio and of no force or effect. This Agreement shall be binding on the undersigned parties and their respective successors and permitted assigns. Nothing contained in this Agreement or in any instrument or document executed by any party in connection with the transactions contemplated hereby shall create any rights in, or be deemed to have been executed for the benefit of, any person or entity that is not a party hereto or thereto or a successor or permitted assign of such a party.

(d) Lock Ups/Leak Out as part of IPO: The Holder acknowledges that its Common Stock acquired through the Exchange Agreement may be subject to Lock Up Agreements and / or Leak Out Agreements required during the IPO process, and Holder agrees to execute such Lock Up Agreements and / or Leak Out Agreements as required by the Company or its underwriters as part of the IPO process. Holder understands failure to execute such agreements may delay or hinder Holder's receipt or transfer of Common Stock through the Company's selected transfer agent process.

(e) Governing Law; Waiver of Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated hereunder (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in Tacoma, Washington (the "***Washington Courts***"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Washington Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Washington Courts, or such Washington Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under the Notes and agrees that such service

shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(f) Interpretation. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement. In this Agreement, unless the context otherwise requires: (i) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; (iii) the words "herein," "hereto," and "hereby" and other words of similar import in this Agreement shall be deemed in each case to refer to this Agreement as a whole and not to any particular section or other subdivision of this Agreement; and (iv) the term "or" means "and/or". The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(g) Severability. In case any provision in this Agreement shall be held invalid, illegal or unenforceable in a jurisdiction, such provision shall be modified or deleted, as to the jurisdiction involved, only to the extent necessary to render the same valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby nor shall the validity, legality or enforceability of such provision be affected thereby in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out, so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal or unenforceable provision.

(h) Specific Performance. Each party hereto acknowledges that its obligations under this Agreement are unique, recognizes and affirms that in the event of a breach of this Agreement by such party, money damages may be inadequate and the other party or parties may not have adequate remedy at law, and agrees that irreparable damage may occur in the event that any of the provisions of this Agreement were not performed by such party in accordance with their specific terms or were otherwise breached. Accordingly, the parties hereunder shall be entitled to seek an injunction or restraining order to prevent breaches of this Agreement by any other party or parties and to enforce specifically the terms and provisions hereof, this being in addition to any other right or remedy to which such party or parties may be entitled under this Agreement, at law or in equity.

(i) Counterparts; Electronic Delivery. This Agreement may be executed in multiple counterparts (including by facsimile or pdf or other electronic document transmission), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. A photocopy, faxed, scanned and/or emailed copy of this Agreement or any signature page to this Agreement, shall have the same validity and enforceability as an originally signed copy.

{Remainder of Page Left Blank; Signature Page Follows}

IN WITNESS WHEREOF, the Company has executed this Agreement on _____.

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer

{Signature Page to Waiver Letter Agreement}

IN WITNESS WHEREOF, the Holder has executed this Agreement on _____.

If the Holder is an INDIVIDUAL, and if purchased as JOINT TENANTS, as TENANTS IN COMMON, or as COMMUNITY PROPERTY:

_____ _____
Printed Name: _____ Social Security Number
Date: _____

_____ _____
Printed Name: _____ Social Security Number
Date: _____

_____
Address

If the Holder is a PARTNERSHIP, CORPORATION, or TRUST:

_____ _____
Name of Partnership, Corporation or Trust Federal Taxpayer Identification Number:

Date

By:
Name:
Title:

State of Organization

Address

{Signature Page to Waiver Letter Agreement}

Exhibit 10.8

Heritage Distilling Holding Company, Inc.

EXCHANGE SUBSCRIPTION AGREEMENT

9668 Bujacich Road
Gig Harbor, WA 98332

Ladies and Gentlemen:

The undersigned holder(s) (the "Holder") of (i) Unsecured Subordinated Convertible Promissory Note(s) Due August 29, 2026 (the "Notes") of Heritage Distilling Holding Company, Inc. (the "Company") in the aggregate principal amount as shown on Exhibit A to this Agreement and (ii) Common Stock Purchase Warrants issued by the Company on or around _____ (the "Warrants"), exercisable for the number of shares of the Company's Common Stock, par value $0.0001 per share (the "Common Stock") set forth next to the Holder's name on Exhibit A to this Agreement, does hereby certify to, and agree with, the Company as follows:

1. The Holder is the owner of the Notes in the aggregate principal amount set forth on Exhibit A and Warrants exercisable for the number of shares of Common Stock set forth next to the Holder's name on Exhibit A. The Holder acknowledges that this Exchange Subscription Agreement is one of a series of Exchange Subscription Agreements (the "Other Exchange Agreements") entered into by the Company on or around the date hereof with other holders (the "Other Holders") of promissory notes (the "Other Notes") and common stock purchase warrants (the "Other Warrants") of the Company that are on terms similar to the Notes and the Warrants, pursuant to which such Other Holders will exchange such Other Notes and Other Warrants for shares of Common Stock and/or Pre-Funded Warrants on terms substantially similar hereto.

2. The Company has offered the Holder the opportunity to subscribe for and purchase (i) the number of shares of Common Stock of the Company set forth next to the Holder's name on Exhibit A (the "Exchange Shares") and/or (ii) if elected by the Holder as indicated on the Holder's signature page hereto, a pre-funded warrant exercisable for the number of shares of Common Stock set forth on the Holder's signature page hereto, in the form attached hereto as Exhibit B (the "Pre-Funded Warrant" and the shares of Common Stock underlying the Pre-Funded Warrant, the "Pre-Funded Warrant Shares") in exchange for all of the Notes, including the accrued interest thereon through February 29, 2024 (the "Effective Date"), in the amount set forth next to the Holder's name on Exhibit A, and all of the Warrants.

The exchange will be effective on the Effective Date. If the Company has not listed the Common Stock on a national or international securities exchange on or prior to February 29, 2025 as part of a SPAC/deSPAC merger (the "deSPAC Merger") or through and initial public offering (the "IPO"), the Holder will have the right to exchange the Exchange Shares and, if applicable, the Pre-Funded Warrant and Pre-Funded Warrant Shares for promissory notes (the "New Notes") and common stock purchase warrants (the "New Warrants") on terms substantially similar to the Notes and Warrants, respectively, exchanged hereunder. The principal amount of the New Notes will be equal to the sum of (i) the principal amount of the Notes and (ii) the amount of interest that would have accrued on the New Notes had the New Notes been issued on the same day as the Notes. For the avoidance of doubt, the accrued interest under the New Notes will include interest that would have accrued between the Effective Date and the date of issuance of the New Notes as if the Notes had remained outstanding during the entirety of such period. The New Warrants will be exercisable for the number of shares of Common Stock for which the Warrants were exercisable.

3. The Holder does hereby irrevocably elect to exchange the Notes and Warrants and to subscribe to (i) the number of shares of Common Stock set forth next to the Holder's name on Exhibit A (less, if applicable the number of Pre-Funded Warrant Shares) and, if applicable, (ii) the Pre-Funded Warrant exercisable for the Pre-Funded Warrant Shares. Upon acceptance by the Company of such exchange and subscription, the Holder's Note(s) and Warrant(s) shall be cancelled by the Company, and the Company shall have no further obligations with respect thereto, and the Company shall issue to the Holder the requisite number of shares of Common Stock and, if applicable, the Pre-Funded Warrant. Each Holder hereby irrevocably waives, with respect to the shares of the Company's common stock received by such Holder pursuant to the Exchange Agreement, any and all rights that it might have, whether under the Exchange Agreement, applicable law or otherwise, to receive securities of the Company, including but not limited to common stock purchase warrants, issued by the Company following the date hereof to its stockholders of record as of May 31, 2023. Notwithstanding the foregoing, this Section 3 shall not effect a Holder's right to receive any such securities of the Company with respect to shares of the Company's common stock owned by such Holder as of May 31, 2023.

4. The Holder hereby acknowledges, represents, warrants and agrees as follows:

(a) None of the shares of Common Stock to be issued to the Holder upon exchange of the Notes and the Warrants are registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws;

(b) The Holder has received all documents related to the Company requested by the Holder, has carefully reviewed them and understands the information contained therein;

(c) Neither the Securities and Exchange Commission nor any state securities commission has approved the Common Stock to be issued hereunder, or passed upon or endorsed the merits of the offering of such Common Stock;

(d) The Holder has had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of the Company concerning the business, financial condition, results of operations and prospects of the Company, and all such questions have been answered to the full satisfaction of the Holder;

(e) In evaluating the suitability of an investment in the Company, the Holder has not relied upon any representation or other information (oral or written) other than as contained in documents or answers to questions so furnished to the Holder by the Company;

(f) The Holder is acquiring the Common Stock and, if applicable, the Pre-Funded Warrant solely for the Holder's own account for investment and not with a view to resale or distribution thereof, in whole or in part; the Holder has no agreement or arrangement, formal or informal, with any person to sell or transfer all or any part of such Common Stock or, if applicable, the Warrant; and the Holder has no plans to enter into any such agreement or arrangement;

(g) The Holder meets the requirements of at least one of the suitability standards for an "accredited investor" as such term is defined the Securities Act; and

(h) The Holder's Common Stock may be subject to Lock Up Agreements and / or Leak Out Agreements required during the IPO process, and Holder agrees to execute such Lock Up Agreements and / or Leak Out Agreements as required by the Company or its underwriters as part of the IPO process. Holder understands failure to execute such agreements may delay or hinder Holder's receipt or transfer of Common Stock through the Company's selected transfer agent process.

5. All questions concerning the construction, validity, enforcement and interpretation of this Exchange Subscription Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated hereunder (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in Tacoma, Washington (the "Washington Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Washington Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Washington Courts, or such Washington Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under the Notes and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Exchange Subscription Agreement or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Exchange Subscription Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

6. (a) This Exchange Subscription Agreement constitutes the entire agreement between the Holder and the Company with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings, if any, relating to the subject matter hereof. No provision of this Exchange Subscription Agreement and the Other Exchange Agreements may be waived, modified, supplemented or amended except in a written instrument signed by the Company and the holders holding at least a majority of the principal amount of the Notes and Other Notes exchanged hereunder and under the Other Exchange Agreements; provided, that any such waivers, modifications, supplements and amendments shall apply equally to this Exchange Subscription Agreement.

(b) The Holder's representations and warranties made in this Exchange Subscription Agreement shall survive the execution and delivery hereof and the delivery of the Common Stock contemplated hereby.

(c) Each of the parties hereto shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Exchange Subscription Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated.

(d) This Exchange Subscription Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

(e) Each provision of this Exchange Subscription Agreement shall be considered separable and if for any reason any provision or provisions hereof are determined to be invalid or contrary to applicable law, such invalidity or illegality shall not impair the operation of or affect the remaining portions of this Exchange Subscription Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Holder has executed this Exchange Subscription Agreement on _____.

If the Holder is an INDIVIDUAL, and if purchased as JOINT TENANTS, as TENANTS IN COMMON, or as COMMUNITY PROPERTY:

_____ _____
Social Security Number

Printed Name: _____ Date: _____

_____ _____
Social Security Number

Printed Name: _____ Date: _____

_____
Address

Number of Pre-Funded Warrant Shares: _____

If the Holder is a PARTNERSHIP, CORPORATION, or TRUST:

_____ _____
Name of Partnership, Corporation or Trust — Federal Taxpayer Identification Number

_____
Date

By: _____ _____
Name: _____ State of Organization
Title: _____

_____
Address

Number of Pre-Funded Warrant Shares: _____

SUBSCRIPTION ACCEPTED AND AGREED TO
on _____

Heritage Distilling Holding Company, Inc.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer

[Signature Page – Exchange Subscription Agreement]

Exhibit A

Holder	Aggregate Principal Amount of Note(s)	Aggregate Accrued and Unpaid Interest on Note(s)	Warrant Shares	Exchange Shares

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Exhibit B
Form of Pre-Funded Warrant (if any)

AMENDMENT NO. 2 TO

LOAN AGREEMENT BY AND AMONG
HERITAGE DISTILLING HOLDING COMPANY, INC., as Holdings,
HERITAGE DISTILLING COMPANY, INC., as Borrower,
SILVERVIEW CREDIT PARTNERS LP, as Agent for the Lenders
and
THE LENDERS PARTY HERETO

THIS AMENDMENT NO. 2 TO LOAN AGREEMENT (this "Amendment"), dated as of October 1, 2024, is made and entered into by and among SILVERVIEW CREDIT PARTNERS LP (f/k/a Silverpeak Credit Partners, LP), a Delaware limited partnership as Agent for the Lenders (in such capacity, and together with any successor agent, the "Agent"), the financial institutions and other institutional investors from time to time party hereto as lenders (the "Lenders"), HERITAGE DISTILLING COMPANY, INC., a Washington corporation, as borrower (the "Borrower"), and HERITAGE DISTILLING HOLDING COMPANY, INC., a Delaware corporation, as holdings ("Holdings").

WHEREAS, reference is hereby made to that certain Loan Agreement, dated as of March 29, 2021 (as amended, supplemented, amended and restated or otherwise modified from time to time and immediately prior to the Amendment Effective Date (as defined below), the "Existing Loan Agreement" and, as amended by this Amendment, the "Loan Agreement"; capitalized terms used but not defined herein having the meanings provided for in the Loan Agreement), by and among the Borrower, Holdings, the Lenders party thereto and the Agent.

WHEREAS, (a) certain Events of Default have occurred and are continuing pursuant to (i) the Borrower's failure to pay principal installments due on the Term Loan in accordance with Section 1.2(a)(i) of the Existing Loan Agreement on each Installment Payment Date occurring on January 15, 2023, April 15, 2023, July 15, 2023, October 15, 2023, January 15, 2024, April 15, 2024, and July 15, 2024, (ii) the Obligors' failure to timely furnish to the Agent audited financial statements required under Section 5.6(i) of the Existing Loan Agreement for the Fiscal Years ending 2021, financial statements and reports required under Section 5.6(ii) of the Existing Loan Agreement for the fiscal quarters ending June 30, 2023, September 30, 2023, December 31, 2023, March 31, 2024 and June 30, 2024 and financial statements and reports required under Section 5.6(iv) of the Existing Loan Agreement for the fiscal months ending June 2023 through August 2024; and (iii) the Obligors' failure to comply with the Financial Covenants for each Applicable Fiscal Periods ending December 31, 2021, June 30, 2022, December 31, 2022, June 30, 2023, December 31, 2023 and June 30, 2024, (each, an "**Existing Event of Default**" and, collectively, the "**Existing Events of Default**");

WHEREAS, Holdings intends to undertake an initial public offering of its shares of common stock of Holdings as contemplated by the Form S-1 registration statement, dated as August 28, 2024 (as amended, restated or otherwise modified thereafter), and filed with the Securities and Exchange Commission;

WHEREAS, pursuant to Section 8.11 of the Loan Agreement, the Borrower, the Agent and the Lenders may consent to a waiver or modification of any provision of the Loan Agreement and waive Defaults or Events of Default that have occurred under the Loan Agreement or any other Loan Document; and

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Borrower, Holdings, the Agent and each Lender party hereto each agrees to enter into this Amendment as set forth below:

1. Consent. Notwithstanding anything to the contrary set forth in the Loan Agreement or any other Loan Document, the Agent and the Lenders hereby consent to the Initial Public Offering. This foregoing consent is a limited consent and (i) shall only be relied upon for the specific purpose set forth herein, (ii) shall not constitute nor be deemed to constitute a consent by the Agent or the Lenders to anything other than as set forth herein, and (iv) shall not constitute a course of dealing among the parties hereto.

2. Waiver of Existing Events of Default. Subject to the terms and conditions of this Amendment, the Agent and the Lenders hereby agree to waive the Existing Events of Default. This waiver is limited in nature and the Agent and the Lenders have not waived and are not by this Amendment waiving, any Defaults or Events of Default (other than the Existing Events of Default to the extent expressly set forth herein) which may be continuing on the date hereof or any Events of Default which may occur after the date hereof (whether the same or similar to the Existing Events of Default or otherwise).

3. Amendments to Existing Loan Agreement. Effective as of the Amendment Effective Date (as defined below), the Existing Loan Agreement is hereby amended pursuant to this Amendment to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Loan Agreement attached as Exhibit A to this Amendment.

4. Representations and Warranties. Each Obligor hereby represents and warrants to Agent and the Lenders as follows:

a. the execution and delivery of this Amendment, and the performance by each Obligor of this Amendment and the Loan Agreement has been duly authorized by all necessary actions of such Obligor, and do not and will not violate any provision of law, or any writ, order or decree of any court or Governmental Authority or agency, or any provision of the Organizational Documents of such Obligor, and do not and will not result in a breach of, or constitute a default or require any consent under, or result in the creation of any Lien upon any property or assets of such Obligor pursuant to, any law, regulation, instrument or agreement to which any such Obligor is a party or by which any such Person or its respective properties may be subject or bound;

b. each of this Amendment and the Loan Agreement is the legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, subject only to bankruptcy and similar laws affecting creditors' rights generally;

c. this Amendment has been duly executed and delivered by each Obligor; and

d. except for the Existing Events of Default, immediately before and after giving effect to this Amendment, no Default or Event of Default will have occurred and be continuing or would result from the consummation of the transactions contemplated hereby.

5. Conditions to Effectiveness. This Amendment shall become effective upon satisfaction (or waiver by the Agent in its sole discretion) of the following, as determined by the Agent in its reasonable discretion (the date of such effectiveness, the "Amendment Effective Date"):

a. Agent shall have received the following:

i. counterparts of this Amendment executed and delivered by the Borrower, Holdings and the Lenders;

ii. an executed Pledge, Security and Guaranty Agreement duly executed and delivered by Thinking Tree Spirits, Inc. ("TTS") in addition to:

1. a Trademark Security Agreement duly executed and delivered by the Borrower in respect of the trademarks acquired from TTS;

2. a Landlord Waiver and Consent duly executed and delivered by the Landlord of the premises occupied by TTS at 88 Jackson St., Eugene, OR 97402;

3. a Pledge Amendment duly executed and delivered by the Borrower in respect of its shares of stock in TTS;

4. an original Stock Power duly executed and delivered by the Borrower in respect of its shares of stock in TTS;

5. the original stock certificate issued to the Borrower in respect of its shares of stock in TTS;

6. a certificate duly executed by the Secretary or Assistant Secretary or other appropriate officer, manager or director, of TTS which shall (A) certify the resolutions of its board of directors, managers, members or other body authorizing the execution, delivery and performance of the Pledge, Security and Guaranty Agreement and other documents ancillary thereto, (B) identify by name and title and bear the signatures of the Senior Officers or managers of TTS authorized to sign the Pledge, Security and Guaranty Agreement and other documents ancillary thereto, and (C) contain appropriate attachments, including the Organizational Documents of TTS certified, if applicable, by the relevant authority of the jurisdiction of formation, and a good standing certificate as of a recent date for TTS from its jurisdiction of formation; and

7. an amendment to the City of Eugene Debt promissory note duly executed and delivered by TTS and the City of Eugene pursuant to which the maturity date of the City of Eugene Debt is extended to a date that is at least ninety-one days after the Maturity Date in accordance with Section 6.3(n) of the Loan Agreement.

iii. a certificate duly executed by the Secretary or Assistant Secretary or other appropriate officer, manager or director, of each Obligor which shall (A) certify the resolutions of its board of directors, managers, members or other body authorizing the execution, delivery and performance of this Amendment and the other Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the Senior Officers or managers of such Obligor authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including the Organizational Documents of such Obligor certified, if applicable, by the relevant authority of the jurisdiction of formation, and a good standing certificate as of a recent date for such Obligor from its jurisdiction of formation;

iv. all documentation and other information about the Obligors as shall have been requested in writing by Agent prior to the Amendment Effective Date that it shall have determined is required by U.S. regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations;

b. except for the Existing Events of Default, before and after giving effect to this Amendment, no Default or Event of Default shall exist or have occurred and be continuing as of the Amendment Effective Date;

c. all of the representations, warranties and certifications of or on behalf of the Obligors contained in Section 4 hereof and set forth in the Loan Agreement and the other Loan Documents shall be true and correct in all material respects (or in all respects if already qualified by materiality or Material Adverse Effect) on and as of the Amendment Effective Date (in each case both immediately before and immediately after giving effect to this Amendment), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in all respects if already qualified by materiality or Material Adverse Effect) as of such earlier date; and

d. the Obligors shall have paid on or before the Amendment Effective Date any and all fees required to be paid pursuant to this Amendment and the Loan Agreement and all Lender Expenses incurred by Agent and the Lenders in connection with this Amendment, including, without limitation, the reasonable fees and expenses of Alston & Bird LLP, counsel to the Agent.

The Obligors shall be deemed to represent and warrant to Agent that each of the foregoing conditions have been satisfied upon the release of their respective signatures to this Amendment.

6. Post-Closing Obligations.

a. [Reserved].

7. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Loan Agreement or any other Loan Document or constitute a course of conduct or dealing among the parties. Agent and the Lenders reserve all rights, privileges and remedies under the Loan Documents. Except as expressly amended hereby, the Loan Agreement and the other Loan Documents remain unmodified and in full force and effect. The parties hereto agree to be bound by the terms and conditions of the Loan Agreement and the other Loan Documents as amended by this Amendment, as though such terms and conditions were set forth herein. On and after the Amendment Effective Date, each reference in the Loan Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of similar import shall mean and be a reference to the Loan Agreement as amended hereby, and each reference in any other Loan Document (including any notice, request, certificate or other document executed concurrently with or after the execution and delivery of this Amendment) to the Loan Agreement shall be deemed to be a reference to the Loan Agreement as amended hereby. On and after the Amendment Effective Date, each reference in the Security Agreement to "this Agreement," "hereunder," "hereof" or words of like import referring the Security Agreement, and each reference in the other Loan Documents to "the Security Agreement," "thereunder," "thereof" or words of like import referring to the Security Agreement, shall mean and be a reference to the Security Agreement, as amended by this Amendment. This Amendment shall constitute a Loan Document.

8. Reaffirmation of Obligors. Each Obligor hereby consents to the amendment of the Existing Loan Agreement effected hereby and confirms and agrees that,

notwithstanding the effectiveness of this Amendment, each Loan Document to which such Obligor is a party is, and the obligations of such Obligor contained in the Existing Loan Agreement, this Amendment or in any other Loan Document to which it is a party are, and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, in each case as amended by this Amendment. For greater certainty and without limiting the foregoing, each Obligor hereby confirms that (a) the existing security interests granted by such Obligor in favor of Agent pursuant to the Loan Documents in the Collateral described therein shall continue to secure the Obligations and (b) the existing guaranties provided by such Obligor in favor of Agent pursuant to the Loan Documents shall continue to guarantee the Obligations under the Loan Agreement and the other Loan Documents as and to the extent provided in the Loan Documents.

9. Release. Each Obligor hereby acknowledges and agrees that, as of the date hereof: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Agent or any Lender (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) under or pursuant to the Loan Agreement or any other Loan Document and (b) Agent and the Lenders have heretofore properly performed and satisfied in a timely manner all of their obligations to the Obligors and all of their Subsidiaries under or pursuant to the Loan Agreement and any other Loan Document. Notwithstanding the foregoing, Agent and the Lenders wish (and the Obligors agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Obligor (for itself and its Subsidiaries and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge Agent and the Lenders, together with their respective Affiliates, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Amendment Effective Date directly arising out of, connected with or related to this Amendment, the Loan Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, or the agreements of Agent or any Lender contained therein, or the possession, use, operation or control of any of the assets of any Obligor, or the making of any Terms Loans or other advances, or the management of such Term Loans or other advances or the Collateral (collectively, the "Released Claims"). Each Obligor represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party which would constitute a Released Claim or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a Released Claim by any Releasor against any Released Party which would not be released hereby.

10. Counterparts; Delivery. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment and by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Amendment. Notwithstanding anything provided for in any of the Loan Documents, the words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11. Complete Agreement. This Amendment constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. By its execution of this Amendment, each of the parties hereto acknowledges and agrees that the terms of this Amendment do not constitute a novation, but, rather, a supplement of the terms of a pre-existing indebtedness and related agreement, as evidenced by the Loan Agreement.

12. Governing Law. This Amendment shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the laws of the State of New York.

[*signatures on next page*]

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

HOLDINGS:

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: /s/ Justin Stiefel
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

BORROWER:

HERITAGE DISTILLING COMPANY, INC.

By: /s/ Justin Stiefel
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

AGENT:

SILVERVIEW CREDIT PARTNERS LP

By: /s/ Vaibhav Kumar

Name: Vaibhav Kumar
Title: Partner

LENDERS:

SILVERVIEW SPECIAL SITUATIONS LENDING LP

By: /s/ Vaibhav Kumar
Name: Vaibhav Kumar
Title: Partner

EXHIBIT A

Amended Loan Agreement

See attached.

Conformed to Amendment No. ~~1~~2

LOAN AGREEMENT

BY AND AMONG

HERITAGE DISTILLING HOLDING COMPANY, INC.,
as Holdings

HERITAGE DISTILLING COMPANY, INC.,
as Borrower

~~SILVERPEAK~~SILVERVIEW CREDIT PARTNERS~~,~~ LP
as Agent for the Lenders

and

THE LENDERS PARTY HERETO

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LOAN AGREEMENT

THIS LOAN AGREEMENT (together with all schedules, exhibits and the Perfection Certificate delivered in connection herewith from time to time, this "Agreement") is entered into this 29th day of March, 2021, among ~~**SILVERPEAK**~~**SILVERVIEW CREDIT PARTNERS LP** (f/k/a Silverpeak Credit Partners, LP), a Delaware limited partnership as Agent for the Lenders (in such capacity, and together with any successor agent, the "Agent"), the financial institutions and other institutional investors from time to time party hereto as lenders (the "Lenders"), **HERITAGE DISTILLING COMPANY, INC.**, a Washington corporation, as borrower (the "Borrower"), and **HERITAGE DISTILLING HOLDING COMPANY, INC.**, a Delaware corporation, as holdings ("Holdings"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Terms Schedule or the Definitions Schedule annexed hereto, as applicable. All schedules, and exhibits annexed hereto, as well as the Perfection Certificate, are incorporated herein and made a part hereof.

Section 1. LOANS AND TERMS OF REPAYMENT

1.1 Term Loan.

(a) Subject to the terms and conditions of this Agreement, the Lenders agree to make a loan in an aggregate principal amount not to exceed $10,500,000 to the Borrower (the "Initial Term Loan") on the Closing Date in an amount, as to each Lender, equal to such Lender's Commitment with respect to the Initial Term Loan.

(b) Subject to the satisfaction or waiver by the Agent of each of the Incremental Closing Conditions, the Lenders agree to make an additional loan in one (1) drawing in an aggregate principal amount not to exceed $2,000,000 to the Borrower (the "Incremental Term Loan") on the Incremental Closing Date in an amount, as to each Lender, equal to such Lender's Commitment with respect to the Incremental Term Loan.

(c) Subject to the satisfaction or waiver by the Agent of each of the Delayed Draw Closing Conditions, the Lenders agree to make an additional loan in one (1) drawing in an aggregate principal amount not to exceed $2,500,000 to the Borrower (the "Delayed Draw Term Loan" and, with the Initial Term Loan and the Incremental Term Loan, the "Term Loan") on the Delayed Draw Closing Date in an amount, as to each Lender, equal to such Lender's Commitment with respect to the Delayed Draw Term Loan.

