

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

**FORM S-1**  
REGISTRATION STATEMENT  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**REED'S, INC.**  
(Exact name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
incorporation or organization)

2086  
(Primary Standard Industrial  
Classification Code Number)

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

501 Merritt 7 PH  
Norwalk, Connecticut 06851  
Tel: (800) 997-3337  
(Address, including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Cyril A. Wallace, Jr.  
Chief Executive Officer  
501 Merritt 7 Corporate Park  
Norwalk, Connecticut 06851  
Tel: (800) 997-3337  
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

*Copies to:*

Yvan-Claude Pierre  
Courtney M.W. Tygesson  
Cooley LLP  
110 North Wacker Drive  
Suite 4200  
Chicago, IL 60606  
Tel: (312) 881-6500

Faith L. Charles  
Thompson Hine LLP  
300 Madison Avenue, 27<sup>th</sup> Floor  
New York, New York 10017  
Tel: (212) 908-3905

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

**This registration statement shall hereafter become effective in accordance with the provisions of Section 8(a) of the Securities Act of 1933.**

**If the Securities and Exchange Commission resumes full operation before the registration statement becomes effective, we may file an amendment to this registration statement requesting a delay or change in the effectiveness of the registration statement.**

The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

SUBJECT TO COMPLETION,

DATED NOVEMBER 12, 2025

1,326,260 Shares  
Common Stock



We are offering 1,326,260 shares of our common stock.

Our common stock is quoted on the OTCQX Best Market under the symbol "REED." On November 11, 2025, the last reported sale price for our common stock on the OTCQX Best Market was \$7.54 per share. We have applied to list our shares of common stock for trading on the New York Stock Exchange American, LLC (the "NYSE American") under the symbol "REED." At this time, the NYSE American has not yet approved our application to list our common stock. There is no assurance that such application will be approved, which approval is a condition to this offering. No assurance can be given that the trading prices of our common stock on the OTCQX Best Market will be indicative of the prices of our common stock if our common stock were traded on the NYSE American.

On October 31, 2025, we effected a 1-for-6 reverse stock split of our common stock (the "Reverse Stock Split"). The conversion or exercise prices of our issued and outstanding preferred stock, stock options and warrants have been adjusted accordingly. All information presented in this prospectus, including our financial statements and the notes thereto, have been adjusted to account for the Reverse Stock Split, and unless otherwise indicated, all such amounts and corresponding conversion price or exercise price data set forth in this prospectus have been adjusted to give effect to the Reverse Stock Split.

We are a "smaller reporting company" as defined under the U.S. federal securities laws and, as such, we have elected to comply with certain reduced reporting requirements for this prospectus and the documents incorporated by reference herein and may elect to do so in future filings. See the section titled "Prospectus Summary—Implications of Being a Smaller Reporting Company." In addition, if our application is approved by the NYSE American, we will be a "controlled company" within the meaning of the applicable rules of the NYSE American. While we are not relying on any exemptions at this time, as a "controlled company," we are permitted to rely on, and may elect to utilize, one or more of the exemptions from certain corporate governance standards of the NYSE American.

Investing in our common stock involves risks. See the section titled "Risk Factors" beginning on page 12 of this prospectus and under similar headings in the documents incorporated by reference into this prospectus to read about factors you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body have approved or disapproved these securities, or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	PER SHARE	TOTAL
Public Offering Price	\$	\$
Underwriting Discounts and Commissions <sup>(1)</sup>	\$	\$
Proceeds, Before Expenses, to Reed's, Inc.	\$	\$

(1) See the section titled "Underwriting" for additional information regarding underwriting compensation.

The underwriters are offering the shares on a firm commitment basis. Delivery of the shares of common stock is expected to be made on or about \_\_\_\_\_, 2025.

We have granted the underwriters an option for a period of 45 days from the date of this prospectus to purchase up to an additional 198,939 shares of common stock. If the underwriters exercise the option in full, the total underwriting discounts and commissions payable by us will be \$805,000 and the total proceeds to us, before expenses, will be \$10,695,000.

*Sole Book-Running Manager*

**A.G.P.**

*Co-Manager*

**Roberts & Ryan**

Prospectus dated \_\_\_\_\_, 2025

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We have not, and the underwriters have not, authorized anyone to provide you with information other than in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. We take no responsibility for and cannot provide any assurance as to the reliability of any other information others may give you. We are not, and the underwriters are not, making an offer to sell shares of our common stock in any jurisdiction where the offer or sale is not permitted. The information in this prospectus or any free writing prospectus is accurate only as of its date, regardless of its time of delivery or of any sale of shares of our common stock. Our business, financial condition, results of operations, and prospects may have changed since that date.

For investors outside the United States: We have not, and the underwriters 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 United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of our common stock and the distribution of this prospectus outside of the United States.

## PROSPECTUS SUMMARY

*This summary highlights selected information contained in greater detail elsewhere in this prospectus. This summary is not complete and does not contain all of the information you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including the information incorporated by reference herein. You should carefully consider, among other things, the section titled "Risk Factors" included elsewhere in this prospectus and the risk factors incorporated by reference herein, the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements and the related notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2024 and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which are incorporated by reference herein. Some of the statements in this summary constitute forward-looking statements; see the section titled "Special Note Regarding Forward-Looking Statements." Unless the context otherwise requires, the terms the "Company," "Reed's," "we," "us," "our," and similar references in this prospectus refer to Reed's, Inc. and its consolidated subsidiaries.*

### Overview

We are a branded beverage company offering a portfolio of natural, premium, and functional beverages under the Reed's and Virgil's brands. Our products are sold in over 32,000 outlets across the United States and in select international markets. We compete within the approximately \$45 billion U.S. carbonated soft drink ("CSD") market by providing alternatives that we believe are better-for-you, with a focus on real ginger, clean-label ingredients, and functional formulations.

We operate an asset-light business model that relies on a network of independent co-packers and distributors. We believe this structure allows us to scale production efficiently, expand distribution, and introduce innovation without significant capital expenditures. We further believe this model positions us to respond quickly to consumer demand shifts and to enter new categories and geographies in a cost-efficient manner.

We have 50 products that are sold throughout the United States, Canada, the United Kingdom, South Africa, the Caribbean, the European Union, and the Asia-Pacific region. We produce our products through a network of seven independent manufacturers and distribute our products through five independent distribution centers.

### Industry Overview

The U.S. CSD market grew approximately 6% in 2024, with the ginger ale segment increasing approximately 9% to reach \$2.1 billion. Functional and "modern soda" products are expanding at double-digit rates, led by consumer demand for beverages with natural ingredients, lower sugar, and added functional benefits. We believe these trends create favorable conditions for our brand portfolio, which is aligned with the following macro-consumer drivers:

- Growing consumer recognition of ginger as a wellness ingredient
- Reduced sugar consumption
- Clean label and natural ingredient demand
- Premiumization, with consumers trading up to higher quality beverages
- Non-alcoholic alternatives with bold flavors

### Brand Portfolio

We make our hand-crafted beverages with only premium, natural ingredients. Our products are free of genetically modified organisms ("GMOs") and artificial preservatives. Over the years, Reed's has developed several product offerings. In 2019, we streamlined our focus to our core categories of Reed's Ginger Beverages and Virgil's Craft Sodas. In April 2020, we launched our new line of Reed's Real Ginger Ales, in both Full Sugar and Zero Sugar varieties, made with fresh organic ginger. In 2021, we entered the alcohol space with the launch of our RTD Classic Mule that is 7% alcohol by volume ("ABV") with Zero Sugar and Hard Ginger Ale which is 5% ABV and Zero Sugar. In April 2025, we launched a new multi-functional soda line that is formulated with organic ingredients.

### ***Reed's Craft Ginger Beer***

Reed's Craft Ginger Beer is set apart from other ginger beers by its proprietary process of pressing fresh ginger root, its exclusive use of natural ingredients, and its authentic Jamaican-inspired recipe. We do not use artificial preservatives, artificial flavors, or colors, and Reed's Ginger Beer is certified kosher. We offer different levels of fresh ginger content, ranging from our lightest-spiced Original, to our medium-spiced Extra, and finally to our spiciest Strongest. We also offer three sweetener options: one with cane sugar, and fruit juices; one with honey and pineapple juice; and another without sugar (Zero Sugar) made from an innovative blend of natural sweeteners.

As of September 30, 2025, the Reed's Craft Ginger Beer line included five major varieties with a mix of bottles and cans:

**Reed's Original Ginger Beer** – Our first to market product uses a Jamaican-inspired recipe that calls for fresh ginger root, lemon and lime, juice, honey and pineapple flavors, raw cane sugar, herbs and spices.

**Reed's Premium Ginger Beer** – Our Original Ginger Beer sweetened with honey and pineapple juice. (No cane sugar added.)

**Reed's Extra Ginger Beer** – Contains 50% more fresh ginger than Reed's Original recipe for extra spice.

**Reed's Strongest Ginger Beer** – Contains 125% more fresh ginger than Reed's Original for the strongest spice.

**Reed's Zero Sugar Extra Ginger Beer** – Launched in 2019, it uses a proprietary natural sweetening system for a zero-calorie version of our Reed's Extra Ginger Beer.

### ***Reed's Real Ginger Ale***

Reed's Real Ginger Ale is unique for the category because it combines real fresh ginger with the classic, refreshing taste that consumers love. It contains nothing artificial and is non-GMO project verified. We offer two sweetener options: one with cane sugar and the other with our zero-calorie proprietary natural sweetening system.

**Reed's Real Ginger Ale** – Launched in April 2020 in standard and sleek 12-ounce cans. It is the only mass market ginger ale made with organic fresh ginger.

**Reed's Zero Sugar Real Ginger Ale** – Launched in April 2020 in standard and slim cans. It uses a proprietary sweetening system to match the great taste of the cane sugar version in a zero-calorie drink.

**Reed's Real Cranberry Ginger Ale** – This seasonal product launched in the fall of 2021 and is a delicious holiday offering available September through December.

**Reed's Harvest Spiced Apple Cider** – This seasonal product launched in the fall of 2022 and is a delicious holiday offering available September through December.

**Reed's Real Blackberry Ginger Ale** - This seasonal product launched in the fall of 2024 and is a delicious holiday offering available September through December.

### ***Reed's Ready to Drink***

**Reed's Zero Sugar Classic Mule** – Launched in 2020 and currently sold in 14 states, Reed's first-ever alcoholic offering is packed with REAL, fresh ginger root and made through a unique handcrafted brewing and fermentation process. It contains 7% ABV, and a light-spice flavor profile with no artificial colors, gluten, GMOs or caffeine. It is the ultimate mule, made with fresh ginger root, to be enjoyed anytime, anywhere.

**Reed's Zero Sugar Hard Ginger Ale** – Launched in late 2022, our line of light refreshing hard ginger ales are available in four flavors: Mango, Cherry Lime, Strawberry Watermelon and Pineapple Coconut. They contain 5% ABV, 100 calories and zero carbohydrates and have no added sugar, artificial colors, gluten, GMOs or caffeine. They are made with fresh ginger root, to be enjoyed anytime, anywhere.

#### ***Reed's Functional Soda***

In April 2025, we launched a new multi-functional soda line. This innovative lineup is formulated with organic ginger, complex adaptogen mushroom extracts, and prebiotic fiber. Each serving contains only 5 grams of sugar, approximately 30 to 45 calories, 500 mg of adaptogens, and 2,000 to 5,000 mg of organic ginger. The flavor profile includes Berry Bubbly, Strawberry Vanilla, Lemongrass Ginger, and Root Beer. These beverages cater to the rising demand for health-conscious, functional refreshment options and position us at the forefront of the evolving beverage market. As of the date of this prospectus, we have secured approximately 9,000 points of distribution.

#### ***Virgil's Handcrafted Soda***

Virgil's is a premium handcrafted soda that uses only natural ingredients to create bold renditions of classic flavors. We don't use any artificial preservatives, any artificial colors, or any GMO-sourced ingredients, and our Virgil's line is certified kosher.

The Virgil's line includes the following products:

**Handcrafted Line:** Virgil's first Handcrafted soda was launched in 1994. It began as one man's passion to create the finest root beer ever produced and has since won numerous awards. Virgil's difference is using natural ingredients to craft bold, classic soda flavors. Virgil's Handcrafted line includes Root Beer, Cola, Vanilla Cream, Black Cherry, and Orange Cream.

**Zero Sugar Line:** Virgil's launched a new line of Zero Sugar, Zero Calorie craft sodas in 2019. Each Zero Sugar soda is sweetened with a proprietary blend of natural sweeteners with no added sugars and is certified Keto. This natural line of Zero Sugar flavors includes Root Beer, Cola, Vanilla Cream, Black Cherry, and Orange Cream.

#### ***Flying Cauldron Soda***

Flying Cauldron is a non-alcoholic butterscotch beer prized for its creamy vanilla and butterscotch flavors. Sought after by beverage aficionados, Flying Cauldron is made with natural ingredients and no artificial flavors, sweeteners, preservatives, gluten, caffeine, or GMOs. Flying Cauldron is available in 4-packs, single 12 oz bottles, and 16 oz swing-lid bottles.

We believe our portfolio enables us to compete across multiple high-growth subcategories of the broader CSD market.

#### **Scalable Operating Model**

All of Reed's products are manufactured through independent co-packers. They brew, blend, bottle, and package our products and charge us a fee, generally by the case, for the products produced. We have relationships with one co-packer in Pennsylvania, three in California, one in Washington, one in New York, and one in North Carolina. We believe this model provides:

- Scalability. The ability to ramp production quickly without significant capital investment
- Flexibility. The ability to shift production among multiple facilities to manage demand, reduce freight costs, and mitigate supply chain risks
- Efficiency. The ability to drive down per-unit costs by introducing freight-friendly packaging, including a shift from glass bottles to aluminum cans.

In 2019, we entered into a strategic partnership with a leading national logistics provider to manage freight and warehousing. We believe this partnership enhances efficiency and cost control across our supply chain.

#### **Sales and Marketing**

We have an experienced and geographically diverse sales force promoting our products, with senior sales representatives strategically placed in multiple regions across the country, supported by local Reed's sales staff. Additionally, we have sales managers handling national accounts for natural, specialty, grocery, mass, club, drug, liquor, convenience and on-premise channels. Our sales managers are responsible for all activities related to the sales, distribution, and marketing of our brands to our entire retail partner and distributor network in North America and in international markets. We not only employ an internal sales force but have partnered with independent sales brokers and outside representatives to promote our products in specific channels and key targeted accounts.

