

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) August 15, 2025

HERITAGE DISTILLING HOLDING COMPANY INC.

(Exact name of registrant as specified in charter)

Delaware

(State or other Jurisdiction of
Incorporation or Organization)

001-42411

(Commission File Number)

83-4558219

(IRS Employer
Identification No.)

**9668 Bujacich Road
Gig Harbor, Washington**

(Address of Principal Executive Offices)

98332

(zip code)

(253) 509-0008

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act (17 CFR 240.14a-12(b))
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	CASK	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

On August 15, 2025, Heritage Distilling Holding Company, Inc. (the “**Company**”) entered into amendments (the “**Amendments**”) to the subscription agreements dated August 11, 2025 (each, a “**Subscription Agreement**” and collectively the “**Subscription Agreements**”) with certain institutional and accredited investors (each, an “**Investor**” and collectively, the “**Investors**”), pursuant to which the Company, subject to the restrictions and satisfaction of the conditions in the Subscription Agreements, had agreed to sell in a private placement offering (the “**Offering**”) to the Investors, and the Investors had agreed to purchase, an aggregate of 183,478,891 shares (the “**Shares**”) of the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”), and pre-funded warrants (the “**Pre-Funded Warrants**”) to acquire in the aggregate up to 186,900,000 shares of Common Stock. The Amendments amended the Subscription Agreements to, among other things, provide that, in lieu of offering and selling the Shares in the Offering, the Company would offer and sell, and each Investor would purchase, in the Offering Pre-Funded Warrants in an amount equal to the number of shares of Common Stock that each such Investor had originally agreed to purchase in the Offering for a purchase price per Pre-Funded Warrant equal to \$0.6042. The Amendments also amended the form of the Pre-Funded Warrants to be issued in the Offering to provide that the Pre-Funded Warrants may not be exercised until the Company receives stockholder approval of the Offering as required under the Nasdaq Listing Rules, including Nasdaq Listing Rule 5635(a) (the “**Stockholder Approval**”), and to provide that, unless otherwise elected by an Investor and subject to any beneficial ownership limitation that may be included in a Pre-Funded Warrant, the Pre-Funded Warrants will be automatically exercised on a cashless basis on the date the Company receives the Stockholder Approval.

On August 15, 2025, the Company closed the Offering, at which the Company sold to the Investors Pre-Funded Warrants to purchase an aggregate of 370,378,890 shares of Common Stock at a purchase price of \$0.6042 per Pre-Funded Warrant, for an aggregate purchase price of \$223.8 million, before deducting placement agent fees and other offering expenses. Included among the Investors in the Offering were Story Foundation, the entity behind the Story Network (“**Story Foundation**”), which purchased Pre-Funded Warrants to purchase 107,781,820 shares of Common Stock; Justin Stiefel, the Company’s Chairman and Chief Executive Officer, who purchased Pre-Funded Warrants to purchase 3,309,615 shares of Common Stock; and Andrew Varga, a director of the Company, who purchased Pre-Funded Warrants to purchase 300,000 shares of Common Stock.

Of the total \$223.8 million purchase price for the Pre-Funded Warrants, \$35.5 million was paid in cash, \$59.5 million was paid in the cryptocurrency stablecoin commonly referred to as USDC (“**USDC**”), based on a purchase price of \$1.00 per USDC, and \$128.8 million was paid in the native cryptocurrency of the Story Network, referred to as \$IP Tokens (“**\$IP Tokens**”), which were valued for purposes of the Subscription Agreements at (i) \$5.2413 (representing a 20% discount from the closing price of \$IP Tokens on August 8, 2025 as reported by CoinMarketCap.com) in the case of the Story Core Contributors (as defined in the Subscription Agreements), (ii) \$3.40 (representing an approximately 48% discount from the closing price of \$IP Tokens on August 8, 2025 as reported by CoinMarketCap.com) in the case of Story Foundation, or (iii) \$6.5516 (the reported closing price of \$IP Tokens on August 8, 2025 as reported by CoinMarketCap.com) in the case of all other Investors.