(d) Amounts repaid or prepaid in respect of the Term Loan in accordance with the terms of this Agreement may not be reborrowed. The proceeds of the Term Loan may be used by the Borrower (i) with respect to the Initial Term Loan, (A) to fund the Transactions, (B) for general corporate purposes and (C) to pay fees and expenses incurred in connection with the Transactions, and (ii) with respect to the Incremental Term Loan and the Delayed Draw Term Loan, for general corporate purposes (including the repayment in full of the Channel Partners Debt, Permitted Acquisitions and other investments permitted pursuant to the terms of this Agreement). In no event may the proceeds of any Term Loan be used to purchase or to carry, or to reduce, retire or refinance any Debt incurred to purchase or carry, any margin stock, as defined by Regulation U of the Board of Governors of the Federal Reserve System, or for any related purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System. The Term Loan and interest accruing thereon shall be evidenced by the records of Agent (including the Loan Account) and by the Note(s).

1.2 Payments.

(a) All payments with respect to any of the Obligations shall be made to Agent for the account of the Lenders in United States dollars on the date when due, in immediately available funds, without any offset or counterclaim. Except where evidenced by Notes or other instruments made by the Borrower to Lender specifically containing payment provisions in conflict with this Section 1.2 (in which event the conflicting provisions of such instruments shall govern and control), the Obligations shall be due and payable as follows:

(i) The Borrower unconditionally promises to pay to Agent for the account of the Lenders the then unpaid principal amount of the Term Loan in installments payable on the dates set forth below in the amounts set forth opposite such date (and on such other date(s) and in such other amounts as may be required from time to time pursuant to this Agreement) (each such date, an "Installment Payment Date"):

Installment Date	**Aggregate Principal Amount**
October 15, 2022	$250,000
~~January 15, 2023~~	~~$325,000~~
~~April 15, 2023~~	~~$400,000~~
~~July 15, 2023~~	~~$475,000~~
~~October 15, 2023~~	~~$550,000~~
~~January 15~~December 31, 2024	$~~625,000~~300,000
~~April 15~~June 30, ~~2024~~2025	$700,000
~~July 15~~December 31, ~~2024~~2025	$~~775,000~~500,000
~~October 15~~June 30, ~~2024~~2026	$~~825,000~~500,000
~~January 15, 2025~~	~~$925,000~~

Further, to the extent not previously paid, the aggregate unpaid principal amount payable of the Term Loan, plus accrued and unpaid interest (if any), and any fees and expenses payable in accordance with the terms of the Loan Documents, shall be due and payable immediately upon the Maturity Date.

(ii) Interest accrued on the principal balance of the Term Loan shall be due and payable on (x) the fifteenth (15th) day of each calendar month (each, an "Interest Payment Date"), in arrears, computed for the period from and including the previous Interest Payment Date (or the Closing Date, in the case of the first Interest Payment Date occurring after the Closing Date) to but excluding such Interest Payment Date, with the first Interest Payment Date after the Closing Date to occur on May 15, 2021; and (y) the Maturity Date, and, to the extent applicable, any interest payable in kind shall be added to the principal amount of the Obligations as of each Interest Payment Date, and interest shall accrue on such amounts in accordance with the terms hereof; and

(iii) The balance of the Obligations requiring the payment of money, if any, shall be due and payable as and when provided in the Loan Documents, or, if the date of payment is not specified in the Loan Documents, on demand.

(iv) Mandatory Prepayments.

(A) Immediately upon the occurrence of a Change of Control, the Borrower shall prepay all of the outstanding Obligations, plus the applicable Prepayment Premium, if any;

(B) Immediately upon the receipt by any Obligor of any Net Proceeds from the incurrence of any Debt (other than Debt permitted to be incurred or issued pursuant to Section 6.3), the Borrower shall prepay the Obligations in an amount equal to 100% of the Net Proceeds from such incurrence of Debt plus the applicable Prepayment Premium, if any;

(C) Immediately upon the occurrence of any Permitted Asset Disposition pursuant to clause (c) of the definition thereof, the Borrower agrees to prepay the Obligations in an amount equal to 100% of the Net Proceeds from such Permitted Asset Disposition plus, to the extent applicable, the exit fee pursuant to Item 5 of the Terms Schedule (provided, for the avoidance of doubt, that no Prepayment Premium shall apply with respect to any prepayment of the Obligations pursuant to this clause (C));

(D) Immediately upon any Obligor suffering an Event of Loss of any property, the Borrower shall prepay the Obligations in an amount equal to 100% of the Net Proceeds from such Event of Loss plus the applicable Prepayment Premium, if any; provided, that if the Borrower notifies the Agent upon or prior to receipt of such Net Proceeds that the Borrower intends to replace or repair the property in respect of which such Net Proceeds are received, then the Borrower may apply all or any part of such Net Proceeds to such replacement or repair of property, so long as (i) no Event of Default shall have occurred and be continuing, and (ii) such Net Proceeds are actually applied to such replacement or repair within 180 days of receipt (or committed in writing to be so applied within 180 days of receipt and deposited in an escrow account of the Borrower until so applied), and provided, further, that to the extent any such Net Proceeds are not actually so applied within the time periods specified in the foregoing clause (ii) or an Event of Default shall have occurred and be continuing before such Net Proceeds have been so applied or committed in writing to be applied, then such Net Proceeds shall be immediately applied to prepay the Obligations;

(E) Upon the completion of the Initial Public Offering and immediately upon the receipt by Holdings of the net proceeds thereof, the Borrower shall prepay the Obligations in an amount equal to Two Million Three Hundred Seventy-Five Thousand Dollars ($2,375,000.00) plus the applicable Prepayment Premium;

(F) ~~(E)~~ Each prepayment of the Obligations pursuant to the foregoing provisions of Section 1.2(a)(iv)(A)-(~~D~~E) shall be applied in accordance with Section 1.7; and

(v) The Borrower may prepay, in whole or in part, the Obligations at any time upon not less than thirty (30) Business Days written notice to the Agent and the Lenders, plus the applicable Prepayment Premium, if any.

(b) Whenever any payment of any Obligations shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day and interest thereon shall continue to accrue and shall be payable for the period pending receipt of the payment at the rate (or rates) otherwise applicable under this Agreement. If any amount applied to the Obligations is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person, then the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such amount had not been made or received. The provisions of the foregoing sentence shall survive the termination of this Agreement and payment in full of the Obligations.

(c) Without limiting any other provision contained in this Agreement with respect to the payment of the Prepayment Premium in connection with the payment of all or any portion of the Term Loan prior to the Maturity Date, in the event of the termination of this Agreement and repayment of the Obligations at any time prior to the Maturity Date, for any reason, including (i) termination upon the election of the Agent or the Lenders to terminate after the occurrence and during the continuation of an Event of Default, (ii) foreclosure and sale of Collateral, (iii) sale of the Collateral in any Insolvency Proceeding, or (iv) restructuring, reorganization, or compromise of the Obligations by the confirmation of a plan of reorganization or any other plan of compromise, restructure, or arrangement in any Insolvency Proceeding, then, in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Agent and the Lenders or profits lost by the Agent and the Lenders as a result of such early termination, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Agent and the Lenders, the Borrower shall pay to the Agent and the Lenders, the Prepayment Premium, measured as of the date of such termination (it being understood, for the avoidance of doubt, that no Prepayment Premium shall be payable in connection with any payments made in accordance with Section 1.2(a)(i)).

1.3 Interest Rates. The principal balance of the Term Loan and other Obligations outstanding from time to time shall bear interest from the respective dates such principal amounts or other Obligations are advanced or incurred or outstanding until paid, (a) during the PIK Interest Option Period, at the Borrower's election at a rate per annum equal to either (i) the PIK Interest Option Rate or (ii) the Cash Interest Rate, and (b) during the Cash Interest Period, at a rate per annum equal to the Cash Interest Rate. All interest chargeable under this Agreement shall be computed on the basis of the actual number of days elapsed in a year of 360 days. At any time that a Default or Event of Default exists, the principal amount of the Obligations outstanding shall bear interest at the Default Rate.

1.4 Fees and Reimbursement of Expenses. In addition to any other fees, expenses or other amounts payable by the Borrower to the Agent and/or the Lenders, including, but not limited, to those pursuant to Section 8.8:

(a) The Borrower shall pay to Agent for the account of the Lenders the fees set forth in Item 5(a) of the Terms Schedule; and

(b) The Borrower shall reimburse Agent and each Lender for all Lender Expenses and all other expenses as set forth in Item 5(b) of the Terms Schedule.

All fees shall be fully earned by Agent and each Lender, as applicable, when due and payable; except as otherwise set forth herein or required by applicable law, shall not be subject to rebate, refund or proration; are and shall be deemed to be for compensation for services; and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. All amounts chargeable to the Borrower under this Section 1.4 shall be Obligations secured by the Collateral, shall be payable on demand to Agent or the Lenders, as applicable, and shall bear interest from the date such demand is made until paid in full at the rate applicable to the Term Loan from time to time.

1.5 Maximum Interest. In no event shall the aggregate of all amounts that are contracted for, charged or received by Agent and the Lenders pursuant to the terms of the Loan Documents and that are deemed interest under applicable law exceed the highest rate permissible under any applicable law that a court of competent jurisdiction shall, in a final determination, deem applicable hereto. If any interest is charged or received in excess of the maximum rate allowable under applicable law ("Excess"), the Borrower acknowledges and stipulates that any such charge or receipt shall be the result of an accident and bona fide error, and such Excess, to the extent received, shall be applied first to reduce the principal Obligations and the balance, if any, returned to the Borrower, it being the intent of the parties hereto not to enter into a usurious or other illegal relationship. The provisions of this Section shall be deemed to be incorporated into every Loan Document (whether or not any provision of this Section is referred to therein).

1.6 Loan Account; Account Stated. Agent shall maintain for its books an account (the "Loan Account") evidencing the Obligations resulting from the Term Loan, including the amount of principal and interest payable from time to time hereunder. Any failure of Agent to make an entry in the Loan Account, or any error in doing so, shall not limit or otherwise affect the agreement of the Borrower to repay the Obligations in accordance with the Loan Documents. The entries made in the Loan Account shall constitute rebuttably presumptive evidence of the information therein, provided that if a copy of information contained in the Loan Account is provided to an Obligor, or an Obligor inspects the Loan Account at any time, then the information contained in the Loan Account shall be conclusive and binding on such Obligor for all purposes, absent manifest error, unless such Obligor notifies Agent in writing within thirty (30) days after such Obligor's receipt of such copy or such Obligor's inspection of the Loan Account that it disputes the information contained therein.

1.7 ~~[Reserved]~~ **Application of Payments and Collections** All payments pursuant to Sections 1.2 (a)(iv) and 1.2(a)(v) shall be applied to the outstanding principal amount of Term Loans in the direct order of maturity.

1.8 Collateral. All of the Obligations shall be secured by a continuing security interest and Lien upon the Collateral as and to the extent provided in the Security Agreement and the other Security Documents.

1.9 Increased Costs; Capital Adequacy.

(a) If any Change in Law shall result in the imposition, modification or applicability of any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by any Lender; or shall subject any Lender to any Tax with respect to the Term Loan or any Loan Document, or change the basis of taxation of payments to such Lender in respect thereof; or shall impose on any Lender or any interbank market any other condition, cost or expense affecting the Term Loan or any Loan Document; and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining any Term Loan, or to reduce the amount of any sum received or receivable by any Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital as a consequence of this Agreement, or Lender's Term Loan, to a level below that which such Lender could have achieved but for such Change in Law (taking into consideration such Lender's policies with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate it for any such reduction suffered.

Section 2. TERM AND TERMINATION

2.1 Term. The Term Loan shall become effective on the date of this Agreement (subject to satisfaction of the conditions set forth in Section 3 hereof) and shall expire at the close of business on the Maturity Date (the "Term"), unless sooner terminated (by acceleration or otherwise) in accordance with the terms of this Agreement.

Section 3. CONDITIONS PRECEDENT

3.1 Closing Conditions. The Lenders shall not be obligated to make any extension of credit hereunder unless, on or before the Closing Date, each of the following conditions has been satisfied or waived by the Agent:

(a) the Borrower and each other Person that is to be a party to any Loan Document shall have executed and delivered each such Loan Document, all in form and substance satisfactory to the Agent;

(b) the Borrower shall cause to be delivered to the Agent the documents described in Item 7 of the Terms Schedule, each in form and substance satisfactory to the Agent;

(c) the Agent shall have received from the Borrower a notice of borrowing and such other information as Agent requests in connection with the funding of the Initial Term Loan on the Closing Date;

(d) no Default or Event of Default shall exist (whether before or upon giving effect to the funding of the Initial Term Loan);

(e) all representations and warranties made by any Obligor in any of the Loan Documents, or otherwise in writing to the Agent, shall be true and correct in all material respects (or if already qualified as to materiality, in all respects);

(f) the Agent shall have received evidence satisfactory to it that each Lien granted by any Obligor under any Loan Document is a valid, first priority (subject to Permitted Liens as set forth in clause (vii) of the definition of Permitted Liens) Lien, and that there are no Liens upon any Collateral other than Permitted Liens;

(g) the Agent shall have received assurances, reasonably satisfactory to it, that no litigation is pending or threatened against any Obligor or any Collateral which would reasonably be expected to have a Material Adverse Effect;

(h) the Agent and the Lenders shall have completed their respective legal and business due diligence investigations with results satisfactory to the Agent or such Lender, as applicable, in their sole discretion; and

(i) the Borrower shall have satisfied such additional closing conditions as are set forth in Item 8 of the Terms Schedule.

Section 4. BORROWER'S REPRESENTATIONS AND WARRANTIES

To induce the Lenders to enter into this Agreement and to extend credit, each Obligor makes the following representations and warranties (in each case, upon giving effect to the Transactions, as of each of the Closing Date, the Incremental Closing Date and the Delayed Draw Closing Date):

4.1 Existence and Rights; Predecessors. Each Obligor is an entity as described in the Perfection Certificate, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified or licensed to transact business in all places where the failure to be so qualified would reasonably be expected to have a Material Adverse Effect; has the right and power to enter into and discharge all of its obligations under the Loan Documents, each of which constitutes a legal, valid and binding obligation of such Obligor, enforceable against it in accordance with its terms, subject only to bankruptcy and similar laws affecting creditors' rights generally; and has the power, authority, rights and franchises to own its property and to carry on its business as presently conducted. Except for the 2019 reorganization resulting in the creation of Holdings or as may be otherwise described in the Perfection Certificate, during the five (5) year period prior to the date of this Agreement, no Obligor has been a party to any merger, consolidation or acquisition of all or substantially all of the assets or equity interests of any other Person and has not changed its legal status or the jurisdiction in which it is organized.

4.2 Authority. The execution, delivery and performance of the Loan Documents by the Borrower and each other Person (other than the Agent and the Lenders) executing any Loan Document have been duly authorized by all necessary actions of such Person, and do not and will not violate any provision of law, or any writ, order or decree of any court or Governmental Authority or agency, or any provision of the Organizational Documents of such Person, and do not and will not result in a breach of, or constitute a default or require any consent under, or result in the creation of any Lien upon any property or assets of such Person pursuant to, any law, regulation, instrument or agreement to which any such Person is a party or by which any such Person or its respective properties may be subject or bound.

4.3 Litigation. Except as disclosed in writing to the Agent prior to the Closing Date, there are no actions or proceedings pending, or to the knowledge of any Obligor, threatened, against any Obligor before any court or administrative agency, and no Obligor has any knowledge or belief of any pending, threatened or imminent governmental investigations or claims, complaints, actions or prosecutions involving any Obligor. No Obligor is in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority.

4.4 Financial Condition; Disclosure.

(a) All financial statements and information relating to Holdings and the Obligors which have been delivered to the Agent have been prepared in accordance with GAAP, unless otherwise stated therein, and fairly present Holdings' and each Obligor's financial condition, as applicable. There has been no material adverse change in the financial condition of Holdings or any Obligor since the date of the most recent of such financial statements submitted to the Agent. No Obligor has knowledge of any liabilities, contingent or otherwise, that are not reflected in such financial statements and information. No Obligor has entered into any special commitments or contracts that are not reflected in such financial statements or is aware of any information that may have a Material Adverse Effect. Holdings and each Obligor, on a Consolidated basis, is, and immediately after consummating the transactions described in the Loan Documents will be, Solvent. As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

(b) Each Obligor hereby represents, warrants and covenants that (a) all written factual information and data, other than (i) the projections, estimates, budgets and other forward-looking information (the "Projections") and (ii) information of a general economic or industry specific nature, that has been or will be made available to the Agent, directly or indirectly, by the Obligors, or by any of the Obligors' representatives on behalf of such Obligor, in connection with the Transactions (such written information and data other than as described in the immediately preceding clauses (i) and (ii), the "Information"), when taken as a whole after giving effect to all supplements and updates provided thereto, is or will be, when furnished, supplemented or updated, correct in all material respects and does not or will not, when furnished, supplemented or updated, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements are made and (b) the Projections that have been or will be made available to the Agent by the Obligors, or by any of the Obligors' representatives on behalf of such Obligor, in connection with the Transactions, when taken as a whole, have been, or will be, prepared in good faith based upon assumptions that are believed by the Obligors to be reasonable at the time the related Projections are so furnished; it being understood that (i) the Projections are merely a prediction as to future events and are not to be viewed as facts or a guarantee of performance, (ii) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Obligors, and (iii) no assurance can be given that any particular Projections will be realized and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results and such differences may be material.

4.5 Taxes. Each Obligor has filed all tax returns that it is required to file, and has paid all Taxes shown on said returns as well as all Taxes shown on all assessments received by it to the extent that such Taxes are not being Properly Contested; and no Obligor is subject to any Tax Liens or has received any notice of deficiency or other official notice to pay any Taxes.

4.6 Material Agreements. No Obligor is a party to any agreement or instrument adversely affecting its business, assets, operations or condition, nor is any Obligor in default in the performance, observance or fulfillment of any material obligations, covenants or conditions contained in any agreement or instrument where such default would reasonably be expected to have a Material Adverse Effect.

4.7 Title to Assets; Intellectual Property. Each Obligor has good title to its assets (including those shown or included in its respective financial statements) or leasehold title as to leased assets or rights as to licenses and the same are not subject to any Liens other than Permitted Liens. Each Obligor possesses all necessary trademarks, trade names, copyrights, patents, patent rights and licenses to conduct business as now operated, without any known conflict with the rights of others, including items described in the Perfection Certificate.

4.8 Compliance With Laws.

(a) Each Obligor and its respective properties, business operations and leaseholds are in compliance in all material respects with all applicable laws.

(b) Without limiting the generality of Section 4.8(a) above:

(i) Holdings and its Subsidiaries have complied and currently are in compliance with all applicable Alcohol Laws, including those pertaining to licenses, permits and other authorizations required to provide such services related to the production, possession and sale of alcoholic beverages on or off premises, except for any noncompliance which, individually and in the aggregate, would not materially and adversely affect Holdings and its Subsidiaries.

(ii) The premises owned or operated by Holdings and its Subsidiaries have complied and currently are in compliance with all applicable Alcohol Laws, including those pertaining to licenses, permits and other authorizations required to provide such services related to the production, possession and sale of alcoholic beverages on or off premises, except for any noncompliance which, individually and in the aggregate, would not materially and adversely affect Holdings and its Subsidiaries.

(iii) The products sold by, or offered for sale by, Holdings and its Subsidiaries, including the labels, labeling and packaging of the products, have complied and currently are in compliance with all applicable Alcohol Laws, including those pertaining to licenses, permits and other authorizations required to provide such services related to the production, possession and sale of alcoholic beverages on or off premises, except for any noncompliance which, individually and in the aggregate, would not materially and adversely affect Holdings and its Subsidiaries.

(iv) The supply chain partnerships used to facilitate the distribution and sale of the products are subject to industry standard agreements that ensure that all distributors and retailers engaged in the sale of the products sold by, or offered for sale by, Holdings and its Subsidiaries, including those pertaining to the three-tier system of alcohol distribution in the United States, and all licenses, permits and other authorizations required to provide such services related to the production, possession and sale of alcoholic beverages on or off premises, except for any noncompliance which, individually and in the aggregate, would not materially and adversely affect Holdings and its Subsidiaries.

(v) To the extent that the products sold by, or offered for sale by, Holdings and its Subsidiaries, contain alcohol ingredients, including, but not limited to ethanol or denatured ethyl alcohol, but do not otherwise qualify as alcoholic beverages, Holdings and its Subsidiaries have complied and currently are in compliance with all applicable laws, rules, regulations, guidances, decrees, orders, judgments, licenses and permits governing the manufacture, sale and distribution of such regulated products, including the labels, labeling and packaging of the products, issued by the FDA applicable to hand sanitizer products.

(vi) Neither Holdings nor any of its Subsidiaries are aware of the receipt by any of any written notice of any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by any Governmental Authority that would implicate Holdings or its Subsidiaries, except where such investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding would not materially and adversely affect Holdings and its Subsidiaries.

(vii) The Borrower and its Subsidiaries market and promote its alcohol beverages and drug products in material compliance with all FDA and TTB laws, rules, regulations, guidances, decrees, orders and judgments.

4.9 Business and Collateral Locations. Each Obligor's chief executive office, principal place of business, office where such Obligor's business records are located and all other places of business of such Obligor are as described in the Perfection Certificate; and, except as otherwise described in the Perfection Certificate, none of the Collateral (other than Inventory in-transit to the Borrower or its customers) is in the possession of any Person other than the applicable Obligor.

4.10 ERISA. Except as disclosed in writing to the Agent prior to the Closing Date, no Obligor has any Plan. No Plan established or maintained by any Obligor had, has, or is expected to have a material accumulated funding deficiency (as such term is defined in Section 302 of ERISA), and no material liability to the Pension Benefit Guaranty Corporation has been, or is expected by any Obligor to be, incurred with respect to any such Plan by such Obligor. No Obligor is required to contribute to or is not contributing to a Multiemployer Plan described in Section 4001(a)(3) of ERISA and has no withdrawal liability to any Plan, nor has any reportable event referred to in Section 4043(b) of ERISA occurred that has resulted or could result in liability of any Obligor; and no Obligor has any reason to believe that any other event has occurred that has resulted or could result in liability of any Obligor as set forth above.

4.11 Labor Relations. Except as disclosed in writing to the Agent prior to the Closing Date, neither any Obligor nor any of their respective Subsidiaries is a party to or bound by any collective bargaining agreement. On the date hereof, there are no material grievances, disputes or controversies with any union or any other organization of any Obligor's or any of their respective Subsidiaries' employees, or, to any Obligor's knowledge, any threats of strikes, work stoppages or any asserted pending demands for collective bargaining by any union or organization.

4.12 Anti-Terrorism Laws; Sanctions. Neither any Obligor nor any of their respective Affiliates is in violation of any anti-terrorism law, including (but not limited to) the PATRIOT Act, engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any anti-terrorism law, including (but not limited to) the PATRIOT Act; or is any of the following (each a "Blocked Person"): (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (iii) a Person with which any bank or other financial institution is prohibited from dealing or otherwise engaging in any transaction by any anti-terrorism law; (iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; (v) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (vi) a Person who is affiliated with a Person listed above. Neither any Obligor nor any of their respective Affiliates conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person or deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224. Each Obligor and each of its respective Affiliates is in compliance with Sanctions and with AML Laws. The Borrower will not use the advances of the Term Loan or the proceeds thereof in violation of any Sanctions, otherwise make such funds available to any Sanctions Target, or use any part of the proceeds of the Term Loan for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977. None of the Obligors, any of their Subsidiaries or any of their respective directors or officers, nor, to their knowledge, any of their respective Affiliates, employees or agents, is a Sanctions Target.

4.13 Capital Structure. As of the date hereof, the Perfection Certificate sets forth the correct name of each Obligor and each Subsidiary of each Obligor, its jurisdiction of organization and the percentage of its Equity Interests owned by such Obligor, the identity of each Person that directly owns any Equity Interests of any Obligor, and the number or percentage of Equity Interests owned by each such Person. Each Obligor has good title to all of the Equity Interests it purports to own in each of its Subsidiaries, free and clear of any Lien other than Liens for the benefit of Agent.

4.14 Perfection Certificate. All of the representations and warranties in the Perfection Certificate are true and accurate on the date of this Agreement.

4.15 Accounts and Other Payment Rights. Each Account, Instrument, Chattel Paper, Payment Intangible and other writing constituting any portion of the Collateral (a) is genuine and enforceable in accordance with its terms except for such limits thereon arising from bankruptcy or similar laws relating to creditors' rights; (b) is not subject to any reduction or discount, defense, setoff, claim or counterclaim of a material nature against any Obligor except as stated on the invoice applicable thereto or as to which such Obligor has notified Agent in writing; (c) is not subject to any other circumstances that would impair the validity, enforceability or amount of such Collateral except as to which any Obligor has notified Agent in writing; (d) arises from a *bona fide* sale of goods or delivery of services in the Ordinary Course of Business and in accordance with the terms and conditions of any applicable contract or agreement; and (e) is free of all Liens other than Permitted Liens.

4.16 Validity, Perfection and Priority of Security Interests. The Liens in favor of Agent provided pursuant to the Security Documents are valid and perfected first priority security interests in the Collateral (subject only to Permitted Liens), and all filings and other actions required by the Loan Documents to perfect the Liens on such Collateral have been taken on the Closing Date or shall be taken as promptly as practicable following the Closing Date.

4.17 Permits, Licenses and Other Approvals. The Borrower and each of its Subsidiaries have all power and authority, and have all permits, licenses, accreditations, certifications, authorizations, approvals, consents, notifications, certifications, registrations, exemptions, variances, qualifications and other rights, privileges and approvals required under applicable laws, to which any Obligor is subject, of all Governmental Entities and other Persons necessary or required for it (a) to own the assets that it now owns, (b) to carry on its business as now conducted, and (c) to execute, deliver and perform the Loan Documents to which it is a party, except, in the case of the foregoing clauses (a) and (b), where the failure to obtain such permits, licenses, accreditations, certifications, authorizations, approvals, consents and agreements would not reasonably be expected to have a Material Adverse Effect.

4.18 Use of Proceeds. Borrower and its Subsidiaries shall have used the proceeds of the Term Loan in accordance withSection 1.1 hereof.

4.19 Investment Company Act; Margin Regulations. No Obligor and no Subsidiary of any Obligor is engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), or extending credit for the purpose of purchasing or carrying margin stock. None of the Obligors, nor any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

4.20 Environmental Compliance.

(a) No Obligor or any Subsidiary (i) has, to the knowledge of the Obligors and their respective Subsidiaries, failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law with respect to such Obligor's or Subsidiary's operations, (ii) has become subject to a pending claim with respect to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability except, in each case, as has not resulted, and would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) (i) None of the properties owned or operated by any Obligor or any Subsidiary is listed or, to the actual knowledge of the Obligors, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) to the actual knowledge of the Obligors and except for distilled spirits and/or distilled spirits mixtures produced in the Ordinary Course of Business, there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Obligor or any Subsidiary; (iii) to the knowledge of the Obligors, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Obligor or Subsidiary; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Obligor or Subsidiary in violation of Environmental Laws or, to the actual knowledge of the Obligors, by any other Person in violation of Environmental Laws on any property currently owned or operated by any Obligor or any Subsidiary, except in the case of this clause (iv) as has not resulted and would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not individually or in the aggregate reasonably be expected to result in Environmental Liabilities on the part of the Obligors and their Subsidiaries in excess of $100,000, no Obligor or any Subsidiary is undertaking, and no Obligor or any Subsidiary has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored by any Obligor or any Subsidiary at, or transported to or from by or on behalf of any Obligor or any Subsidiary, any property owned or operated by any Obligor or any Subsidiary have, to the actual knowledge of the Obligors, been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

4.21 Initial Public Offering. The registration statement on Form S-1 filed in connection with the Initial Public Offering does not contain any untrue statement of a material fact, or omit to state a material fact necessary to make the statements contained therein not misleading and the final prospectuses contained in the Form S-1 does not contain any untrue statement of a material fact, or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading

4.22 Material Non-Public Information. None of the information that has been provided to the Agent, the Lenders or any of their respective officers, directors, employees, attorneys, representatives or agents by or on behalf of any Obligor constitutes material non-public information, except any such information that will be, and is in fact, publicly disclosed by Holdings in a current report on Form 8-K.