We sell to well-known popular natural food and gourmet retailers, large grocery store chains, mass merchants, club stores, convenience and drug stores, liquor stores, industrial cafeterias (corporate feeders), and to on-premises bars and restaurants nationwide and in some international markets. We also sell our products and promotional merchandise directly to consumers via the Internet through our Company website [www.drinkreeds.com](http://www.drinkreeds.com), Amazon, and third party e-commerce retailers.

Some of our representative key customers include:

- **Natural stores:** Whole Foods Market, Sprouts, Natural Grocers by Vitamin Cottage, Fresh Thyme, NCG, and INFRA.
- **Gourmet & specialty stores:** Trader Joe's, Erewhon, Gelson's, Harmon's, Bristol Farms, The Fresh Market, Woodman's, Cost Plus World Market, and Cracker Barrel.
- **Grocery and mass chains:** Kroger (and all Kroger banners), Albertson's/Safeway, Publix, Food Lion, Stop & Shop, H.E.B., Wegmans, Walmart, Raley's, Savemart, Ingles, Harris Teeter, Hannaford, SEG/Winn Dixie, Giant, Spartan Nash, Food Land, Lowes, Smart and Final, Winco, Bashes, Haggen, AFS, Market Basket, Meijer, Cub, and HyVee.
- **Club stores:** Costco
- **Liquor stores:** BevMo!, ABC, and Total Wine and More.
- **Convenience & drug stores:** Duane Reade.

#### **Distribution Network**

Our products are brought to market through an extremely flexible and fluid hybrid distribution model, which is a mix of direct-store-delivery, customer warehouse, and distributor networks. The distribution system used depends on customer needs, product characteristics, and local trade practices.

Our product reaches the market in the following ways:

##### *Direct to Natural & Specialty Wholesale Distributors*

Our natural and specialty distributor partners operate a distribution network delivering thousands of SKUs of natural and gourmet products to thousands of small, independent, natural retail outlets around the U.S., along with national chain customers, both conventional and natural. This system of distribution allows our brands far reaching access to some of the most remote parts of North America. During the past year we have expanded and will continue to expand in this distribution network.

##### *Direct to Store Distribution ("DSD") Through Non-Alcoholic and Alcoholic Beverage Distributor Network*

Our independent distributor partners operate DSD systems which deliver primarily beverages, foods, and snacks directly to retail stores where the products are merchandised by their route sales and field sales employees. DSD enables us to merchandise with maximum visibility and appeal. DSD is especially well-suited to products frequently restocked and responds to in-store promotion and merchandising. We are primarily focused on expanding our DSD network on a national basis.

##### *Direct to Store Warehouse Distribution*

Some of our products are delivered from our co-packers and warehouses directly to customer warehouses. Some retailers mandate we deliver directly to them, as it is more cost effective and allows them to pass savings along to their customers. Other retailers may not mandate direct delivery, but they recommend and prefer it as they have the capability to self-distribute and can realize significant savings with direct delivery.

##### *Wholesale Distribution*

We utilize a network of five independent distribution and consolidation centers across the United States to store and distribute our products. Our Wholesale Distributor network handles the wholesale shipments of our products. These distributors have a warehouse and distribution center, and ship Reed's and Virgil's products directly to the retailer (or to customers who opt for drop shipping).

**International Expansion**

We believe international markets represent a significant long-term growth opportunity. In 2025, we established Reed's (Asia) Limited, with subsidiaries in Hong Kong, Japan, China and Singapore as part of our strategy to build a local presence in the Asia-Pacific region. We expect continued investment in our Asia-Pacific growth initiative.

Our international strategy emphasizes local co-packing arrangements and concentrate models, which we believe allow us to reduce freight costs and scale efficiently in markets where ginger is already a culturally relevant and widely consumed ingredient.

**Growth Strategy**

We intend to grow our business through the following strategic priorities:

- **Expand Distribution and Market Penetration.** We intend to broaden retail coverage across mass, club, convenience, and liquor channels, and to expand our national DSD network to improve visibility and execution at the store level.
- **Drive International Expansion.** We plan to leverage our newly formed Asia-Pacific subsidiaries and our existing international customer relationships to expand further into international markets. We believe these regions provide natural alignment with our ginger-based portfolio.
- **Enhance Operational Efficiency and Reduce Costs.** We continue to transition packaging to aluminum cans, diversify our co-packer network, and utilize consolidated freight and logistics services. We believe these initiatives will lower unit costs, improve gross margin potential, and reduce exposure to supply chain disruption.
- **Leverage Innovation in Functional and Better-for-You Beverages.** We intend to expand our functional soda line with new SKUs and flavors and continue to introduce beverages that align with consumer trends favoring natural, low-sugar, and premium alternatives.

**Recent Developments***Reverse Stock Split*

Effective at 5:00 p.m. Eastern Time on October 31, 2025, we effected a 1-for-6 reverse stock split (the "Reverse Stock Split") of our common stock pursuant to a certificate of amendment (the "Certificate of Amendment") to our certificate of incorporation (as amended, the "Certificate"), filed with the Secretary of State of the State of Delaware on October 28, 2025. The Reverse Stock Split reduced the number of shares issued and outstanding, as well as the number of shares subject to then-outstanding warrants and the exercise price thereof, and the number of shares available for future issuance under the Company's equity plans, the number of shares subject to such awards and purchase rights and the exercise and purchase price of, and other terms and conditions relating to, such awards and purchase rights. The conversion terms of the Series A Convertible Preferred Stock ("Preferred Stock") have also been adjusted automatically such that each share of Preferred Stock will be convertible into the number of shares of common stock that would have been issuable if all of the outstanding shares of Preferred Stock were converted into common stock immediately prior to the Reverse Stock Split. No fractional shares were distributed as a result of the Reverse Stock Split, and stockholders were entitled to a cash payment in lieu of fractional shares. The Reverse Stock Split did not affect the par value or total number of authorized shares of common stock. The share and per share amounts included in this prospectus have been adjusted to account for the Reverse Stock Split.

Our common stock began trading on a split-adjusted basis on the OTCQX Best Market on November 3, 2025. The trading symbol for our common stock remained "REED" after the Reverse Stock Split. Our common stock was assigned a new CUSIP number (758338404) following the Reverse Stock Split.

## **Risk Factor Summary**

Investing in our common stock involves significant risks. You should carefully consider the risks described in the section titled “Risk Factors” included elsewhere in this prospectus and in the section titled “Risk Factors” included in our Annual Report on Form 10-K for the year ended December 31, 2024, as updated by our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, both of which reports are incorporated by reference herein, before making a decision to invest in our common stock. If we are unable to successfully address these risks and challenges, our business, financial condition, results of operations, or prospects could be materially and adversely affected. In such case, the trading price of our common stock would likely decline, and you may lose all or part of your investment. Below is a summary of some of the risks we face.

### *Risks Related to This Offering*

- Our quarterly and annual operating results may fluctuate significantly or may fall below the expectations of investors or securities analysts or any guidance we may publicly provide, each of which may cause our stock price to fluctuate or decline.
- The market price of our common stock has been and may continue to be volatile or may decline regardless of our operating performance, which could result in substantial losses for investors purchasing shares in this offering.
- Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.
- If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares. You will experience further dilution if we issue additional equity securities in the future.
- Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.
- We have broad discretion in the use of our cash and cash equivalents, including how we use the net proceeds of this offering, and may not use them effectively, which could affect our results of operations and cause our stock price to decline.

### *Risks Related to Our Capital Structure*

- There is currently a limited public market for our common stock, a trading market for our common stock may never develop, and our common stock prices may be volatile and could decline substantially.
- Even if the Reverse Stock Split achieves the requisite increase in the market price of our common stock, we cannot assure you that we will be able to continue to comply with the minimum bid price requirement of NYSE American.
- The Reverse Stock Split may decrease the liquidity of the shares of our common stock.

### *Risks Related to Our Business and Industry*

- We have incurred and may continue to incur losses, and we may be unable to achieve or maintain profitability.
- Our current indebtedness contains, and any future indebtedness may contain, restrictions on our business. If we are unable to secure additional financing on favorable terms, or at all, when we require it, our ability to continue to grow our business or react to market conditions could be impaired and in turn adversely affect our financial position and results of operations.

- Demand for our products can fluctuate significantly and our management's estimates of future product demand may be inaccurate, particularly with new products. Further, we may be subject to a variety of other factors that impact timely production and shipment of our products. Our business and results of operations are impacted by product shortages as well as product surplus.
- We may experience a reduced demand for some of our products due to health concerns (including obesity) and legislative initiatives against sweetened beverages.
- Supply chain challenges have impacted our ability to respond effectively or in a timely manner to increases in demand for our products and have adversely impacted our business. Supply chain constraints could cause a disruption in our ability to obtain raw materials required to manufacture our products and adversely affect our operations and financial performance.
- Damage to our reputation or brand image can adversely affect our business.
- Any inability to compete effectively can adversely affect our business.
- We are subject to international regulations that could adversely affect our business and results of operations.
- Our performance significantly depends on the contributions of key personnel. If we lose key personnel, our operations and ability to manage our business may be affected.

*Risks Related to Legal, Tax and Regulatory Matters*

- If we are unable to adequately protect our intellectual property rights, or if we are found to infringe on the intellectual property rights of others, our business can be adversely affected.
- Failure to comply with laws and regulations applicable to our business can adversely affect our business.
- Potential liabilities and costs from litigation, claims, legal or regulatory proceedings, inquiries or investigations inherent in our business can have an adverse impact on our business.

*Risks Related to Environmental Matters*

- Significant changes to or failure to comply with various environmental laws may expose our co-packers to liability or cause them to close, relocate or operate at reduced production levels, which could adversely affect our business, financial condition and results of operations.
- Water scarcity and poor quality could negatively impact our costs and capacity.
- Climate change and legal or regulatory responses thereto may have a long-term adverse impact on our business and results of operations.

*Risks Related to Ownership of Our Common Stock and General Matters*

- Our largest stockholder's preemptive right could dissuade a strategic investor from making an investment in the Company.
- We do not intend to pay dividends for the foreseeable future and, as a result, stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.

### **Corporate Information and Trademarks**

Reed's Original Ginger Brew, created in 1987, was introduced to the market in Southern California stores in 1989. In 1991, we incorporated our business operations under the laws of the State of Florida under the name of "Original Beverage Corporation." In September 2001, pursuant to a reincorporation merger, we changed our state of incorporation to the State of Delaware, and changed our name to "Reed's, Inc."

Our principal executive office is located at 501 Merritt 7 Corporate Park, Norwalk, Connecticut 06851. Our telephone number is (800) 997-3337. Our website address is <https://investor.reedsinc.com>. Information contained in, or accessible through, our website does not constitute a part of, and is not incorporated into, this prospectus.

The Reed's logo, the name Reed's, and other trademarks of Reed's, Inc. appearing in this prospectus are the property of Reed's, Inc. Solely for convenience, trade names, trademarks, and service marks contained in this prospectus may appear without the "®" or "™" symbols. Such references are not intended to indicate, in any way, that the respective owners will not assert, to the fullest extent possible under applicable law, their rights to those trade names, trademarks, and service marks.

### **Implications of Being a Smaller Reporting Company**

We are a "smaller reporting company," as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We will continue to be a smaller reporting company as long as (i) the market value of our common stock held by non-affiliates is less than \$250.0 million or (ii) our annual revenue is less than \$100.0 million during the most recently completed fiscal year and the market value of our common stock held by non-affiliates is less than \$700.0 million. We may 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 are not required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002. In addition, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

### **Controlled Company Status**

We are a "controlled company" within the meaning of the corporate governance rules of the NYSE American, and are permitted to rely on, and may elect to utilize, one or more of the exemptions from certain corporate governance standards of the NYSE American. While we are not relying on any exemptions at this time, if we do rely on such exemptions in the future, you will not have the same protections afforded to stockholders of companies that are subject to these corporate governance requirements. In the event that we cease to be a "controlled company" and our shares continue to be listed on the NYSE American, we will be required to comply with these provisions within the applicable transition periods.

## THE OFFERING

Common stock offered by us	1,326,260 shares.
Option to purchase additional shares of common stock	The underwriters have a 45-day option to purchase up to 198,939 additional shares of our common stock, at the public offering price less the underwriting discounts and commissions.
Total common stock to be outstanding immediately after this offering	10,271,714 shares, or 10,470,653 shares if the underwriters exercise their option to purchase additional shares of our common stock in full.
Use of proceeds	<p>We estimate that our net proceeds from this offering will be approximately \$9.0 million (or approximately \$10.4 million if the underwriters exercise in full their option to purchase additional shares of our common stock), based on the assumed public offering price of \$7.54 per share, which is the last reported sale price of our common stock on the OTCQX Best Market on November 11, 2025, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.</p> <p>We intend to use the net proceeds of this offering, together with our existing cash and cash equivalents, to fund growth initiatives, working capital and other general corporate purposes, which may include repayment of debt.</p> <p>See the section titled “Use of Proceeds” for additional information.</p>
Risk factors	You should carefully read and consider the information set forth in the section titled “Risk Factors,” together with all of the other information set forth in this prospectus or incorporated by reference herein, before deciding whether to invest in our common stock.
Trading symbol	Our common stock is quoted on the OTCQX Best Market under the symbol “REED.” We have applied to list our common stock for trading on the NYSE American under the symbol “REED.” There is no assurance that such application will be approved.

The number of shares of our common stock to be outstanding after this offering is based on 8,945,454 shares of common stock outstanding as of September 30, 2025, after giving effect to the Reverse Stock Split, which excludes:

- 125 shares of common stock issuable upon conversion of 9,411 outstanding shares of Series A convertible preferred stock;
- 47,072 shares of common stock issuable upon the exercise of outstanding stock options as of September 30, 2025 under the 2017 Incentive Compensation Plan (as amended, the “2017 Plan”), the 2020 Equity Incentive Plan (as amended, the “2020 Plan”) and the 2024 Inducement Plan (the “2024 Inducement Plan”), at a weighted-average exercise price of \$119.16 per share;
- 44,595 shares of common stock reserved for future issuance under the 2020 Plan and the 2024 Inducement Plan; and
- 91,550 shares of our common stock issuable upon the exercise of warrants outstanding as of September 30, 2025, with an exercise price of \$52.32 per share.