The Company intends to use (a) up to \$4.0 million of the net proceeds from the Offering for general corporate purposes initiated after the closing, (b) up to \$7.6 million for the payment of debt or other pre-existing working capital commitments or obligations, and (c) at least \$80.0 million to purchase \$IP Tokens from Story Foundation at a price per \$IP Token of \$3.40. The balance of the net proceeds will be used to purchase or otherwise acquire \$IP Tokens and for the establishment of the Company’s cryptocurrency treasury operations to the extent consistent with the Company’s investment policy as amended or otherwise modified from time to time. Upon the closing of the Offering, the Company’s previously-announced digital asset treasury reserve strategy became effective, pursuant to which the Company plans to use \$IP Tokens as its primary treasury reserve asset on an ongoing basis.

Cantor Fitzgerald & Co. and Roth Capital Partners, LLC acted as placement agents (the “**Placement Agents**”) for the Offering pursuant to a Placement Agency Agreement, dated as of August 11, 2025 (the “**Placement Agent Agreement**”) between the Company and the Placement Agents. Pursuant to the Placement Agent Agreement, the Company paid to the Placement Agents (i) a cash fee equal to approximately \$4.3 million and (ii) warrants to purchase an aggregate of 4,307,289 shares of Common Stock, initially with an exercise price of \$0.01 per share and a five-year term (the “**Agent Warrants**”). The Company also reimbursed the expenses of the Placement Agents up to a maximum of \$300,000 in the aggregate.

The foregoing summaries of the Pre-Funded Warrants and the Amendments do not purport to be complete and are qualified in their entirety by reference to the complete text of those agreements or forms thereof, which are attached hereto

as Exhibits 4.1 and 10.1, respectively, to this Current Report on Form 8-K and are hereby incorporated by reference into this Item 1.01. In addition, the foregoing summaries of the Agent Warrants, the Subscription Agreements and the Placement Agent Agreement do not purport to be complete and are qualified in their entirety by reference to the complete text of those agreements or forms thereof, which were attached as Exhibits 4.3, 10.1 and 10.3, respectively, to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission (the "SEC") on August 11, 2025, and are hereby incorporated by reference into this Item 1.01. The representations, warranties and covenants contained in such agreements were made only for the purposes of such agreements and as of specific dates, were solely for the benefit of the parties to such agreements and may be subject to limitations agreed upon by the contracting parties.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K with respect to the offer and sale of the Pre-Funded Warrants to the Investors and the issuance of the Agent Warrants to the Placement Agents is incorporated herein by reference. The Pre-Funded Warrants and the Agent Warrants were issued and sold by the Company, and the future issuance of shares of Common Stock pursuant to the exercise of the Pre-Funded Warrants and the Agent Warrants will be issued and sold by the Company, in reliance upon an exemption from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and/or Rule 506 of Regulation D of the Securities Act and in reliance on similar exemptions under applicable state laws. The Company relied on this exemption from registration with respect to the Pre-Funded Warrants based in part on representations made by the Investors. These securities may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. Neither this Current Report on Form 8-K, nor any exhibit attached hereto, is an offer to sell or the solicitation of an offer to buy the securities described herein.

Forward-Looking Statements

This Current Report on Form 8-K includes forward-looking statements. These forward-looking statements generally can be identified by the use of words such as "anticipate," "expect," "plan," "could," "may," "will," "believe," "estimate," "forecast," "goal," "project," and other words of similar meaning. These forward-looking statements address various matters including statements relating to the intended use of proceeds from the Offering, the Company's digital asset treasury strategy, the digital assets held and to be held by the Company and the expected benefits from the transactions described herein. Each forward-looking statement contained in this Current Report on Form 8-K is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statement. Applicable risks and uncertainties include, among others, the failure to realize the anticipated benefits of the Offering and related transactions, including the digital asset treasury strategy; changes in business, market, financial, political and regulatory conditions; risks relating to the Company's operations and business, including the highly volatile nature of the price of \$IP Tokens and other cryptocurrencies; the risk that the Company's stock price may be highly correlated to the price of the digital assets that it holds; risks related to increased competition in the industries in which the Company does and will operate; risks relating to significant legal, commercial, regulatory and technical uncertainty regarding digital assets generally; risks relating to the treatment of crypto assets for U.S. and foreign tax purposes, as well as those risks and uncertainties identified in Addendum A to the form of Subscription Agreement filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on August 11, 2025 and those identified under the heading "Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2024 and other information the Company has or may file with the SEC.