Section 5. AFFIRMATIVE COVENANTS

At all times prior to the Termination Date, each Obligor covenants that it shall, and shall cause each of its Subsidiaries to:

5.1 Notices. Notify the Agent, promptly (and in any event, within three (3) Business Days) after any Obligor's obtaining knowledge thereof, of (i) any Default or Event of Default; (ii) the commencement of any action, suit or other proceeding against, or any demand for arbitration with respect to, any Obligor involving more than $100,000 in the aggregate; (iii) the occurrence or existence of any default by an Obligor under any agreement relating to Debt for money borrowed involving more than $100,000 in the aggregate; or (iv) any other event or transaction which has or would reasonably be expected to have a Material Adverse Effect. Notice to Agent shall be deemed delivered for purposes of this Agreement when posted to the website of the Borrower or Holdings or to the website of the Securities and Exchange Commission or any successor thereto and written notice of such posting has been delivered to the Agent.

5.2 Maintenance of Rights and Properties. Maintain and preserve all rights, franchises and other authority adequate for the conduct of its business; maintain its properties, equipment and facilities in good order and repair, ordinary wear and tear excepted; conduct its business in an orderly manner without voluntary interruption; and maintain and preserve its existence.

5.3 Performance and Compliance with Material Contracts. At the expense of such Obligor or such Subsidiary, as applicable, timely and fully perform and comply with all material provisions, covenants and other promises required to be observed by it under all of its Material Contracts, to the extent the failure to perform of comply with such provisions, covenants and promises would be materially adverse to the Agent or the Lenders hereunder.

5.4 Visits and Inspections. Permit representatives of the Agent, as often as may be reasonably requested, but only during normal business hours and (except when a Default or Event of Default exists) upon reasonable prior notice to Holdings to: visit and inspect properties of the Obligors and each of their respective Subsidiaries; inspect, audit and make extracts from each Obligor's Books, including all records relating to any Collateral; and discuss with each of its officers, employees and independent accountants Obligors' and their respective Subsidiaries' business, financial conditions, business prospects and results of operations; *provided*, that unless an Event of Default exists during any such visit or inspection, Obligors shall only be responsible for the expenses incurred by Agent or its representatives in connection with one (1) such visit or inspection per calendar year, notwithstanding any terms to the contrary in the Terms Schedule.

5.5 Taxes. Pay and discharge all Taxes prior to the date on which such Taxes become delinquent or any penalties attach thereto, except and to the extent only that such Taxes are being Properly Contested. If requested by the Agent, each Obligor shall provide proof of payment or, in the case of withholding or other employee taxes, deposit funds required by applicable law and shall deliver to the Agent copies of all tax returns (and amendments thereto) within thirty (30) days following the filing thereof.

5.6 Financial Statements and Other Information. Keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP reflecting all its financial transactions; and cause to be prepared and furnished to the Agent the following:

(i) Commencing with the Fiscal Year ending December 31, 2021, as soon as available and in any event within one hundred eighty (180) days after the close of each Fiscal Year, audited balance sheets of Holdings and its Subsidiaries as of the end of such Fiscal Year and the related statements of income, shareholders' equity and cash flow, on a consolidated and consolidating basis, certified without any going concern or other material qualification, by a firm of independent certified public accountants of recognized national standing selected by Holdings but reasonably acceptable to the Agent and setting forth in each case in comparative form the corresponding consolidated and consolidating figures for the preceding Fiscal Year;

(ii) Commencing with the fiscal quarter ending June 30, 2021, as soon as available, and in any event within forty five (45) days after the close of each fiscal quarter of Holdings, unaudited balance sheets of Holdings and its Subsidiaries as of the end of such fiscal quarter and the related unaudited statements of income and cash flow for such fiscal quarter and for the portion of Holdings' Fiscal Year then elapsed, on a consolidated and consolidating basis, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year and certified by the principal financial officer of Holdings as prepared in accordance with GAAP and fairly presenting the consolidated and consolidating financial position and results of operations of Holdings and its Subsidiaries for such period subject only to changes from year-end adjustments and except that such statements need not contain notes;

~~(iii) Commencing with the Fiscal Year ending December 31, 2021, as soon as available, and in any event within seventy five (75) days after the close of each Fiscal Year of Holdings, unaudited balance sheets of Holdings and its Subsidiaries as of the end of such Fiscal Year and the related unaudited statements of income and cash flow for such Fiscal Year, on a consolidated and consolidating basis, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year and certified by the principal financial officer of Holdings as prepared in accordance with GAAP and fairly presenting the consolidated and consolidating financial position and results of operations of Holdings and its Subsidiaries for such month and period subject only to changes from year-end adjustments and except that such statements need not contain notes;~~

(iii) [reserved];

(iv) as soon as available and in any event within thirty (30) days after the close of each fiscal month, (a) a monthly income statement~~and a calculation of EBITDA as of the end of such fiscal month~~, (b) a monthly cash balance report detailing Holdings' and its Subsidiaries' cash balances as of the end of such fiscal month, and (c) a monthly operational performance report detailing wholesale revenue and retail revenue by spirits segment, tribal partner revenue, monthly sales by category with comparative figures to budget for such fiscal month, in each case on a consolidated and consolidating basis, and setting forth in each case in comparative form the corresponding consolidated and consolidating figures for the comparable fiscal month in the preceding Fiscal Year;

(v) concurrently with the delivery of the financial statements described in clauses (i) and (ii) of this Section, or more frequently if requested by Agent during any period that a Default or Event of Default exists, Holdings shall cause to be prepared and furnished to Lender a Compliance Certificate and an updated Perfection Certificate;

(vi) promptly after the sending or filing thereof, as the case may be, copies of any regular, periodic and special reports or registration statements or prospectuses which the Obligors file with any Governmental Authority;

(vii) within ninety (90) days after the end of each Fiscal Year (beginning with the Fiscal Year ending December 31, 2021), annual financial projections of Holdings and its Subsidiaries for the following Fiscal Year on a consolidated and consolidating basis, in form reasonably satisfactory to Agent, of monthly consolidated and consolidating balance sheets and statements of income or operations and cash flows and detailing assumptions made in the build-up of such budget;

(viii) all reporting with respect to the Collateral as provided in the Security Agreement and the other Security Documents; and

(ix) promptly following any request therefor, (a) such other information regarding the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Obligors, or compliance with the terms of the Loan Documents, as the Agent or any Lender (through the Agent) may from time to time reasonably request, or (b) information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws or (c) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.

Notwithstanding the foregoing, the obligations under clauses (i) and (ii) of this Section 5.6 with respect to delivery of financial information of Holdings and its Subsidiaries may be satisfied by furnishing Holdings' Form 10-K or 10-Q (or any comparable or successor form), as applicable, as filed with the SEC.

Notwithstanding any other requirement of this Agreement or any other Loan Document, upon the written request of any Lender (so long as such written request is in effect, a "Public Lender"), Holdings will not, and will cause each of its Subsidiaries and Affiliates and its and each of their respective officers, directors, employees, attorneys, representatives and agents to not, provide such Public Lender with any material nonpublic information regarding Holdings or any of its Subsidiaries or Affiliates without the express prior written consent of such Public Lender. Notwithstanding anything to the contrary herein or any other Loan Document, any information provided to any Public Lender or the Agent by Holdings, its Subsidiaries, Affiliates, and its and each of their respective officers, directors, employees, attorneys, representatives and agents, to the extent Holdings is a public company, (x) to the extent such information is filed with any securities regulator or stock exchange to the authority of which Holdings may become subject from time to time, shall be deemed to be public information ("Public Information") and (y) any other information shall be deemed material nonpublic information ("Private Information"). For the avoidance of doubt, the failure of any of the Borrower or any Obligor to provide any notice or communication otherwise required hereunder or under any other Loan Document to any Public Lender solely as a result of the Borrower's or such Obligor's compliance with this paragraph and because such notice or communication would contain or constitute Private Information shall not constitute or be considered a breach or violation of, or a Default or Event of Default under, this Agreement or any other Loan Document. At any time any Public Lender may deliver written notice to Holdings notifying Holdings that it no longer wishes to be a Public Lender (a "Public Lender Notice"), at which time it will cease to be a Public Lender until such time as it delivers another written request to become a Public Lender. The Public Lender Notice shall not apply retroactively, and the Agent shall have no liability with respect to any material nonpublic information regarding Holdings or any of its Subsidiaries or Affiliates shared by the Agent with any Lender prior to the Agent's receipt of such Public Lender Notice. Notwithstanding anything to the contrary in this paragraph, Agent and Lenders acknowledge and agree that each Board Observer will receive Private Information; provided, however, that, except with the Agent's express prior written consent, Holdings will not, and will cause each of its Subsidiaries and Affiliates and its and each of their respective officers, directors, employees, attorneys, representatives and agents to not, provide to any Board Observer any Private Information that would cause such Board Observer and/or the Agent or the Agent's Affiliates to become subject to any special or other blackout periods or other trading restrictions imposed by Holdings or its Subsidiaries except for the customary quarterly blackout periods associated with the release of financial information that end not later than the second trading day following the date Holdings' and its Subsidiaries' financial results are publicly disclosed and any other blackout periods and trading restrictions applicable generally to independent members of such board.

5.7 Compliance with Laws. Comply in all material respects with all applicable laws (including, but not limited to, the PATRIOT Act), and all other laws regarding the collection, payment and deposit of Taxes, and shall obtain and keep in full force and effect any and all governmental approvals necessary to the ownership of its properties or the conduct of its business and shall promptly report any non-compliance to Agent, except in such instances in which such requirement of law is being contested in good faith by appropriate proceedings diligently conducted.

5.8 ~~Financial Covenants~~[Reserved]~~. Comply with all of the Financial Covenants.~~

5.9 Maintenance of Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance (including, without limitation, business interruption insurance) with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates.

5.10 Covenant to Guarantee Obligations and Give Security. Upon (x) the request of the Agent following the occurrence and during the continuance of an Event of Default, (y) the formation or acquisition of any new direct or indirect Subsidiaries by any Obligor or (z) the acquisition of any property by any Obligor, and such property, in the judgment of the Agent, shall not already be subject to a perfected first priority security interest in favor of the Agent for the benefit of the Lenders, then in each case at the Obligors' expense:

(i) in connection with the formation or acquisition of a Subsidiary, within twenty (20) days after such formation or acquisition, cause each such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Agent a guaranty or guaranty supplement, in form and substance satisfactory to the Agent, guaranteeing the other Obligor's obligations under the Loan Documents,

(ii) within twenty (20) days after (A) such request, furnish to the Agent a description of the real and personal properties of the Obligors and their respective Subsidiaries in detail reasonably satisfactory to the Agent and (B) such formation or acquisition, furnish to the Agent a description of the real and personal properties of such Subsidiary or the real and personal properties so acquired, in each case in detail satisfactory to the Agent,

(iii) within twenty (20) days after (A) such request or acquisition of property by any Obligor, duly execute and deliver, and cause each Obligor to duly execute and deliver, to the Agent such additional mortgages, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and other security agreements as specified by, and in form and substance satisfactory to the Agent (it being acknowledged and agreed that security agreements in the form and substance similar to those being delivered on the Closing Date shall be satisfactory to Agent), securing payment of all the Obligations of such Obligor under the Loan Documents and constituting Liens on all such properties and (B) such formation or acquisition of any new Subsidiary, duly execute and deliver and cause such Subsidiary and each Obligor acquiring Equity Interests in such Subsidiary to duly execute and deliver to the Agent mortgages, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and other security agreements as specified by, and in form and substance satisfactory to, the Agent (it being acknowledged and agreed that security agreements in the form and substance similar to those being delivered on the Closing Date shall be satisfactory to Agent), securing payment of all of the obligations of such Subsidiary or Obligor, respectively, under the Loan Documents,

(iv) within thirty (30) days after such request, formation or acquisition, take, and cause each Obligor and each newly acquired or newly formed Subsidiary to take, whatever action (including, without limitation, the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Agent to vest in the Agent (or in any representative of the Agent designated by it) valid Liens on the properties purported to be subject to the mortgages, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements delivered pursuant to this Section 5.10, enforceable against all third parties (subject to Permitted Liens) in accordance with their terms,

(v) within thirty (30) days after such request, formation or acquisition, deliver to the Agent, upon the request of the Agent in its reasonable discretion (or sole discretion in connection with such request), a signed copy of a customary opinion, addressed to the Agent and the other Lenders, of counsel for the Obligors acceptable to the Agent as to (1) the matters contained in clauses (i), (iii) and (iv) above, (2) such guaranties, guaranty supplements, mortgages, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements being legal, valid and binding obligations of each Obligor party thereto enforceable in accordance with their terms, as to the matters contained in clause (iv) above, (3) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such properties, and (4) such other matters as the Agent may reasonably request,

(vi) as promptly as practicable after such request, formation or acquisition, deliver, upon the request of the Agent in its reasonable discretion (or sole discretion in connection with such request), to the Agent with respect to each parcel of real property owned or held by each Obligor and each newly acquired or newly formed Subsidiary title reports, surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance satisfactory to the Agent, provided, however, that to the extent that any Obligor or any of its Subsidiaries shall have otherwise received any of the foregoing items with respect to such real property, such items shall, promptly after the receipt thereof, be delivered to the Agent, and

(vii) at any time and from time to time, promptly execute and deliver, and cause each Obligor and each newly acquired or newly formed Subsidiary to execute and deliver, any and all further instruments and documents and take, and cause each Obligor and each newly acquired or newly formed Subsidiary to take, all such other action as the Agent may reasonably deem necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, mortgages, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements.

5.11 Further Assurances. Take such further actions as the Agent shall reasonably request from time to time in connection herewith to evidence or give effect to this Agreement and the other Loan Documents and any of the transactions contemplated hereby. Promptly after the Agent's request therefor, the Obligors shall execute or cause to be executed and delivered to the Agent such instruments, assignments, title certificates or other documents as are necessary under the UCC or other applicable law to perfect (or continue the perfection of) the Agent's Liens upon the Collateral and shall take such other action as may be reasonably requested by the Agent to give effect to or carry out the intent and purposes of this Agreement.

5.12 Holdings Covenant. With respect to Holdings, engage solely in the following activities: (i) acting as a holding company and transactions incidental thereto, (ii) entering into the Loan Documents and the transactions required herein or permitted herein to be performed by Holdings, (iii) receiving and distributing the dividends, distributions and payments permitted to be made to Holdings pursuant to Section 6.5, (iv) entering into engagement letters and similar type contracts and agreements with attorneys, accountants and other professionals, (v) owning the Equity Interests of the Borrower and its other direct Subsidiaries, (vi) issuing Equity Interests as permitted hereunder, (vii) engaging in activities necessary or incidental to any director, officer and/or employee option incentive plan at Holdings, (viii) providing guarantees for the benefit of Borrower to the extent Borrower is otherwise permitted to enter into the underlying transaction pursuant to the terms of this Agreement ~~and~~, (ix) after the consummation of the Initial Public Offering, any public filing or registration requirements of the SEC, NASDAQ or NYSE, as applicable, in respect of the Equity Interests of Holdings, including the ability to incur costs, fees and expenses related thereto, and (x) holding nominal deposits in deposit accounts in connection with consummating any of the foregoing transactions.

5.13 Compliance with Anti-Corruption Laws, AML Laws, Sanctions and Beneficial Ownership Regulations Maintain in effect and enforce policies and procedures reasonably intended to promote and achieve compliance by Holdings, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, AML Laws and applicable Sanctions.

5.14 Post-Closing Actions.

(a) Not later than the date that is thirty (30) days after the Closing Date (or such later date as the Agent may agree in its sole discretion), deliver a Control Agreement, in form and substance satisfactory to the Agent, for each Deposit Account (other than any Excluded Account (as such term is defined in the Security Agreement)) maintained by any Obligor as of the Closing Date;

(b) Not later than the date that is fifteen (15) days after the Closing Date (or such later date as the Agent may agree in its sole discretion), deliver insurance certificates, with confirming endorsements, naming the Agent, on behalf of the Lenders, as loss payee or mortgagee, as their interest may appear, on all property damage policies and as an "additional insured" on all third party liability policies; and

(c) Not later than the date that is forty-five (45) days after the Closing Date (or such later date as the Agent may agree in its sole discretion), use commercially reasonable efforts to deliver a Lien Waiver satisfactory to Agent for the real properties located at (i) 3553 West First Avenue, Eugene, Oregon and (ii) 9668 Bujacich Road, Gig Harbor, Washington 98332-8477.

(d) Not later than the date that is thirty (30) days after the Closing Date (or such later date as the Agent may agree in its sole discretion), deliver to the Agent evidence of (i) a filed UCC-3 financing statement amendment that amends the UCC-1 financing statement filed with the Department of Licensing of the State of Washington under file number 2014-259-3239-0 (the lien evidenced by such financing statement and amendments thereto being the "Specified Summit Equipment Lien"), to limit the collateral description therein to equipment acquired for or used in the Borrower location at 110 Madison Street, Eugene, Oregon, and (ii) a corresponding amendment to the collateral description in the underlying security agreement pursuant to which the lien on such equipment is granted in favor of Summit Bank.

5.15 Holdings Public Listing. After the consummation of the Initial Public Offering, Holdings shall maintain the public listing of its common stock on NASDAQ or NYSE.

Section 6. NEGATIVE COVENANTS

At all times prior to the Termination Date, each Obligor shall not, and shall not permit any of their respective Subsidiaries to:

6.1 Fundamental Changes. Merge, reorganize, or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions (other than merger or consolidation of any Subsidiary of the Borrower with and into (a) the Borrower or (b) another subsidiary of Borrower that is an Obligor); change its name or conduct business under any fictitious name except for any fictitious name shown in the Perfection Certificate; change its federal employer identification number, organizational identification number, state of organization, or the type of entity it is; relocate its chief executive office or principal place of business without having first provided ten (10) Business Days prior written notice to the Agent; amend, modify or otherwise change any of the terms or provisions in any of its Organizational Documents or the Organizational Documents of any of its Subsidiaries, except for changes that do not affect in any way such Obligor's authority to enter into and perform the Loan Documents to which it is a party, the perfection of the Agent's Liens on any of the Collateral, or its authority or obligation to perform and pay the Obligations, and except for changes that are not adverse to the Lenders; or create any Subsidiary or acquire all or substantially all of the assets or Equity Interests of another Person, except for Permitted Acquisitions.

6.2 Conduct of Business; Asset Transfers. Sell, lease or otherwise dispose of any of its assets (including any Collateral) other than a Permitted Asset Disposition; suspend or otherwise discontinue all or any material part of its business operations, except as previously disclosed in writing to Agent; or engage in any business other than the business engaged in by it on the Closing Date, without the prior written consent of the Agent.

6.3 Debt; Liens. Create, incur or suffer to exist any (i) Lien on any of its assets other than Permitted Liens, or (ii) any Debt, including any guaranties or other

contingent obligations, other than the following:

(a) the Obligations;

(b) Debt for accrued payroll and Taxes incurred in the Ordinary Course of Business, in each case so long as payment thereof is not past due and payable unless, in the case of Taxes, such Taxes are being Properly Contested;

(c) Additional Permitted Debt;

(d) unsecured Debt owing from any Obligor to any other Obligor;

(e) unsecured guarantees of any Obligor with respect to Debt or obligations of any other Obligor that is otherwise permitted hereunder, including guarantees of the type specified in Section 5.12(viii);

(f) Debt in the form of Capital Lease Obligations or purchase money financing for Fixed Assets and Permitted Refinancings of such Debt;provided, however, that the aggregate amount of all such Debt at any one time outstanding shall not exceed $750,000;

(g) Debt under performance, surety, statutory, appeal bonds or other similar bonds in the Ordinary Course of Business;

(h) Debt in respect of netting services, overdraft protections, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") and cash management services and otherwise in connection with cash management and deposit accounts, in each case incurred in the Ordinary Course of Business; provided, however, that the aggregate amount of all such Debt at any one time outstanding shall not exceed $100,000;

(i) Debt in respect of financed insurance premiums, in an aggregate amount at any one time not to exceed the amount of any premiums under such insurance policies;

(j) unsecured Debt consisting of any earnout obligations or similar deferred or contingent consideration obligations incurred or created in connection with a Permitted Acquisition; provided, that any such Debt shall be on terms and conditions (including amounts and terms as to subordination) acceptable to the Agent in its sole discretion;

(k) Debt owed to any Person providing workers' compensation, health, disability or other employee benefits (including contractual and statutory benefits) or property, casualty or liability insurance to any Obligor, in each case in the Ordinary Course of Business;

(l) other unsecured Debt so long as (i) no Default or Event of Default has occurred or would result from the incurrence thereof, (ii) such Debt is subordinated to the Term Loan, matures at least ninety-one (91) days after the Maturity Date, and is otherwise subject to terms and conditions (including, without limitation, subordination provisions) acceptable to the Agent in its sole discretion, and (iii) except with respect to Permitted Convertible Debt, after giving effect to the incurrence of such Debt, the Total Leverage Ratio for the most recently ended Applicable Fiscal Period, recomputed to give Pro Forma Effect to the incurrence of such Debt, shall not exceed 1.50:1.00, unless otherwise waived in writing by Agent; ~~and~~

(m) the Channel Partners Debt; provided, that such Debt shall only remain outstanding until the earlier of (i) the incurrence of Permitted Additional Debt and (ii) the borrowing of the Incremental Term Loans, upon which such earlier date the Channel Partners Debt shall be repaid in full~~.~~;

(n) the City of Eugene Debt, so long as such Debt (i) is subordinated to the Term Loan, (ii) matures at least ninety-one (91) days after the Maturity Date, and (iii) is otherwise subject to terms and conditions (including, without limitation, subordination provisions) acceptable to the Agent in its sole discretion; and.

(o) the outstanding amount owed by TTS on the SBA COVID Relief Loan as of October 1, 2024, in a maximum aggregate amount of $39,246, which is not subject to subordination.

6.4 Loans; Advances; Investments. Make any loans or advances or other transfers of property to any Person or make any capital contribution or other investment in any Person, except, in each case, (i) reimbursement of expenses to officers or employees in the Ordinary Course of Business, (ii) transfers by a Subsidiary of the Borrower to the Borrower or to another Subsidiary of the Borrower that is an Obligor, (iii) transfers to the Lenders pursuant to the Loan Documents, (iv) investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business and investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors; (v) to the extent constituting an investment, guarantees permitted under Section 6.3, (vi) Permitted Acquisitions (including investments in Subsidiaries acquired pursuant to a Permitted Acquisition), (vii) deposits and other prepaid expenses in the Ordinary Course of Business and (viii) investments received as the non-cash portion of consideration received in connection with a disposition of property otherwise permitted hereunder.

6.5 Distributions. Declare or make any Distribution other than (a) Distributions by any Subsidiary of the Borrower to the Borrower; (b) Distributions by Holdings to the direct holders of Equity Interests in Holdings so long as (i) no Default or Event of Default shall have occurred and be continuing immediately before and immediately after giving effect to such Distribution, (ii) ~~immediately before and immediately after giving effect to such Distribution, Obligors are in Pro Forma Compliance with the Financial Covenants~~[Reserved] and (iii) the Total Net Leverage Ratio, as of the last day of the Applicable Fiscal Period most recently ended, and calculated on a Pro Forma Basis after giving effect to the making of such Distribution, shall not be greater than 1.50:1.00; (c) the issuance of Equity Interests of Holdings to the holders of any Permitted Convertible Debt that is convertible into common Equity Interests of Holdings, to redeem such Permitted Convertible Debt; ~~and~~ (d) Distributions to repay any Permitted Convertible Debt set forth in clause (a) of the definition thereof in cash, and (e) Distributions accrued on preferred Equity Interests of Holdings where such Distributions are paid in-kind and converted into common Equity Interests of Holdings, unless otherwise approved in writing by Agent.

6.6 ERISA. Withdraw from participation in, permit any full or partial termination of, or permit the occurrence of any other event with respect to any Plan maintained for the benefit of the Obligors' employees under circumstances that could result in liability to the Pension Benefit Guaranty Corporation, or any of its successors or assigns, or to any entity which provides funds for such Plan; or withdraw from any Multiemployer Plan described in Section 4001(a)(3) of ERISA which covers the Obligors' employees.

6.7 Tax and Accounting Matters. File or consent to the filing of any consolidated income tax return with any Person other than one or more of its Subsidiaries; make any significant change in accounting treatment or reporting practices, except as required by GAAP; or establish a fiscal year different than the Fiscal Year.

6.8 Restrictive Agreements. Enter into or permit to exist any contractual arrangement (other than this Agreement or any other Loan Document) that limits the ability (i) of any Subsidiary to make Distributions to the Borrower or any Guarantor or to otherwise transfer property to or invest in the Borrower or any Guarantor, except for any agreement in effect (A) on the date hereof or (B) at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (ii) of any Subsidiary to Guarantee the Debt of the Borrower or (iii) of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person (including, without limitation, as to the Equity Interests of BSB held by the Obligors and their Subsidiaries; provided, that, for the avoidance of doubt, that any such limitations set forth in the limited liability company operating agreement of BSB as of the Closing Date are permitted pursuant to this Section 6.8), except for any lease or other similar agreement with respect to property that is subject to a purchase money security interest or Capital Lease Obligation, the terms of which lease or other similar agreement limits the ability of the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on such property.

6.9 Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except in the Ordinary Course of Business and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof.

6.10 Reserved.

6.11 Prepayments/Modifications of Debt.

(a) Voluntarily prepay, redeem, purchase, repurchase, defease, acquire, or otherwise satisfy prior to the scheduled maturity thereof any Debt (other than the Obligations and Permitted Refinancings of Debt permitted hereunder); *provided* that (i) such payments shall be permitted if (A) no Default or Event of Default shall have occurred and be continuing or would result therefrom at the time of the making of such payment and (B) immediately before and immediately after giving effect to such payment, the Total Leverage Ratio for the most recently ended Applicable Fiscal Period, recomputed to give Pro Forma Effect to such payment, shall not exceed 1.50:1.00, (ii) the conversion or exchange of any Permitted Convertible Debt to or for common Equity Interests of Holdings shall be permitted, (iii) prepayments, redemptions, purchases, repurchases, defeasances or other satisfactions of intercompany Debt, to the extent such intercompany Debt is payable to an Obligor (other than Holdings) shall be permitted in accordance with the terms of the subordination agreements (if any) applicable thereto and (iv) prepayments of Capital Lease Obligations and purchase money financings for Fixed Assets permitted to be incurred under this Agreement shall be permitted.

(b) Amend, modify or alter, nor permit to be amended, modified or altered, in any manner any document governing any Debt that is subordinated to any of the Obligations, other than (i) amendments, modifications or alterations that are permitted under any subordination terms and conditions applicable thereto, or (ii) other amendments, modification or alterations which are not materially adverse to the interests of the Agent or any Lender.

Section 7. EVENTS OF DEFAULTS; REMEDIES

7.1 Events of Default. The occurrence or existence of any one or more of the following events or conditions shall constitute an Event of Default under this Agreement and the Loan Documents:

(a) The Borrower or any other Obligor shall fail to pay any of the Obligations on the due date thereof (whether due at stated maturity, on demand, upon acceleration or otherwise); provided, however, that any default pursuant to this Section 7.1(a) shall be subject to a three (3) Business Day cure period in the event such default arose solely as a result of administrative or operational errors on the part of the Agent, the Lenders or the Obligors' banking institution.