Unless otherwise indicated, all information contained in this prospectus assumes or gives effect to:

- the Reverse Stock Split;
- no exercise of the outstanding options or warrants described above subsequent to September 30, 2025; and
- no exercise by the underwriters of their option to purchase additional shares of our common stock .

**SUMMARY CONSOLIDATED FINANCIAL INFORMATION**

The following tables set forth a summary of our consolidated financial data as of, and for the periods ended on, the dates indicated. All share and per share amounts presented in this section have been retroactively adjusted to reflect the Reverse Stock Split.

We have derived the summary consolidated statements of operations data for the years ended December 31, 2024 and 2023 from our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2024, which are incorporated by reference herein. We have derived the summary condensed consolidated statements of operations for the nine months ended September 30, 2025 and 2024, and the summary condensed consolidated balance sheet data as of September 30, 2025, from our unaudited interim condensed consolidated financial statements included in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which are incorporated by reference herein. Our consolidated financial statements and condensed consolidated financial statements incorporated by reference herein were prepared in accordance with U.S. generally accepted accounting principles. Our unaudited condensed consolidated interim financial statements were prepared on a basis consistent with our audited consolidated financial statements and include, in our opinion, all adjustments of a normal and recurring nature that are necessary for the fair statement of the financial information set forth in those financial statements.

Our historical results are not necessarily indicative of results that should be expected in any future period and our results for the nine months ended September 30, 2025 are not necessarily indicative of results to be expected for the full fiscal year or any other period. You should read the following summary consolidated financial data together with our consolidated financial statements and condensed consolidated financial statements and related notes and in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2024 and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which are incorporated by reference herein.

	Year Ended December 31,		Nine Months Ended September 30,	
	2024	2023	2025	2024
	(unaudited)			
	(in thousands, except per share data)			
<b>Statements of Operations Data</b>				
Net Sales	\$ 37,954	\$ 44,711	\$ 26,585	\$ 28,221
Cost of goods sold	26,578	31,884	19,377	19,762
Inventory write-offs associated with exited categories and major packaging and formula changes	—	1,848	1,775	—
Product quality hold write-down	—	1,267	—	—
Gross profit	<u>11,376</u>	<u>9,712</u>	<u>5,433</u>	<u>8,459</u>
Operating Expenses				
Delivery and handling expenses	5,863	7,561	4,299	4,204
Selling and marketing expense	4,405	4,865	4,139	3,473
General and administrative expense	9,109	6,118	8,633	5,239
Provision for receivable with former related party	115	585	—	—
Total operating expense	<u>19,492</u>	<u>19,129</u>	<u>17,071</u>	<u>12,916</u>
Loss from operations	(8,116)	(9,417)	(11,638)	(4,457)
Other income	445	—	441	—
Interest expense, net	(5,481)	(6,106)	(864)	(4,578)
Net loss	<u>(13,152)</u>	<u>(15,523)</u>	<u>\$ (12,061)</u>	<u>\$ (9,035)</u>
Dividends on Series A Convertible Preferred Stock	(5)	(5)	(5)	(5)
Net loss attributable to common stockholders	(13,157)	(15,528)	(12,066)	(9,040)
Loss per share, basic and diluted	<u>\$ (9.82)</u>	<u>\$ (26.33)</u>	<u>\$ (1.54)</u>	<u>\$ (12.10)</u>
Weighted-average number of shares outstanding basic and diluted <sup>(1)</sup>	1,340,249	589,647	7,848,471	747,265

(1) See Note 2 to our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2024 and Note 1 to our unaudited condensed consolidated financial statements in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which are incorporated by reference herein, for explanations of the calculations of net loss per share, basic and diluted, and the weighted-average number of shares used in the computation of per-share amounts.

	As of September 30, 2025	
	Actual	As Adjusted <sup>(1)(2)</sup>
	(in thousands)	
<b>Balance Sheet Data</b>		
Cash	\$ 4,136	\$ 13,136
Working capital <sup>(3)</sup>	1,712	10,712
Total assets	19,925	28,925
Senior secured loan, net of deferred financing costs of \$90	9,160	9,160
Total liabilities	17,168	17,168
Total stockholders' equity	2,757	11,757

- (1) The as adjusted consolidated balance sheet data gives effect to the issuance and sale of 1,326,260 shares of our common stock in this offering at an assumed public offering price of \$7.54 per share, which is the last reported sale price of our common stock on the OTCQX Best Market on November 11, 2025, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.
- (2) As adjusted information is illustrative only and will change based on the actual public offering price and other terms of this offering determined at pricing. Each \$1.00 increase (decrease) in the assumed public offering price of \$7.54 per share would increase (decrease) each of the as adjusted cash, working capital, total assets, and total stockholders' equity by approximately \$1.2 million, \$1.2 million, \$1.2 million and \$5.4 million, respectively, assuming that the number of shares of common stock offered by us, as set forth on the cover of this prospectus, remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of common stock offered by us, as set forth on the cover of this prospectus, would increase (decrease) each of the as adjusted cash, working capital, total assets, and total stockholders' equity by approximately \$7.0 million, \$7.0 million, \$7.0 million and \$11.1 million, respectively, assuming that the assumed public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.
- (3) Working capital is defined as current assets less current liabilities. See our condensed consolidated financial statements and the related notes included in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which is incorporated by reference herein, for further details regarding our current assets and current liabilities.

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, as well as the risks and uncertainties set forth under the heading "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2024, as updated by our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, both of which reports are incorporated by reference herein, and all of the other information contained in this prospectus and the documents incorporated by reference herein before making an investment decision. If any of the following risks actually occurs, our business, prospects, operating results, and financial condition could suffer materially, the trading price of our common stock could decline, and you could lose all or part of your investment. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial also may materially and adversely affect our business, prospects, operating results, and financial condition.*

### Risks Related to This Offering

*As a result of the shutdown of the federal government, we have determined to rely on Section 8(a) of the Securities Act to cause the registration statement of which this prospectus forms a part to become effective automatically. Our reliance on Section 8(a) could result in a number of adverse consequences, including the potential for a need for us to file a post-effective amendment and distribute an updated prospectus to investors, or a stop order issued preventing use of the registration statement, and a corresponding substantial stock price decline, litigation, reputational harm or other negative results.*

The registration statement of which this prospectus forms a part is expected to become automatically effective by operation of Section 8(a) of the Securities Act on the 20th calendar day after the most recent amendment of the registration statement filed with the SEC, in lieu of the SEC declaring the registration statement effective following the completion of its review. Although our reliance on Section 8(a) does not relieve us and other parties from the responsibility for the adequacy and accuracy of the disclosure set forth in the registration statement and for ensuring that the registration statement complies with applicable requirements, use of Section 8(a) poses a risk that, after the date of this prospectus, we may be required to file a post-effective amendment to the registration statement and distribute an updated prospectus to investors, or otherwise abandon this offering, if changes to the information in this prospectus are required, or if a stop order under Section 8(d) of the Securities Act prevents continued use of the registration statement. These or similar events could cause the trading price of our common stock to decline substantially, result in securities class action or other litigation, and subject us to significant monetary damages, reputational harm and other negative results.

*Our quarterly and annual operating results may fluctuate significantly or may fall below the expectations of investors or securities analysts or any guidance we may publicly provide, each of which may cause our stock price to fluctuate or decline.*

We expect our operating results to be subject to quarterly and annual fluctuations which may, in turn, cause the price of our common stock to fluctuate substantially. Our net loss and other operating results will be affected by numerous factors, including:

- the level of consumer demand and spending, which may vary significantly from period to period;
- expenditures that we may incur to acquire, develop or commercialize additional products;
- pricing pressures;
- our ability to expand or maintain the geographic reach of our commercial efforts;
- the degree of competition in our industry and any change in the competitive landscape of our industry;
- announcements relating to strategic transactions, including acquisitions, collaborations, or similar arrangements;
- positive or negative coverage in the media of our products or products of our competitors or our industry;
- any intellectual property infringement lawsuit or opposition, interference, or cancellation proceeding in which we may become involved;
- recruitment and departures of key personnel; and
- adverse macroeconomic conditions or geopolitical events, including international trade relations and tariffs, high levels of inflation, heightened interest rates, and geopolitical tensions such as the conflict between Ukraine and Russia and the conflict in the Middle East.

If our quarterly or annual operating results fall below the expectations of investors or securities analysts or any forecasts or guidance we may provide to the market, the price of our common stock could decline substantially. Such a stock price decline could occur even when we have met any previously publicly stated guidance we may provide. We believe that quarterly or annual comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

*The market price of our common stock has been and may continue to be volatile or may decline regardless of our operating performance, which could result in substantial losses for investors purchasing shares in this offering.*

The market price of our common stock is likely to be volatile and could fluctuate widely in response to many factors, including but not limited to:

- volatility and instability in the financial and capital markets;
- adverse macroeconomic conditions or geopolitical events, including international trade relations and tariffs, high levels of inflation, heightened interest rates, and geopolitical tensions such as the conflict between Ukraine and Russia and the conflict in the Middle East;
- announcements relating to our existing and new products;
- announcements by competitors that impact our competitive outlook;
- developments with respect to intellectual property rights;
- announcements relating to strategic transactions, including acquisitions, collaborations, or similar arrangements;
- actual or anticipated variations in our operating results due to the level of development expenses and other factors;
- changes in financial estimates by equities research analysts and whether our earnings (or losses) meet or exceed such estimates;
- announcement or expectation of additional financing efforts and receipt, or lack of receipt, of funding in support of conducting our business;
- sales of our common stock by us, our insiders, or other stockholders, or issuances by us of shares of our common stock in connection with strategic transactions;
- conditions and trends in our industry;
- recruitment and departures of key personnel;
- litigation or arbitration;
- general economic, political, and market conditions and other factors; and
- the occurrence of any of the risks described in this section titled “Risk Factors”.

In addition, if the stock market for beverage companies, or the stock market generally, experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. Stock prices of many beverage companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. As a result of these and other factors, you may be unable to resell your shares of our common stock at or above the price you paid. In the past, stockholders have filed securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business. These fluctuations may be even more pronounced in the trading market for our stock shortly following this offering.

***Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.***

Our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially hold a significant percentage of our outstanding common stock, including D&D, our controlling stockholder. These stockholders, acting together, would be able to control the outcome of all matters requiring stockholder approval. For example, these stockholders would be able to control the outcome of elections of directors, amendments of our organizational documents, or approval of any merger, sale of assets, or other major corporate transaction. This level of control may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders. The significant concentration of stock ownership may adversely affect the trading price of our common stock due to investors' perception that conflicts of interest may exist or arise. In addition, if these principal stockholders sell a substantial number of shares of our common stock in the public market, the market price of our common stock could be adversely impacted. The perception among the public that these sales will occur could also contribute to a decline in the market price of our common stock.

***Participation in this offering by certain of our existing stockholders and their affiliated entities, including, but not limited to, D&D, may reduce the public float for our common stock.***

To the extent certain of our existing stockholders and their affiliated entities, including, but not limited to, D&D, participate in this offering, such purchases would reduce the non-affiliate public float of our shares, meaning the number of shares of our common stock that are not held by officers, directors and controlling stockholders. A reduction in the public float could reduce the number of shares that are available to be traded at any given time, thereby adversely impacting the liquidity of our common stock and depressing the price at which you may be able to sell shares of common stock purchased in this offering.

***If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares. You will experience further dilution if we issue additional equity securities in the future.***

You will suffer immediate and substantial dilution with respect to the common stock you purchase in this offering. If you purchase common stock in this offering, assuming a public offering price of \$7.54 per share, and assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and that the underwriters do not exercise their option to purchase additional shares of common stock in this offering, you will incur immediate and substantial dilution of \$6.46 per share, representing the difference between the assumed public offering price of \$7.54 per share and our as adjusted net tangible book value per share as of September 30, 2025. See the section titled "Dilution" for a more detailed description of the dilution to new investors in this offering. In addition, to the extent that the shares underlying equity awards that we may grant in the future are exercised or settle or we raise additional funds by issuing equity securities, you will experience further dilution.

***Sales of a substantial number of shares of our common stock in the public market could cause our stock price to fall.***

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. Pursuant to certain registration rights agreements, we have registered shares of our common stock sold in private transactions for resale, including shares of common stock held by D&D, our controlling stockholder. In addition, we have filed, and may file in the future, registration statements on Form S-8 under the Securities Act of 1933, as amended (the "Securities Act"), registering the issuance of shares of common stock subject to options or other equity awards issued or reserved for future issuance under our equity incentive plan and inducement plan. Shares registered under the registration statement on Form S-8 will be available for sale in the public market subject to vesting arrangements and exercise of options, and the restrictions of Rule 144 in the case of our affiliates. If these additional shares of common stock are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline.

We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. However, future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding options or warrants, or the perception that such sales may occur, could adversely affect the market price of our common stock.

*We have broad discretion in the use of our cash and cash equivalents, including how we use the net proceeds of this offering, and may not use them effectively, which could affect our results of operations and cause our stock price to decline.*

Our management has considerable discretion in the application of our cash and cash equivalents, including the net proceeds of this offering. We may use our cash and cash equivalents, including the net proceeds of this offering, for purposes that do not yield a significant return or any return at all for our stockholders. In addition, pending their use, we may invest our cash and cash equivalents, including the net proceeds from this offering, in a manner that does not produce income or that loses value.

#### **Risks Related to Our Capital Structure**

*There is currently a limited public market for our common stock, a trading market for our common stock may never develop, and our common stock prices may be volatile and could decline substantially.*

Prior to this offering, our common stock was quoted on the OTCQX Best Market, an over-the-counter quotation system, under the symbol "REED," and there has been no material public market for our common stock. Although we have applied to list our common stock on the NYSE American, an active trading market may not develop following the closing of this offering or, if developed, may not be sustained. As a result of these and other factors, investors may be unable to resell shares of our common stock at or above the price for which they purchased them, at or near quoted bid prices, or at all. Further, an inactive market may also impair our ability to raise capital by selling additional equity in the future, and may impair our ability to enter into strategic partnerships or acquire companies or products by using shares of our common stock as consideration.