The Company cautions investors not to place considerable reliance on the forward-looking statements contained in this Current Report on Form 8-K. You are encouraged to read the Company's filings with the SEC, available at www.sec.gov, for a discussion of these and other risks and uncertainties. The forward-looking statements in this Current Report on Form 8-K speak only as of the date of this report, and we undertake no obligation to update or revise any of these statements. The Company's business is subject to substantial risks and uncertainties, including those referenced above. Investors, potential investors, and others should give careful consideration to these risks and uncertainties.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
4.1	Form of Pre-Funded Warrant
10.1	Form of Amendment to Subscription Agreement
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

Date: August 18, 2025

HERITAGE DISTILLING HOLDING COMPANY INC.

By: /s/ Justin Stiefel
Justin Stiefel
Chief Executive Officer

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS EXERCISABLE HAS 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 WITH A REGISTERED BROKER DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN “ACCREDITED INVESTOR” AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

**FORM OF PRE-FUNDED COMMON STOCK PURCHASE WARRANT
HERITAGE DISTILLING HOLDING COMPANY, INC.**

Warrant Shares: [•]

Date of Issuance: [•], 2025 (such date, the “*Issue Date*”)

Warrant No.: [•]

THIS PRE-FUNDED COMMON STOCK PURCHASE WARRANT (the “*Warrant*”) certifies that, for value received, [] or its permitted assigns (the “*Holder*”) is entitled, upon the terms and subject to the limitations on exercise and the conditions set forth herein, at any time on or after the effective date of the Stockholder Approval (the “*Initial Exercise Date*”) until this Warrant is exercised in full, 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 the Company’s common stock, par value \$0.0001 per share (“*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 3(a).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Subscription Agreement (as amended, the “*Subscription Agreement*”), dated August 11, 2025, between the Company and the Holder. For purposes of this Warrant, the following terms shall have the following meanings:

- (a) “*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 of 1933, as amended (the “*Securities Act*”).
- (b) “*Bloomberg*” means Bloomberg Financial Markets.
- (c) “*Business Day*” means any day except any Saturday, any Sunday, any day that is a federal legal holiday in the United States or any day on which the Trading Market is authorized or required by law or other governmental action to close.

- (d) “**Common Stock Equivalent**” means any security or obligation which is by its terms, directly or indirectly, convertible into or exchangeable or exercisable for shares of Common Stock, including, without limitation, any option, warrant or other subscription or purchase right with respect to Common Stock or any Common Stock Equivalent.
- (e) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.
- (f) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.
- (g) “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, for the Company’s primary trading market or quotation system with respect to the Common Stock that is in effect on the date of delivery of an applicable exercise notice, which as of the Issue Date was “T+1”.
- (h) “**Trading Day**” means any day on which the Common Stock is traded on the Trading Market.
- (i) “**Trading Market**” means the principal securities exchange or securities market, including an over-the-counter market, on which the Common Stock is then traded in the United States.
- (j) “**Weighted Average Price**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Trading Market during the period beginning at 9:30:01 a.m., New York City time, and ending at 4:00:00 p.m., New York City time, as reported by Bloomberg through its “Volume at Price” function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York City time, and ending at 4:00:00 p.m., New York City time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices). If the Weighted Average Price cannot be calculated for such security on such date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 6(m) with the term “Weighted Average Price” being substituted for the term “Exercise Price.” All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period pursuant to Section 4.

Section 2. Warrant Register. The Company shall register ownership of this Warrant, upon records to be maintained by the Company for that purpose (the “**Warrant Register**”), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any assignee to which this Warrant is assigned pursuant to the terms hereunder) 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.

Section 3. Exercise.

- (a) Exercise of Warrant. Subject to the terms and conditions hereof, the purchase rights represented by this Warrant may be exercised, in whole or in part, at any time or times on or after the Initial Exercise Date by delivery (whether via facsimile, e-mail or otherwise) to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the Warrant Register) of a duly executed copy of the Notice of Exercise form annexed hereto (the “**Notice of Exercise**”) and by payment to the Company of an amount equal to the aggregate Exercise Price of the Warrant Shares thereby purchased by wire transfer (or by notifying the Company that this Warrant is being exercised

pursuant to a Cashless Exercise (as defined below) in accordance with Section 3(c) hereof). The aggregate exercise price of this Warrant, except for the nominal \$0.0001 per share, was pre-funded to the Company on or before the Issue Date, and consequently no additional consideration (other than the nominal \$0.0001 per share) shall be required to be paid by the Holder 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-funded exercise price under any circumstance or for any reason whatsoever. The remaining unpaid exercise price per share of Common Stock under this Warrant shall be \$0.0001, subject to adjustment hereunder (the “**Exercise Price**”). 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 form be required. The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the exercise notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant (as defined below) evidencing the right to purchase the remaining number of Warrant Shares, if any. **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) Mechanics of Exercise