(b) Any Obligor fails or neglects to perform, discharge, keep or observe (i) any covenant contained in Sections 5.1, 5.4, 5.6, 5.8, 5.9, 5.10, 5.12, 5.13, 5.14, 6, 8.6(h)(iii) or Item 9 of the Terms Schedule on the date that the Obligors are required to perform, keep or observe such covenant (subject to any applicable time period set forth in such Sections); (ii) any other covenant contained in this Agreement if the breach of such other covenant is not cured to the Agent's satisfaction within fifteen (15) days after the sooner to occur of any Senior Officer's receipt of notice of such breach from the Agent or the date on which such failure or neglect first becomes known to any Senior Officer, provided that such notice and opportunity to cure shall not apply in the case of any failure to perform, keep or observe any covenant that is not capable of being cured at all or within such fifteen (15) day period or that is a willful and knowing breach by the Borrower or any other Obligor; or (iii) any covenant or undertaking by it in any other Loan Document (subject to any applicable time period or cure period set forth therein).

(c) Any representation, statement, report, or certificate made or delivered by any Obligor to Agent and/or the Lenders is not true and correct, in any material respect, when made or furnished.

(d) An Insolvency Proceeding (i) is commenced against any Obligor or any of their respective Subsidiaries and is not dismissed within forty-five (45) days thereafter, or (ii) is commenced by any Obligor or any of their respective Subsidiaries.

(e) There is entered against any Obligor or any of their respective Subsidiaries (i) one or more judgments or orders for the payment of money in an aggregate amount exceeding $250,000 (except to the extent that the judgment or order is discharged, appealed or covered by insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, such judgments or orders remain unvacated and unpaid until either (A) enforcement proceedings are commenced by any creditor upon any such judgment or order or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of any such judgment or order, by reason of a pending appeal or otherwise, is not in effect.

(f) Any Obligor or any of their respective Subsidiaries (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any Debt (other than the Obligations) having an aggregate principal amount of more than $250,000, or (B) fails to observe or perform any other agreement or condition relating to any such Debt, or (C) any other event occurs, and such event continues for more than the grace period, if any, therein specified, and in each of the foregoing clauses (B) and (C), the effect of which is to cause, or to permit the holder or holders of such Debt (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), prior to its stated maturity (other than in respect of any such secured Debt that becomes due solely as a result of the sale, transfer or other disposition of the property or assets securing such Debt).

(g) Any Obligor or any of their respective Subsidiaries dissolves or becomes the subject of an Insolvency Proceeding; revokes or attempts to revoke the guaranty signed by any Guarantor; repudiates or disputes any Guarantor's liability thereunder; is in default under the terms thereof; or fails to confirm in writing, promptly after receipt of the Agent's written request therefor, any Guarantor's ongoing liability under the guaranty in accordance with the terms thereof.

(h) A Reportable Event (consisting of any of the events set forth in Section 4043(b) of ERISA) shall occur which Agent, in its reasonable discretion, shall determine constitutes grounds for the termination by the Pension Benefit Guaranty Corporation of any Plan or the appointment by the appropriate United States district court of a trustee for any Plan, or if any Plan shall be terminated or any such trustee shall be requested or appointed, or if the Borrower or any other Obligor is in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan described in Section 4001(a)(3) of ERISA resulting from the Borrower's, or such other Obligor's complete or partial withdrawal from such Multiemployer Plan.

(i) Any Obligor or any of their respective Subsidiaries shall challenge in any action, suit or other proceeding the validity or enforceability of any of the Loan Documents, the legality or enforceability of any of the Obligations or the perfection or priority of any Lien granted to the Agent, or any of the Loan Documents ceases to be in full force or effect for any reason other than a full or partial waiver or release by the Agent in accordance with the terms thereof.

(j) Any Obligor shall be required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(k) Any Obligor shall cease to operate its business in the same manner as such Obligor's business is conducted as of the Closing Date.

(l) A Change of Control shall occur.

7.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, the Agent may, in its discretion, without notice to or demand upon any Obligor, do any one or more of the following:

(a) Declare all Obligations, whether arising pursuant to this Agreement or otherwise, due, whereupon the same shall become without further notice or demand (all of which notice and demand each Obligor expressly waives) immediately due and payable, and the Borrower shall pay to the Agent for the account of the Lenders the entire aggregate outstanding principal amount of and accrued and unpaid interest on the Term Loan and other Obligations, plus any applicable Prepayment Premium, plus attorneys' fees and its court costs if such principal, interest and fees are collected by or through an attorney-at-law;

(b) Cease advancing money or extending credit to or for the benefit of the Borrower under this Agreement or under any other agreement between the Borrower and the Lenders;

(c) Notify Account Debtors or lessees of the Obligors that the Accounts have been assigned to the Agent and that the Agent has a security interest therein, collect them directly, and charge the collection costs and expenses to the Loan Account;

(d) Take immediate possession of any Collateral, wherever located; require the Obligors to assemble the Collateral, at the Obligors' expense, and make it available to the Agent at a place designated by the Agent which is reasonably convenient to both parties; and enter any premises where any of the Collateral may be located and keep and store the Collateral on said premises until sold (and if said premises are the property of an Obligor, then such Obligor agrees not to charge the Agent for storage thereof);

(e) Sell or otherwise dispose of all or any part of the Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sales, with such notice as may be required by applicable law, in lots or in bulk, for cash or on credit, all as the Agent in its discretion may deem advisable; and each Obligor agrees that any requirement of reasonable notice to such Obligor or any other Obligor of any proposed public or private sale or other disposition of Collateral by the Agent shall be deemed satisfied if such notice is given at least ten (10) days prior thereto, and such sale may be at such locations as the Agent may designate in said notice; and

(f) Petition for and obtain the appointment of a receiver, without notice of any kind whatsoever, to take possession of any or all of the Collateral and business of the Borrower and to exercise such rights and powers as the court appointing such receiver shall confer upon such receiver.

The Agent is hereby granted, solely for the purpose of effectuating any of the foregoing remedies and only during the continuance of an Event of Default, an irrevocable, non-exclusive license or other right to use, license or sub-license (exercisable without payment of compensation to any Obligor or any other Person), any or all of the Obligors' patents, trademarks, trade names and copyrights and all of the Obligors' computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, and packaging materials, and any property of a similar nature, in advertising for sale, marketing, selling and collecting and in completing the manufacturing of any Collateral, and the Obligors' rights under all licenses and franchise agreements shall inure to the Agent's benefit. The proceeds realized from any sale or other disposition of any Collateral may be applied first to any expenses incurred by the Agent and the Lenders and then to the remainder of the Obligations, in such order of application as the Agent may elect in its discretion, with the Borrower and all other Obligors remaining liable for any deficiency.

7.3 Cumulative Rights; No Waiver. All covenants, conditions, warranties, guaranties, indemnities and other undertakings of any Obligor in any of the Loan Documents shall be deemed cumulative, and the Agent and the Lenders shall have all other rights and remedies not inconsistent herewith as provided under the UCC, or other applicable law. No exercise by the Agent or the Lenders of one right or remedy shall be deemed an election, and no waiver by the Agent or the Lenders of any Default or Event of Default on one occasion shall be deemed to be a continuing waiver or applicable to any other occasion. No delay by the Agent or the Lenders shall constitute a waiver, election or acquiescence by the Agent or the Lenders in any failure by the Borrower strictly to comply with its obligations under the Loan Documents.

7.4 Application of Payments. Except to the extent provided for in Section 7.2 hereof, any amounts received by the Agent and the Lenders shall be applied by the Agent (and each Obligor hereby affirmatively consents to any such application) as follows:

(i) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts then due and payable to the Agent;

(ii) second, to payment of that portion of the Obligations constituting fees, expenses, indemnities and other amounts then due and payable to the Lenders arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause (ii) payable to them;

(iii) third, to payment of that portion of the Obligations constituting unpaid principal installments of the Term Loan then due and payable, ratably among the Lenders in proportion to the respective amounts described in this clause (iii) payable to them;

(iv) fourth, to the payment in full of all other Obligations then due and payable, in each case ratably among the Agent and the Lenders based upon the respective aggregate amounts of all such Obligations then due and payable owing to them in accordance with the respective amounts thereof then due and payable; and

(v) fifth, to the extent any surplus amounts remain, to be repaid to the Obligors.

Section 8. GENERAL PROVISIONS

8.1 Accounting Terms. Unless otherwise specified herein, all terms of an accounting character used in this Agreement shall be interpreted, all accounting determinations under this Agreement shall be made, and all financial statements required to be delivered under this Agreement shall be prepared in accordance with GAAP, applied on a basis consistent with the most recent audited financial statements of Holdings and its Subsidiaries delivered to the Agent prior to the Closing Date and using the same method for inventory valuation as used in such audited financial statements, except for any changes required by GAAP. Notwithstanding any provision to the contrary in this Agreement or any other Loan Document, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to Accounting Standards Codification 842 (or any other existing or future Accounting Standards Codification or Financial Accounting Standard having a similar effect or result) and related interpretations (collectively, "ASC 842") to the extent the effect would be to cause leases which would be treated as operating leases under GAAP immediately prior to the effectiveness of ASC 842 to be recorded as a liability or as debt on any Person's statement of financial position under GAAP.

8.2 Certain Matters of Construction. The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles, table of contents and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All references in this Agreement to statutes shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including any of the Loan Documents) shall include any and all modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof; to any Person shall mean and include the successors and permitted assigns of such Person; to "including" shall be understood to mean "including, without limitation"; or to the time of day shall mean the time of day on the day in question in New York, New York, unless otherwise expressly provided in this Agreement. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement. Whenever in any provision of this Agreement the Agent is authorized to take or decline to take any action (including making any determination) in the exercise of its "discretion," such provision shall be understood to mean that Lender may take or refrain to take such action in its sole and absolute discretion (unless such discretion is qualified by the term "reasonable" in the applicable provision). Whenever the phrase "to the best of the Borrower's knowledge" or words of similar import relating to the knowledge or the awareness of the Borrower are used in this Agreement or other Loan Documents, such phrase shall mean and refer to the actual knowledge of any Senior Officer of the Borrower.

8.3 Power of Attorney. Each Obligor hereby irrevocably makes, constitutes and appoints the Agent (and any of the Agent's officers, employees or agents designated by the Agent), with full power of substitution, as such Obligor's true and lawful attorney, in such Obligor's or the Agent's name: (a) to endorse such Obligor's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into the Agent's possession; (b) during the continuance of an Event of Default, to sign such Obligor's name on drafts against Account Debtors, on schedules and assignments of Accounts, on notices to Account Debtors and on any Account invoice or bill of lading; (c) during the continuance of an Event of Default, to send requests for verification of Accounts, and to contact Account Debtors in any other manner to verify the Accounts; (d) during the continuance of an Event of Default, to notify the post office authorities to change the address for delivery of such Obligor's mail to any address designated by the Agent, to receive and open all mail addressed to such Obligor, and to retain all mail relating to the Collateral and forward, within two (2) Business Days of the Agent's receipt thereof, all other mail to such Obligor; and (e) during the continuance of an Event of Default, to do all other things necessary to carry out this Agreement. The foregoing power of attorney, being coupled with an interest, is irrevocable so long as any Obligations are outstanding. Each Obligor ratifies and approves all acts of the attorney. Neither the Agent nor its employees, officers, or agents shall be liable for any acts or omissions or for any error in judgment or mistake of fact or law except for gross negligence or willful misconduct.

8.4 Notices and Communications. All notices, requests and other communications to or upon a party hereto shall be in writing (including facsimile transmission or similar writing) and shall be given to such party at the address, facsimile number or email address for such party in Item 10 of the Terms Schedule or at such other address or facsimile number as such party may hereafter specify for the purpose of notice to the Agent and the Obligors in accordance with the provisions of this Section. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified herein for the noticed party and confirmation of receipt is received, (ii) if given by mail, three (3) Business Days after such communication is deposited in the U.S. Mail, with first class postage pre-paid, addressed to the noticed party at the address specified herein, (iii) if sent by electronic mail, when actually received at the address listed in Item 10 of the Terms Schedule, or (iv) if given by personal delivery, when duly delivered with receipt acknowledged in writing by the noticed party. Notwithstanding the foregoing, no notice to or upon the Agent pursuant to Section 5.1 shall be effective until actually received by the individual to whose attention at the Agent such notice is required to be sent. Any written notice, request or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice, request or demand is actually received by the individual to whose attention at the noticed party such notice, request or demand is required to be sent.

8.5 Performance of Obligors' Obligations. If any Obligor shall fail to discharge any covenant, duty or obligation hereunder or under any of the other Loan Documents, the Agent may, in its discretion at any time, for such Obligor's account and at such Obligor's expense, pay any amount or do any act required of such Obligor hereunder or under any of the other Loan Documents or otherwise lawfully requested by the Agent. All costs and expenses incurred by the Agent in connection with the taking of any such action shall be reimbursed to the Agent by such Obligor **on demand** with interest at the Default Rate from the date such payment is made or such costs or expenses are incurred to the date of payment thereof. Any payment made or other action taken by the Agent under this Section shall be without prejudice to any right to assert, and without waiver of, an Event of Default hereunder and without prejudice to the Agent's right to proceed thereafter as provided herein or in any of the other Loan Documents.

8.6 Agent.

(a) Authorization and Action. Each Lender (in its capacity as a Lender) hereby appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to such Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of the Obligations of the Obligors), no Agent shall be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of all Lenders, and such instructions shall be binding upon all Lenders; *provided*, *however*, that the Agent shall not be required to take any action that exposes such Agent to personal liability or that is contrary to this Agreement or applicable law.(b)In furtherance of the foregoing, each Lender (in its capacities as a Lender) hereby appoints and authorizes the Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Obligors to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Agent (and any Supplemental Collateral Agents appointed by the Agent pursuant to Section 8.6(c) for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Agent) shall be entitled to the benefits of this Section 8.6 (including, without limitation, Section 8.6(g)) as though the Agent (and any such Supplemental Collateral Agents) were an "Agent" under the Loan Documents, as if set forth in full herein with respect thereto.(c)The Agent may execute any of its duties under this Agreement or any other

Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents or of exercising any rights and remedies thereunder at the direction of the Agent) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Agent may also from time to time, when the Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a "Supplemental Collateral Agent") with respect to all or any part of the Collateral; *provided*, *however*, that no such Supplemental Collateral Agent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Agent. Should any instrument in writing from the Borrower or any other Obligor be required by any Supplemental Collateral Agent so appointed by the Agent to more fully or certainly vest in and confirm to such Supplemental Collateral Agent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Obligor to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Agent. If any Supplemental Collateral Agent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall automatically vest in and be exercised by the Agent until the appointment of a new Supplemental Collateral Agent. The Agent shall be not responsible for the negligence or misconduct of any agent, attorney-in-fact or Supplemental Collateral Agent that it selects in accordance with the foregoing provisions of this Section 8.6(c) in the absence of the Agent's gross negligence or willful misconduct.(d)Agents' Reliance, Etc. Neither the Agent nor any of its respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with the Loan Documents, except for its or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Agent: (a) may consult with legal counsel (including counsel for any Obligor), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (b) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with the Loan Documents; (c) shall not have any duty to ascertain or to inquire as to the performance, observance or satisfaction of any of the terms, covenants or conditions of any Loan Document on the part of any Obligor or the existence at any time of any Default under the Loan Documents or to inspect the property (including the books and records) of any Obligor; (d) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; and (e) shall incur no liability under or in respect of any Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telegram, telecopy or electronic communication) believed by it to be genuine and signed or sent by the proper party or parties.~~Silverpeak~~Silverview Credit Partners~~,~~ LP and Affiliates. With respect to its Commitments, the Term Loan made by it and any Notes issued to it~~Silverpeak~~Silverview Credit Partners~~,~~ LP shall have the same rights and powers under the Loan Documents as any other Lender and may exercise the same as though it were not the Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include ~~Silverpeak~~Silverview Credit Partners~~,~~ LP in its individual capacity. ~~Silverpeak~~Silverview Credit Partners~~,~~ LP and its affiliates may accept deposits from, lend money to, act as trustee under indentures of, accept investment banking engagements from and generally engage in any kind of business with, any Obligor, any of its Subsidiaries and any Person that may do business with or own securities of any Obligor or any such Subsidiary, all as if ~~Silverpeak~~Silverview Credit Partners~~,~~ LP were not the Agent and without any duty to account therefor to the Lenders. The Agent shall not have any duty to disclose any information obtained or received by it or any of its Affiliates relating to any Obligor or any of its Subsidiaries to the extent such information was obtained or received in any capacity other than as the Agent.(f)Lender Party Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender and based on the financial statements referred to in Section 3 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.(g)Indemnification. Each Lender severally agrees to indemnify the Agent (to the extent not promptly reimbursed by the Obligors) from and against such Lender's ratable share (determined as provided below) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Agent under the Loan Documents (collectively, the "Indemnified Costs"); *provided*, *however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Obligors under Section 8.8, to the extent that the Agent is not promptly reimbursed for such costs and expenses by the Obligors. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.6(g) applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. For purposes of this Section 8.6(g), each Lender's ratable share of any amount shall be determined, at any time, according to the sum of (i) the aggregate principal amount of the Term Loans outstanding at such time and owing to such Lender, and (ii) the aggregate unused portions of such Lender's Commitments at such time. The failure of any Lender to reimburse the Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Agent, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Agent, for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Agent, for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.6 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.(h)Erroneous Payments.(i)Each Lender hereby agrees that (i) if the Agent notifies such Lender that the Agent has determined that any funds received by such Lender from the Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), and if such Lender fails to return the amount of any such Erroneous Payment (or portion thereof) to the Agent by such Business Day, such Lender shall also pay the Agent interest thereon in respect of each day after such Business Day to the date such amount is repaid to the Agent in same day funds at a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine. A notice of the Agent to any Lender under this clause (i) shall be conclusive, absent manifest error.(ii)Without limiting immediately preceding clause (i), each Lender hereby further agrees that if it receives an Erroneous Payment from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Agent (or any of its Affiliates) with respect to such Erroneous Payment (an "Erroneous Payment Notice"), (y) that was not preceded or accompanied by an Erroneous Payment Notice, or (z) that such Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case, an error has been made with respect to such Erroneous Payment, and to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine. Each Lender agrees that, in each such case, it shall promptly (and, in all events, within one (1) Business Day of its actual knowledge of such error) notify the Agent of such occurrence (provided, that a failure by any Lender to notify the Agent of such occurrence shall neither constitute nor be deemed to constitute a breach by such Lender of any of its obligations under this Agreement unless and to the extent such failure resulted from such Lender's gross negligence or willful misconduct) and, upon demand from the Agent, it shall promptly, but in all events no later than one (1) Business Day thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), and if such Lender fails to return the amount of any such Erroneous Payment (or portion thereof) to the Agent by such Business Day, such Lender shall also pay the Agent interest thereon in respect of each day after such Business Day to the date such amount is repaid to the Agent in same day funds at a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) Each Obligor hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment that does not consist of Borrower's funds, or to the extent an Erroneous Payment consists of Borrower's funds and such Erroneous Payment has been returned to the Borrower, such Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Obligor.

(iv) Each party's obligations under this Section 8.6 shall survive the resignation or replacement of the Agent, the termination of the Commitments or

the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

8.7 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties, provided, that the Borrower may not assign this Agreement or any rights or obligations hereunder without the Agent's prior written consent and any prohibited assignment shall be null and void *ab initio*. The Lenders may sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, or any right or remedy under, the Obligations and the Loan Documents, to any Person other than Persons that are investors in or other Affiliates of BSB as of the Closing Date.

8.8 General Indemnity. Each Obligor shall jointly and severally indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all actual out-of-pocket losses, claims, damages, liabilities and documented expenses, including the fees, charges and disbursements of any counsel for any Indemnitee (but limited, in the case of legal fees and expenses, to the reasonable fees, disbursements and other charges of external counsel to the Indemnitees, and if necessary, local counsel in any relevant jurisdiction to all affected Indemnitees taken as a whole, and solely, in the event of a conflict of interest, additional counsel (and, if necessary, local counsel in each relevant jurisdiction) to each group of similarly situated affected Indemnitees, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) the Term Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Holdings or any of its Subsidiaries, or any Environmental Liability related in any way to Holdings or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation, arbitration or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation, arbitration or proceeding is brought by Holdings or any other Obligor or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (a) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee, (b) result from a claim brought by any Borrower or any other Obligor against an Indemnitee for a material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or other Obligor has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction, (c) result from a claim not involving an act or omission of any Obligor or any of its Affiliates and that is brought by an Indemnitee against another Indemnitee (other than the Agent acting in its capacity as such) or (d) result from any Erroneous Payment so long as Obligors are otherwise in compliance with Section 8.6(h). Notwithstanding anything to the contrary in any of the Loan Documents, the obligations of Holdings and each other Obligor with respect to each indemnity given by it in this Agreement or any of the other Loan Documents shall survive the termination of this Agreement and payment in full of the Obligations.

8.9 Interpretation; Severability. Section headings and section numbers have been set forth herein for convenience only. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the Agent, the Lenders or any Obligor, whether under any rule of construction or otherwise, as this Agreement has been reviewed and prepared by all parties hereto. Each provision of this Agreement shall be severable from every other provision of this Agreement for purposes of determining the legal enforceability of any specific provision.

8.10 Indulgences Not Waivers. The Agent's or any Lender's failure at any time or times to require strict performance by any Obligor of any provision of this Agreement or any of the other Loan Documents shall not waive, affect or otherwise diminish any right of the Agent or the Lenders thereafter to demand strict compliance and performance with such provision.

8.11 Modification; Termination; Counterparts; Electronic Signatures. This Agreement cannot be changed orally and any change shall only be valid and effective if executed in writing by each Obligor, Agent and the Required Lenders; this Agreement supersedes all prior agreements, understandings, negotiations and inducements regarding the same subject matter, and, together with the other Loan Documents, represents the entire understanding of the parties with respect to the subject matter hereof and thereof. This Agreement shall terminate upon the Termination Date, except for any provisions herein that are expressly stated to survive the termination of this Agreement. This Agreement and any amendments hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including via PDF) or by electronic signature if in compliance with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com), and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes and shall have the same force and effect as manually signed originals.

8.12 Governing Law; Consent to Forum. This Agreement shall be deemed to have been made in New York, New York, and shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to any conflict of law provisions that would cause the laws of another jurisdiction to apply. Each Obligor hereby consents to the non-exclusive jurisdiction of any United States federal court sitting in or with direct or indirect jurisdiction over the Southern District of New York or any state or superior court sitting in New York County, New York, in any action, suit or other proceeding arising out of or relating to this Agreement or any of the other Loan Documents; and each Obligor irrevocably agrees that all claims and demands in respect of any such action, suit or proceeding may be heard and determined in any such court and irrevocably waives any objection it may now or hereafter have as to the venue of any such action, suit or proceeding brought in any such court or that such court is an inconvenient forum. The Agent and each Lender reserves the right to bring proceedings against any Obligor in the courts of any other jurisdiction. Nothing in this Agreement shall be deemed or operate to affect the right of the Agent or any Lender to serve legal process in any other manner permitted by law or to preclude the enforcement by the Agent or such Lender of any judgment or order obtained in such forum or the taking of any action under this Agreement to enforce same in any other appropriate forum or jurisdiction.

8.13 Waiver of Certain Rights. To the fullest extent permitted by applicable law, each Obligor hereby knowingly, intentionally and intelligently waives (with the benefit of advice of legal counsel of its own choosing): (i) the right to trial by jury (which the Agent and each Lender hereby also waives) in any action, suit, proceeding or counterclaim of any kind arising out of, related to or based in any way upon any of the Loan Documents, the Obligations or the Collateral; (ii) notice prior to taking possession or control of any of the Collateral and the requirement to deposit or post any bond or other security which might otherwise be required by any court or applicable law prior to allowing the Agent or any Lender to exercise any of the Agent's or any Lender's self-help or judicial remedies to obtain possession of any of the Collateral; (iii) any claim against the Agent or any Lender on any theory of liability, for special, indirect, consequential, exemplary or punitive damages arising out of, in connection with, or as a result of any of the Loan Documents, any transaction thereunder, the enforcement of any remedies by the Agent or any Lender or the use of any proceeds of any Term Loans; and (iv) notice of acceptance of this Agreement by the Agent and the Lenders.

8.14 Credit Inquiries. Each Obligor hereby authorizes the Agent (but the Agent shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning the Borrower or its Subsidiaries.

8.15 Board Observers. Each Obligor agrees that, until the Termination Date, each of Holdings and its Subsidiaries (for purposes of this Section 8.15, each a "Board Party" and collectively, the "Board Parties") shall allow Agent to designate one representative (each a "Board Observer") to attend and participate in meetings, whether telephonic or in-person, of the board of directors or board of managers, any audit or compensation committees thereof, or any similar governing body of such Board Party (the "Board"), in each case with speaking rights~~.~~; provided that in no event shall the Board Observer (i) be deemed to be a member of the Board or any committee thereof, (ii)

except for the confidentiality obligations expressly set forth in this Section 8.15, have or be deemed to have, or otherwise be subject to, any duties (fiduciary or otherwise) to such Board Party or its stockholders or subsidiaries, or (iii) have the right to propose, offer or vote on any motions or resolutions to the Board or any committee thereof or otherwise have power to cause such Board Party to take, or not to take, any action. Each Board Party shall (i) give each Board Observer notice of all such meetings, at the same time as furnished to the attendees, directors, managers, officers, stockholders or members, as applicable, of such Board Party, (ii) provide to each Board Observer all notices, documents and information furnished to the attendees, directors, managers, officers, stockholders or members, as applicable, of such Board Party, whether at or in anticipation of a meeting, at the same time furnished to such directors, managers, officers, stockholders or members, as applicable, (iii) provide each Board Observer copies of the minutes of all such meetings at the time such minutes are furnished to the attendees of such meeting (if any), and (iv) provide each Board Observer notice of the adoption of any material resolutions and other material actions taken by the board of directors or board of managers, any audit or compensation committees thereof, or any similar governing body of any Board Party; provided, however, that (i) a Board Party may withhold information or materials from a Board Observer or exclude a Board Observer from any meeting or portion thereof if (as determined by the Board Party in its reasonable discretion) access to such information or materials or attendance at such meeting or portion thereof would be reasonably likely to (A) adversely affect the attorney-client or work product privilege between such Board Party and its counsel; or (B) result in a conflict of interest and (ii) all information shared with a Board Observer shall be subject to the confidentiality obligations set forth in Section 8.19 below. Unless such contact is initiated by a director, officer, employee, manager or stockholder of a Board Party, each Board Observer shall not contact any director, officer, employee, manager or stockholder of a Board Party, except (x) during the aforementioned meetings, (y) to the extent such contact is otherwise necessary to enable Agent to administer the Term Loan, and (z) as otherwise expressly permitted pursuant to the terms of this Agreement, including as to the exercise of remedies. The ~~board of directors~~Obligors agree that none of the Obligors, their Affiliates or any member of the Board or any committee thereof shall be entitled to rely on any statements or views expressed by the Board Observer in any Board or committee meeting. The Board Observer shall be entitled to indemnification and advancement of expenses from Holdings to the same extent provided by Holdings to its directors under its Organizational Documents as in effect upon consummation of the Initial Public Offering. During the period of any Board Observer's appointment hereunder, and thereafter for the duration of the applicable statute of limitations, Holdings shall cause to be maintained in effect a policy of liability insurance coverage for such Board Observer against liability that may be asserted against or incurred by them in their capacity as Board Observer (or any other alleged, purported or actual relationship with Holdings) which is equivalent in scope and amount to that provided to Holdings' directors. Holdings acknowledges and agrees that the foregoing rights to indemnification, advancement of expenses and insurance constitute third-party rights extended to the Board Observer by Holdings and do not constitute rights to indemnification, advancement or insurance as a result of the Board Observer serving as a director, officer, employee, or agent of Holdings or its Affiliates. The Board of each Board Party shall meet no fewer than three times per year.