*Our failure to meet the continued listing requirements of NYSE American could result in a de-listing of our common stock.*

We may fail to satisfy the continued listing requirements of NYSE American, such as the corporate governance requirements or the minimum stock price requirement, and the NYSE American may take steps to de-list our common stock. Such a de-listing or the announcement of such de-listing will 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 may attempt to take actions to restore our compliance with the NYSE American listing requirements, but we can provide no assurance that any such action taken by us would allow our common stock to become listed again, stabilize the market price or improve the liquidity of our common stock, prevent our common stock from dropping below the NYSE American minimum listing requirements or prevent future non-compliance with the NYSE American listing requirements.

*Even if the Reverse Stock Split achieves the requisite increase in the market price of our common stock, we cannot assure you that we will be able to continue to comply with the minimum bid price requirement of NYSE American.*

Even if the Reverse Stock Split achieves the requisite increase in the market price of our common stock to be in compliance with the minimum bid price of NYSE American, there can be no assurance that the market price of our common stock following the Reverse Stock Split will remain at the level required for continuing compliance with that requirement. It is not uncommon for the market price of a company's common stock to decline in the period following a Reverse Stock Split. If the market price of our common stock declines following the effectuation of the Reverse Stock Split, the percentage decline may be greater than would occur in the absence of a reverse stock split. In any event, other factors unrelated to the number of shares of our common stock outstanding, such as negative financial or operational results, could adversely affect the market price of our common stock and jeopardize our ability to meet or maintain NYSE American's minimum bid price requirement.

***The Reverse Stock Split may decrease the liquidity of the shares of our common stock.***

The liquidity of the shares of our common stock may be affected adversely by the Reverse Stock Split given the reduced number of shares outstanding following the Reverse Stock Split, especially if the market price of our common stock does not increase as a result of the Reverse Stock Split. In addition, the Reverse Stock Split may increase the number of stockholders who own odd lots (less than 100 shares) of our common stock, creating the potential for such stockholders to experience an increase in the cost of selling their shares and greater difficulty effecting such sales.

***Following the Reverse Stock Split, the resulting market price of our common stock may not attract new investors, including institutional investors, and may not satisfy the investing requirements of those investors. Consequently, the trading liquidity of our common stock may not improve.***

Although we believe that a higher market price of our common stock may help generate greater or broader investor interest, there can be no assurance that the Reverse Stock Split will result in a share price that will attract new investors, including institutional investors. In addition, there can be no assurance that the market price of our common stock will satisfy the investing requirements of those investors. As a result, the trading liquidity of our common stock may not necessarily improve.

***We are a “controlled company” within the meaning of the NYSE American rules and, as a result, qualify for, and may rely on, exemptions and relief from certain corporate governance requirements. If we rely on these exemptions, our stockholders will not have the same protections afforded to stockholders of companies that are subject to such requirements.***

We are a “controlled company” within the meaning of the NYSE American corporate governance standards. Under these corporate governance standards, a company of which more than 50% of the voting power in the election of directors is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain corporate governance requirements. For example, controlled companies are not required to have:

- a board that is composed of a majority of “independent directors,” as defined under the NYSE American rules;
- a compensation committee that is composed entirely of independent directors; and
- director nominations be made, or recommended to the full board of directors, by its independent directors, or by a nominations/governance committee that is composed entirely of independent directors.

As a “controlled company” within the meaning of the NYSE American rules, we are permitted to rely on, and may elect to utilize, one or more of the exemptions from certain corporate governance standards of the NYSE American for as long as we continue to qualify as a “controlled company.” If we do rely on such exemptions in the future, our stockholders may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the NYSE American. Investors may find our common stock less attractive as a result of our reliance 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.

**Risks Related to Our Business and Industry**

***We have incurred and may continue to incur losses, and we may be unable to achieve or maintain profitability.***

We incurred net losses of \$13.2 million and \$15.5 million for the fiscal years ended December 31, 2024 and 2023, respectively. While we aim to reduce costs, our operating expenses may increase over time as we continue to invest in growing our business, increasing our customer base, contract manufacturers and distributors, and expanding our selling and marketing channels. Our expansion efforts may prove more expensive than we anticipate, and there is no guarantee that these efforts will translate into sufficient sales to cover our expenses and result in profits. In addition, if our efforts to increase the average selling price of our products over time result in outsized volume decreases, our net sales may be adversely impacted and it will be challenging to achieve profitability or maintain pace with cost increases over time. We incur significant expenses in developing our innovative products and delivering, handling and marketing our products. Accordingly, we may not be able to achieve or maintain profitability, and we may continue to incur significant losses in the future.

***Failure to realize benefits from our productivity initiatives can adversely affect our financial performance.***

Our future growth depends, in part, on our ability to continue to reduce costs and improve efficiencies. We continue to identify and implement initiatives that we believe will position our business for long-term sustainable growth by allowing us to achieve a lower cost structure, improve decision-making and operate more efficiently. If we are unable to successfully implement our productivity initiatives as planned or do not achieve expected savings as a result of these initiatives, we may not realize all or any of the anticipated benefits, resulting in adverse effects on our financial performance.

***Our current indebtedness contains, and any future indebtedness may contain, restrictions on our business. If we are unable to secure additional financing on favorable terms, or at all, when we require it, our ability to continue to grow our business or react to market conditions could be impaired and in turn adversely affect our financial position and results of operations.***

We intend to continue to expand, grow and develop our business, which may require additional capital to develop new products, enhance our platform, expand distribution, improve our operating infrastructure, react to market conditions and finance working capital requirements. Accordingly, we may need to engage in additional equity or debt financings to secure additional capital. If we raise additional funds through future 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.

Additionally, on September 26, 2025, we entered into the first amendment (the "Amendment") to our Senior Secured Loan and Security Agreement (as amended, the "Loan Agreement") with certain funds affiliated with Whitebox Advisors, LLC (the "Lenders") and Cantor Fitzgerald Securities, as administrative agent and collateral agent, with respect to our revolving credit facility (the "Senior Secured Facility"). The Amendment provides a revolving credit commitment in an aggregate amount of \$9.25 million and, as of September 30, 2025, the principal amount outstanding was \$9.25 million. The Senior Secured Facility is secured by substantially all of our assets, including all intellectual property. Our current and future indebtedness, including the revolving credit commitment under the Senior Secured Facility, may have significant negative effects on our operations, including:

- impairing our ability to obtain additional financing in the future (or to obtain such financing on acceptable terms) for working capital, capital expenditures, acquisitions or other important needs, and subjecting us to other restrictive covenants that may reduce our ability to take certain corporate actions;
- requiring us to dedicate a portion of our cash resources to the payment of interest and principal, reducing money available to fund working capital, capital expenditures, potential acquisitions, international expansion, new product development, new enterprise relationships and other general corporate purposes;
- requiring us to repay the principal and accrued interest on the revolving credit commitment under the Senior Secured Facility in an event of default under the covenants thereof, which could impair our liquidity and reduce the availability of our cash flow to fund working capital, capital expenditures, acquisitions and other important needs;
- limiting our ability to adjust to rapidly changing conditions in the industry, reducing our ability to withstand competitive pressures and making us more vulnerable to a downturn in general economic conditions or business than our competitors with relatively lower levels of debt; and
- requiring us, in certain circumstances, to obtain approval from Whitebox Advisors, LLC and/or the lenders party to the Senior Secured Facility before embarking on certain mergers, acquisitions, capital expenditures, or other operational issues.

We intend to satisfy our current and future debt service obligations with our then existing cash and cash equivalents. However, we may not have sufficient funds, and may be unable to arrange for additional financing, to pay the amounts due under the Senior Secured Facility or any other debt instruments. In addition, the Senior Secured Facility contains, and the agreements governing our future indebtedness may contain, restrictive covenants that may limit our ability to engage in activities that may be in our long-term best interest. These restrictive covenants include, among others, limitations on indebtedness, liens, mergers, consolidations, liquidations and dissolutions, sales of assets, investments (including acquisitions), dividends and other restricted payments and transactions with affiliates. Our failure to make payments under or comply with other covenants contained in the documents governing our indebtedness could result in an event of default which, if not cured or waived, could result in the acceleration of substantially all of our debt and potentially the foreclosure on our assets in the event we are unable to repay all amounts owed.

If we are unable to secure additional funding on favorable terms, or at all, when we require it, our ability to continue to grow our business to react to market conditions could be impaired, which would adversely affect our financial position and results of operations.

***Demand for our products can fluctuate significantly and our management's estimates of future product demand may be inaccurate, particularly with new products. Further, we may be subject to a variety of other factors that impact timely production and shipment of our products. Our business and results of operations are impacted by product shortages as well as product surplus.***

Management's estimates of future product demand may be inaccurate, which could result in an understated or overstated provision required for excess and obsolete inventory. As of December 31, 2024 and 2023, inventory has been reduced by cumulative write-downs for inventory aggregating approximately \$277,000 and \$1.8 million, respectively. In addition, we incurred \$1.7 million of inventory write-offs related to changes in product portfolio optimization made by new management during the nine months ended September 30, 2025.

When we underestimate demand for our products, we are unable to secure sufficient ingredients or raw materials or procure adequate packing arrangements to obtain adequate or timely shipment of our products, as a result of which we are not able to satisfy demand on a short-term basis.

It is difficult to predict the timing and amount of our sales because our distributors are not required to place minimum orders with us. Our independent distributors and national accounts are not required to place minimum monthly or annual orders for our products. In order 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. 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.

Further, all of our products are produced by our co-pack partners. For most of our products, there are limited co-packing facilities in our markets with adequate capacity and/or suitable equipment to package our products. If a co-packer terminates its relationship with us, we have in the past, and will likely in the future, experience a delay finding a suitable replacement, which will negatively impact our business and financial results.

***Reduction in future demand for our products would adversely affect our business.***

Demand for our products depends in part on our ability to innovate and anticipate and effectively respond to shifts in consumer trends and preferences, including the types of products our consumers want and how they browse for, purchase and consume them. Consumer preferences continuously evolve due to a variety of factors, including: changes in consumer demographics, consumption patterns, diet (whether due to changes in consumer behavior and eating habits, the use of weight-loss drugs or other factors) and channel preferences (including continued increases in the e-commerce and online-to-offline channels); pricing; product quality; concerns or perceptions regarding packaging and its environmental impact (such as single-use and other plastic packaging); and concerns or perceptions regarding the nutrition profile and health effects of, or location of origin of, ingredients or substances in our products or packaging, including due to the results of third-party studies (whether or not scientifically valid). Concerns with any of the foregoing could lead consumers to reduce or publicly boycott the purchase or consumption of our products. Pandemics, epidemics or other disease outbreaks, such as COVID-19, and geopolitical events, international trade relations and tariffs, wars and other military conflicts have also impacted and could continue to impact consumer preferences and demand for our products. Consumer preferences are also influenced by perception of our brand image or the brand images of our products, the success of our advertising and marketing campaigns, our ability to engage with our consumers in the manner they prefer, including through the use of digital media or assets, and the perception of our use of social media and our response to political and social issues, geopolitical events, wars and other military conflicts or catastrophic events. These and other factors have reduced and could continue to reduce consumers' willingness to purchase certain of our products, including as a result of public boycotts. Any inability on our part to anticipate or react to changes in consumer preferences and trends, or make the right strategic investments to do so, including investments in data analytics to understand consumer trends, can lead to reduced demand for our products, lead to inventory write-offs or erode our competitive and financial position, thereby adversely affecting our business and preventing us from gaining market share and achieving long-term profitability. In addition, our business operations, including our supply chain, are subject to disruption by geopolitical events, international trade relations and tariffs, wars and other military conflicts, natural disasters, pandemics, epidemics or other events beyond our control that could negatively impact product availability and decrease demand for our products.

***We may experience a reduced demand for some of our products due to health concerns (including obesity) and legislative initiatives against sweetened beverages.***

Consumers are concerned about health and wellness; public health officials and government officials are increasingly vocal about obesity and its consequences. There has been a trend among some public health advocates and dietary guidelines to recommend a reduction in sweetened beverages, as well as increased public scrutiny, new taxes on sugar-sweetened beverages (see also the risk factor captioned "*Our effective tax rate or taxes aimed at our products can adversely affect our business or financial performance*" for more information), and additional governmental regulations concerning the marketing and labelling/packing of the beverage industry. Additional or revised regulatory requirements, whether labelling, tax or otherwise, could have a material adverse effect on our financial condition and results of operations. Further, increasing public concern with respect to sweetened beverages could reduce demand for our beverages and increase desire for more low-calorie soft drinks, water, enhanced water, coffee-flavored beverages, tea, and beverages with natural sweeteners. We are continuously working to reduce calories and sugar in our products while launching additional products, to pair with existing brand extensions that round out our portfolio. However, there is no guarantee that our product lines will meet consumer expectations, shifting consumer preferences, or regulatory developments.

***Our reliance on distributors, retailers and brokers 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. Most of our distributors, retailers and brokers sell and distribute competing products and our products may represent a small portion of their businesses. The success of this network will depend on the performance of the distributors, retailers and brokers of this network. 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, such third parties' financial position or market share may deteriorate, which could adversely affect our distribution, marketing and sales activities. Our ability to maintain and expand our distribution network and attract additional distributors, retailers and brokers will depend on a number of factors, some of which are outside our control. Some of these factors include: (i) the level of demand for our brands and products in a particular distribution area; (ii) our ability to price our products at levels competitive with those of competing products; and (iii) our ability to deliver products in the 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 with regards to any of these factors in a geographic distribution area will have a material adverse effect on our relationships in that particular geographic area, thus limiting our ability to maintain or expand our market, which will likely adversely affect our revenues and financial results.

***Supply chain challenges have impacted our ability to respond effectively or in a timely manner to increases in demand for our products and have adversely impacted our business. Supply chain constraints could cause a disruption in our ability to obtain raw materials required to manufacture our products and adversely affect our operations and financial performance.***

We have experienced supply chain challenges. The disruption and increased lead times caused by labor shortages, significant raw material cost inflation, logistics issues, increased freight costs and ongoing port congestion have resulted in suppressed margins. The average cost of shipping and handling of our products during the years ended December 31, 2024 and 2023 was \$2.75 and \$3.07 per case, respectively. Although we have experienced decreases in freight costs and have implemented mitigation plans to manage this risk, in our opinion there remains a volatile environment, and we will continue to monitor pricing and availability in transportation. Any increase in transportation costs (including increases in fuel costs), shipping costs or warehouse costs, port or supplier-side delays, reductions in the transportation capacity of carriers, labor strikes or shortages in the transportation industry, disruptions to the national and international transportation infrastructure, decreased warehouse availability and unexpected delivery interruptions or delays may increase the cost of, and adversely impact, our logistics and our ability to provide quality and timely service to our distributors and customers.