- (i) Delivery of Warrant Shares Upon Exercise. Upon exercise of this Warrant, the Company shall promptly (but in no event later than the number of Trading Days comprising the Standard Settlement Period): (1) credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with The Depository Trust Company (“**DTC**”) through its Deposit/Withdrawal At Custodian system provided that the transfer agent is then a participant in the DTC Fast Automated Securities Transfer Program (“**FAST Program**”) if either (A) there is an effective registration statement permitting the issuance of such Warrant Shares to or resale of such Warrant Shares by the Holder or (B) such Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 promulgated under the Securities Act, or (2) otherwise issue such Warrant Shares in the name of the Holder or its designee in restricted book-entry form in the Company’s share register. This Warrant shall be deemed to have been exercised upon proper delivery of the Notice of Exercise and payment of the Exercise Price (or notification of Cashless Exercise) in accordance with the terms hereof. 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 (or notification of Cashless Exercise, if applicable) is received on the same Trading Day as the Notice of Exercise. The Company shall maintain a transfer agent that is a participant in the FAST Program so long as this Warrant remains outstanding and exercisable. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if issued in restricted book-entry form, will contain a customary legend to the effect that the Warrant Shares are not registered. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise within the Standard Settlement Period, 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 Weighted Average Price 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 the Standard Settlement Period) for each Trading Day after such Standard Settlement Period until such Warrant Shares are delivered to said Holder or the Holder rescinds such exercise.
- (ii) Delivery of New Warrant 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) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if within the Standard Settlement Period the Company fails to cause its transfer agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 3(b)(1) above pursuant to an exercise (other than a failure caused by incorrect or incomplete information provided by the Holder to the Company), 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 promptly, and in any event within two (2) Business Days, either (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, or (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 this Warrant 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. 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 Warrant Shares upon exercise of the Warrant as required pursuant to the terms hereof.
- (iv) 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 fractions in an amount equal to such fraction multiplied by the Exercise Price or round up to the nearest whole share of Common Stock.
- (v) 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 shares, all of which taxes and expenses shall be paid by the Company, and such 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 certificates for 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 any Notice of Exercise and all fees to the DTC (or another established clearing corporation performing similar functions) required for electronic delivery of the Warrant Shares.
- (vi) 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.
- (vii) Restrictive Legends. If all or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the issuance or resale of the Warrant Shares or if the Warrant is exercised via cashless exercise and the Warrant Shares have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without volume or manner-of-sale restrictions, the Warrant Shares issued pursuant to any such exercise shall be issued free of all legends. If at any time following the date hereof a registration statement registering the sale or resale of

the Warrant Shares has been declared effective and is no longer effective or is not otherwise available for the sale or resale of the Warrant Shares, the Company shall immediately notify the Holders of the Warrants in writing that such registration statement is not then effective and thereafter shall promptly notify such Holders when the registration statement is effective again and available for the sale or resale of the Warrant Shares (it being understood and agreed that the foregoing shall not supersede the ability of the Company to issue, or any Holder to sell, any of the Warrant Shares in compliance with applicable federal and state securities laws).

(viii) Rescission Rights. If the Company fails to cause the Company's transfer agent to transmit to the Holder the Warrant Shares pursuant to Section 3(b)(i) within the Standard Settlement Period, then the Holder will have the right to rescind such exercise prior to the transmission of such Warrant Shares.

(c) Cashless Exercise. Notwithstanding anything contained herein to the contrary, the Holder may exercise this Warrant, whether in whole or in part, and in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Exercise Price, by effecting a cashless exercise of this Warrant pursuant to which the Holder shall receive upon such cashless exercise the "Net Number" of Warrant Shares determined according to the following formula (a "*Cashless Exercise*"):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A = the total number of shares of Common Stock with respect to which this Warrant is then being exercised.