8.16 ~~Equity Cure Right~~[Reserved] ~~In the event the Obligors fail to comply with the Financial Covenants as of the end of any Applicable Fiscal Period (such Applicable Fiscal Period, a "Cure Period"), subject to the terms and conditions hereof, the then existing direct or indirect equityholders of Holdings shall have the right (the "Cure Right") from the last day of the Cure Period until the expiration of the thirtieth (30th) day subsequent to the date the financial statements for the Cure Period are first required to be delivered to Agent pursuant to Section 5.6, to make an equity investment in Holdings in cash in an aggregate amount equal to, but not greater than, the amount necessary to cause the Obligors to be in compliance with the Financial Covenants (hereinafter, the "Cure Amount"), and upon the receipt by Holdings of the Cure Amount, the Financial Covenants shall then be recalculated giving effect to the following pro forma adjustments: (a) such equity investment shall be disregarded for purposes of the determination of any baskets or other ratios with respect to the covenants contained in Section 6; (b) in the event of a Default or Event of Default as a result of a breach of the covenant contained in clause (i)(a) of Item 9 of the Terms Schedule, EBITDA shall be increased in an amount equal to the Cure Amount for the Applicable Fiscal Period in respect of which the Cure Right shall have been exercised; (c) in the event of a breach of any of the covenants contained in clauses (i)(b) or (ii) of Item 9 of the Terms Schedule, cash and/or Liquidity shall be increased in an amount equal to the Cure Amount for the Applicable Fiscal Period in respect of which the Cure Right shall have been exercised; and (d) if, after giving effect to the foregoing recalculations, the Obligors shall then be in compliance with the requirements of the Financial Covenants, the Obligors shall be deemed to have been in compliance with the Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach, Default or Event of Default of the Financial Covenants that had occurred shall be deemed not to have occurred for this purpose of the Agreement. In the event that (i) no Default or Event of Default exists other than that arising due to failure of the Obligors to comply with the Financial Covenants and (ii) Holdings shall have delivered to Agent written notice of its intention to exercise the Cure Right (which notice shall be delivered no later than the fifth (5th) day subsequent to the date the applicable financial statements are required to be delivered hereunder), which exercise if fully consummated would be sufficient in accordance with the terms hereof to cause the Obligors to be in compliance with the Financial Covenants as of the relevant date of determination, then from and following receipt by Agent of any such notice and until the date that is the earlier of (x) the thirtieth (30th) day subsequent to the date the applicable financial statements are required to be delivered and (y) the date, if any, on which Holdings notifies Agent in writing that such Cure Right shall not be exercised, neither Agent nor any Lender shall exercise any rights or remedies that would otherwise be available as a result of the Obligors' failure to comply with the Financial Covenants (but solely to the extent no other Events of Default are then continuing). Notwithstanding anything herein to the contrary, in no event shall Holdings be permitted to exercise the Cure Right hereunder (x) more than four (4) times in the aggregate during the term of this Agreement, or (y) more than two (2) times in respect of any Applicable Fiscal Periods or fiscal quarters ending in the same calendar year.~~

8.17 Division/Series Transactions. Any reference herein to a merger, transfer, consolidation, amalgamation, assignment or disposition, or similar term (including, for the avoidance of doubt, any restriction, condition or prohibition applicable thereto), shall be deemed to apply to a Division/Series Transaction, as if it were a merger, consolidation, amalgamation, assignment, investment or disposition, or similar term, as applicable, to, of, or with, a separate Person. Each Person that engages in a Division/Series Transaction and that, prior thereto, is a Subsidiary, a joint venture or any other like term hereunder shall also constitute such a Person or entity hereunder after giving effect to such Division/Series Transaction and any new Person resulting from such Division/Series Transaction shall remain subject to the same restrictions and corresponding exceptions applicable to its predecessor(s). If any Obligor or Subsidiary thereof shall consummate a Division/Series Transaction, such Obligor or such Subsidiary shall be required to (effective simultaneously with the effectiveness of such Division/Series Transaction regardless of any longer time periods otherwise provided for) comply with the applicable requirements of the Security Documents, including actions described in Sections 5.10 and 5.11, to the extent applicable.

8.18 Holdings Guaranty.

(a) Guarantee. Holdings hereby absolutely and unconditionally, guarantees, as a guarantee of payment and performance and not merely as a guarantee of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise (including, without limitation, any interest, fees, costs or charges that would accrue but for the provisions of the Bankruptcy Code after any bankruptcy or insolvency petition thereunder), of any other Obligor to the Agent and the Lenders, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Agent and the Lenders in connection with the collection or enforcement thereof). Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings, and conclusive for the purpose of establishing the amount of the Obligations, absent manifest error. This Holdings Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Holdings under this Holdings Guaranty (other than defense of payment), and Holdings hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than defense of payment).

(b) Rights of Lenders. Holdings consents and agrees that the Agent and Lenders may, at any time and from time to time, without notice or demand,

and without affecting the enforceability or continuing effectiveness hereof and subject only to the terms of this Agreement: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Holdings Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one (1) or more of any endorsers or other Guarantors of any of the Obligations. Without limiting the generality of the foregoing, Holdings consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings under this Holdings Guaranty or which, but for this provision, might operate as a discharge of Holdings.

(c) Certain Waivers.

(i) Holdings waives, to the fullest extent permitted by law, (A) any defense arising by reason of any disability or other defense of the Borrower or any other Guarantor, or the cessation from any cause whatsoever (including any act or omission of the Agent or any Lender) of the liability of the Borrower or any other Guarantor; (B) any defense based on any claim that Holdings' obligations exceed or are more burdensome than those of the Borrower or any other Guarantor; (C) the benefit of any statute of limitations affecting Holdings' liability hereunder; (D) any right to require the Agent or any Lender to proceed against the Borrower or any other Guarantor, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of the Agent or any Lender whatsoever; (E) any benefit of and any right to participate in any security now or hereafter held by the Agent or any Lender; and (F) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, except payment in full of the Obligations. Holdings expressly waives, to the fullest extent permitted by law, all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Holdings Guaranty or of the existence, creation or incurrence of new or additional Obligations, except as otherwise expressly set forth in this Agreement.

(ii) Holdings agrees that its obligations hereunder are absolute and unconditional, irrespective of (A) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which the Borrower or other Obligor is or may become a party or be bound; (B) the absence of any action to enforce this Agreement (including this Section 8.18) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Lender with respect thereto; (C) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guarantee for the Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security or guarantee); (D) the insolvency of the Borrower or any other Obligor; (E) any election by Agent or any Lender in proceeding under applicable law for the application of Section 1111(b)(2) of the Bankruptcy Code; (F) any borrowing or grant of a Lien by the Borrower or other Obligor, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (G) the disallowance of any claims of Agent or any Lender against the Borrower or any other Guarantor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (H) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except defense of payment.

(iii) Holdings expressly waives, to the fullest extent permitted by law, all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Agent or Lenders to marshal assets or to proceed against the Borrower, any other Obligor, or any other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against Holdings. Holdings waives, to the fullest extent permitted by law, all defenses available to a surety, guarantor or accommodation co-obligor other than defense of payment. It is agreed among Holdings, the Agent and Lenders that the provisions of this Section 8.18 are essential to the transaction contemplated by the Loan Documents and that, but for such provisions, the Agent and Lenders would decline to make the Term Loans. Holdings acknowledges that its guarantee pursuant to this Section 8.18 is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(iv) Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non judicial sale or enforcement, without affecting any rights and remedies under this Section 8.18. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Obligor or other Person, whether because of any applicable laws pertaining to "election of remedies" or otherwise, Holdings consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that Holdings might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against the Borrower or any other Obligor shall not impair Holdings' obligation to pay the full amount of the Obligations.

(d) Obligations Independent. The obligations of Holdings hereunder are those of a primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other Guarantor, and a separate action may be brought against Holdings to enforce this Holdings Guaranty whether or not the Borrower or any other person or entity is joined as a party.

(e) Subrogation. Holdings hereby agrees that it shall not exercise any right or remedy, directly or indirectly, of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Holdings Guaranty until the Termination Date. If any amounts are paid to Holdings in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Agent and the Lenders and shall forthwith be paid to Agent to reduce the amount of the Obligations, whether matured or unmatured.

(f) Termination; Reinstatement. This Holdings Guaranty is a continuing and irrevocable guarantee of all Obligations now or hereafter existing and shall remain in full force and effect until the Termination Date. Notwithstanding the foregoing, this Holdings Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or any Guarantor is made, or the Agent or any Lender exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent or any Lender in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Agent or any Lender is in possession of or have released this Holdings Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings under this the preceding sentence shall survive termination of this Agreement and payment in full of the Obligations.

(g) Subordination. Holdings hereby subordinates the payment of all obligations and indebtedness of any Subsidiary of Holdings owing to Holdings, whether now existing or hereafter arising, including but not limited to any obligation of any such Subsidiary to Holdings as subrogee of the Agent and the Lenders or resulting from Holdings' performance under this Holdings Guaranty, to the payment in full of all Obligations; *provided*, that each Subsidiary of Holdings may make, and Holdings may receive, any Distributions permitted to be made under Section 6.5. If the Lenders so request after the occurrence and during the continuance of any Event of Default, any such obligation or indebtedness of any Subsidiary of Holdings to Holdings shall be enforced and performance received by Holdings as trustee for the Agent and the Lenders and the proceeds thereof shall be paid over to the Agent to be applied to the Obligations (in each case except for any Distributions permitted under Section 6.5(c)), but without reducing or affecting in any manner the liability of Holdings under this Holdings Guaranty.

(h) Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Holdings under any Insolvency Proceeding, or otherwise, all such amounts shall nonetheless be payable by Holdings immediately upon demand by the Agent.

(i) Condition of the Borrower and the Guarantors. Holdings acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other Guarantor such information concerning the financial condition, business and operations of the Borrower and any such other Guarantor as Holdings requires, and that none of Agent or any Lender has any duty, and Holdings is not relying on the Agent or the Lenders at any time, to disclose to Holdings any information relating to the business, operations or financial condition of the Borrower or any other Guarantor (Holdings waiving any duty on the part of the Agent or the Lenders to disclose such information and any defense relating to the failure to provide the same).

8.19 Confidentiality.

(a) The Agent and each Lender hereby agrees to maintain the confidentiality of the transactions contemplated by the Loan Documents and any information it receives in connection with such transactions (collectively, "Transaction Information"), except that Transaction Information may be disclosed (a) to its managers, directors, officers, employees, partners and agents, including accountants, legal counsel and other advisors on a "need to know basis" (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Transaction Information and shall agree to keep such Transaction Information confidential); (b) to any assignee, participant or potential assignee or participant that has agreed in writing (including by electronic mail) to comply with the covenant contained in this Section 8.19 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them on a "need to know basis" as described in clause (a) above), (c) to the extent required or requested by any Governmental Authority having or asserting jurisdiction over such Person (including any Governmental Authority regulating any Lender), *provided* that the Agent or such Lender, as applicable, agrees that it will notify the Obligors as soon as practicable in the event of any such disclosure by such Person unless such notification is prohibited by law, rule or regulation; (d) to the extent required by applicable law or by any subpoena or similar legal process, *provided* that the Agent or such Lender, as applicable, agrees that it will notify Obligors as soon as practicable in the event of any such disclosure by such Person unless such notification is prohibited by law, rule or regulation; (e) with the prior written consent of the Borrower to be given or withheld at its sole discretion; (f) to the extent such Transaction Information becomes publicly available other than as a result of a breach of this Section 8.19 or other obligation of confidentiality owed to the Obligors; (g) to the extent such information is independently developed by the Agent or any Lender; or (h) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of its rights hereunder or thereunder.

(b) Without limiting the foregoing provisions of Section 8.19, the parties hereto acknowledge that the Nondisclosure Agreement entered into between Agent and Holdings, dated February 2, 2021, remains in full force and effect in accordance with the terms thereof.

[Signatures commence on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first set forth above.

HOLDINGS:

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

BORROWER:

HERITAGE DISTILLING COMPANY, INC.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

[Signatures continued on following page.]

AGENT:

~~SILVERPEAK~~SILVERVIEW CREDIT PARTNERS~~,~~ LP

By: _____
Name: Vaibhav Kumar
Title: Partner

LENDER:

~~SILVERPEAK~~SILVERVIEW SPECIAL SITUATIONS LENDING LP

By: _____
Name: Vaibhav Kumar
Title: Partner

TERMS SCHEDULE

This **Terms Schedule** is a part of the Loan Agreement dated March 29, 2021, among Heritage Distilling Company, Inc., a Washington corporation, as Borrower, Heritage Distilling Holding Company, Inc., a Delaware corporation, as Holdings, Silverview Credit Partners LP (f/k/a Silverpeak Credit Partners, LP), as Agent for the Lenders from time to time party thereto, and the Lenders party thereto from time to time (as at any time amended, restated, amended and restated, modified or supplemented, the "Loan Agreement"). Capitalized terms used in this Terms Schedule, unless otherwise defined herein, shall have the meanings ascribed to them in the Definitions Schedule annexed to the Loan Agreement.

1. Authorized Officers (Definitions Schedule):

In addition to the Senior Officers, each of the following persons:

Name:	Position:

2. Guarantors (Definitions Schedule):

Name:	Mailing Address:
Holdings	~~4021 Harborview Drive, Gig Harbor, WA 98332-2133~~c/o Heritage Distilling Company, Inc. ATTN: Zanne Rhyder 9668 Bujacich Road Gig Harbor, WA 98332-8477
TTS	c/o Heritage Distilling Company, Inc. ATTN: Zanne Rhyder 9668 Bujacich Road Gig Harbor, WA 98332-8477

3. [Reserved].

4. Interest Rates (§1.3):

The "Default Margin" is 2.00% per annum.

5. Fees and Expenses (§1.4):

(a) The Borrower shall pay to the Agent, for distribution to the Agent and the Lenders, in Agent's sole discretion, the following fees: (i) (A) a closing and origination fee in the amount of $315,000 to be fully earned and payable concurrently with the funding of the Initial Term Loan on the Closing Date, (B) a closing and origination fee in the amount of $60,000 to be fully earned and payable concurrently with the funding of the Incremental Term Loan on the Incremental Closing Date, and (C) a closing and origination fee in the amount of $90,000 to be fully earned and payable concurrently with the funding of the Delayed Draw Term Loan on the Delayed Draw Closing Date, (ii) a $25,000 per annum administrative fee, to be fully earned and payable in advance on the Closing Date and on each anniversary thereof after the Closing Date, (iii) an exit fee in the amount of (~~x~~w) 8.50% of the aggregate principal amount of Term Loans borrowed pursuant to this Agreement, to be fully earned on the Closing Date and payable upon the earlier of the Maturity Date and the Termination Date ~~(or such earlier date on which the Obligations are repaid in their entirety)~~, plus (~~y~~x) upon the receipt of BSB Sale Proceeds in an aggregate amount in excess of $30,000,000 (if any) upon the consummation of one or more BSB Sale Transactions, five percent (5.00%) of such aggregate BSB Sale Proceeds in excess of $30,000,000~~; provided, the exit fee payable under this clause (iii) shall in no event exceed $5,500,000 in the aggregate~~, plus (y) 1.00% of the aggregate principal amount of Term Loans borrowed pursuant to this Agreement, to be fully earned on the Amendment No. 2 Effective Date and payable on the earlier of the Termination Date and the Maturity Date, plus (z) to the extent the Obligations are not fully prepaid by July 30, 2025, 1.00% of the aggregate principal amount of Term Loans borrowed pursuant to this Agreement, to be fully earned on July 31, 2025 and payable on the earlier of the Termination Date and the Maturity Date. Notwithstanding anything to the contrary in any of the Loan Documents, the obligations of Holdings and each other Obligor with respect to the exit fee set forth in clause (iii)(~~y~~x) of this Item 5 and the Specified Provisions (as defined in the Limited Guaranty) shall survive the termination of this Agreement and payment in full of the Obligations. All fees paid pursuant to the terms of the Loan Documents shall be non-refundable once paid.

(b) The Obligors shall reimburse the Agent and the Lenders for all out-of-pocket costs and expenses incurred by the Agent or the Lenders in connection with examinations and reviews of each Obligor's Books and such other matters pertaining to the Obligors or any Collateral as the Agent and the Lenders shall reasonably deem appropriate; *provided*, that Agent and the Lenders agree that such reimbursed costs and expenses shall not exceed $50,000 in any Fiscal Year of the Obligors.

6. [Reserved].

7. Documents to be delivered at closing (§3.1(b)):

(i) A certificate of each Obligor, dated the Closing Date and executed by its Secretary or Assistant Secretary or other appropriate officer, manager or director, which shall (A) certify the resolutions of its board of directors, managers, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Obligor authorized to sign the Loan Documents to which it is a party, and (C) contain appropriate attachments, including (i) the certificate or articles of incorporation or organization of each Obligor certified by the relevant authority of the jurisdiction of organization of such Obligor and a true and correct copy of its by-laws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Obligor from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Obligor from the appropriate governmental officer in such jurisdiction;

(ii) A customary legal opinion of outside legal counsel to the Obligors, addressed to the Agent and the Lenders regarding such matters as the Agent and its counsel may customarily request;

(iii) A certificate, signed by a Senior Officer of Holdings, dated as of the Closing Date (i) stating that no Default or Event of Default has occurred and is continuing and (ii) stating that the representations and warranties contained in the Loan Documents are true and correct in all material respects (or if qualified by materiality, in all respects) as of such date (or, if such representations or warranties expressly reference an earlier date, then as of such earlier date);

(iv) Evidence of insurance, including standard forms of certificates of insurance addressed to the Agent, reasonably satisfactory to the Agent and otherwise confirming the Obligors' satisfaction of the insurance requirements contained in the Loan Documents, and evidence of commercially reasonable efforts to deliver to the Agent endorsements to such insurance policies naming Agent as "loss payee", as their interest may appear, on all property damage policies and as an "additional insured" on all liability policies (*provided*, that if such endorsements are not delivered on or prior to the Closing Date, then such endorsements shall be delivered within 15 days after the Closing Date);

(v) A solvency certificate signed by a Senior Officer of the Borrower dated the Closing Date;

(vi) Receipt of the consolidated financial statements of the Borrower and its Subsidiaries for the fiscal month and Fiscal Year ending December 31, 2020, and such other financial reports and information concerning any Obligor as the Agent shall request;

(vii) At least five (5) days prior to the Closing Date, any Obligor that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Obligor;

(viii) UCC financing statements naming each Obligor as debtor, and the Agent, as secured party;

(ix) Evidence satisfactory to the Agent of the payment in full of all indebtedness owed by any Obligor to the following lenders, and the release of any Liens granted by such Obligor in favor of such lenders:

(i) John Korsmo Construction, Inc., dba Korsmo Construction;

(ii) Anthony Panagiotu

(iii) Tiburon Opportunity Investment Fund L.P.

(iv) Doug George;

(v) John Colby; and

(vi) 1st Security Bank of Washington.

(x) Evidence satisfactory to the Agent of the release of Liens granted by any Obligor in favor of Derek Gafford.

8. Other Closing Conditions (§3.1(i)):

(i) The Agent shall have received and found satisfactory the results of field examinations, audits, title reports, environmental reports, appraisals, and such other reports, audits and certifications as the Agent shall request with respect to the Collateral;

(ii) The Agent and the Lenders shall have received at least five (5) days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, for each Obligor;

(iii) The Agent and the Lenders shall have received all fees required to be paid, and all expenses required to be paid (including the reasonable fees and expenses of external legal counsel) and for which invoices have been presented to Obligors at least one (1) Business Day prior to the Closing Date;

(iv) All governmental and third party approvals necessary in connection with the financing contemplated hereby and the continuing operations of Holdings and its Subsidiaries have been obtained and are in full force and effect; and

(v) All other agreements, certificates and other documents required to be delivered on the Closing Date as set forth on the closing checklist attached as Exhibit A hereto, and all other actions required to be taken on the Closing Date as set forth on Exhibit A hereto shall have been taken.

9. ~~Financial Covenants~~[Reserved].

~~Each Obligor covenants that, from the Closing Date until the payment in full of the Obligations, the Obligors shall comply with the following covenants (collectively, the "Financial Covenants"):~~

~~(i) Interest Coverage Ratio. With respect to the Applicable Fiscal Period ending on each June 30 and December 31 of each Fiscal Year (commencing with the Applicable Fiscal Period ending December 31, 2021), Holdings and its Subsidiaries shall comply with one (1) of the covenants set forth in the following clauses (a) and (b) for each such Applicable Fiscal Period:~~

~~(a) At the end of each Applicable Fiscal Period ending on the dates set forth in the table below, Holdings and its Subsidiaries shall maintain an EBITDA Interest Coverage Ratio of not less than the applicable EBITDA Interest Coverage Ratio for the Applicable Fiscal Period in the table below:~~

~~Applicable Fiscal Period Ending:~~	~~EBITDA Interest Coverage Ratio:~~
~~December 31, 2021~~	~~1.25:1.00~~

June 30, 2022	1.375:1.00
December 31 ,2022	1.50:1.00
June 30, 2023	1.75:1.00
December 31, 2023 and each semiannual period thereafter	2.00:1.00

(b) At the end of each Applicable Fiscal Period ending on each June 30 and December 31 of each Fiscal Year (commencing with the Applicable Fiscal Period ending December 31, 2021), Holdings and its Subsidiaries shall maintain a Cash Interest Coverage Ratio of not less than 1.25:1.00.

(ii) Minimum Liquidity: For each fiscal quarter of Holdings and its Subsidiaries (commencing with the fiscal quarter ending June 30, 2021), Holdings and its Subsidiaries shall maintain Liquidity of not less than $500,000.

10. Notices (§8.4)

If to Holdings, the Borrower or any Obligor:

Prior to May 1, 2021:

Heritage Distilling Company, Inc.
4021 Harborview Drive
Gig Harbor, Washington 98332-2133
Attention: Laura Baumann
Telephone No.: (206) 200-9679
Email: Laura@heritagedistilling.com
On or after May 1, 2021:
Heritage Distilling Company, Inc.

9668 Bujacich Road
Gig Harbor, Washington 98332-8477
Attention: Laura BaumannZanne Rhyder
Telephone No.: (206253) 200-9679549-1608
Email: Laurazanne.rhyder@heritagedistilling.com

With a copy to (which copy shall not constitute notice) to:

Davis Wright TremainePryor Cashman LLP
1300 SW Fifth Avenue

Suite 24007 Times Square
New York NY 10036-6569
ATTN: Eric Hellige
Portland, Oregon 97201-5610
Attention: Jesse D. Lyon

Telephone No.: (503212) 778-5268326-0846
Email: jesselyon@dwtehellige@pryorcashman.com

If to Agent and the Lenders:

c/o SilverpeakSilverview Credit Partners, LP
411 Theodore Fremd Avenue, Suite 206 South
Rye, New York, 10580
Attention: Vaibhav Kumar
Email: vaibhav.kumar@silverpeakVab.Kumar@silverview.com
Tel.: (212) 716-2066

With a copy to (which copy shall not constitute notice) to:

Alston & Bird LLP
90 Park Avenue
New York, NY 10016
Attention: Paul W. Hespel
Telephone No.: (212) 210-9492
Email: paul.hespel@alston.com

[Signatures commence on following page.]

The undersigned have executed this Terms Schedule on the 29th day of March, 2021.

HOLDINGS:

Heritage Distilling Holding Company, Inc.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

BORROWER:

HERITAGE DISTILLING COMPANY, INC.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

[Signatures continued on following page.]

AGENT:

~~SILVERPEAK~~SILVERVIEW CREDIT PARTNERS, LP

By: _____
Name: Vaibhav Kumar
Title: Partner

LENDER:

~~SILVERPEAK~~SILVERVIEW SPECIAL SITUATIONS LENDING LP

By: _____
Name: Vaibhav Kumar
Title: Partner

DEFINITIONS SCHEDULE

This **Definitions Schedule** is a part of the Loan Agreement dated March 29, 2021, among Heritage Distilling Company, Inc., a Washington corporation, as Borrower, Heritage Distilling Holding Company, Inc., a Delaware corporation, as Holdings, Silverview Credit Partners LP (f/k/a Silverpeak Credit Partners, LP), as Agent for the Lenders from time to time party thereto, and the Lenders party thereto from time to time (as at any time amended, restated, amended and restated, modified or supplemented, the "Loan Agreement"). When used in the Loan Agreement or in any Schedule (including this Definitions Schedule) thereto, the following terms shall have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Account Debtor" means a Person obligated to pay an Account.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in the acquisition of (a) the Equity Interests in another Person causing such Person to become a Subsidiary of the Borrower or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business or division conducted by such Person.

"Additional Permitted Debt" means the following Debt: (a) a Permitted Credit Facility and (b) Debt provided in connection with the Coronavirus Aid, Relief, and Economic Security Act and all regulations and guidance issued by any Governmental Authority with respect thereto (and any successor thereto), any similar program established under the Small Business Act (Public Law 85-536, as amended), or any similar program established prior to or after the Closing Date, which Debt is reasonably likely to be forgiven in accordance with its terms.

"Affiliate" means a Person (i) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, another Person; (ii) which beneficially owns or holds 10% or more of any class of the Equity Interests of a Person; (iii) 10% or more of the Equity Interests with power to vote of which is beneficially owned or held by another Person or a Subsidiary of another Person; or (iv) who is a natural person who is the spouse, former spouse, domestic partner, former domestic partner, or other immediate family member of another Person. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of any Equity Interest, by contract or otherwise.

"Agreement" means the Loan Agreement, together with all Schedules (including the Terms Schedule and this Definitions Schedule), and Exhibits thereto (if any), and the Perfection Certificate, in each case whether now or hereafter annexed thereto.

"Alcohol Laws" means any constitution, statute, law, code, ordinance, regulation, treaty, rule, common law, policy or interpretation enacted, published or promulgated by any Governmental Authority, including, but not limited to, to the Federal Alcohol Administration Act, as well as "dram shop" laws, laws governing the three-tier system of alcohol distribution, alcohol safety laws and other similar laws and regulations applicable to the production, storage, distribution, possession, transportation and sale of alcoholic beverages.

"Alcohol Beverage Authorities" means the TTB, as well as the applicable state, local, municipal, provincial, foreign and other Governmental Authorities that regulate the production and sale of alcoholic beverage products.

"Amendment No. 1" means that certain Amendment No. 1 to Loan Agreement, dated as of the Amendment No. 1 Effective Date, by and among the Borrower, Holdings, the Lenders party thereto and the Agent.

"Amendment No. 2" means that certain Amendment No. 2 to Loan Agreement, dated as of October 1, 2024, by and among the Borrower, Holdings, the Lenders party thereto and the Agent.

"Amendment No. 1 Effective Date" means September 9, 2021.

"Amendment No. 2 Effective Date" has the meaning given to the term "Amendment Effective Date" in Amendment No. 2.