Furthermore, periodic and often unpredictable industry-wide shortages of raw materials, including aluminum cans, glass bottles, and the principal ingredients used in our products, such as organic ginger and cane sugar, could disrupt or delay the production of certain products and adversely affect our operations and financial performance. The prices of the principal raw materials used in our products are subject to fluctuation. We are uncertain whether the prices of any of the foregoing or any other raw materials or ingredients we utilize will rise in the future and whether we will be able to pass any of such increases on to our customers. We do not use hedging agreements or alternative instruments to manage the risks associated with securing sufficient ingredients or other raw materials. Although we regularly monitor companies in our supply chain and use alternative suppliers when necessary and available, supply chain constraints could cause a disruption in our ability to obtain raw materials required to manufacture our products and adversely affect our operations, financial condition, results of operations, and cash flows.

***Damage to our reputation or brand image can adversely affect our business.***

Maintaining a positive reputation is critical to selling our products. Our reputation or brand image could be adversely impacted by a variety of factors, including: particular ingredients in our products, including concerns regarding whether certain of our products contribute to obesity and other health conditions; any product quality or safety issues, including the recall of any of our products; any failure by us or by independent contract manufacturers and suppliers with whom we do business to comply with applicable laws and regulations or ethical business practices; marketing programs, use of social media; or any failure to effectively respond to negative or inaccurate comments about us on social media or otherwise regarding any of the foregoing. Damage to our reputation or brand image could decrease demand for our products, thereby adversely affecting our business.

We have in the past, and may in the future, use social media influencers and celebrities for product promotion and marketing, which may expose us to risk that such content could contain problematic, inaccurate, or misleading product or marketing claims. These influencers and celebrities could also engage in behavior that reflects poorly on our brand. Any claims or behavior by such influencers or celebrities may be attributed to us and expose us to fines, monetary liabilities, or could harm our brand reputation all of which could have an adverse impact on our business and operations. Although we take measures to confirm that public information about our company and brand is accurate, compliant with regulations and substantiated by factual analysis and research, we may be subject to claims that such information is false or misleading. Even if such claims are disproven, any negative publicity surrounding an assertion that our marketing materials are inaccurate could cause consumers to lose confidence in the safety and quality of our products. In addition, a judgment against us could lead to further litigation and have a material adverse effect on our business, financial condition, results of operations or liquidity.

***Product recalls or other issues or concerns with respect to product quality and safety can adversely affect our business and financial condition.***

We have recalled, and could in the future recall, products due to product quality or safety issues, such as mislabeling, spoilage or malfunction. Product quality or safety issues could reduce consumer confidence and demand for our products, cause production, inventory and delivery disruptions, and result in increased costs (including payment of fines, judgments and legal fees, and costs associated with alternative sources of production) and damage our reputation, all of which can adversely affect our business and financial condition. Any perception or allegation (whether or not valid) of failure to maintain adequate oversight over product quality or safety can result in product recalls, litigation, government investigations or inquiries or civil, all of which may result in fines, penalties and damages. In addition, while we currently maintain insurance coverage that, subject to its terms and conditions, is intended to address costs associated with certain aspects of product recalls, this insurance coverage may not, depending on the specific facts and circumstances surrounding an incident, cover all losses or all types of claims that arise from an incident, or the damage to our reputation or brands that may result from an incident.

***Any inability to compete effectively can adversely affect our business.***

Our products compete against products of international beverage companies, as well as regional, local and private label and economy brand manufacturers and other competitors, including smaller companies developing and selling micro brands directly to consumers through e-commerce platforms or through retailers focused on locally sourced products. Our products compete primarily on the basis of brand recognition and loyalty, taste, quality, innovation, distribution, shelf space, advertising, and promotional activity, packaging, convenience, and the ability to anticipate and effectively respond to consumer preferences and trends. Some of our competitors have significantly more financial resources than us. These competitors can use their resources and scale to rapidly respond to competitive pressures and changes in consumer preferences by introducing new products, changing their route to market, reducing prices or increasing promotional activities. Our business can be adversely affected if we are unable to effectively promote or develop our existing products or introduce and effectively market new products, if we are unable to improve operating efficiencies, if we are unable to effectively respond to supply disruptions, pricing pressure (including as a result of commodity inflation) or otherwise compete effectively, and we may be unable to grow or maintain sales or category share or we may need to increase capital, marketing or other expenditures. It is possible that our competitors may either respond to industry conditions or consumer trends more rapidly or effectively or resort to price competition to sustain market share, which could adversely affect our sales and profitability. See also the risk factor captioned “*Changes in the retail landscape or in sales to any key customer can adversely affect our business. Increased competitor consolidations, market-place competition, particularly among branded beverage products, and competitive product and pricing pressures could impact our earnings, market share and volume growth.*”

***Changes in the retail landscape or in sales to any key customer can adversely affect our business. Increased competitor consolidations, market-place competition, particularly among branded beverage products, and competitive product and pricing pressures could impact our earnings, market share and volume growth.***

The retail industry is impacted by the actions and increasing power of retailers, including as a result of increased consolidation of ownership resulting in large retailers or buying groups with increased purchasing power, particularly in North America, Europe and Latin America. In this changing retail landscape, retailers and buying groups have impacted and may continue to impact our ability to compete in these jurisdictions by demanding lower prices or increased promotional programs. We may be required to grant retailers price concessions that negatively impact our margins and our profitability in order to compete with larger companies with significantly greater financial resources. If we are not able to lower our cost structure adequately in response to such competitive customer pricing, and if we are not able to attract and retain a profitable customer mix and a profitable product mix, our profitability could continue to be adversely affected. Furthermore, our inability to resolve a significant dispute with customers, a change in the business conditions (financial or otherwise) of either of these customers, even if unrelated to us, a significant reduction in sales to either of them, or the loss of either of them could adversely affect our business.

The beverage industry is highly competitive. We compete with other beverage companies not only for consumer acceptance but also for shelf space in retail outlets and for marketing focus by our distributors, all of whom also distribute other beverage brands. Our products compete with all non-alcoholic beverages, most of which are marketed by companies with substantially greater financial resources than ours. Some of these competitors are placing severe pressure on independent distributors not to carry competitive sparkling brands such as ours. We also compete with regional beverage producers and “private label” soft drink suppliers.

Our direct competitors in the sparkling beverage category include traditional large beverage companies and distributors, and regional premium soft drink companies. These national and international competitors have advantages such as lower production costs, larger marketing budgets, greater financial and other resources and more developed and extensive distribution networks than ours. We may not be able to grow our volumes or maintain our selling prices, whether in existing markets or as we enter new markets.

Increased competitor consolidations, market-place competition, particularly among branded beverage products, and competitive product and pricing pressures could impact our earnings, market share and volume growth. If, due to such pressure or other competitive threats, we are unable to sufficiently maintain or develop our distribution channels, we may be unable to achieve our current revenue and financial targets. As a means of maintaining and expanding our distribution network, we intend to introduce product extensions and additional brands. We may not be successful in doing this, or it may take us longer than anticipated to achieve market acceptance of these new products and brands, if at all. Other companies may be more successful in this regard over the long term. Competition, particularly from companies with greater financial and marketing resources than ours, could have a material adverse effect on our existing markets, as well as on our ability to expand the market for our products.

***We may face difficulties as we expand our operations into new markets in which we have no prior operating experience.***

As we work to grow our brand, we intend to enter into new markets, including eventually expanding into countries other than those in which we currently operate, including our recent expansion into new geographic markets in the Asia-Pacific region. It may be difficult for us to understand and accurately predict taste preferences and purchasing habits of consumers in these new geographic markets. We will also face increased competition with larger competitors who have stronger established brands in such markets. The political, legal and social systems of certain territories pose difficult challenges related to establishing and maintaining control and ownership of our brand and intellectual property, as well as mitigating the risk of diverted sales to other territories and/or sales diverted into the U.S. It is also costly to establish, develop and maintain international operations and develop and promote our brands in international markets and we may face adverse tax consequences, tariffs, and barriers to trade. As we expand our business into new countries, we may encounter regulatory, legal, personnel, technological and other difficulties that increase our expenses and/or delay our ability to become profitable and compete effectively in such countries, which may have a material adverse effect on our business and brand.

***We are subject to international regulations that could adversely affect our business and results of operations.***

We are subject to regulations internationally where we distribute and/or will sell our products. Our products are subject to numerous laws and regulations relating to the sourcing, manufacturing, storing, labeling, marketing, advertising and distribution of these products. If regulators determine that the labeling and/or composition of any of our products is not in compliance with laws or regulations in any jurisdictions in which we operate or may enter in the future, or if we or our contract manufacturers otherwise fail to comply with applicable laws and regulations in any jurisdictions in which we operate or may enter in the future, we could be subject to civil remedies or penalties, such as fines, injunctions, recalls or seizures, warning letters, restrictions on the marketing or manufacturing of the products, or refusals to permit the import or export of products, as well as potential criminal sanctions. In addition, enforcement of existing laws and regulations, changes in legal requirements and/or evolving interpretations of existing regulatory requirements may result in increased compliance costs and create other obligations, financial or otherwise, that could adversely affect our business, financial condition or operating results. In addition, if we expand our international operations, we could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act and similar worldwide anti-bribery laws, which generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials or other third parties for the purpose of obtaining or retaining business. While our policies mandate compliance with these anti-bribery laws, our internal control policies and procedures may not protect us from reckless or criminal acts committed by our employees or agents. Violations of these laws, or allegations of such violations, could disrupt our business, impact our reputation, and result in a material adverse effect on our results of operations, cash flows and financial condition.

***Our performance significantly depends on the contributions of key personnel. If we lose key personnel, our operations and ability to manage our business may be affected.***

Our performance significantly depends on the contributions of our executive officers and key employees, both individually and as a group and our ability to retain and motivate them. Certain of our officers and key personnel have many years of experience with us and in our industry and it may be difficult to replace them. If we lose key personnel, our operations and ability to manage our business may be affected.

***Failure to attract, develop and maintain a highly skilled and diverse workforce or effectively manage changes in our workforce can have an adverse effect on our business.***

Our business requires that we attract, develop and maintain a highly skilled and diverse workforce. Our employees are highly sought after by our competitors and other companies and our continued ability to compete effectively depends on our ability to attract, retain, develop and motivate highly skilled personnel for all areas of our organization. Our ability to do so has been and may continue to be impacted by challenges in the labor market, which has experienced and may continue to experience wage inflation, labor shortages, increased employee turnover, changes in availability of our workforce and changing worker expectations regarding flexible work models. Any unplanned turnover or failure to attract, develop and maintain a highly skilled and diverse workforce, can erode our competitive advantage or result in increased costs due to increased competition for employees or increased employee benefit costs.

***We rely on our information technology, and a potential cyber-attack, data breach or other failure or disruption of our information technology could disrupt our operations and adversely affect our results of operations.***

Our business increasingly relies on the successful and uninterrupted functioning of our information technology systems to process, transmit, and store electronic information. A significant portion of the communication between our personnel, customers, and suppliers depends on information technology. As with all large systems, our information technology systems may be susceptible to damage, disruptions or shutdowns due to failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, telecommunication failures, user errors or catastrophic events. In addition, cybersecurity related risks including security breaches and cyber-attacks such as computer viruses, denial-of-service attacks, malicious code (including ransomware), social-engineering attacks (including phishing attacks) or other information security breaches could result in unauthorized disclosure or misappropriation of our confidential information. These threats also may be further enhanced in frequency or effectiveness through threat actors' use of artificial intelligence.

While we have security measures in place designed to protect the integrity of customer information and prevent data loss, misappropriation, and other security breaches, our information technology systems could nevertheless be penetrated by outside parties intent on extracting information, corrupting information or disrupting business processes (including for purposes of ransom demands or other forms of blackmail), particularly if the our information security training and compliance programs prove to be inadequate. In addition, if our information technology systems suffer severe damage, disruption or shutdown and our business continuity plans do not effectively resolve the issues in a timely manner, we may lose customers and suppliers and revenue and profits as a result of its inability to timely manufacture, distribute, invoice and collect payments from our customers, and could experience delays in reporting our financial results, including with respect to our operations in emerging markets. Furthermore, if we are unable to prevent security breaches, we may suffer financial and reputational damage because of lost or misappropriated confidential information belonging to us or to our customers or suppliers, and we may suffer indirect economic loss if our existing insurance policies and coverage related to information security risks prove to be insufficient. Failure or disruption of our information technology systems, or the back-up systems, for any reason could disrupt our operations and negatively impact our cash flows or financial condition.

Similar risks exist with respect to our business partners and third-party providers, including suppliers, software and cloud-based service providers, that we rely upon for aspects of various business processes and activities, including procurement, supply chain, manufacturing, distribution, information technology support services and administrative functions (including payroll processing, health and benefit plan administration and certain finance and accounting functions) and the systems managed, hosted, provided and/or used by such third parties and their vendors. For example, malicious actors have employed and could continue to employ the information technology supply chain to introduce malware through software updates or compromised supplier accounts or hardware and exploit known or unknown hardware or software vulnerabilities in our systems or the systems of our vendors and third-party service providers. The need to coordinate with various third-party service providers, including with respect to timely notification and access to personnel and information concerning an incident, may complicate our efforts to address issues that arise. As a result, we are subject to the risk that the activities associated with our third-party service providers can adversely affect our business even if the attack or breach does not directly impact our systems or information.

***Future cyber incidents and other disruptions to our information systems can adversely affect our business.***

We work with a third-party vendor, which has extensive cybersecurity expertise to help protect and defend against cybersecurity threats. This vendor has advised us on material cybersecurity-related risks and is helping us establish controls designed to protect, detect, respond to, and recover from cybersecurity incidents. These controls include firewall protection, antivirus software protection, two-factor authentication enforced on all endpoints including Windows PCs and laptops, and intrusion prevention software designed to automatically block any unauthorized access attempts on our servers. Our cybersecurity controls are embedded within our overall risk management processes and technology, including a 24/7 threat monitoring system provided by the vendor.