B = the Weighted Average Price of the shares of Common Stock on the date immediately preceding the date of the Notice of Exercise.

C = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

If Warrant Shares are issued in such a Cashless Exercise, the Company acknowledges and agrees that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrant being exercised, and the holding period of the Warrant being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 3(c).

In the event that a registration statement registering the issuance of the Warrant Shares is, for any reason, not effective at the time of exercise of this Warrant, then the Warrant may only be exercised through a cashless exercise, as set forth in this Section 3. Except as set forth in Section 3(b)(iii) (Buy-In remedy) and Section 3(b)(iv) (payment of cash in lieu of fractional shares), in no event will the exercise of this Warrant be settled in cash.

Notwithstanding anything herein to the contrary, unless the Holder expressly indicated otherwise in the Subscription Agreement, on the Initial Exercise Date, this Warrant shall, subject to the limitations on the exercise of this Warrant set forth in Section 3(d), be automatically exercised via cashless exercise pursuant to this Section 3(c).

(d) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 3 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 (i) the Holder's Affiliates, (ii) any other Persons acting as a group together with the Holder or any of the Holder's Affiliates, and (iii) any other Persons whose beneficial ownership of the shares of Common Stock would or could be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder (such Persons, "**Attribution Parties**")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the aggregate 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 3(d), 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 3(d) 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 3(d), in determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Beneficial Ownership Limitation, 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 (the "**Reported Outstanding Share Number**"). If the Company receives a Notice of Exercise from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Notice of Exercise would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d), to exceed the Beneficial Ownership Limitation, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Notice of Exercise (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the

Holder any exercise price paid by the Holder for the Reduction Shares. 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%/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 written notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 3(d), provided that the Beneficial Ownership Limitation in no event exceeds 19.99% 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 3(d) shall continue to apply, provided further that the Holder may suspend the Beneficial Ownership Limitation in its entirety if, and for so long as, such Beneficial Ownership Limitation is not required to be in effect to ensure compliance with applicable Nasdaq listing requirements with respect to stockholder approval. 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 3(d) 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.

- (e) Notwithstanding anything to the contrary contained in any section herein, the Company agrees to comply with any applicable rules of the Trading Market with respect to the issuance of the Warrant Shares to the Holder and to take any action required by such rules to issue such Warrant Shares.
- (f) **Notwithstanding any other provision herein, this Warrant may not be exercised, and the Company may not issue any shares of Common Stock upon submission of a Notice of Exercise, until receipt of the Stockholder Approval. Until receipt of the Stockholder Approval, no Holder of this Warrant shall be issued shares of Common Stock upon an attempted exercise of this Warrant.**

Section 4. Certain Adjustments.