"AML Laws" means, as to any Obligor and its Subsidiaries, any applicable anti-money laundering laws including, without limitation, the Bank Secrecy Act of 1970, as amended, and the regulations and guidance thereunder.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to Holdings, the Borrower or their respective Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010.

"Applicable Fiscal Period" means a period of four (4) consecutive, trailing fiscal quarters ending at the end of each prescribed fiscal quarter.

"Authorized Officer" means each Senior Officer, each Person identified in Item 1 of the Terms Schedule, and each other person designated in writing by Holdings to the Agent as an authorized officer to request the Term Loan under the Agreement.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Board Observer" has the meaning set forth in Section 8.15 of the Agreement.

"Board Party" has the meaning set forth in Section 8.15 of the Agreement.

"Books" means all books and records of any Obligor relating to its existence, governance, financial condition or operations, or any of the Collateral, regardless of the medium in which any such information may be recorded.

"BSB" means BSB-Brown Sugar Bourbon LLC, a Delaware limited liability company.

"BSB Contingent Exit Fee Obligations" means the contingent obligations of the Borrower with respect to the exit fee set forth in Item 5(a)(iii)(y) of the Terms Schedule, to the extent such fee is not payable at the time of determination but may become due and payable in the future in accordance with the Specified Provisions (as defined in the Limited Guaranty) and Item 5(a)(iii)(y) of the Terms Schedule.

"BSB Sale Proceeds" means the gross proceeds (excluding any deferred purchase price payments, earnouts or other future consideration) received by the Obligors in connection with a BSB Sale Transaction.

"BSB Sale Transaction" means a transaction or series of transactions in which (i) any of the Equity Interests of BSB owned by the Obligors or (ii) all or substantially all of the assets of BSB, are transferred, sold or otherwise disposed of.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Equivalents" means, at any time, (a) any evidence of Debt with a maturity of three hundred and sixty five (365) days or less issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States is pledged in support thereof; (b) certificates of deposit or bankers' acceptances with a maturity of three hundred and sixty five (365) days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $1,000,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of three hundred and sixty five (365)days or less issued by a corporation (except an Affiliate of any Obligor) organized under the laws of any State of the United States or the District of Columbia and rated at least A-1 by S&P or at least P-1 by Moody's; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and surplus and undivided profits of not less than $1,000,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States or issued by any governmental agency thereof and backed by the full faith and credit of the United States, in each case maturing within three hundred and sixty five (365) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above; and (g) investments in bond and equity funds which funds have a Morningstar rating of four or higher and a term not in excess of twelve months. For the avoidance of doubt, auction rate securities shall not constitute "Cash Equivalents".

~~"Cash Interest Coverage Ratio" means, as of any date of determination, the ratio of (a) the sum of (i) unrestricted cash and Cash Equivalents of Holdings and its Subsidiaries, to the extent subject to Control Agreements, *plus* (ii) any amounts available to be borrowed under a Permitted Credit Facility (to the extent constituting a revolving~~

~~line of credit), as of such date of determination, to (b) (i) Cash Interest Expense of Holdings and its Subsidiaries for the most recently completed Applicable Fiscal Period *less* (ii) non-cash interest expense and any interest paid in kind on any Permitted Convertible Debt, in each case, to the extent applicable, during the Fiscal Year ending December 31, 2021.~~

"Cash Interest Expense" means, for any period for Holdings and its Subsidiaries, the sum (without duplication) of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, but excluding any up-front or financing fees, transaction costs, commissions, expenses, premiums (other than prepayments or make-whole premiums) or charges that are amortized and recorded as interest expense under GAAP, and (b) the portion of rent expense with respect to such period under capital leases that is treated as interest in accordance with GAAP, in each case to the extent paid in cash during such period.

"Cash Interest Period" means the period from (and excluding) the eighteen (18) month anniversary of the Closing Date through the Maturity Date.

"Cash Interest Rate" means a rate per annum equal to fifteen percent (15.00%); provided that from and after the Post-IPO Cash Interest Effective Date, the applicable rate shall be a rate per annum equal to sixteen and one-half percent (16.50%).

"Change of Control" means:

(i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934), other than the Permitted Holders becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of fifty percent (50%) or more (measured by voting power rather than number of shares) of the Equity Interests of Holdings entitled to vote for members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(ii) any merger or consolidation of or with Holdings or any Obligor or sale, lease, license or other disposition of all or substantially all of the property of Holdings or any Obligor;

(iii) the failure of Holdings to own and control, directly or indirectly, one hundred percent (100%) of the Equity Interests of the Borrower; and

(iv) the failure of the Borrower to own and control, directly or indirectly, one hundred percent (100%) of the Equity Interests of its Subsidiaries.

For the avoidance of doubt, the change of ownership of the Equity Interests in Holdings directly resulting from the consummation of the Initial Public Offering shall not be deemed a Change of Control pursuant to clause (i) of this definition.

"Change in Law" means the occurrence after the date of this Agreement or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement, of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) compliance by any Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted, issued or implemented.

"Channel Partners Debt" shall mean all obligations incurred pursuant to that certain Business Loan and Security Agreement, dated as of September 21, 2020, by and among Holdings and Channel Partners Capital, in an initial aggregate principal amount of $150,000.

"City of Eugene Debt" means all obligations incurred pursuant to that Promissory Note (as amended, restated, amended and restated, replaced, or otherwise modified from time to time), dated as of March 22, 2019, in an amount of $475,000 issued by TTS in favor of the City of Eugene.

"Closing Date" means the date on which all conditions precedent contained in Section 3 of this Agreement are satisfied or waived by the Agent and the Initial Term Loan extension of credit is made by the Lenders.

"Collateral" means, collectively, all of the property and interests in property described in the Security Agreement; all property and interests in property of Holdings, the Borrower or any other Obligor described in any of the other Security Documents as security for the payment or performance of any of the Obligations; and all other property and interests in property that now or hereafter secure the payment or performance of any of the Obligations, in each case whether real or personal, or tangible or intangible, and wherever located, and excludes, for the avoidance of doubt, any of the Equity Interests of BSB owned by the Obligors (other than products and proceeds of such Equity Interests that are not obtained in contravention of the provisions of the limited liability company operating agreement of BSB).

"Commitment" means, with respect to each Lender, such Lender's commitment to provide the portion of the Initial Term Loan, Incremental Term Loan or Delayed Draw Term Loan, as applicable, as set forth opposite such Lender's name on Annex A hereto.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a Compliance Certificate, in the form required by Agent, to be submitted to Agent by Holdings pursuant to the Agreement and certified as true and correct by a Senior Officer.

"Consent, Waiver and Acknowledgment No. 1" means that certain Consent, Waiver and Acknowledgment, dated as of April 6, 2022, by and among the Borrower, Holdings, the Lenders party thereto and the Agent.

"Consent, Waiver and Acknowledgment No. 2" means that certain Consent, Waiver and Acknowledgment, dated as of December 31, 2022, by and among the Borrower, Holdings, the Lenders party thereto and the Agent.

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Consolidated Net Income" means, for any period, the net income of Holdings and its Subsidiaries (excluding extraordinary gains and extraordinary losses) for that period determined in accordance with GAAP.

"Control Agreement" means a deposit account control agreement or securities account control agreement in form and substance satisfactory to Agent and perfecting the Agent's first priority security interest therein.

"Core Business" means any material line of business conducted by Holdings and its Subsidiaries as of the Closing Date as described in writing to the Agent prior to the Closing Date and other business activities which are reasonable extensions thereof or otherwise reasonably incidental, related, complementary or ancillary to any of the foregoing.

~~"Cure Amount" means the term set forth in Section 8.15 of the Agreement.~~

~~"Cure Period" means the term set forth in Section 8.15 of the Agreement.~~

~~"Cure Right" means the term set forth in Section 8.15 of the Agreement.~~

"Debt" of any Person means, without duplication, (a) all obligations of such Person for borrowed money (including, without limitation, with respect to overdrafts), (b) all obligations of such Person evidenced by bonds, debentures, notes, preferred Equity Interests (which preferred Equity Interests are either mandatorily redeemable or redeemable at the option of the holder, in each case, at any time on or prior to the date that is six months after the Maturity Date) or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements (other than operating leases) relating to property acquired by such Person, (d) all obligations of such Person upon which interest charges are customarily paid (excluding trade accounts payable incurred in the Ordinary Course of Business and repayable in accordance with customary trade practices), (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable incurred in the Ordinary Course of Business and repayable in accordance with customary trade practices and excluding earnouts to the extent not required to be reflected as a liability on the balance sheet of such Person in accordance with GAAP), (f) all Debt of others secured by any Lien on property owned or acquired by such Person (other than Debt secured by the Specified Summit Equipment Lien), whether or not the Debt secured thereby has been assumed, (g) all Guarantees by such Person of Debt of others (excluding credit support for suppliers or customers in the Ordinary Course of Business), (h) all Capital Lease Obligations of such Person, (i) all reimbursement obligations of such Person with respect to letters of credit (other than letters of credit that are secured by cash), bankers' acceptances or similar facilities and (j) all off-balance sheet liabilities arising from transactions entered into by such Person that are intended to function primarily as a borrowing of funds. The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner or joint venturer) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such Person is not liable therefor.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

"Default Rate" means, with respect to any Obligations and during any time that an Event of Default exists, a per annum rate equal to the sum of the Default Margin (as specified in Item 4 of the Terms Schedule), plus the interest rate that otherwise would be in effect at such time under the Loan Documents with respect to such Obligations in the absence of such Event of Default.

"Delayed Draw Closing Conditions" means each of the following conditions:

(a) no Additional Permitted Debt shall have been issued or incurred;

(b) immediately before and immediately after giving effect to the Delayed Draw Term Loan, the~~Obligors are in Pro Forma Compliance with the Financial Covenants~~Total Net Leverage Ratio as of the last day of the Applicable Fiscal Period most recently ended, and calculated on a Pro Forma Basis, shall not be greater than 1.50:1.00;

(c) the Agent shall have received from the Borrower a notice of borrowing and such other information as Agent requests in connection with the funding of the Delayed Draw Term Loan on the Delayed Draw Closing Date;

(d) no Default or Event of Default shall exist (whether immediately before or immediately after giving effect to the funding of the Delayed Draw Term Loan);

(e) all representations and warranties made by any Obligor in any of the Loan Documents, or otherwise in writing to the Agent, shall be true and correct in all material respects (or if already qualified as to materiality, in all respects) provided, that, for purposes of this clause (e), each reference to the Closing Date in each representation and warranty shall be deemed to refer to the Delayed Draw Closing Date; and

(f) the Agent shall have received a certificate, signed by a Senior Officer of Holdings, dated as of the Delayed Draw Closing Date, certifying as to the satisfaction of each of the Delayed Draw Closing Conditions as of the Delayed Draw Closing Date.

(g) EBITDA of Holdings and its Subsidiaries for the immediately preceding three (3) fiscal months, when annualized (i.e. multiplied by four (4)), shall be greater than $2,500,000;

(h) total revenue of Holdings and its Subsidiaries for the immediately preceding twelve (12) fiscal months shall have been greater than $16,200,000;

(i) not less than five (5) Tribal Locations (i) have been executed for Phase 1 Development, Phase 2 Development or Phase 3 Development or (ii) have been opened and are operating;

(j) each of the Specified Company Retail Locations are open and generating positive revenue; and

(k) the Agent shall have received all financial information reasonably requested to evidence the satisfaction of the foregoing clauses (g) through (j).

"Delayed Draw Closing Date" means the date on which all Delayed Draw Closing Conditions are satisfied or waived by the Agent and the Delayed Draw Term Loan extension of credit is made by the Lenders.

"Delayed Draw Term Loan" has the meaning set forth in Section 1.1(c) of this Agreement.

"Distribution" means, in respect of any entity, (i) any payment of dividends or other distributions on Equity Interests of the entity (except distributions in common Equity Interests), (ii) any purchase, redemption or other acquisition or retirement for value of any Equity Interests of the entity or an Affiliate of the entity and (iii) the repayment of any Permitted Convertible Debt in cash, whether at stated maturity or on demand in accordance with the definitive documentation governing such Permitted Convertible Debt.

"EBITDA" means the sum of (A) Consolidated Net Income of Holdings and its Subsidiaries for the Applicable Fiscal Period, plus (B) to the extent deducted from revenue in computing Consolidated Net Income for such period, the sum of (i) total interest expense (whether cash or non-cash), (ii) the provision for taxes based on income, including federal, state and local income taxes, (iii) depreciation and amortization expense, (iv) non-cash charges, losses or expenses not representing an accrual or reserve for a future cash charge, (v) earn-outs, purchase price adjustments and similar adjustments (other than working capital adjustments) in connection with any Permitted Acquisition, (vi) out-of-pocket non-recurring transaction expenses related to the transactions contemplated by this Loan Agreement and amendments or other modifications of the Loan Documents, out-of-pocket non-recurring transaction expenses related to Additional Permitted Debt and amendment or other modifications of the documents pertaining thereto and out-of-pocket non-recurring transaction expenses related to Permitted Acquisitions, collectively in an aggregate amount not to exceed $1,000,000 during the term of this Agreement, (ix) proceeds of business interruption to the extent losses from the business interruption event were included in computing Consolidated Net Income and (x) non-cash expenses relating to employee benefit or management compensation plans, minus (C) to the extent included in revenue in computing Consolidated Net Income, any non-cash gains or credits.

~~"EBITDA Interest Coverage Ratio" means, as of any date of determination, the ratio of (a) EBITDA of Holdings and its Subsidiaries for the most recently completed Applicable Fiscal Period to (b) Cash Interest Expense of Holdings and its Subsidiaries for the most recently completed Applicable Fiscal Period.~~

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (i) the environment, (ii) preservation or reclamation of natural resources, (iii) the management, release or threatened release of any Hazardous Material or (iv) health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of their respective Subsidiaries, directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interest" means the interest of (i) a shareholder in a corporation, (ii) a partner (whether general or limited) in a partnership (whether general, limited or limited liability), (iii) a member in a limited liability company, or (iv) any other Person having any other form of equity security or ownership interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"Erroneous Payment" has the meaning set forth in Section 8.6(h)(i) of this Agreement.

"Erroneous Payment Notice" has the meaning set forth in Section 8.6(h)(ii) of this Agreement.

"Event of Default" means any event or condition described in Section 7 of the Agreement.

"Event of Loss" means, with respect to any property, any of the following: (a) any loss, destruction or damage of such property or (b) any condemnation, seizure, or taking, by exercise of the power of eminent domain or otherwise, of such property by any Governmental Authority, or confiscation of such property or the requisition of the use of such property by any Governmental Authority.

"Excess" has the meaning set forth in Section 1.5 of the Agreement.

"FDA" means the U.S. Food and Drug Administration.

~~"Financial Covenants" has the meaning set forth in Item 9 of the Terms Schedule.~~

"Fiscal Year" means the fiscal year of Holdings and its Subsidiaries for accounting and tax purposes, commencing on January 1 and ending on December 31 of each calendar year.

"Fixed Assets" means property of the Obligors consisting of Equipment, Fixtures or real estate.

"GAAP" means generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether foreign, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Debt of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Debt or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Debt; provided, that the term Guarantee shall not include (i) endorsements for collection or deposit in the Ordinary Course of Business, (ii) joint and several liability imposed by Environmental Laws, or (iii) credit support to suppliers or customers provided in the Ordinary Course of Business.

"Guarantor" means each Person listed on Item 2 of the Terms Schedule as a Guarantor and any other Person who may guarantee payment or collection of any of the

Obligations.

"Guaranty" means each guaranty now or hereafter executed by a Guarantor with respect to any of the Obligations.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holdings Guaranty" means the Guarantee of the Obligations by Holdings pursuant to Section 8.18 of the Agreement.

"Increase Trigger Date" means the earlier of (a) sixty (60) days after the Closing Date and (b) the date on which Borrower provides written notice to the Lenders that no Permitted Credit Facility is available.

"Incremental Closing Conditions" means each of the following conditions:

(a) not less than twenty (20) days shall have elapsed since the Increase Trigger Date;

(b) no Additional Permitted Debt shall have been issued or incurred;

(c) the Channel Partners Debt shall have been, or substantially simultaneously with the borrowing of the Incremental Term Loan will be, repaid in full;

(d) the Agent shall have received from the Borrower a notice of borrowing and such other information as Agent requests in connection with the funding of the Incremental Term Loan on the Incremental Closing Date;

(e) no Default or Event of Default shall exist (whether immediately before or immediately after giving effect to the funding of the Incremental Term Loan);

(f) all representations and warranties made by any Obligor in any of the Loan Documents, or otherwise in writing to the Agent, shall be true and correct in all material respects (or if already qualified as to materiality, in all respects) provided, that, for purposes of this clause (d), each reference to the Closing Date in each representation and warranty shall be deemed to refer to the Incremental Closing Date; and

(g) the Agent shall have received a certificate, signed by a Senior Officer of Holdings, dated as of the Incremental Closing Date, certifying as to the satisfaction of each of the Incremental Closing Conditions as of the Incremental Closing Date.

"Incremental Closing Date" means the date on which all Incremental Closing Conditions are satisfied or waived by the Agent and the Incremental Term Loan extension of credit is made by the Lenders.

"Incremental Term Loan" has the meaning set forth in Section 1.1(b) of this Agreement.

"Indemnitees" means the Agent, each Lender and each of their respective officers, directors, agents (including legal counsel) and Affiliates.

"Information" has the meaning set forth in Section 4.4(b) of this Agreement.

"Initial Public Offering" means the initial public offering of shares of common stock of Holdings as contemplated by the Form S-1 registration statement, dated as August 28, 2024 (as amended, restated or otherwise modified thereafter), filed with the Securities and Exchange Commission.

"Initial Term Loan" has the meaning set forth in Section 1.1(a) of this Agreement.

"Insolvency Proceeding" means a bankruptcy, receivership, assignment for the benefit of creditors, debt adjustment, liquidation or any other insolvency case or proceeding under any applicable law.

"Installment Payment Date" has the meaning set forth in Section 1.2(a)(i) of the Agreement.

"Interest Payment Date" has the meaning set forth in Section 1.2(a)(ii) of the Agreement.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Lender Expenses" means all of the following: (a) Taxes and insurance premiums required to be paid by the Obligors under the Loan Documents which are paid or advanced by the Agent or any Lender; (b) filing, recording, publication and search fees paid or incurred by the Agent or any Lender, including all recording taxes; and (c) the costs, fees (including reasonable attorneys', paralegals', auctioneers', appraisers' or other consultants fees) and expenses incurred by the Agent or any Lender (i) to inspect, copy, audit or examine or any of the Obligors' Books or inspect, count or appraise any Collateral in accordance with this Agreement, (ii) to correct any default or enforce any provision of any of the Loan Documents, whether or not litigation is commenced, (iii) in gaining possession of, maintaining, handling, preserving, insuring, storing, shipping, preparing for sale, advertising for sale, selling or foreclosing a Lien upon any of the Collateral, whether or not a sale is consummated, (iv) in collecting the Accounts or recovering any of the Obligations, or (v) in structuring, drafting, reviewing or preparing any of the Loan Documents, or any amendment, modification or waiver of any of the Loan Documents or in defending the validity, priority or enforceability of Liens.

"Lien" means any interest in property (including for the avoidance of doubt securing an obligation owed to or a claim by a Person), whether such interest is based on common law, statute or contract.

"Lien Waiver" means the waiver or subordination of Liens satisfactory to Agent from a lessor, mortgagee, warehouse operator, processor or other third party that may have a Lien upon any Collateral that is in such third party's possession or is located or leased by such party to any Obligor, by which such Person shall waive or subordinate its Liens and claims with respect to any Collateral in favor of Lender and shall assure Lender's access to any Collateral for the purpose of allowing Agent to enforce its rights and Liens with respect thereto.

"Limited Guarantor" means each of (a) Justin Stiefel and (b) Jennifer Stiefel.

"Limited Guaranty" means that certain Limited Payment Guaranty, dated as of the Closing Date, by and among Justin Stiefel, Jennifer Stiefel and the Agent.

"Liquidity" means, on any date of determination, the total amount of unrestricted cash and Cash Equivalents of Holdings and its Subsidiaries as of such date, plus, to the extent Obligors become party to any revolving credit facility permitted hereunder (including without limitation any Additional Permitted Debt), amounts available to be borrowed under such revolving credit facility.

"Loan Account" has the meaning set forth in Section 1.6 of the Agreement.

"Loan Documents" means, collectively, the Agreement, Amendment No. 1, Amendment No. 2, Consent, Waiver and Acknowledgment No. 1, Consent, Waiver and Acknowledgement No. 2, each Note, the Security Documents, the Limited Guaranty, each agreement evidencing or relating to any, and any other instruments or agreements executed by an Obligor in connection with the Agreement or any of the Obligations.

"Material Adverse Effect" means the effect of any event, condition, action, omission or circumstance, which, alone or when taken together with other events, conditions, actions, omissions or circumstances occurring or existing concurrently therewith, (i) has, or with the passage of time is reasonably likely to have, a material adverse effect upon the business, operations, properties, prospects or condition (financial or otherwise) of the Obligors, taken as a whole; (ii) has or would be reasonably expected to have any material adverse effect upon the validity or enforceability of the Agreement or any of the other Loan Documents; (iii) has any material adverse effect upon the title to or value of any material part of the Collateral, the Liens of Lender with respect to the Collateral or the priority of any such Liens; (iv) has any material adverse effect on the ability of any Obligor to perform its obligations under any of the Loan Documents, including repayment of any of the Obligations when due; or (v) materially impairs or delays Lender's ability to enforce or collect the Obligations or realize upon any of the Collateral in accordance with the Loan Documents or applicable law.

"Maturity Date" means ~~April 15~~October 25, ~~2025~~2026.

"Mortgage" means each mortgage, deed of trust, deed to secure debt or other security instrument that at any time grants to Agent for the benefit of the Lenders a Lien in any real estate of any Obligor.

"NASDAQ" means the National Association of Securities Dealers Automated Quotations.

"Net Proceeds" means

(a) with respect to any disposition by any Obligor, including, without limitation, a disposition in any Insolvency Proceeding, the excess of (i) the sum of cash and cash equivalents received by such Person from such disposition, over (ii) the sum of (1) out-of-pocket fees, costs and expenses incurred by such Obligor in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions paid by any Obligor to third parties (other than Affiliates)), (2) the principal amount of any Debt that is secured by the asset that is subject to such disposition that is required to be repaid in connection with such disposition (other than the Obligations), (3) taxes payable or reasonably estimated to be payable in connection with such disposition and (4) the amount of any reserves established by any Loan Party or any of its Subsidiaries in accordance with GAAP to fund purchase price or similar adjustments, indemnities or liabilities, contingent or otherwise, reasonably estimated to be payable in connection with such disposition;

(b) with respect to any Event of Loss, the excess of (i) the sum of cash received by such Person from such Event of Loss, over (ii) the sum of (1) out-of-pocket expenses incurred by such Obligor in connection with such Event of Loss paid by any Obligor to third parties (other than Affiliates), (2) the principal amount of any Debt that is secured by the asset that is subject to such Event of Loss that is required to be repaid in connection with such Event of Loss (other than the Obligations) and (3) taxes payable or reasonably estimated to be payable in connection with such Event of Loss; and

(c) with respect to any incurrence of Debt (other than Debt expressly permitted to be incurred or issued pursuant to Section 6.3 of the Agreement) by any Obligor, the excess of (i) the gross proceeds received by such Person from such incurrence of Debt, over (ii) the sum of fees and commissions (including underwriting fees and commissions), costs and expenses, including, but not limited to, reasonable attorneys' fees and other professional fees, if any, incurred in connection therewith (but excluding any expenses paid to another Obligor or any Affiliate thereof).

"Notes" means each Note and any other promissory note executed by the Borrower at a Lender's request to evidence any of the Obligations.

"NYSE" means the New York Stock Exchange.

"Obligations" means all Debts, obligations, covenants, and duties now or at any time or times hereafter owing by the Obligors to the Agent and/or the Lenders of any kind and description, whether incurred pursuant to or evidenced by any of the Loan Documents or any other agreement and whether direct or indirect, absolute or contingent, due or to become due, or joint or several, including the principal of and interest on the Term Loan, all fees, all obligations of the Obligors in connection with any indemnification of the Agent or any Lender, and all Lender Expenses.

"Obligors" means the Borrower, each Guarantor, and each other Person that is at any time liable for the payment of the whole or any part of the Obligations or that has granted in favor of the Agent for the benefit of the Lenders a Lien upon any of such Person's assets to secure payment of any of the Obligations.

"OFAC" has the meaning set forth in the definition of Sanctions.

"Ordinary Course of Business" means, with respect to any Person, the ordinary course of such Person's business, as conducted by such Person in accordance with past practices and undertaken by such Person in good faith and not for the purpose of evading any covenant or restriction in any Loan Document.

"Organizational Documents" means, with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust, or similar agreement or instrument governing the formation or operation of such Person.

"Patent Security Agreement" means that certain Grant of a Security Interest – Patents, dated as of the Closing Date, by and among the Borrower and the Agent.

"Perfection Certificate" means the Perfection Certificate dated as of the Closing Date and executed by each Obligor in favor of the Agent.

"Permitted Acquisition" means any Acquisition by an Obligor (other than Holdings) whether by purchase, merger or otherwise, of (i) substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person or (ii) no less than 100% of the capital stock, partnership interests, membership interests or equity of any Person (except for any such interests or equity issued to rollover shareholders of management or existing shareholders, which are promptly exchanged for equity interests of a direct or indirect parent company), so long as:

(a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and, if applicable, such Acquisition has been approved by such Person's board of directors (or other appropriate governing body), and the line or lines of business of the Person to be acquired constitute Core Businesses (it being understood that Acquisitions of assets through sales under Article 9 of the UCC and pursuant to bankruptcy proceedings shall be permitted);

(b) no Default or Event of Default shall have occurred and be continuing either immediately prior to or immediately after giving effect to such Acquisition;

(c) after giving Pro Forma Effect to such Acquisition (including the payment of cash and other property given as consideration, any Debt incurred, assumed or acquired by any Obligor in connection with such Acquisition, the maximum amount of all additional purchase price consideration in the form of earn-outs and other similar contingent obligations, and all fees expenses and transaction costs incurred in connection therewith), the ~~Obligors shall be in compliance on a Pro Forma Basis with the Financial Covenants recomputed for the~~Total Net Leverage Ratio, as of the last day of the Applicable Fiscal Periodmost recently ended ~~fiscal quarter for which information is available regarding the business being acquired~~, shall not be greater than 1.50:1.00;

(d) Borrower shall have furnished Agent and the Lenders with ten (10) Business Days' (or such shorter period as may be agreed by Agent) prior written notice of such intended Acquisition and shall have furnished Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed) and, (i) a due diligence package, which package shall consist of the following with regard to such Acquisition (solely to the extent made available in the context of such Acquisition and not being subject to attorney-client privilege and, if appropriate, subject to the entry into customary non-disclosure and non-reliance letters): (1) a pro forma balance sheet and pro forma financial projections (each, after giving effect to such Acquisition) for Holdings and its Subsidiaries for the twelve (12) month period following such Acquisition (prepared on a monthly basis) and the subsequent two (2) Fiscal Years or through the remaining term of this Agreement; (2) appraisals (if existing); (3) historical financial statements of the Person to be (or whose assets are to be) acquired for the three (3) fiscal years prior to such Acquisition (or, if such Person has not been in existence for three (3) years, for each year such Person has existed); and (4) a description of the method of financing the Acquisition, including sources and uses, and (ii) to the extent a quality of earnings report is obtained by the Obligors in connection with such Acquisition, such quality of earnings report;

(e) the Borrower shall have furnished to Agent and the Lenders at least five (5) days prior to the date on which any such Acquisition is to be consummated (or such shorter time as the Agent may allow) a certificate of a Senior Officer of the Borrower, in form and substance reasonably satisfactory to Agent, (i) certifying that all of the requirements for a Permitted Acquisition will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed calculation of item (d) above (and such certificate shall be updated as necessary to make it accurate in all material respects as of the date the Acquisition is consummated);

(f) at or prior to the closing of any such proposed Permitted Acquisition, Agent will be granted a perfected first priority Lien (subject only to Permitted Liens) in substantially all assets acquired pursuant thereto or in the assets and Equity Interests of the Person being acquired, and the Obligors and such Person shall have executed such documents and taken such actions as may be reasonably required by Agent in connection therewith (including the delivery of (A) certified copies of the resolutions of the board of directors (or comparable governing board) of Holdings, its Subsidiaries and such Person authorizing such Permitted Acquisition and the granting of Liens described herein, (B) legal opinions, in form and substance reasonably acceptable to Agent, with respect to the transactions described herein, and (C) evidence of insurance of the business to be acquired consistent with the requirements of Section 5.9 of the Agreement); *provided* that if any Lien on any Collateral (including the creation or perfection of any Lien) is not or cannot reasonably be created and/or perfected on the closing date of such Acquisition after the Borrower's use of commercially reasonable efforts to do so, without undue burden or expense (other than (x) the pledge of certificated Equity Interests of any Subsidiary, (y) the grant and perfection of security interests in other assets pursuant to which a Lien may be perfected solely by the filing of a financing statement under the Uniform Commercial Code, and (z) the filing of intellectual property security agreements with the U.S. Patent and Trademark Office or the U.S. Copyright Office, as applicable), then the creation and/or perfection of any such Lien on such Collateral shall not constitute a requirement to close such Permitted Acquisition and shall be required to be created and/or perfected within thirty (30) days (or such longer period as the Agent may agree) after the closing date of such Permitted Acquisition; and

(g) the consideration for the proposed Permitted Acquisition shall consist of (or be financed with) (i) the sale or issuance of Equity Interests of Holdings (and any net cash proceeds thereof, or any cash capital contribution in lieu thereof), (ii) any cash on hand available on the balance sheet of Holdings and its Subsidiaries and/or (iii) any deferred purchase price obligations in the form of earn-outs, other contingent deferred purchase price obligations and seller debt (other than working capital or similar adjustments) to the extent permitted to be incurred pursuant to the Agreement.