Cyberattacks and other cyber incidents are occurring more frequently, the techniques used to gain access to information technology systems and data, disable or degrade service or sabotage systems are constantly evolving and becoming more sophisticated in nature and are being carried out by groups and individuals with a wide range of expertise and motives. In addition, the rapid evolution and increased adoption of artificial intelligence technologies may increase our cybersecurity risks, including generative artificial intelligence augmenting threat actors' technological sophistication to enhance existing or create new malware. We have not experienced a cyber security breach; however, a breach could have a material adverse effect on us in the future.

***Failure to comply with personal data protection and privacy laws can adversely affect our business.***

We are subject to a variety of continuously evolving and developing laws and regulations in numerous jurisdictions regarding personal data protection and privacy laws. These laws and regulations may be interpreted and applied differently from country to country or, within the United States, from state to state, and can create inconsistent or conflicting requirements. For example, the California Consumer Privacy Act, which was significantly modified by the California Privacy Rights Act, as well as comprehensive privacy legislation in Virginia, Colorado, Utah and Connecticut that became effective in 2023, as well as the European Union's General Data Protection Regulation (GDPR), the U.K. General Data Protection Regulation (which implements the GDPR into U.K. law) and China's Personal Information Protection Act, impose significant costs and challenges that are likely to continue to increase over time, particularly as additional jurisdictions continue to adopt similar regulations. Failure to comply with these laws and regulations or to otherwise protect personal data from unauthorized access, use or other processing, have in the past and could in the future result in litigation, claims, legal or regulatory proceedings, inquiries or investigations, damage to our reputation, fines or penalties, all of which can adversely affect our business.

#### **Risks Related to Legal, Tax and Regulatory Matters**

***Our effective tax rate or taxes aimed at our products can adversely affect our business or financial performance.***

Tax rates at the federal, state and local levels may be subject to significant change. If our effective tax rate increases, our operating results and cash flow could be adversely affected. Our effective income tax rate can vary significantly between periods due to a number of complex factors including, but not limited to, projected levels of taxable income in each jurisdiction, tax audits conducted and settled by various tax authorities, and adjustments to income taxes upon finalization of income tax returns.

In addition, certain jurisdictions in which our products are sold have either imposed, or are considering imposing, new or increased taxes on the manufacture, distribution or sale of certain of our products, as a result of ingredients contained in our products. These taxes vary in scope and form: some apply to all beverages, including non-caloric beverages, while others apply only to beverages with a caloric sweetener (e.g., sugar). Similarly, some measures apply a single tax rate per ounce/liter on beverages containing over a certain amount of added sugar (or other sweetener), some apply a graduated tax rate depending upon the amount of added sugar (or other sweetener) in the beverage and others apply a flat tax rate on beverages containing any amount of added sugar (or other sweetener). These tax measures, whatever their scope or form, have in the past and could continue to increase the cost of certain of our products, reduce overall consumption of our products or lead to negative publicity, resulting in an adverse effect on our business and financial performance.

***Limitations on the marketing or sale of our products can adversely affect our business and financial performance.***

Certain jurisdictions in which our products are sold or may be sold have either imposed, or are considering imposing, limitations on the marketing or sale of our products as a result of ingredients or substances in our products or product packaging. These limitations require that we highlight perceived concerns about a product or product packaging, warn consumers to avoid consumption of certain ingredients or substances present in our products, restrict the age of consumers to whom products are marketed or sold, limit the location in which our products may be available or discontinue the use of certain ingredients or packaging. Certain jurisdictions have imposed or are considering imposing color-coded labelling requirements where colors such as red, yellow and green are used to indicate various levels of a particular ingredient, such as sugar, sodium or saturated fat, in products. The imposition or proposed imposition of additional limitations on the marketing or sale of our products has in the past reduced and could continue to reduce overall consumption of our products, lead to negative publicity or leave consumers with the perception that our products do not meet their health and wellness needs, resulting in an adverse effect on our business and financial performance.

Furthermore, the marketing and labeling of any food product in recent years has brought increased risk that consumers will bring class action lawsuits and that the U.S. Federal Trade Commission (“FTC”) and/or state attorneys general will bring legal action concerning the truth and accuracy of the marketing and labeling of the product, seek removal of a product from the marketplace, and/or impose fines and penalties. Products that we sell carry claims as to their ingredients or health and wellness related attributes, including the term “natural” or other express or implied statements relating to the ingredients or health and wellness related attributes of our products. Although the U.S. Food and Drug Administration (“FDA”) and the U.S. Department of Agriculture (“USDA”) each has issued statements regarding the appropriate use of the word “natural,” there is no single, official U.S. government regulation defining the term “natural” for use in the food industry, which is true for many other label statements in the better-for-you and functionally-focused food industry. The lack of regulatory definition for “natural” and other label statements has contributed to legal challenges against many consumer products companies, and plaintiffs have commenced legal actions against several food companies that market “natural” products and/or product ingredients, asserting false, misleading and deceptive advertising and labeling claims, including claims related to genetically modified ingredients. In limited circumstances, the FDA has taken regulatory action against products labeled “natural” that contain synthetic ingredients, chemicals, processing and/or components. As a result of such legal or regulatory challenges, consumers may avoid purchasing products from us or seek alternatives, even if the basis for the claim is unfounded.

***Laws and regulations related to the use or disposal of plastics or other packaging materials can adversely affect our business and financial performance.***

We rely on diverse packaging solutions to safely deliver products to our customers and consumers. Certain of our products are sold in packaging designed to be recyclable, commercially compostable, biodegradable or reusable. However, not all packaging is recovered, whether due to lack of infrastructure, improper disposal or otherwise, and certain of our packaging is not currently recyclable, commercially compostable, biodegradable or reusable. Packaging waste not properly disposed of that displays one or more of our brands has in the past resulted in and could continue to result in negative publicity, litigation, government investigations or other action or reduced consumer demand for our products, adversely affecting our financial performance. Many jurisdictions in which our products are sold have imposed or are considering imposing laws, regulations or policies intended to encourage the use of sustainable packaging, waste reduction, increased recycling rates or decreased use of single-use plastics or to restrict the sale of products utilizing certain packaging. These laws, regulations and policies vary in form and scope and include extended producer responsibility policies, plastic or packaging taxes, minimum recycled content requirements, restrictions on certain products and materials, restrictions or bans on the use of certain types of packaging, including single-use plastics and packaging containing PFAS, restrictions on labelling related to recyclability, requirements to charge deposit fees and requirements to scale reusable or refillable packaging. For example, the European Union and certain states in the United States, among other jurisdictions, have imposed a minimum recycled content requirement for beverage bottle packaging and similar legislation is under consideration in other jurisdictions. These laws and regulations have in the past increased and could continue to increase the cost of our products, impact demand for our products, result in negative publicity and require us and our business partners, including our independent co-packers, to increase capital expenditures to invest in reducing the amount of virgin plastic or other materials used in our packaging, to develop alternative packaging or to revise product labelling, all of which can adversely affect our business and financial performance.

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

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

***If we are unable to adequately protect our intellectual property rights, or if we are found to infringe on the intellectual property rights of others, our business can be adversely affected.***

We possess intellectual property rights that are important to our business, including ingredient formulas, trademarks, copyrights, business processes and other trade secrets. The laws of various jurisdictions in which we operate have differing levels of protection of intellectual property. Our competitive position and the value of our products and brands can be reduced and our business adversely affected if we fail to obtain or adequately protect our intellectual property, including our ingredient formulas, or if there is a change in law that limits or removes the current legal protections afforded our intellectual property.

We cannot assure you that the steps we have taken to protect our intellectual property rights are adequate, that our intellectual property rights can be successfully defended and asserted in the future or that third parties will not infringe upon or misappropriate any such rights. Failure to protect our rights could also prevent us from entering into new markets or territories in the future. Moreover, intellectual property disputes, proceedings, misappropriation or infringement claims may result in a significant distraction for management, diversion of resources, and significant expense, which may not be recoverable regardless of whether we are successful. Such proceedings may be protracted with no certainty of success, and an adverse outcome could subject us to liabilities, force us to cease use of certain trademarks or other intellectual property or force us to enter into licenses with others. Any one of these occurrences may have an adverse effect on our business, financial condition and results of operations.

Also, in the course of developing new products or improving the quality of existing products, we could in the future infringe or be alleged to infringe, on the intellectual property rights of others. Such infringement or allegations of infringement could result in expensive litigation and damages, damage to our reputation, disruption to our operations, injunctions against development, manufacturing, use and/or sale of certain products, inventory write-offs or other limitations on our ability to introduce new products or improve the quality of existing products, resulting in an adverse effect on our business.

***Failure to comply with laws and regulations applicable to our business can adversely affect our business.***

The conduct of our business is subject to numerous laws and regulations relating to the production, storage, distribution, sale, display, advertising, marketing, labelling, content (including whether a product contains genetically engineered ingredients), quality, safety, transportation, supply chain, traceability, sourcing (including pesticide use), packaging, disposal, recycling and use of our products or raw materials, employment and occupational health and safety, environmental, social and governance matters and reporting (including climate change), machine learning and artificial intelligence and data privacy and protection. The imposition of new laws, changes in laws or regulatory requirements or changing interpretations thereof, changes in the enforcement priorities of regulators, and differing or competing regulations and standards across the markets where our products or raw materials are made, manufactured, distributed or sold, have in the past and could continue to result in higher compliance costs, capital expenditures and higher production costs, resulting in adverse effects on our business. For example, increasing governmental and societal attention to environmental, social and governance matters has resulted and could continue to result in new laws or regulatory requirements, including expanded disclosure requirements that are expected to continue to expand the nature, scope and complexity of matters on which we are required to report. In addition, the entry into new markets or categories has resulted in and could continue to result in our business being subject to additional regulations resulting in higher compliance costs. If one jurisdiction imposes or proposes to impose new laws or regulations that impact the manufacture, distribution or sale of our products, other jurisdictions may follow. Failure to comply with such laws or regulations (or allegations thereof) can subject us to criminal or civil investigations or enforcement actions, including voluntary and involuntary document requests, fines, injunctions, product recalls, penalties, disgorgement of profits or activity restrictions, all of which can adversely affect our business.

***Potential liabilities and costs from litigation, claims, legal or regulatory proceedings, inquiries or investigations inherent in our business can have an adverse impact on our business.***

We have been party to a variety of litigation, claims, legal or regulatory proceedings, inquiries and investigations, including but not limited to disputes with our contractors, matters related to our ingredients, personal injury and employment, matters. These matters are uncertain and there is no guarantee that we will be successful in defending ourselves or that our assessment of the materiality of these matters and the likely outcome or potential losses and established reserves will be consistent with the ultimate outcome of such matters. Responding to these matters, even those that are ultimately non-meritorious, requires us to incur significant expense and devote significant resources, and may generate adverse publicity that damages our reputation or brand image. Any of the foregoing can adversely affect our business.

***Regulations concerning our alcohol beverages may adversely affect our business, financial condition or results of operations.***

Governmental agencies heavily regulate the alcohol beverage industry. In particular, they monitor and regulate licensing, warehousing, trade and pricing practices, permitted and required labelling, including warning labels, signage, advertising, relations with wholesalers and retailers, and, in control states, product listings. There may also be a focus on companies with established non-alcohol beverages lines of business that have expanded into the alcohol beverage industry, since marketing practices that are acceptable in the non-alcohol space may have regulatory challenges in the alcohol space. In addition, other countries in which we may sell alcohol beverages could impose duties, excise taxes and/or other related taxes. If, in the future, we are unable to comply with certain regulations, sales of our products could decrease significantly. Additionally, if such agencies or jurisdictions, foreign or domestic, choose to implement new or revised laws, regulations, fees, taxes, or other such requirements, our business could be adversely affected. If such governmental bodies require increased additional product labelling, warning requirements, or limitations on the marketing or sale of our alcohol products due to their contents or allegations concerning their potential to cause adverse health effects, our sales of alcohol beverages may be adversely affected.

***Risks Related to Environmental Matters***

***Significant changes to or failure to comply with various environmental laws may expose our co-packers to liability or cause them to close, relocate or operate at reduced production levels, which could adversely affect our business, financial condition and results of operations.***

Our co-packers are subject to a wide and increasingly broad array of federal, state, regional, local, and international environmental laws, including statutes and regulations, which aim to regulate emissions and impacts to air, land, and water. Their operations may result in odors, noise, or other pollutants being emitted. Failure to comply with any environmental laws or any future changes to them could result in alleged harm to employees or others near facilities. Significant costs to satisfy environmental compliance, remediation or compensatory requirements, or the imposition of penalties or restrictions on operations by governmental agencies or courts may adversely affect our business, financial condition, and results of operations. Increasing concern over sustainability matters, including climate change, will likely result in new or revised laws and regulations aimed at reducing or mitigating the potential effects of greenhouse gases, restricting or increasing the costs of commercial water use due to local water scarcity concerns, or increasing mandatory reporting of certain sustainability metrics, such as recycling.

***Water scarcity and poor quality could negatively impact our costs and capacity.***

Water is a main ingredient in substantially all of our products, it is vital to the production of the agricultural ingredients on which our business relies and is needed in our manufacturing process. Lack of available water of acceptable quality, actions by governmental and non-governmental organizations, investors, customers and consumers on water scarcity and increasing pressure to conserve and replenish water in areas of scarcity and stress, including due to the effects of climate change, can lead to: supply chain disruption; adverse effects on our operations or the operations of our business partners; higher compliance costs; increased capital expenditures; higher production costs, including less favorable pricing for water; perception of our failure to act responsibly with respect to water use or to effectively respond to legal or regulatory requirements concerning water scarcity; or damage to our reputation, any of which can adversely affect our business.