- (a) Subdivision or Combination of Common Stock. During such time as this Warrant is outstanding, if the Company subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. During such time as this Warrant is outstanding, if the Company combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 4(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.
- (b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 4(a) above, if during such time as this Warrant is outstanding the Company grants, issues or sells any rights to purchase stock, warrants, securities or other property, in each case 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, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder together with any Affiliates and Attribution Parties collectively beneficially owning in excess of 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 together with any Affiliates and Attribution Parties 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 any class 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) (other than as a result of a stock dividend covered by Section 4(a) above) (a “**Distribution**”), 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, to the extent that the Holder’s right to participate in any such Distribution would result in the Holder together with any Affiliates and Attribution Parties 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 either its right thereto would not result in the Holder together with any Affiliates and Attribution Parties 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, in which the Company is not the surviving entity or the stockholders of the Company immediately prior to such merger or consolidation do not own, directly or indirectly, at least 50% of the voting power of the surviving entity immediately after such merger or consolidation, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition to another Person 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 capital stock who tender shares representing more than 50% of the voting power of the capital stock of the Company and the Company or such other Person, as applicable, accepts such tender for payment, (iv) the Company, directly or indirectly, in one or more related transactions, consummates a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the voting power of the capital stock of the Company (except for any such transaction in which the stockholders of the Company immediately prior to such transaction maintain, in substantially the same proportions, the voting power of such Person immediately after the transaction) or (v) 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 (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 4(a), above) (in any such case, a “**Fundamental Transaction**”), then following such Fundamental Transaction the Holder shall have the right to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 3(d), above 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, if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant without regard to any limitations on exercise contained herein; provided, that to the extent that the Holder’s right to receive any such Alternate Consideration would result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to receive such Alternate Consideration to such extent (and shall not be entitled to beneficial ownership of such Common Stock as a result of such Alternate Consideration (and beneficial ownership) to such extent) and at the Holder’s election, in its sole discretion, either (1) such Alternate Consideration to such extent shall be held in abeyance for the benefit of the Holder until such time or times as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation, at which time or times the Holder shall be granted such right (and any Alternate Consideration granted, issued or sold on such initial receipt or on any subsequent receipt to be held similarly in abeyance) to the same extent as if there had been no such limitation) or (2) the Company shall offer the Holder the right upon receipt of such Alternate Consideration to acquire a security (e.g., a pre-funded warrant) that would not result in the Holder and the other Attribution Parties exceeding the Beneficial Ownership Limitation but will otherwise to the extent possible have economic and other rights, preferences and privileges substantially consistent and on par with the securities or other property issuable upon exercise of the originally offered Alternate Consideration. 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. Any such payment of such amount of such Alternate Consideration shall be made in the same form of consideration (whether securities, cash or property) as is given to the holders of Common Stock in such Fundamental Transaction, and if multiple forms of consideration are given, the consideration shall be paid to the Holder in the same proportion as such consideration is paid to the holders of Common Stock. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (d) and insuring that this Warrant (or any such replacement security) will be similarly adjusted upon any subsequent Fundamental Transaction. The Company shall not effect any Fundamental Transaction in which the Company is not the surviving entity or the Alternate Consideration includes securities of another Person unless (i) the Alternate Consideration is solely cash and the Company provides for the simultaneous “cashless exercise” of this Warrant pursuant to Section 3(c) or (ii) prior to or simultaneously with the consummation thereof, any successor to the Company, surviving entity or other Person (including any purchaser of assets of the Company) shall assume the obligation to deliver to the Holder such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Warrant. The provisions of this paragraph (d) shall similarly apply to subsequent transactions analogous of a Fundamental Transaction type.

- (e) Calculations. For purposes of this Section 4, any calculation of the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall not include treasury shares, if any.
- (f) Par Value Limitation. Nothing herein shall be construed to allow for the Exercise Price per share to be reduced to below the par value of the Common Stock.

Section 5. Transfer of Warrant. Subject to compliance with all applicable securities laws, the Company shall, or will cause its transfer agent to, register the transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, together with a written assignment of this Warrant substantially in the form annexed hereto duly executed by the Holder, and payment for all applicable transfer taxes (if any) by the Holder. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a “*New Warrant*”) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant. The Company shall, or will cause its transfer agent to, prepare, issue and deliver at the Company’s own expense any New Warrant under this Section 5. Until due presentment for registration of transfer, the Company may treat the registered Holder hereof as the owner and holder for all purposes, and the Company shall not be affected by any notice to the contrary.

Section 6. Miscellaneous.

- (a) No Rights as Stockholder Until Exercise. Except as expressly set forth in Section 4, 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 3. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.
- (b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to them 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, 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. 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 authorized but unissued shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant (without regard to any limitations on exercise contained herein). The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the 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. 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 (including any Fundamental Transaction), in each case, in order to avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder 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 its reasonable best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant. 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) Governing Law. This Warrant, and any claim or cause of action hereunder based upon, arising out of or related to this Warrant (whether based on law, in equity, in contract, in tort or any other theory) or the negotiation, execution, performance or enforcement of this Warrant, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

(i) THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, THE SUPREME COURT OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS WARRANT AND THE DOCUMENTS REFERRED TO IN THIS WARRANT AND IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY, AND HEREBY WAIVE, AND AGREE NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR INTERPRETATION OR ENFORCEMENT HEREOF THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS OR THAT VENUE THEREOF MAY NOT BE APPROPRIATE OR THAT THIS WARRANT OR ANY SUCH DOCUMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL CLAIMS WITH RESPECT TO SUCH ACTION, SUIT OR PROCEEDING SHALL BE HEARD AND DETERMINED BY SUCH NEW YORK STATE OR FEDERAL COURT. THE PARTIES HEREBY CONSENT TO AND GRANT ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF SUCH DISPUTE AND AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 6(e) OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW SHALL BE VALID AND SUFFICIENT SERVICE THEREOF.