"Permitted Asset Disposition" means a sale, lease, license, consignment or other transfer or disposition of assets (real or personal, tangible or intangible, but excluding any Equity Interests of Holdings) of an Obligor, including a disposition of property of an Obligor in connection with a sale-leaseback transaction or synthetic lease, of the following types: (a) in each case if such disposition is a transfer of property to Borrower by another Obligor, (b) other sales, leases, licenses, consignments or other transfers or dispositions of assets (real or personal, tangible or intangible, but excluding any Equity Interests of Holdings) with a fair market value not to exceed $500,000 in the aggregate in any Fiscal Year, (c) the sale, transfer or disposition of any Equity Interests of BSB held by the Obligors in connection with a BSB Sale Transaction; provided, that such sale, transfer or disposition is for fair market value (as determined in good faith by the Borrower) and consummated on arm's-length terms, (d) sales or other dispositions of Inventory in the Ordinary Course of Business, (e) dispositions of obsolete or worn out equipment, whether now owned or hereafter acquired, in the Ordinary Course of Business, (f) non-exclusive licenses of intellectual property rights in the Ordinary Course of Business, (g) any sale, discount or other disposition of past due accounts receivable in the Ordinary Course of Business (other than, for the avoidance of doubt, as part of a financing), (h) making of investments and distributions permitted under Sections 6.4 or 6.5, (i) the sale, license, transfer, abandonment, allowance to lapse or other disposition of intellectual property rights that are no longer material to or necessary for or used in the operation of the business of the Obligors, (j) any termination of leases to the extent not prohibited under the Loan Documents, and (k) dispositions of property subject to casualty and condemnation events related to property upon receipt of the applicable insurance proceeds or condemnation proceeds in respect thereof.

"Permitted Convertible Debt" means (a) the convertible debt in the outstanding principal amount of $550,000, held by Derek Gafford, and interest accrued and to accrue thereon, (b) the convertible debt in the outstanding aggregate principal amount of $1,120,000 held by Derek Gafford, Alan Boyce, Nicholas Tedesco, James Lowell and Lois Erickson, Michael Weaver, Ganet Burr, Ben Hedin, John & Carole Holmaas, Brad Jung, Matt Lessard, Josh and Erin Gatherum, Tom Thiel, Leonard and Linda Psyk, and Francis Hagen Jr., and interest accrued and to accrue thereon, and (c) any additional unsecured convertible debt issued after the Closing Date, provided such additional Debt (i) does not require the payment of interest in cash prior to maturity, (ii) does not require any regularly scheduled payments of principal prior to maturity, (iii) matures no earlier than the date that is the 91st day after the Maturity Date, and (iv) is convertible into common Equity Interests of Holdings or another parent entity.

"Permitted Credit Facility" means a senior secured credit facility, entered into by any Obligor on or prior to the Increase Trigger Date, providing for loans in an aggregate principal amount not to exceed $4,500,000 at any time outstanding, on terms and conditions and subject to intercreditor provisions acceptable to the Agent in its sole

discretion.

"Permitted Holders" means Tiburon Opportunity Investment Fund L.P., Jennifer Stiefel, Glenn Keiper, JP Wensel, Derrek Gafford, Justin Stiefel, Douglas A. George and Leroy Cabana.

"Permitted Lien" means any of the following: (i) Liens granted in favor of the Agent for the benefit of the Lenders; (ii) Liens for Taxes (excluding any Lien imposed pursuant to the provisions of ERISA) not yet due or being Properly Contested; (iii) statutory Liens (other than Liens for Taxes or Liens securing bonding or other surety arrangements) arising in the Ordinary Course of Business of Holdings or any of its Subsidiaries, but only if and for so long as payment in respect of such Liens is not at the time required or the Debt secured by any such Liens is being Properly Contested and such Liens do not materially detract from the value of the property of Holdings or such Subsidiary and do not materially impair the use thereof in the operation Holdings' or such Subsidiary's business; (iv) purchase money Liens securing Debt incurred for the purchase of Fixed Assets as permitted by Section 6.3(c) of the Agreement, provided that such Liens are confined to the property so acquired and secure only the Debt incurred to acquire such property; (v) Liens arising from the rendition, entry or issuance against Holdings or any Obligor of any judgment, writ order or decree for so long as each such Lien is in existence for less than thirty (30) consecutive days after it first arises or such judgment, writ, order or decree is being Properly Contested; (vi) normal and customary rights of setoff upon deposits of cash in favor of banks and other depository institutions and Liens of a collecting bank arising under the UCC, on payment items in the course of collections; (vii) Liens in effect as of the Closing Date and set forth on Schedule A attached hereto, subject to compliance with (and the permitted amendment as described in) Section 5.14(d), (viii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the Ordinary Course of Business, (ix) deposits to secure the performance of bids, tenders, trade contracts, governmental contracts and leases, and surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business, (x) any interest or title of the licensor under any license agreement in the Ordinary Course of Business, (xi) any interest or title of a lessor, sublessor, lessee or sublessee, under lease agreements, in each case, entered into by any Obligor in the Ordinary Course of Business, (xii) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods, (xiii) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease not prohibited by the Loan Documents, (xiv) Liens consisting of an agreement to dispose of any property in Permitted Asset Disposition, (xv) limitations on the ability of any Obligor to transfer or otherwise dispose of any Equity Interests of BSB directly or indirectly owned by such Obligor as set forth in the operating agreement of BSB as in effect on the Closing Date, (xvii) Liens securing any Permitted Credit Facility, and (xviii) such other Liens as may be consented to in writing by the Agent in its sole discretion.

"Permitted Refinancing" means, with respect to any Debt, any refinancings, refundings, renewals or extensions thereof;*provided* that (a) the amount of such Debt is not increased at the time of such refinancing, refunding, renewal or extension except by (i) an amount equal to a reasonable premium or other reasonable amounts paid, (ii) fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal or extension and (iii) an amount equal to any existing commitments unutilized thereunder, (b) the final maturity date and weighted average life thereof shall not be prior to or shorter than that of the existing Debt prior to such refinancing, refunding, renewal or extension, and (c) the direct or any contingent obligor with respect thereto and security interests granted in connection with such Debt is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension (except to the extent of any partial release thereof).

"Person" means an individual, general partnership, limited partnership, corporation, limited liability company, limited liability partnership, joint stock company, land trust, business trust, or unincorporated organization, or a Governmental Authority, department, or other subdivision thereof.

"Phase 1 Development" means that a tribe has executed a memorandum of terms engaging the Borrower to begin on the initial scoping, design and budget estimation process to allow the tribe to further evaluate the project for possible advancement to Phase 2 development and review.

"Phase 2 Development" means that a tribe has engaged the Borrower to commence preparing schematic designs and drawings sufficient to allow a formal construction budget and timeline to be gathered by accepting the Phase 2 deliverables in writing as required by an executed Memorandum of Terms.

"Phase 3 Development" means that a tribe has committed to financing, constructing and operating the project, and the tribe and the Borrower will have begun to negotiate the master agreement governing their relationship and roles in the project by accepting the Phase 3 deliverables in writing as required by an executed Memorandum of Terms.

"PIK Interest Option Period" means the period from (and including) the Closing Date through (and including) the eighteen (18) month anniversary of the Closing Date.

"PIK Interest Option Rate" means a rate per annum equal to (i) ten percent (10.00%), which portion shall be payable in cash*plus* (ii) six and one half percent (6.50%), which portion shall be payable in kind and added to the outstanding Obligations as principal hereunder.

"Plan" means an employee pension benefit plan that is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and that is either (i) maintained by any Obligor for employees, or (ii) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which an Obligor is then making or accruing an obligation to make contributions or has within the preceding five (5) years made or accrued such contributions.

"Pledge Agreement" means that certain Pledge Agreement, dated as of the Closing Date, by and among Holdings and the Agent.

"Post-IPO Cash Interest Effective Date" means the first day of the calendar month immediately following the consummation of the Initial Public Offering.

"Prepayment Premium" means, in connection with any prepayment or repayment of the Obligations (except for any such prepayment or repayment pursuant to Section 1.2(a)(i) of the Agreement or any prepayment or repayment resulting from a BSB Sale Transaction), beginning with any such prepayment or repayment on or prior to the first Interest Payment Date occurring after the Closing Date, an amount equal to 30.00% of the Obligations being prepaid or repaid in connection with such prepayment or repayment, with such percentage decreasing by 1.25% for each subsequent Interest Payment Date that occurs after the first Interest Payment Date after the Closing Date (such that, for the avoidance of doubt, the Prepayment Premium shall reduce to 0.00% on the second anniversary of the first Interest Payment Date after the Closing Date).

"Pro Forma Basis," "Pro Forma Compliance" and "Pro Forma Effect" mean, as to any Person, for any events as described below that occur subsequent to the commencement of a period for which the effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred on the first day of the Applicable Fiscal Period most recently ended on or before the occurrence of such event: (a) [reserved]; (b) in making any determination on a Pro Forma Basis, of Pro Forma Compliance or of Pro Forma Effect, (x) all Debt (including Debt issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the financial effect is being calculated, whether incurred under the Loan Documents or otherwise) issued, incurred, assumed or repaid during the Applicable Fiscal Period (or with respect to Debt repaid, during the Applicable Fiscal Period or subsequent to the end of the Applicable Fiscal Period and prior to, or simultaneously with, the event for which the calculation of any such ratio is made) shall be deemed to have been issued, incurred, assumed or repaid at the beginning of such period and (y) interest expense of such Person attributable to interest on any Debt, for which pro forma effect is being given as

provided in preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis as if the rates that would have been in effect during the period for which pro forma effect is being given had been actually in effect during such periods and (c) notwithstanding anything to the contrary in this definition or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the asset sale, transfer, disposition or lease thereof has been entered into as discontinued operations, no Pro Forma Effect shall be given to the classification thereof as discontinued operations (and the EBITDA or any component thereof attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such asset sale, transfer, disposition or lease shall have been consummated. ~~Any computation on a Pro Forma Basis of compliance with the Financial Covenants prior to June 30, 2021 or December 31, 2021 shall be made as if the Financial Covenant levels as of June 30, 2021 and/or December 31, 2021 are in effect.~~

"Projections" has the meaning set forth in Section 4.4(b) of this Agreement.

"Properly Contested" means, in the case of any Debt of an Obligor (including any Taxes) that is not paid as and when due or payable by reason of such Obligor's bona fide dispute concerning its liability to pay same or concerning the amount thereof, (i) such Debt is being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (ii) such Obligor has established appropriate reserves as shall be required in conformity with GAAP; (iii) the non-payment of such Debt would not reasonably be expected to have a Material Adverse Effect; (iv) no Lien is imposed upon any of such Obligor's assets with respect to such Debt unless such Lien is at all times subordinate in priority to the Liens of the Agent for the benefit of the Lenders (except only with respect to property taxes that have priority as a matter of applicable state law) and enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; (v) if the Debt results from, or is determined by the entry, rendition or issuance against an Obligor or any of its assets of a judgment, the enforcement of such judgment is stayed pending a timely appeal or other judicial review; and (vi) if such contest is abandoned, settled or determined adversely (in whole or in part) to such Obligor, such Obligor forthwith pays such Debt and all penalties, interest and other amounts due in connection therewith.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, managers, general partners, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Required Lenders" means, as of any date of determination, Lenders holding more than 50% of the sum of (a) Term Loans outstanding as of such date of determination and (b) aggregate unused Commitments as of such date of determination.

"Sanctioned Jurisdiction" means, at any time, a country, territory or geographical region which is itself the subject or target of any Sanctions.

"Sanctions" means economic or financial sanctions, requirements or trade embargoes imposed, administered or enforced from time to time by U.S. Governmental Authorities (including, but not limited to, the Office of Foreign Assets Control ("OFAC"), the U.S. Department of State and the U.S. Department of Commerce), the United Nations Security Council, the European Union, Her Majesty's Treasury, or any other relevant Governmental Authority.

"Sanctions Target" means any Person: (a) that is the subject or target of any Sanctions; (b) named in any Sanctions-related list maintained by OFAC, the U.S. Department of State, the U.S. Department of Commerce or the U.S. Department of the Treasury, including the OFAC list of "Specially Designated Nationals and Blocked Persons;" (c) operating, organized or resident in a Sanctioned Jurisdiction; or (d) owned or controlled by any such Person or Persons described in the foregoing clauses (a)-(c).

"SEC" means the Securities and Exchange Commission.

"Security Agreement" means the Security Agreement between the Obligors and the Agent dated or to be dated on or about the date hereof.

"Security Documents" means each instrument or agreement at any time securing or assuring payment of any of the Obligations, including the Security Agreement, the Pledge Agreement, the TTS Security Agreement, each Guaranty, each Patent Security Agreement, each Trademark Security Agreement, any Lien Waiver, any Control Agreements and each Mortgage.

"Senior Officer" means, with respect to any Person, on any date, any person occupying any of the following positions of such Person on such date: the chair of the board of directors, president, chief executive officer, chief financial officer, chief accounting officer, treasurer, managing member or managing partner.

"Solvent" means, as to any Person: (a) the fair value of the assets of such Person, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of such Person will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) such Person will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; (d) such Person will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Closing Date; and (e) Holdings and its Subsidiaries are, on a Consolidated basis, "solvent" within the meaning given that term and similar terms under the Bankruptcy Code and applicable laws relating to fraudulent transfers and conveyances.

"Specified Company Retail Locations" means the Borrower's location (a) in Tumwater, Washington and (b) at the 5th Street Market in Eugene, Oregon.

"Specified Summit Equipment Lien" has the meaning set forth in Section 5.14(d).

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent. For the avoidance of doubt, BSB is not a Subsidiary of Borrower.

"Subsidiary" means, with respect to any Obligor, any direct or indirect subsidiary thereof.

"Supplemental Collateral Agent" means the term set forth in Section 8.6(c) of the Agreement.

"Taxes" means any present or future taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, use, transfer, license, payroll, withholding, social security and franchise taxes now or hereafter imposed or levied by the United States or any other Governmental Authority and all interest, penalties, additions to tax and similar liabilities with respect thereto, but excluding, in the case of the Agent or the Lenders, taxes imposed on or measured by the net income or overall gross receipts of the Agent or the Lenders.

"Trademark Security ~~Agreement~~Agreements" means that (i) certain Grant of a Security Interest – Trademarks, dated as of the Closing Date,and (ii) certain Grant of a Security Interest – Trademarks, dated as of or about the Amendment No. 2 Effective Date, by and among the Borrower and the Agent.

"Term" means the term set forth in Section 2.1 of the Agreement.

"Termination Date" means the first date when (a) the Obligations (other than any contingent indemnification obligations and BSB Contingent Exit Fee Obligations) have been paid in full and (b) no commitments of the Agent or the Lenders which would give rise to any new Obligations are outstanding.

"Term Loan" has the meaning set forth in Section 1.1(c) of this Agreement.

"Terms Schedule" means the Terms Schedule annexed to the Agreement.

"Total Debt" means, as of any date of determination, for Holdings and its Subsidiaries on a Consolidated basis, (a) the total of (i) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including the Obligations) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all purchase money Debt (including Capital Lease Obligation), (iii) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (iv) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the Ordinary Course of Business), (v) without duplication, all Guarantees with respect to outstanding Debt of the types specified in clauses (i) through (iv) above of Persons other than Holdings or any of its Subsidiaries, (vi) all other Debt of Holdings or any of its Subsidiaries secured by any Lien or property owned or acquired by Holdings or any of its Subsidiaries, whether or not the Debt secured thereby have been assumed and (vii) all Debt of the types referred to in clauses (i) through (vi) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Holdings or any Subsidiary is a general partner or joint venturer (excluding, for the avoidance of doubt, BSB), unless such Debt is expressly made non-recourse to Holdings or such Subsidiaries.

"Total Leverage Ratio" means, as of any date of determination, the ratio of Total Debt of Holdings and its Subsidiaries at such date, to EBITDA of Holdings and its Subsidiaries for the most recently completed Applicable Fiscal Period.

"Total Net Debt" means, as of any date of determination, for Holdings and its Subsidiaries on a Consolidated basis, (a) Total Debt of Holdings and its Subsidiaries as of such date of determination, less (b) unrestricted cash and Cash Equivalents of Holdings and its Subsidiaries, as of such date of determination, to the extent deposited in or credited to deposit accounts and/or securities accounts subject to Control Agreements for the benefit of the Agent and the Lenders.

"Total Net Leverage Ratio" means, as of any date of determination, the ratio of Total Net Debt of Holdings and its Subsidiaries at such date, to EBITDA of Holdings and its Subsidiaries for the most recently completed Applicable Fiscal Period.

"Transactions" means, collectively, (i) the execution and delivery of this Agreement and the other Loan Documents, (ii) the repayment of Debt in connection therewith and (iii) the payment of fees and expenses in connection with the foregoing.

"Tribal Location" means a proposed Heritage Distilling Company, Inc. branded distillery and/or tasting room, owned by a federally recognize Indian Tribe and operated with the assistance and guidance of the Borrower.

"TTB" means the U.S. Alcohol and Tobacco Tax and Trade Bureau.

"TTS" means Thinking Tree Spirits, Inc., a Delaware corporation, a wholly-owned subsidiary of the Borrower.

"TTS Security Agreement" means that certain Pledge, Security and Guaranty Agreement, executed and delivered by TTS in favor of Agent as of or about the Amendment No. 2 Effective Date.

"UCC" means the Uniform Commercial Code (or any successor statute) as adopted and in force in the State of New York or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such state.

All other capitalized terms contained in the Agreement and not otherwise defined therein shall have, when the context so indicates, the meanings provided for by the UCC. Without limiting the generality of the foregoing, the following terms shall have the meaning ascribed to them in the UCC: Account, Chattel Paper, Commercial Tort Claim, Deposit Account, Document, Electronic Chattel Paper, Equipment, Fixtures, Goods, General Intangible, Instrument, Inventory, Investment Property, Letter-of-Credit Right, Payment Intangible, Security, Securities Account, and Software.

[Signatures commence on following page.]

The undersigned have executed this Definitions Schedule on the 29th day of March, 2021.

HOLDINGS:

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____
Name: Justin Stiefel
Title: Chief Executive Officer and Treasurer

BORROWER:

HERITAGE DISTILLING COMPANY, INC.

By: _____
Name: Justin Stiefel

Title: Chief Executive Officer and Treasurer

[Signatures continued on following page.]

AGENT:

~~SILVERPEAK~~SILVERVIEW CREDIT PARTNERS, LP

By: _____
Name: Vaibhav Kumar
Title: Partner

LENDER:

~~SILVERPEAK~~SILVERVIEW SPECIAL SITUATIONS LENDING LP

By: _____
Name: Vaibhav Kumar
Title: Partner

Annex A

Commitments

Lender	Initial Term Loan	Incremental Term Loan Commitment Amount	Delayed Draw Term Loan
~~Silverpeak~~Silverview Special Situations Lending LP	$10,500,000.00	$2,000,000.00	$2,500,000.00
Total:	$10,500,000.00	$2,000,000.00	$2,500,000.00

SUBSCRIPTION AGREEMENT

in connection with

HERITAGE DISTILLING HOLDING COMPANY, INC.

500,000

COMMON STOCK PURCHASE WARRANTS

, 2024

INSTRUCTIONS TO SUBSCRIPTION AGREEMENT

NAME OF SUBSCRIBER: _____

SECURITIES OFFERED: Up to 500,000 Common Stock Purchase Warrants (each, a "Common Warrant") of Heritage Distilling Holding Company, Inc., a Delaware corporation (the "Company"), each to purchase one share of Common Stock, par value $0.0001 per share, of the Company for a purchase price of $0.01 per share, subject to adjustment.

To: Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, Washington 98332
Attention: Justin Stiefel
Chief Executive Officer

IMPORTANT INSTRUCTIONS FOR COMPLETION:

1. COMPLETE YOUR NAME ABOVE; *and*

2. PROVIDE THE NUMBER OF COMMON WARRANTS TO BE PURCHASED AND ALL INFORMATION REQUESTED ON PAGES 13 AND 14, AND COMPLETE THE INVESTOR QUESTIONNAIRE ATTACHED AS ANNEX A; *and*

3. SIGN THE AGREEMENT IN THE APPROPRIATE PLACE ON PAGE 13 AND IN THE APPROPRIATE PLACES ON PAGE A-4 OF ANNEX A *and*

4. WIRE TRANSFER PAYMENT PURSUANT TO PARAGRAPH 7 BELOW; *and*

5. EMAIL A COPY OF YOUR PHOTO IDENTIFICATION (FOR EXAMPLE, IN THE CASE OF AN INDIVIDUAL, AN UNEXPIRED GOVERNMENT ISSUED IDENTIFICATION EVIDENCING NATIONALITY OR RESIDENCE AND BEARING A PHOTOGRAPH OR SIMILAR SAFEGUARD OR, IN THE CASE OF A CORPORATION OR OTHER ENTITY, CORPORATE OR OTHER ORGANIZATIONAL DOCUMENTS AND EVIDENCE THAT THE PERSON SIGNING HAS FULL AUTHORITY TO EXECUTE AND DELIVER THIS AGREEMENT ON BEHALF OF THE ENTITY) TO ZANNE.RHYDER@HERITAGEDISTILLING.COM; *and*

6. PLEASE EXECUTE THIS SUBSCRIPTION AGREEMENT VIA DOCUSIGN OR DELIVER THE ORIGINAL SUBSCRIPTION AGREEMENT TO THE FOLLOWING ADDRESS:

Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, Washington 98332
Attention: Justin Stiefel
Chief Executive Officer
E-Mail: justin@heritagedistilling.com

7. WIRE TRANSFER PAYMENT TO THE COMPANY AS FOLLOWS:

Domestic Wire Instructions

Receiving Bank:	InBank
Receiving Bank Address:	6380 S. Fiddlers Green Cir, Suite 108A, Greenwood Village, CO 80111
Routing Number:	102200245
Beneficiary Name:	Heritage Distilling Holding Company, Inc.
Beneficiary Address:	920 W. Combs Rd. #123, Queen Creek AZ 85140
Beneficiary Account:	TBD

International Wire Instructions ($USD)

Receiving Bank:	Bankers Bank of the West
Bank Address:	1099 18th Street, Suite 2700, Denver, CO 80202
Swift Code:	INSTUS5D
Routing Number:	102003743
Beneficiary Name:	Heritage Distilling Holding Company, Inc. – Acct #
Address:	
Beneficiary Account:	

ACH Instructions

Receiving Bank:	InBank
Routing Number:	102200245
Account Name:	Heritage Distilling Holding Company, Inc.
Account Number:	TBD
Account Type:	Checking

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "Agreement") is executed by the undersigned (the "Subscriber") in connection with the offering (the "Offering") by Heritage Distilling Holding Company, Inc., a Delaware corporation (the "Company"), of up to 500,000 Common Stock Purchase Warrants of the Company (each, a "Common Warrant"), plus an additional 75,000 Common Warrants to cover over-subscriptions, if any], at a purchase price of $[ ] per Common Warrant. The form and terms of the Common Warrants are set in Addendum A attached hereto.

SECTION 1

1.1 Subscription. The Subscriber, intending to be legally bound, hereby irrevocably subscribes for and agrees to purchase the number of Common Warrants indicated on Page 9 hereof, on the terms and conditions described herein.

1.2 Purchase. The Subscriber understands and acknowledges that the purchase price to be remitted to the Company for the purchase of the Common Warrants shall be $[ ] per Common Warrant.

1.3 Payment for Purchase. PAYMENT FOR THE COMMON WARRANTS SHALL BE BY WIRE TRANSFER to a non-interest bearing escrow account in the Company's name at [____] pending a closing pursuant to the instructions below. Please execute this Agreement using DocuSign or an original executed copy of this Agreement should be mailed to the Company at 9668 Bujacich Road, Gig Harbor, Washington 98332 Attention: Justin Stiefel, or emailed to the Company at justin@heritagedistilling.com.

Wire transfer payment shall be made as follows:

Domestic Wire Instructions

Receiving Bank:	InBank
Receiving Bank Address:	6380 S. Fiddlers Green Cir, Suite 108A, Greenwood Village, CO 80111
Routing Number:	102200245
Beneficiary Name:	Heritage Distilling Holding Company, Inc.
Beneficiary Address:	920 W. Combs Rd. #123, Queen Creek AZ 85140
Beneficiary Account:	TBD

Incoming International Wire Instructions ($USD)

Receiving Bank:	Bankers Bank of the West
Bank Address:	1099 18th Street, Suite 2700, Denver, CO 80202
Swift Code:	INSTUS5D
Routing Number:	102003743
Beneficiary Name:	Heritage Distilling Holding Company, Inc. – Acct #
Address:	
Beneficiary Account:	

ACH Instructions

Receiving Bank:	InBank

Routing Number: 102200245
Account Name: Heritage Distilling Holding Company, Inc.
Account Number: TBD
Account Type: Checking

SECTION 2

2. Acceptance or Rejection.

(a) The Subscriber understands and agrees that the Company reserves the right to reject this subscription for Common Warrants in whole or in part in any order, if, in its reasonable judgment, it deems such action in the best interest of the Company, notwithstanding prior receipt by the Subscriber of notice of acceptance of the Subscriber's subscription.