***Climate change and legal or regulatory responses thereto may have a long-term adverse impact on our business and results of operations.***

There is increasing concern that a gradual increase in global average temperatures due to increased concentration of carbon dioxide and other greenhouse gases in the atmosphere will cause significant changes in weather patterns around the globe and an increase in the frequency and severity of natural disasters. Decreased agricultural productivity in certain regions of the world as a result of changing weather patterns may limit the availability or increase the cost of key agricultural commodities, which are important sources of ingredients for our products, and could impact the food security of communities around the world. Agricultural products that make up a significant portion of our raw materials, including organic ginger and cane sugar, are particularly vulnerable to changing weather patterns. Unpredictability and reduced agricultural yields could significantly increase our costs and impair our production capabilities. Climate change may also exacerbate water scarcity and cause a further deterioration of water quality in affected regions, which could limit water availability for our independent co-packers. Increased frequency or duration of extreme weather conditions could also impair production capabilities, disrupt our supply chain or impact demand for our products. Increasing concern over climate change also may result in additional legal or regulatory requirements designed to reduce or mitigate the effects of carbon dioxide and other greenhouse gas emissions on the environment. Increased energy or compliance costs and expenses due to increased legal or regulatory requirements may cause disruptions in, or an increase in the costs associated with, the manufacturing and distribution of our beverage products. There is an increased focus in many jurisdictions in which our products are manufactured, distributed or sold regarding environmental policies relating to climate change, biodiversity loss, regulating greenhouse gas emissions and energy policies and sustainability. This increased focus may result in new or increased legal and regulatory requirements, such as potential carbon pricing programs or revised product labelling requirements or other regulatory measures, which could result in significant increased costs. The effects of climate change and legal or regulatory initiatives to address climate change could have a long-term adverse impact on our business and results of operations.

***Risks Related to Ownership of Our Common Stock and General Matters***

***Our largest stockholder's preemptive right could dissuade a strategic investor from making an investment in the Company.***

Our largest stockholder, D&D, holds a preemptive right to purchase its pro-rata share, based on the ratio of shares of our common stock it owns to all the outstanding shares of our common stock, of any investment in our equity securities or equity-linked securities. As of the date of this prospectus, D&D beneficially owns approximately % of our common stock. As such, D&D's exercise of its preemptive right could serve to dissuade a new strategic investor from proposing an investment in us or significantly decrease the size of a new investor's investment.

***We do not intend to pay dividends for the foreseeable future and, as a result, stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.***

We do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. In addition, the terms of the Senior Secured Facility restrict our ability to pay dividends. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

***Our amended and restated bylaws, as currently in effect, and second amended and restated bylaws (the "Bylaws"), as will become effective upon the listing of our common stock on the NYSE American, designate the Delaware Court of Chancery or Delaware state or United States federal district courts as the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit such stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, other employees or other stockholders.***

Our Bylaws provide that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of claims or causes of action under Delaware statutory or common law: any derivative claims or causes of action brought on our behalf; any claims or causes of action asserting a breach of a fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law (the "DGCL"), our certificate of incorporation, or our Bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. In addition, our Bylaws provide that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. These choice of forum provisions will not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Such provisions are intended to benefit and may be enforced by us and our officers and directors, employees and agents.

These provisions may benefit us by providing increased consistency in the application of Delaware law and federal securities laws by chancellors and judges, as applicable, particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. These choice of forum provisions 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, or other employees, which may discourage lawsuits with respect to such claims or make such lawsuits more costly for stockholders, although our stockholders will not be deemed to have waived our compliance with federal securities laws and the rules and regulations thereunder. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions, and there can be no assurance that such provisions will be enforced by a court in those other jurisdictions. If a court were to find either choice of forum provisions contained in our Bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions.

***Global economic uncertainty and unfavorable global economic conditions caused by political instability, changes in trade agreements and conflicts, such as the Russia-Ukraine conflict and the conflict in the Middle East, could adversely affect our business, financial condition, results of operations or prospects.***

Our business, financial condition, results of operations or prospects could be adversely affected by unstable economic and political conditions within the United States and foreign jurisdictions, including as a result of an economic downturn and geopolitical events, such as changes in U.S. federal policy that affect the geopolitical landscape. Changes to policy implemented by the U.S. Congress, the Trump administration or any new administration have impacted and may in the future impact, among other things, the U.S. and global economy, international trade relations, unemployment, immigration, healthcare, taxation, the U.S. regulatory environment, inflation and other areas. The recent announcements of substantial new tariffs and other restrictive trade policies have created a dynamic and unpredictable trade landscape, which may adversely impact our business. Current or future tariffs or other restrictive trade measures may raise the costs of raw materials, components or finished goods, which may adversely impact both our product offerings and our operational expenses. Such cost increases may reduce our margins and require us to increase prices, which could harm our competitive position, reduce customer demand and damage customer relationships. Our manufacturers, suppliers and distribution channels are also affected by the current trade environment, and we may experience supply chain disruptions as a result of increased costs and uncertainty, as well as risks to the long-term viability of key vendors, which may impact our ability to meet customer demand or manage inventory efficiently. Tariff and other trade-related cost pressures and supply chain disruptions may lead to reputational harm if we are unable to deliver products or services on expected timelines or if any price increases are poorly received by customers or business partners.

Political tensions as a result of trade policies could reduce trade volume, investment, technological exchange and other economic activities between major international economies, resulting in a material adverse effect on global economic conditions and the stability of global financial markets. Any changes in political, trade, regulatory, and economic conditions, including U.S. trade policies, could have a material adverse effect on our financial condition or results of operations. We have experienced, and may continue to experience, moderate inflationary impact because of recent trade and political tensions, include tariff discussions, between the United States and other countries. Ongoing tariff, trade restrictions and macroeconomic uncertainty has and may continue to contribute to volatility in the price of our common stock. Ongoing uncertainty regarding trade policies may also complicate our short- and long-term strategic planning, and that of our partners and customers, including decisions regarding hiring, product strategy, capital investment, supply chain design and geographic expansion.

While we continue to monitor trade developments, the ultimate impact of these risks remains uncertain and any prolonged economic downturn, escalation in trade tensions, or deterioration in international perception of U.S.-based companies could materially and adversely affect our business, results of operations, financial condition and prospects.

In addition, the current military conflict between Russia and Ukraine and the armed conflict in Israel and the Gaza Strip could disrupt or otherwise adversely impact our operations and those of third parties upon which we rely. Related sanctions, export controls or other actions that may be initiated by nations including the United States, the EU or Russia (e.g., potential cyberattacks, disruption of energy flows, etc.), which could adversely affect our business and/or our supply chain and other third parties with which we conduct business. A severe or prolonged economic downturn or political unrest could result in a variety of risks to our business, including but not limited to weakened demand for our products and our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy could also strain our suppliers, possibly resulting in supply disruption, or cause our customers to delay making payments for our services. Any of the foregoing could harm our business and we cannot anticipate all of the ways in which the current political and economic climate and financial market conditions could adversely impact our business.

***Changes in economic conditions can adversely impact our business.***

Many of the jurisdictions in which our products are sold have experienced and could continue to experience uncertain or unfavorable economic conditions, such as high inflation and adverse changes in interest rates, tax laws or tax rates, including as a result of geopolitical events. These uncertain or unfavorable economic conditions have resulted in and could continue to result in recessions or economic slowdowns; volatile commodity markets; labor shortages; highly inflationary economies; and stimulus measures. In 2024, we experienced moderate inflation. In addition, we cannot predict how current or future economic conditions will affect our business partners, including financial institutions with whom we do business, and any negative impact on any of the foregoing may also have an adverse impact on our business. Furthermore, if our business continues to grow, we may continue to expand our international operations, and our exposure to foreign currency exchange rate risk could increase. Fluctuations in exchange rates, including as a result of inflation, central bank monetary policies, currency controls or other currency exchange restrictions or geopolitical instability could have an adverse impact on our financial performance.

***Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.***

We are subject to the periodic reporting requirements of the Exchange Act. We have designed our disclosure controls and procedures to reasonably assure that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC.

However, any disclosure controls and procedures or internal controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system will be met. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

***We are a “smaller reporting company” and we cannot be certain if the reduced reporting requirements applicable to “smaller reporting companies” will make our common stock less attractive to investors.***

We are a “smaller reporting company,” meaning that the market value of our stock held by non-affiliates is less than \$700.0 million and our annual revenue is less than \$100.0 million during the most recently completed fiscal year. We may continue to be a “smaller reporting company” until (i) the market value of our stock held by non-affiliates is less than \$250.0 million or (ii) our annual revenue is less than \$100.0 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than \$700.0 million as of the prior June 30.

Our designation as a “smaller reporting company,” allows us to take advantage of many of the same exemptions from disclosure requirements, including presenting only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K not being required to comply with the independent auditor attestation requirements of Section 404 and 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.

The following risks, some of which have occurred and any of which may occur in the future, can have a material adverse effect on our business or financial performance, which in turn can affect the price of our publicly traded securities. These are not the only risks we face. There may be other risks we are not currently aware of or that we currently deem not to be material but that may become material in the future.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents we have filed with the SEC that are incorporated by reference herein contain forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical fact contained in this prospectus, including statements regarding our plans, objectives, goals, strategies, future events, future revenues or performance, financing needs, plans, or intentions relating to our business, products, markets and industry trends and other information referred to under the sections titled “Prospectus Summary” and “Risk Factors” in this prospectus and the sections titled “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” in our Annual Report on Form 10-K for the year ended December 31, 2024 and “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which are incorporated by reference herein, are forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “can,” “contemplate,” “continue,” “could,” “design,” “estimate,” “expect,” “intend,” “may,” “might,” “objective,” “plan,” “potential,” “predict,” “project,” “shall,” “should,” “target,” “will,” or “would,” or the negative of these words or other similar terms or expressions.

These statements involve known and unknown risks, uncertainties, and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

- our expectations regarding consumers diverting their consumption from mainstream beverages containing artificial ingredients, and our ability to provide natural alternatives;
- our ability to continue to adapt to and accommodate consumer preferences;
- the impact of rising costs, interest rates, and inflation on the discretionary income of our consumers, their spending power and demand for our products;
- the impact of any supply chain disruptions and volatility in commodity prices due to geopolitical tensions, such as the conflict between Ukraine and Russia and the conflict in the Middle East, international trade relations and tariffs, and other macroeconomic factors;
- our ability to absorb, mitigate or pass on cost increases to our bottlers, distributors and/or customers;
- the impact of logistical issues and delays;
- our ability to effectively manage our inventories and/or our accounts receivables;
- our ability to continue to generate sufficient cash flows to support our expansion plans and general operating activities;
- changes in demand that are weather, or season related and/or for other reasons, including changes in product category and/or package consumption and changes in cost and availability of certain key ingredients including aluminum cans, as well as disruptions to the supply chain, as a result of climate change and poor or extreme weather conditions;
- the impact on our business of competitive products and pricing pressures and our ability to gain or maintain our share of sales in the marketplace as a result of actions by competitors;
- our ability to implement and/or maintain price increases, including through reductions in promotional allowances;

- the effectiveness of sales and/or marketing efforts by us and/or by distributors of our products, most of whom distribute products that may be regarded as competitive with our products;
- the costs and/or effectiveness, now or in the future, of our advertising, marketing and promotional strategies;
- the failure of our co-packers to manufacture our products on a timely basis or at all;
- our ability to make suitable arrangements and/or procure sufficient capacity for the co-packing of any of our products, the timely replacement of discontinued co-packing arrangements and/or limitations on co-packing availability;
- volatility of stock prices which may restrict stock sales, stock purchases or other opportunities as well as negatively impact the motivation of equity award grantees;
- any disruption in and/or lack of effectiveness of our information technology systems, including a breach of cyber security, which disrupts our business or negatively impacts customer relationships, as well as cybersecurity incidents involving data shared with third parties;
- the imposition of additional regulation imposing excise taxes and/or sales taxes on sweetened beverages or alcoholic beverages;
- recruitment and retention of senior management, other key employees and our employee base in general;
- our ability to comply with the terms of our current and future loan agreements and our expectations regarding our ability to access additional tranches thereunder;
- the accuracy of our estimates regarding future expenses, future revenue, capital requirements, and need for additional financing; and
- our anticipated use of the proceeds from this offering.

These forward-looking statements reflect our management's beliefs and views with respect to future events and are based on estimates and assumptions as of the date of this prospectus and are subject to risks and uncertainties. In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements. We discuss many of the risks associated with the forward-looking statements in this prospectus in greater detail under the heading "Risk Factors" included in this prospectus and our Annual Report on Form 10-K for the year ended December 31, 2024, as updated by our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, both of which reports are incorporated by reference herein. You should evaluate all forward-looking statements made in this prospectus in the context of these risks and uncertainties. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. Given these uncertainties, you should not place undue reliance on these forward-looking statements.

You should carefully read this prospectus and the documents that we have filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in this prospectus by these cautionary statements.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in any forward-looking statements, whether as a result of new information, future events, or otherwise.

## MARKET AND INDUSTRY DATA

This prospectus and the documents incorporated by reference herein contain estimates, projections, and other information concerning our industry, our business, and the markets for our products, including data regarding the estimated size of such markets. Unless otherwise expressly stated, we obtained the industry, market, and similar data set forth in this prospectus from our internal estimates and research and from academic and industry research, publications, surveys, and studies conducted by third parties, including governmental agencies. In some cases, we do not expressly refer to the sources from which this data is derived. In that regard, when we refer to one or more sources of this type of information in any paragraph, you should assume that other information of this type appearing in the same paragraph is derived from the same sources, unless otherwise expressly stated or the context otherwise requires.

Information that is based on estimates, forecasts, projections, market research, or similar methodologies is inherently subject to uncertainties and involves a number of assumptions and limitations; as a result, actual events or circumstances may differ materially from events and circumstances that are assumed in this information. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the section titled “Risk Factors” in this prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2024, as updated by our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, both of which reports are incorporated by reference herein. Although we are responsible for all of the disclosure contained in this prospectus and the documents incorporated by reference herein and we believe that the data we use from third parties are reliable, we have not separately verified this data. Further, while we believe that our internal research is reliable, such research has not been verified by any third party. You are cautioned not to give undue weight to any such information, projections, and estimates.

## USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately \$9.0 million (or approximately \$10.4 million if the underwriters' option to purchase additional shares is exercised in full) from the sale of the shares of common stock offered by us in this offering, based on an assumed public offering price of \$7.54 per share, which is the last reported sale price of our common stock on the OTCQX Best Market on November 11, 2025, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

Each \$1.00 increase (decrease) in the assumed public offering price of \$7.54 per share would increase (decrease) the net proceeds to us from this offering by \$1.2 million, assuming the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, would increase (decrease) our net proceeds from this offering by \$7.0 million, assuming the assumed public offering price remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

We intend to use the net proceeds of this offering, together with our existing cash and cash equivalents, to fund growth initiatives, working capital and other general corporate purposes, which may include repayment of debt.