(ii) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT OR THE TRANSACTIONS

CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED BY THIS WARRANT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (II) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THE FOREGOING WAIVER; (III) SUCH PARTY MAKES THE FOREGOING WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 6(e).

- (f) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of the Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, 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.
- (g) Notices.
- (i) Notice Procedures. Any notice or communication required or permitted hereunder shall be in writing and either delivered personally, emailed or telecopied, sent by overnight mail via a reputable overnight carrier, or sent by certified or registered mail, postage prepaid, and shall be deemed to be given and received (i) when so delivered personally, (ii) upon receipt of an appropriate electronic answerback or confirmation when so delivered by telecopy (to such number specified below or another number or numbers as such person may subsequently designate by notice given hereunder), (iii) when sent, with no mail undeliverable, "bounceback" or other rejection notice, if sent by email or (iv) five (5) business days after the date of mailing to the address below or to such other address or addresses as such person may hereafter designate by notice given hereunder:

If to the Company:

Heritage Distilling Holding Company, Inc.
9668 Bujacich Road
Gig Harbor, Washington 98332
Attention: Justin Stiefel, CEO
Email: justin@heritagedistilling.com

With copy to:

Pryor Cashman LLP
7 Times Square

New York, NY 10036
Attention: Eric M. Hellige, Esq.
Email: ehellige@pryorcashman.com

If to the Holder:

To the address, email address or facsimile number set forth in the Warrant Register, or as otherwise provided by the Holder to the Company in accordance with this Section 6(g)(i).

- (ii) Adjustment to Exercise Price. Whenever the Exercise Price or number of Warrant Shares is adjusted pursuant to any provision of Section 4, the Company shall promptly provide the Holder a notice setting forth the Company's good faith adjustment of the Exercise Price and number of Warrant Shares after such adjustment and setting forth a description of the transactions giving rise to such adjustments and a detailed statement of the facts upon which such adjustment is based.
- (iii) Notice to Allow Exercise by the Holder. After the Issue Date, if (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, including any Distribution, (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, including any Purchase Right, (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, including any Fundamental Transaction, 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, at least ten 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. 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. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries, the Company shall promptly file such notice with the SEC pursuant to a Current Report on Form 8-K.
- (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. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 3(c) herein or to receive cash payments pursuant to Sections 3(b)(i) and 3(b)(iii), in no event shall the Company be required to net cash settle an exercise of this Warrant.

- (j) Successors and Assigns. Except as otherwise provided herein, this Warrant and the rights and obligations evidenced hereby shall be binding upon, and inure to the benefit of, the parties hereto and their respective affiliates and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns.
- (k) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder. No amendment or modification of any Warrant shall be made unless the same is also offered to all holders of Warrants. In addition, no consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of this Warrant unless the same consideration (other than the reimbursement of legal fees) also is offered to all holders of the Warrants issued by the Company on the Issue Date.
- (l) Severability. If any provision of this Warrant shall be adjudicated by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Warrant shall not in any way be affected or impaired thereby and shall continue in full force and effect.
- (m) Dispute Resolution. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations in writing within two Business Days of receipt of the Notice of Exercise giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two Business Days, submit in writing (i) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (ii) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause, at its expense, the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The expenses of the investment bank and accountant will be borne by the Company unless the investment bank or accountant determines that the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares by the Company was correct and such determination by the Holder was incorrect, in which case the expenses of the investment bank and accountant will be borne by the Holder.
- (n) 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.

[remainder of page intentionally left blank]

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

[Signature Page to Pre-Funded Warrant]

NOTICE OF EXERCISE

To: Heritage Distilling Holding Company, Inc.

- (1) The undersigned holder of Warrant No. 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):
 - ☐ Cash Exercise: lawful money of the United States; or
 - ☐ Cashless Exercise: the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in Section 3(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in Section 3(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 or by delivery by book entry on the transfer accounts records to:

Name of Holder

By:
Name:
Title:
Date:

ASSIGNMENT FORM

(To assign the foregoing warrant, execute
this form and supply required information.)

(Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [] all of or [] shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to

whose address is:

Dated:

Holder's Signature:

Holder's Address:

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever.

Heritage Distilling Holding Company, Inc.
Restated Signature Page and Amendment

By signing below, the undersigned Subscriber (the “Subscriber”) hereby acknowledges and agrees that the Subscription Agreement, dated August 11, 2025 (the “Agreement”), between the Subscriber and Heritage Distilling Holding Company, Inc. (the “Issuer”), including the Subscriber’s signature page to the Agreement previously delivered by the Subscriber, shall be amended and restated as set forth below and on Annex A hereto.

SUBSCRIBER:

Name of Subscriber: _____

Signature of Subscriber: _____

By: _____

Name: _____

Title: _____

Name in which securities are to be registered (if different): _____

Email Address: _____

Subscriber’s EIN: _____

Address: _____

Attn: _____

Telephone No: _____

Facsimile No: _____

Aggregate Number of Shares subscribed for: 0_____

Aggregate Number of Pre-Funded Warrants subscribed for: _____

Purchase Price: \$_____

Form of Payment and Purchase Price: ☐ Cash: \$_____☐ USDC:_____☐ \$IP Token: _____Beneficial Ownership Limitation Percentage (Select one): ☐ 4.99% ☐ 9.99%

[Signature Page to Amendment No. 1 to Subscription Agreement]

Note: Upon receipt of the Stockholder Approval (as defined in the Agreement), 100% of the Pre-Funded Warrants will be automatically exercised on a “cashless” exercise basis pursuant to their terms unless the undersigned subscriber checks this box. ☐

You must pay the Purchase Price by wire transfer of United States dollars in immediately available funds to the account specified by the Issuer in the Closing Notice. If you are paying the Purchase Price in USDC or \$IP Token, you must pay the total USDC Amount or the applicable \$IP Token Amount, as applicable, free and clear of any liens, encumbrances or other restrictions, to the Issuer’s wallet address specified in the Closing Notice.

Please note that if you have already paid the Purchase Price set forth above, you do not need to submit an additional payment at this time.

ISSUER:

HERITAGE DISTILLING HOLDING COMPANY, INC.

By: _____

Name: Justin Stiefel

Title: Chief Executive Officer

[Signature Page to Amendment No. 1 to Subscription Agreement]

Annex A

This Annex A shall amend that certain Subscription Agreement, dated as of August 11, 2025, between the Issuer and the Subscriber (the “Subscription Agreement”). Capitalized terms used but not defined herein shall have the meanings set forth in the Subscription Agreement.

By signing the signature pages preceding this Annex A, the Subscriber and the Issuer hereby agree that the Subscription Agreement shall be amended as follows:

1. The signature page to the Subscription Agreement of Subscriber is hereby amended to be as set forth on the initial signature page preceding this Annex A, which signature page has been updated to reflect that Subscriber is only subscribing for Pre-Funded Warrants under the Subscription Agreement.
2. Exhibit A to the Subscription Agreement (the form of Pre-Funded Warrant) is hereby replaced with the new Exhibit A attached hereto, which has been revised to reflect that a Pre-Funded Warrant may only be exercised upon receipt of the Stockholder Approval, and that, unless otherwise indicated on the initial signature page preceding this Annex A, the Pre-Funded Warrants purchased by the Subscriber will be automatically exercised upon receipt of the Stockholder Approval.
3. The reference to “fourth (4th) Business Day” in Section 3a. and the reference to “four (4) business days” in Section 8 of the Subscription Agreement shall be revised to refer to “fifth (5) Business Day” in Section 3a. and “five (5) business days” in Section 8 in order to provide for an additional business day for the parties to ensure that all conditions to Closing are satisfied.
4. Except as set forth in this Annex A and the signature pages preceding this Annex A, the Subscription Agreement shall not be amended or modified and shall remain in full force and effect.
5. At the Closing, the Issuer shall deliver an executed PDF copy of the Pre-Funded Warrants to be issued to the Subscriber, and the Issuer shall hold the wet-ink original of the Pre-Funded Warrants in its possession unless and until the Subscriber requests in writing that a wet-ink original of the Pre-Funded Warrants be delivered to the Subscriber.

[Remainder of Page Intentionally Left Blank]

Exhibit A

Revised Form of Pre-Funded Warrant

Annex A