(b) In the event of rejection of this subscription, or in the event the sale of the Common Warrants is not consummated by the Company for any reason (in which event this Agreement shall be deemed to be rejected), this Agreement and any other agreement entered into between the Subscriber and the Company relating to this subscription shall thereafter have no force or effect and the Company shall promptly return or cause to be returned to the Subscriber the purchase price remitted to the Company by the Subscriber in exchange for the Securities.

SECTION 3

3. Subscriber Representations and Warranties. The Subscriber hereby acknowledges, represents and warrants to, and agrees with, the Company and its affiliates as follows:

(a) The Subscriber is acquiring the Securities for the Subscriber's own account as principal, not as a nominee or agent, for investment purposes only, and not with a view to, or for, resale, distribution or fractionalization thereof in whole or in part and no other person has a direct or indirect beneficial interest in such Common Warrants. Further, the Subscriber does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Common Warrants.

(b) The Subscriber acknowledges the Subscriber's understanding that the offering and sale of the Common Warrants is intended to be exempt from registration under the Securities Act by virtue of Section 3(b) of the Securities Act of 1933, as amended (the "Securities Act"), and the provisions of Regulation D promulgated thereunder ("Regulation D"). In furtherance thereof, the Subscriber represents and warrants to and agrees with the Company and its affiliates as follows:

(i) The Subscriber realizes that the basis for the Regulation D exemption may not be present, if, notwithstanding such representations, the Subscriber has in mind merely acquiring any of the Common Warrants for a fixed or determinable period in the future, or for a market rise, or for sale if the market does not rise. The Subscriber does not have any such intentions;

(ii) The Subscriber has the financial ability to bear the economic risk of the Subscriber's investment, has adequate means for providing for the Subscriber's current needs and personal contingencies and has no need for liquidity with respect to the Subscriber's investment in the Company; and

(iii) The Subscriber has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment. If other than an individual, the Subscriber also represents it has not been organized for the purpose of acquiring the Common Warrants.

(c) The Subscriber represents and warrants to the Company as follows:

(i) The Subscriber is 21 years of age or over; if a corporation, trust, company, partnership, unincorporated association or other entity, such Subscriber is authorized, empowered, and qualified to execute and deliver this Agreement and other transaction documents to which such Subscriber is a party and to purchase and hold the Common Warrants pursuant hereto; and

(ii) The Subscriber understands that the net proceeds to the Company from the sale of the Common Warrants, together with the net proceeds form the Company's initial public offering of Common Stock (the "Initial Public Offering"), will be used for the purposes set forth prospectus relating to the Initial Public Offering; and

(iii) The Subscriber has been given the opportunity for a reasonable time prior to the date hereof to (a) review the risk factors relating to the Company and its business set forth in prospectus relating to the Initial Public Offering, and (b) to ask questions of, and receive answers from, the Company or its representatives concerning the terms and conditions of the Offering, and other matters pertaining to this investment, and has been given the opportunity for a reasonable time prior to the date hereof to obtain such additional information in connection with the Company in order for the Subscriber to evaluate the merits and risks of purchase of the Common Warrants to the extent the Company possesses such information or can acquire it without unreasonable effort or expense; and

(iv) The Subscriber has not been furnished with any oral representation or oral information in connection with the offering of the Common Warrants; and

(v) The Subscriber has determined that the Common Warrants and the shares of Common Stock issuable upon exercise of the Common Warrants are a suitable investment for the Subscriber and that at this time the Subscriber can bear a complete loss of the Subscriber's investment; and

(vi) The Subscriber is not relying on the Company or its affiliates with respect to economic considerations involved in this investment; and

(vii) The Subscriber realizes that it may not be able to resell readily any of the Common Warrants purchased hereunder, or the shares of Common Stock issuable upon exercise of the Common Warrants, because (A) there may only be a limited market, if any exists, for any of the Common Warrants and (B) none of the Common Warrants purchased hereunder, or the shares of Common Stock issuable upon exercise of the Common Warrants, has been registered under Securities Act of the "blue sky" laws of any state; and

(viii) The Subscriber understands that the Company has the absolute right to refuse to consent to the transfer or assignment of the Common Warrants, or the shares of Common Stock issuable upon exercise of the Common Warrants, if such transfer or assignment does not comply with applicable state and federal securities laws; and

(ix) No representations or warranties have been made to the Subscriber by the Company, or any officer, employee, agent, affiliate or subsidiary of the Company, other than the representations of the Company in this Agreement; and

(x) Any information which the Subscriber has heretofore furnished to the Company with respect to the Subscriber's financial position and business experience is correct and complete as of the date of this Agreement and if there should be any material change in such information the Subscriber will immediately furnish such revised or corrected information to the Company; and

(xi) The foregoing representations, warranties and agreements shall survive the sale of the Common Warrants and acceptance by the Company of the Subscriber's subscription.

(d) The Subscriber hereby represents that none of the "Bad Actor" disqualifying events described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event") is applicable to the Subscriber or any of its Rule 506(d) Related Parties (as defined below), except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. The Subscriber hereby agrees that it shall notify the Company promptly in writing in the event a Disqualification Event becomes applicable to the Subscriber or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. For purposes of this paragraph (d), "Rule 506(d) Related Party" shall mean a person or entity that is a beneficial owner of the Subscriber's securities for purposes of Rule 506(d) of the Act.

(e) Confidential Treatment.

(i) The Subscriber acknowledges that it has and will receive Confidential Information (as defined below) of significant value to the Company in connection with the purchase and ownership of the Common Warrants. The Subscriber shall at all times keep documents or other materials containing Confidential Information in a secure place, shall not use the Confidential Information for any purpose other than the evaluation of its investment in the Company, except as otherwise agreed to in a writing signed by the Company, and shall not disclose any of the Confidential Information in any manner whatsoever, in whole or in part, to any person for any reason or purpose whatsoever except (A) if such Subscriber is required by a court of competent jurisdiction to so disclose after notice has been given to the Company and the Company has had an opportunity to oppose such disclosure or seek a protective order to the extent practicable, (B) to employees and representatives of such Subscriber, if any, who need to know such information in connection with such Subscriber's investment in the Company ("Necessary Agents"), provided that the Subscriber shall have informed each such Necessary Agent of the confidential nature of such information and obtained their agreement (the "Necessary Agent Confidentiality Agreement") to hold all Confidential Information in strict confidence and not to use it for any purpose other than as permitted hereunder and shall ensure the performance by each Necessary Agent of such Necessary Agent Confidentiality Agreement.

(ii) "Confidential Information" means any and all information provided to the Subscriber by or on behalf of the Company in connection with the purchase and ownership of the Securities or otherwise, except for information that the Subscriber can establish (A) is generally known to the public other than as a result of the breach by the Subscriber or any Affiliate of the Subscriber of an obligation of confidentiality to the Company, (B) was known by the Subscriber (as evidenced by written records) prior to its receipt by the Subscriber from the Company or (C) was disclosed to the Subscriber by a third party under no obligation of confidence.

(f) Anti-Terrorism and Money Laundering Activities.

(i) The Subscriber acknowledges that the Company is required by U.S. Federal law to obtain, verify and record information that identifies each person or entity who subscribes to purchase the Common Warrants. The Subscriber acknowledges and agrees that it will furnish to the Company upon request a copy of the Subscriber's identifying documents that will assist the Company to properly identify the Subscriber as required by U.S. Federal law. Such documents may include, without limitation, in the case of an individual, the Subscriber's driver's license, passport or other appropriate identifying documents or, in the case of a corporation, partnership or other entity, a copy of such entity's organizational documents and evidence of the authority of the person executing this Agreement on behalf of such entity that such person has full authority to execute and deliver this Agreement on behalf of such entity and otherwise to act on behalf of such entity in connection with such entity's subscription for the Securities.

(ii) The Subscriber is not an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC, such Persons, "Specially Designated Nationals and Blocked Persons") or otherwise. Neither the Subscriber nor any Person who owns an interest in the Subscriber is a Person with whom a U.S. Person, including a United States financial institution as defined in 31 U.S.C. 5312, as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by OFAC (including those executive orders and lists published by OFAC with respect to Specially Designated Nationals and Blocked Persons) or otherwise.

(g) The Subscriber is aware that Newbridge Securities Corporation (the "Placement Agent") is acting as Placement Agent for the Offering and will receive compensation from the Company in connection with the Offering.

SECTION 4

The Company represents and warrants to the Subscriber as follows:

4.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on the business or properties of the Company and its subsidiaries taken as a whole. To its knowledge, the Company is not the subject of any pending or threatened investigation or administrative or legal proceeding by the Internal Revenue Service, the taxing authorities of any state or local jurisdiction, the Securities and Exchange Commission or the securities agency or commission of any state or local jurisdiction that has not been disclosed.

4.2 Authorization. All corporate action on the part of the Company and its officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement, the performance of all obligations of the Company hereunder and the authorization, issuance (or reservation for issuance) and delivery of the Common Warrants being sold hereunder have been taken, and this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms.

4.3 Valid Issuance of Common Warrants. The Common Warrants, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be validly issued, and, based in part upon the representations of the Subscriber in this Agreement, will be issued in compliance with all applicable U.S. federal and state securities laws.

4.4 Selling Efforts in Regard to this Transaction. The Offering is not part of a plan or scheme to evade the registration provisions of the Securities Act. Neither the Company nor any person or entity acting on behalf of the Company has offered or sold any of the Common Warrants to be issued pursuant to this Agreement by any form of general solicitation or general advertising. The Company has offered the securities for sale only to each Subscriber in this Offering and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

4.5 No Conflicts. The execution and delivery of this Agreement and the consummation of the issuance of the Common Warrants and the transactions contemplated by this Agreement do not and will not conflict with or result in a breach by the Company of any of the terms or provisions of, or constitute a default under, the company operating agreement of the Company, or any indenture, mortgage, deed of trust or other material agreement or instrument to which the Company is a party or by which it or any of its properties or assets are bound, or any existing applicable decree, judgment or order of any court, Federal or State regulatory body, administrative agency or other governmental body having jurisdiction over the Company or any of its properties or assets.

4.6 Compliance with Laws. As of the date hereof, the conduct of the business of the Company complies in all material respects with all material statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto. The Company has not received notice of any alleged violation of any statute, law, regulations, ordinance, rule, judgment, order or decree from any governmental authority. The Company shall comply with all applicable securities laws with respect to the sale of the Common Warrants.

4.7 Litigation. There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign, now pending or, to the knowledge of the Company, threatened, against or affecting the Company, or any of its properties, which could reasonably be expected to result in any material adverse change in the business, financial condition or results of operations of the Company, or which could reasonably be expected to materially and adversely affect the properties or assets of the Company.

If, in any respect, those representations and warranties shall not be true and accurate at the time of closing of the Offering, the Company shall immediately give written notice to the Placement Agent specifying which representations and warranties are not true and accurate and the reason therefor.

SECTION 5

5.1 Definitions. As used in this Section 5, the following terms have the respective meanings set forth in this Section 5.1:

(a) "Commission" means the U.S. Securities and Exchange Commission and any successor thereto.

(b) "Effective Date" means as to the Registration Statement, the date on which the Registration Statement is first declared effective by the Commission; provided that the Company shall use its reasonable best efforts to cause the Effective Date of the Registration Statement to occur as soon as possible following the date on which the Registration Statement is initially filed with the Commission.

(c) "Effectiveness Period" means, as to the Registration Statement, the period commencing on the Effective Date of the Registration Statement and ending on the earliest to occur of (a) the second anniversary of such Effective Date, (b) such time as all of the Registrable Securities covered by the Registration Statement have been publicly sold by the Holders of the Registrable Securities included therein, or (c) such time as all of the Registrable Securities covered by the Registration Statement may be sold by the Holders without volume restrictions pursuant to Rule 144, in each case as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected Holders.

(d) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(e) "Filing Date" means (a) with respect to the Registration Statement, the 30th day following the six-month anniversary of the closing date the Company's initial public offering of Common Stock pursuant to the prospectus included in the Company's registration statement on Form S-1 (Registration No. 333-279382); provided that, if the Filing Date falls on a Saturday, Sunday or any other day which shall be a legal holiday or a day on which the Commission is authorized or required by law or other government actions to close, the Filing Date shall be the following Trading Day.

(f) "Holder" or "Holders" means the registered holder or holders, as the case may be, from time to time of Registrable Securities.

(g) "Prospectus" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

(h) "Registrable Securities" means: (i) any Warrant Shares, and (ii) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the Warrant Shares, or any exercise price adjustment with respect to the Common Warrants; provided, however, following such time as any of the securities described in clauses (i) or (ii) above (A) have been sold by a Holder pursuant to a Registration Statement or Rule 144 or (B) may be sold by a Holder without volume restrictions pursuant to Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected Holders, then such securities shall cease to be considered "Registrable Securities" for purposes of this Section 5.

(i) "Registration Statement" means the registration statement required to be filed in accordance with Section 5.2, including (in each case) the Prospectus, amendments and supplements to such Registration Statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference therein.

(j) "Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(k) "Rule 415" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(l) "Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(m) "Trading Day" means a day on which the principal Trading Market is open for trading.

(n) "Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board or the OTC Markets (or any successors to any of the foregoing).

(o) "Warrant Shares" means the shares of Common Stock issued or issuable upon exercise of the Common Warrants issued to the Subscriber pursuant to this Subscription Agreement.

5.2 Registration.

(a) On or prior to the applicable Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all Registrable Securities not already covered by an existing and effective registration statement under the Securities Act for an offering to be made on a continuous basis pursuant to Rule 415, on Form S-1 (or on such other form appropriate for such purpose). Such Registration Statement shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Registration Statement, other than as to the characterization of any Holder as an underwriter, which shall not occur without such Holder's written consent) the "Plan of Distribution" attached hereto as Annex B. The Company shall use its reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as soon as possible and shall use its reasonable best efforts to keep the Registration Statement continuously effective during the entire Effectiveness Period. By 9:30 a.m. (New York City time) on the Trading Day immediately following the Effective Date of such Registration Statement, the Company shall file with the Commission in accordance with Rule 424 under the Securities Act the final prospectus to be used in connection with sales pursuant to the Registration Statement (whether or not such filing is technically required under such Rule).

(b) Each Holder agrees to furnish to the Company a completed selling stockholder questionnaire in customary form (a 'Selling Holder Questionnaire") as requested by the Company. Notwithstanding anything to the contrary contained herein, the Company shall not be required to include the Registrable Securities of a Holder in the Registration Statement who fails to furnish to the Company a fully completed Selling Holder Questionnaire at least two Trading Days prior to the Filing Date.

5.3 Registration Procedures. In connection with the Company's registration obligations hereunder, the Company shall:

(a) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to the Registration Statement and the Prospectus used in connection therewith as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for its Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424; (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and, as promptly as reasonably possible provide the Holders, upon written request, true and complete copies of all correspondence from and to the Commission relating to the Registration Statement that would not result in the disclosure to the Holders of material and non-public information concerning the Company; and (iv) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the Registration Statement(s) and the disposition of all Registrable Securities covered by each Registration Statement.

(b) Use its reasonable best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of the Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(c) Prior to any public offering of Registrable Securities, register or qualify such Registrable Securities for offer and sale under the securities or Blue Sky laws of all jurisdictions within the United States as any Holder may request, to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the Registration Statement(s).

(d) Use its reasonable best efforts to cause all Registrable Securities relating to the Registration Statement to be listed or quoted on any securities exchange, quotation system or market, if any, on which similar securities issued by the Company are then listed or traded.

5.4 Allowable Delay. Notwithstanding anything to the contrary contained herein, as to the Registration Statement required to be filed pursuant to Section 5.2, for not more than an aggregate of 30 Trading Days (which need not be consecutive) during the Effectiveness Period of the Registration Statement, the Company may delay the disclosure of material non-public information concerning the Company, by suspending the use of any Prospectus included in the Registration Statement containing such material non-public information, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company (an "Allowed Delay"); provided, that the Company shall promptly (a) notify the Holders in writing of the existence of (but in no event, without the prior written consent of a Holder, shall the Company disclose to such Holder any of the facts or circumstances regarding) such material non-public information giving rise to an Allowed Delay, (b) advise the Holders in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use commercially reasonable efforts to terminate an Allowed Delay as promptly as practicable.

5.5 Registration Expenses. All fees and expenses incident to the performance of or compliance with this Section 5 by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement other than transfer taxes payable on the sale of such shares and fees and commissions of broker, dealers and underwriters. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Section 5 (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder.

SECTION 6

6.1 Indemnity. (a) The Subscriber agrees to indemnify and hold harmless the Company, the Placement Agent and their respective officers and directors, employees and their affiliates and each other person, if any, who controls any thereof, against any loss, liability, claim, damage and expense whatsoever (including, but not limited to, any and all expenses whatsoever reasonably incurred in investigating, preparing or defending against any litigation commenced or threatened or any claim whatsoever) arising out of or based upon any false representation or warranty or breach or failure by the Subscriber to comply with any covenant or agreement made by the Subscriber herein or in any other document furnished by the Subscriber to any of the foregoing in connection with this transaction.

(b) The Company agrees to indemnify and hold harmless the Subscriber, the Placement Agent their officers and directors, employees and their affiliates and each other person, if any, who controls any thereof, against any loss, liability, claim, damage and expense whatsoever (including, but not limited to, any and all expenses whatsoever reasonably incurred in investigating, preparing or defending against any litigation commenced or threatened or any claim whatsoever) arising out of or based upon any false representation or warranty or breach or failure by the Company to comply with any covenant or agreement made by the Company herein or in any other document furnished by the Company to any of the foregoing in connection with this transaction.

6.2 Modification. Neither this Agreement nor any provisions hereof shall be waived, amended, modified, discharged or terminated except by an instrument in writing signed by the party against whom any waiver, amendment, modification, discharge or termination is sought.

6.3 Notices. Any notice, demand or other communication that any party hereto may be required, or may elect, to give to anyone interested hereunder shall be in writing and shall be deemed given when (a) deposited, postage prepaid, in a United States mail letter box, registered or certified mail, return receipt requested, addressed to such address as may be given herein, or (b) delivered personally, to the other party hereto at their address set forth in this Agreement or such other address as a party hereto may request by notifying the other party hereto.

6.4 Counterparts. This Agreement may be executed through the use of separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

6.5 Binding Effect. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and assigns. If the Subscriber is more than one person, the obligation of the Subscriber shall be joint and several and the agreements, representations, warranties and acknowledgments herein contained shall be deemed to be made by and be binding upon each such person and his heirs, executors, administrators and successors.

6.6 Entire Agreement. The Exhibit and Addendums attached hereto are hereby incorporated herein by reference. This Agreement together with the Annex, Exhibit, and Addendums contains the entire agreement of the parties and there are no representations, covenants or other agreements except as stated or referred to herein.

6.7 Assignability. This Agreement is not transferable or assignable by the Subscriber except as may be provided herein.

6.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

6.9 Amendments. The provisions of this Agreement may be amended at any time and from time to time, and particular provisions of this Agreement may be waived, with and only with an agreement or consent in writing signed by the Company and the Subscriber.

6.10 Neutral Gender. The use in this Agreement of words in the male, female or neutral gender are for convenience only and shall not affect or control any provisions of this Agreement.

6.11 Captions. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6.12 Third Party Beneficiaries. The Placement Agent shall be deemed a third party beneficiary of the representations and warranties of the Subscriber contained in Section 3 hereof and the Company as contained in Section 4 hereof and shall have the right to enforce such provisions directly to the extent it may deem such enforcement necessary or advisable to protect its rights.

[Remainder of page intentionally left blank]

SIGNATURE PAGE

By execution and delivery of this signature page, the Subscriber is (a) agreeing to become a Subscriber for the number of Common Warrants set forth below, (b) acknowledging that the Subscriber has read the representations and warranties in Section 3 of this Subscription Agreement, and (c) hereby representing that the statements contained in Section 3 of this Subscription Agreement are complete and accurate with respect to the Subscriber as a subscriber for the Common Warrants.

A. **SUBSCRIPTION:**

Number of Common Warrants: _____ X $[ ] = $_____.

B. **TITLE:**

PLEASE GIVE THE EXACT AND COMPLETE NAME IN WHICH TITLE TO THE COMMON WARRANTS ARE TO BE HELD:

C. **MANNER IN WHICH TITLE IS TO BE HELD** (Please check One):

1.	☐	Individual	7.	☐	Trust/Estate/Pension or Profit Sharing Plan, and Date Opened: _____
2.	☐	Joint Tenants with Rights of Survivorship	8.	☐	As a Custodian for _____ UGMA _____ (State)
3.	☐	Community Property	9.	☐	Married with Separate Property
4.	☐	Tenants in Common	10.	☐	Keogh
5.	☐	Corporation/Partnership	11.	☐	Tenants by the Entirety
6.	☐	IRA	12.	☐	Other

D. **ACCREDITED INVESTOR REPRESENTATION:**

Subscriber must complete and sign the Accredited Investor Questionnaire attached as Annex A to this Agreement.

IN WITNESS WHEREOF, the Subscriber has executed this Agreement effective as of _____, 2024.

Signature: _____ Signature:_____ _____

Name: _____ Name: _____

Title (if applicable) _____

Street Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Email Address: _____

Social Security or Federal Tax ID No: _____

*****DO NOT WRITE BELOW DOTTED LINE*****

ACCEPTED ON BEHALF OF THE COMPANY:

Heritage Distilling Holding Company, Inc.

By: _____ No. of Common Warrants:_____

Name: Justin Stiefel
Title: Chief Executive Officer

Annex A

ACCREDITED INVESTOR QUESTIONNAIRE

A **APPLICABLE TO INDIVIDUALS ONLY.** Please review the following categories concerning your possible financial condition as an "accredited investor" (within the meaning of Rule 501 of Regulation D) and check the box(es) of the categories applicable to you. If the Subscriber is more than one individual, each individual must check the applicable box(es), indicating to which individual it applies. The Subscriber must check at least one box below to be considered an "accredited investor." If the Subscriber is purchasing jointly with his or her spouse or spousal equivalent, one box may be checked for the couple as a whole. References to "the Company" are references to Heritage Distilling Holding Company, Inc., a Delaware corporation.

☐ **Individual with Net Worth In Excess of $1.0 Million.** A natural person (not an entity) whose net worth, or joint net worth with his or her spouse or spousal equivalent[1], at the time of purchase exceeds $1,000,000. (Explanation: In calculating your net worth, you must exclude the value of your primary residence. This means you must exclude both the equity in your primary residence and any mortgage or other debt secured by your primary residence up to the fair market value of your primary residence; provided, however, that any indebtedness secured by your primary residence that (i) you have incurred in the 60 day period prior to the date hereof or (ii) is in excess of the fair market value of your primary residence should be considered a liability and deducted from your aggregate net worth. In calculating your net worth, you may include your equity in personal property and real estate (excluding your primary residence), cash, short-term investments, stock and securities. Your inclusion of equity in personal property and real estate (excluding your primary residence) should be based on the fair market value of such property less debt secured by such property. Joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Securities need not be purchased jointly.)

☐ **Individual with a $200,000 Individual Annual Income.** A natural person (not an entity) who had an individual income of more than $200,000 in each of the preceding two calendar years, and has a reasonable expectation of reaching the same income level in the current year.

☐ **Individual with a $300,000 Joint Annual Income.** A natural person (not an entity) who had joint income with his or her spouse or spousal equivalent in excess of $300,000 in each of the preceding two calendar years, and has a reasonable expectation of reaching the same income level in the current year.

☐ **Individual with Professional Certification**. A natural person holding in good standing one or more of the following professional certifications or designations or credentials (check all that apply):

☐ Licensed General Securities Representative (Series 7);

☐ Licensed Investment Adviser Representative (Series 65); or

☐ Licensed Private Securities Offerings Representative (Series 82).

1 "Spousal equivalent" means a cohabitant occupying a relationship generally equivalent to that of a spouse.

☐ **Knowledgeable Employee**. A natural person who is (i) an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Company or an affiliated person that manages the investment activities of the Company (an "Affiliated Management Person") of the Company; or (ii) an employee of the Company or an Affiliated Management Person of the Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the Company, provided that such employee has been performing such functions and duties for or on behalf of the Company or the Affiliated Management Person of the Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

☐ **Executive Officer or Director.** A natural person who is an executive officer or director of the Company.

B. **APPLICABLE TO CORPORATIONS, PARTNERSHIPS AND OTHER ENTITIES ONLY:**

The Subscriber is an accredited investor because the Subscriber falls within at least one of the following categories (Check all appropriate boxes):

☐ **Corporations or Partnerships.** A corporation, partnership, or similar entity that has at least $5,000,000 of assets and was not formed for the specific purpose of acquiring an equity interest in the Company.

☐ **Massachusetts or Similar Business Trust.** A Massachusetts or similar business trust that has at least $5,000,000 of assets and was not formed for the specific purpose of acquiring an equity interest in the Company.

☐ **Non-Profit Entity.** An organization described in section 501(c)(3) of the Internal Revenue Code, as amended, that has at least $5,000,000 of assets and was not formed for the specific purpose of acquiring an equity interest in the Company.

☐ **ERISA Employee Benefit Plan.** An employee benefit plan within the meaning of Title I of the ERISA Act that either: (i) has a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser and such plan fiduciary makes the investment decisions for the plan; (ii) has total assets in excess of $5,000,000; or (iii) is self-directed solely by persons that are accredited investors and make the investment decisions for the benefit plan.

☐ **Government Benefit Plan.** A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000.

☐ **Other Institutional Investor (check one).**

☐ A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity;

☐ A broker-dealer registered under the Securities Exchange Act of 1934, as amended;

☐ An insurance company, as defined in Section 2(a)(13) of the Securities Act;

☐ An investment company registered under the Investment Company Act of 1940.

☐ A "business development company," as defined in Section 2(a)(48) of the Investment Company Act of 1940;

☐ A small business investment company licensed under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended; or

☐ A "private business development company" as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended.

☐ **Sophisticated Trust.** Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person who has the knowledge and experience in financial and business matters to enable the person to evaluate the merits and risks of the prospective investment.

☐ **Entity Owned Entirely By Accredited Investors.** A corporation, partnership, private investment company or similar entity *each* of whose equity owners is a natural person who is an accredited investor. (If this category is checked, please also check the additional category or categories under which each natural person qualifies as an accredited investor.)

☐ **Family Office or Family Client.** A "family office" or "family client" each as defined in Rule 202(a)(11)(G)-1 of the Investment Advisers Act of 1940 (i) with assets under management in excess of $5,000,000, (ii) that is not formed for the specific purpose of acquiring the securities offered, and (iii) whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment and, in the case of a family client, such family client is a client of a family office meeting the above requirements and the investment in The Company is directed by such family office.

☐ **Other Entity**. Any entity, of a type not listed above, not formed for the specific purpose of acquiring the securities offered, that has total assets in excess of $5,000,000.

Subscriber(s):

Signature of Subscriber	Signature of Co- Subscriber (if any)
Print Name of Subscriber	Print Name of Co- Subscriber

Exhibit 23.1

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the inclusion in this Registration Statement of Heritage Distilling Holding Company, Inc. on Form S-1 Amendment No. 3 File No. 333-279382, of our report dated May 13, 2024 (except for the effect of the reverse stock split described in Note 1, as to which the date is July 5, 2024), which includes an explanatory paragraph as to the company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Heritage Distilling Holding Company, Inc. as of December 31, 2023 and 2022 and for the years ended December 31, 2023 and 2022, which report appears in the Prospectus, which is part of this Registration Statement. We also consent to the reference to our Firm under the heading "Experts" in such Prospectus.

/s/ Marcum llp

Marcum llp
Costa Mesa, CA
October 3, 2024