We may also use a portion of the net proceeds from this offering to acquire, or invest in complementary businesses, technologies, products, or assets. However, we have no current plans, commitments, or obligations to do so.

Our expected use of net proceeds from this offering represents our current intentions based upon our present plans and business condition. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the net proceeds to be received upon the completion of this offering, or the amounts that we will actually spend on the uses set forth above. The amounts and timing of our actual use of the net proceeds will vary depending on numerous factors, including the factors described under "Risk Factors" in this prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2024, as updated by our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, both of which reports are incorporated herein by reference, as well as the amount of cash used in our operations and any unforeseen cash needs. We may find it necessary or advisable to use the net proceeds for other purposes, and our management will have broad discretion in the application of the net proceeds, and investors will be relying on our judgment regarding the application of the net proceeds from this offering.

Pending the use of the proceeds from this offering, we plan to invest the proceeds in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit, or direct or guaranteed obligations of the U.S. government.

#### **DIVIDEND POLICY**

We have never declared or paid any cash dividends on our capital stock. As of the date of this prospectus, shares of our Series A convertible preferred stock will have accrued approximately \$18,824 in unpaid dividends, which are payable, at our option, in cash or shares of our common stock. We currently intend to retain all available funds and future earnings, if any, to support our operations and finance the growth and development of our business. We have no present intention to pay cash dividends on our common stock for the foreseeable future. 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 (including any restrictions in our then-existing debt arrangements), business prospects, and other factors our board of directors may deem relevant, and subject to the restrictions contained in any future financing instruments. In addition, the terms of our Loan Agreement restrict our ability to pay dividends. Investors should not purchase our common stock with the expectation of receiving cash dividends.

## CAPITALIZATION

The following table sets forth our cash and our capitalization as of September 30, 2025:

- on an actual basis (as adjusted for the Reverse Stock Split); and
- on an as adjusted basis, giving effect to the issuance and sale of 1,326,260 shares of our common stock in this offering, at an assumed public offering price of \$7.54 per share, which is the last reported sale price of our common stock on the OTCQX Best Market on November 11, 2025, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

The as adjusted information below is illustrative only, and our cash and capitalization following the completion of this offering will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.

You should read this information in conjunction with our unaudited condensed consolidated financial statements and the related notes and the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our condensed consolidated financial statements in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, which are incorporated by reference herein.

	As of September 30, 2025	
	Actual	As Adjusted <sup>(1)</sup>
	(in thousands, except share and per share data)	
Cash	\$ 4,136	\$ 13,136
Senior secured loan, net of deferred financing costs of \$90	\$ 9,160	\$ 9,160
Stockholders’ equity:		
Series A convertible preferred stock, \$10 par value: 500,000 shares authorized, 9,411 shares issued and outstanding, actual and as adjusted	94	94
Common stock, \$.0001 par value: 60,000,000 shares authorized, 8,945,454 shares issued and outstanding, actual; 10,271,714 shares issued and outstanding, as adjusted	1	1
Additional paid-in capital	166,612	175,612
Accumulated deficit	(163,950)	(163,950)
Total stockholders’ equity	2,757	11,757
Total capitalization	\$ 11,917	\$ 28,925

(1) Each \$1.00 increase or decrease in the assumed public offering price of \$7.54 per share would increase or decrease the as adjusted amount of each of cash, additional paid-in capital, total stockholders’ equity and total capitalization by \$1.2 million, \$5.4 million, \$5.4 million and \$5.4 million, respectively, assuming that the number of shares offered by us, as 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. Similarly, each increase or decrease of 1.0 million in the number of shares offered by us would increase or decrease the as adjusted amount of each of cash, additional paid-in capital, total stockholders’ equity and total capitalization by \$7.0 million, \$11.1 million, \$11.1 million and \$11.1 million, respectively, assuming no change in the assumed public offering price per share and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The number of shares of our common stock to be outstanding after this offering is based 8,945,454 (after giving effect to the Reverse Stock Split) on shares of common stock outstanding as of September 30, 2025, which excludes:

- 125 shares of common stock issuable upon conversion of 9,411 outstanding shares of Series A convertible preferred stock;
- 47,072 shares of common stock issuable upon the exercise of outstanding stock options as of September 30, 2025 under the 2017 Plan, the 2020 Plan and the 2024 Inducement Plan, at a weighted-average exercise price of \$119.16 per share;
- 44,595 shares of common stock reserved for future issuance under the 2020 Plan and the 2024 Inducement Plan; and
- 91,550 shares of our common stock issuable upon the exercise of warrants outstanding as of September 30, 2025, with a weighted-average exercise price of \$52.32 per share.

## DILUTION

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

Our historical net tangible book value as of September 30, 2025 was \$2.1 million, or \$0.24 per share of common stock (after giving effect to the Reverse Stock Split). Our historical net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the total number of shares of common stock outstanding as of September 30, 2025 (after giving effect to the Reverse Stock Split).

After giving effect to our issuance and sale of 1,326,260 shares of our common stock that we are offering at an assumed public offering price of \$7.54 per share, which is the last reported sale price of our common stock on the OTCQX Best Market on November 11, 2025, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, our as adjusted net tangible book value as of September 30, 2025 would have been \$11.1 million, or approximately \$1.08 per share of common stock.

This amount represents an immediate increase in net tangible book value of \$0.84 per share to our existing stockholders and an immediate dilution of approximately \$6.46 per share to new investors participating in this offering.

Dilution per share to new investors is determined by subtracting as adjusted net tangible book value per share after this offering from the assumed public offering price per share paid by new investors. The following table illustrates this dilution on a per share basis to new investors:

Assumed public offering price per share		\$	7.54
Historical net tangible book value per share as of September 30, 2025	\$	0.24	
Increase in net tangible book value per share attributable to this offering		0.84	
As adjusted net tangible book value per share after this offering			1.08
Dilution per share to new investors participating in this offering		\$	6.46

The dilution information discussed above is illustrative only and will change based on the actual public offering price and other terms of this offering determined at pricing.

Each \$1.00 increase in the assumed public offering price of \$7.54 per share would increase our as adjusted net tangible book value per share after this offering by \$0.12 and the dilution per share to new investors purchasing shares of common stock in this offering by \$0.88, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

Each \$1.00 decrease in the assumed public offering price of \$7.54 would decrease our as adjusted net tangible book value per share after this offering by \$0.12 and the dilution per share to new investors purchasing shares of common stock in this offering by \$0.88, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

An increase of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase our as adjusted net tangible book value per share after this offering by \$0.53 and decrease the dilution per share to new investors purchasing shares of common stock in this offering by \$0.53 assuming no change in the assumed public offering price per share and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

A decrease of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would decrease our as adjusted net tangible book value per share after this offering by \$0.64 and increase the dilution per share to new investors purchasing shares of common stock in this offering by \$0.64 assuming no change in the assumed public offering price and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares of our common stock in full in this offering, the as adjusted net tangible book value after the offering would be \$1.19 per share, the increase in net tangible book value to existing stockholders would be \$0.95 per share, and the dilution to new investors would be \$6.35 per share, in each case based on the assumed public offering price of \$7.54 per share, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

The number of shares of our common stock to be outstanding after this offering is based on 8,945,454 shares of common stock outstanding as of September 30, 2025, after giving effect to the Reverse Stock Split, which excludes:

- 125 shares of common stock issuable upon conversion of 9,411 outstanding shares of Series A convertible preferred stock;
- 47,072 shares of common stock issuable upon the exercise of outstanding stock options as of September 30, 2025 under the 2017 Plan, the 2020 Plan and the 2024 Inducement Plan, at a weighted-average exercise price of \$119.16 per share;
- 44,595 shares of common stock reserved for future issuance under the 2020 Plan and the 2024 Inducement Plan; and
- 91,550 shares of our common stock issuable upon the exercise of warrants outstanding as of September 30, 2025, with an exercise price of \$52.32 per share.

## PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding beneficial ownership of our capital stock as of October 31, 2025 by:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our common stock;
- each of our directors;
- each of our named executive officers; and
- all of our current executive officers and directors as a group.

The percentage ownership information shown in the table prior to this offering is based on 8,945,454 shares of common stock outstanding as of October 31, 2025. The percentage ownership information shown in the table after this offering is based on 10,271,714 shares of common stock outstanding, assuming the sale of 1,326,260 shares of common stock by us in this offering and no exercise by the underwriters of their option to purchase additional shares. All share information presented in the table gives effect to the Reverse Stock Split.

We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options or warrants that are either immediately exercisable or exercisable on or before December 31, 2025, which is 60 days after October 31, 2025. These shares are deemed to be outstanding and beneficially owned by the person holding those options or warrants for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, we believe based on information provided to us, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws. The table below excludes any potential purchases in this offering by the beneficial owners identified in the table below.

Except as otherwise noted below, the address for each person or entity listed in the table is c/o Reed's, Inc., 501 Merritt 7 Corporate Park, Norwalk, Connecticut 06851.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
<b>Greater Than 5% Stockholders:</b>			
D&D Source of Life Holding Ltd. <sup>(1)</sup>	4,745,420	52.8%	46.0%
<b>Named Executive Officers and Directors:</b>			
Norman E. Snyder, Jr. <sup>(2)</sup>	14,996	*	*
Joann Tinnelly <sup>(3)</sup>	5,832	*	*
Chris Burleson <sup>(4)</sup>	4,026	*	*
Shufen Deng	—	—	—
Cyril A. Wallace, Jr.	—	—	—
Sam Van	—	—	—
Rudolf J. M. Bakker	—	—	—
Michael C. Tu	—	—	—
All current executive officers and directors as a group (8 persons)	—	—	—

\* Represents beneficial ownership of less than 1%.

- (1) This information has been obtained from a Schedule 13D filed on June 11, 2025 by entities affiliated with D&D. Consists of (a) 4,706,735 shares of common stock held by D&D and (b) 38,685 shares of common stock issuable upon the exercise of certain warrants held by D&D. All outstanding shares of D&D are held by Era Regenerative Medicine Ltd. ("ERM"), a holding company. Dai Siqi is the sole director of ERM, and may be deemed to have shared voting, investment and dispositive power with respect to the securities held by D&D. Dai Siqi disclaims beneficial ownership in the securities held by D&D except for his pecuniary interest therein as sole director of ERM. The address of D&D is Genesis Building, 5th Floor, Genesis Close, George Town, PO Box 446, Grand Cayman, Cayman Islands, KY1-1106. The address of each of ERM and Dai Siqi is Unit 8, 3/F, Qwomar Trading Complex, Blackburne Road, Port Purcell, Road Town Tortola, D8, VG1110.
- (2) Mr. Snyder retired from his roles as Chief Executive Officer and a member of our board of directors in April 2025. This information has been partly obtained from filings under Section 16 of the Exchange Act. Consists of (a) 3,193 shares of common stock, (b) 11,327 shares of common stock subject to outstanding stock options that are exercisable within 60 days of October 31, 2025 and (d) 476 shares issuable upon the exercise of warrants to purchase common stock.
- (3) Ms. Tinnelly ceased serving as Chief Accounting Officer in July 2025. This information has been partly obtained from filings under Section 16 of the Exchange Act. Consists of (a) 614 shares of common stock and (b) 5,218 shares of common stock subject to outstanding stock options that are exercisable within 60 days of October 31, 2025.
- (4) Mr. Burleson resigned from his role as Chief Commercial Officer in September 2025. This information has been partly obtained from filings under Section 16 of the Exchange Act.

## DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock and certain provisions of our Certificate, as currently in effect, and our Bylaws, as will become effective upon the listing of our common stock on the NYSE American, are summaries and are qualified by reference to the Certificate and the Bylaws, which are included as exhibits to the registration statement of which this prospectus is part.

### **General**

The Certificate authorizes us to issue up to 60,000,000 shares of common stock, par value \$0.0001 per share, and 500,000 shares of preferred stock, par value \$10.0 per share. Our board of directors may establish the rights and preferences of the preferred stock from time to time.

On October 31, 2025, we effectuated the Reverse Stock Split and our common stock began trading on a Reverse Stock Split-adjusted basis on the OTCQX Best Market on November 3, 2025 under the existing trading symbol "REED."

As a result of the Reverse Stock Split, every six shares of issued and outstanding common stock were automatically combined into one issued and outstanding share of common stock, without any change in the par value per share. No fractional shares were issued in connection with the Reverse Stock Split and stockholders who otherwise would be entitled to receive fractional shares of common stock received cash in lieu thereof. The Reverse Stock Split reduced the number of shares of common stock outstanding on the effective date of the Reverse Stock Split from 53,673,722 shares to 8,945,454 shares. The number of authorized shares of common stock remains unchanged at 60,000,000 shares.

Proportionate adjustments have been made to the per share exercise price and the number of shares of common stock that may be purchased upon exercise of outstanding stock options and warrants for common stock, and to the number of shares of common stock reserved for future issuance pursuant to the 2020 Plan and 2024 Inducement Plan.

### **Common Stock**

#### ***Voting***

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our stockholders do not have cumulative voting rights in the election of directors. Accordingly, holders of a majority of the voting shares are able to elect all of the directors.

#### ***Dividends***

Subject to preferences that may be applicable to any then-outstanding preferred stock, the holders of common stock are entitled to receive ratably dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

#### ***Liquidation***

In the event of our liquidation, dissolution or winding-up, holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of preferred stock.

#### ***Rights, Preferences, and Privileges***

Except as described below, holders of our common stock have no preemptive, conversion, or subscription rights, and there are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences, and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of our Series A convertible preferred stock and any other series of preferred stock that we may designate and issue in the future.

Pursuant to the Shareholders Agreement, dated as of May 25, 2023, as amended on January 24, 2025, by and between us and D&D, we agreed to provide contractual preemptive rights to D&D. If, at any time, we (or any of our subsidiaries or affiliates) propose to issue equity securities or any securities convertible into or having the rights to purchase any equity securities, then we shall first offer in writing to sell such securities to D&D on the same terms and conditions as proposed by us to any other investors, subject to certain exceptions. In such event, D&D has the option to purchase its pro rata portion of the securities proposed to be offered, calculated on a fully diluted basis, at the price and upon the terms set forth in such writing.

### ***Fully Paid and Nonassessable***

All of our outstanding shares of common stock are, and the shares of common stock to be issued in this offering will be, fully paid and nonassessable.

### **Preferred Stock**

Under our Certificate, our board of directors has the authority, without further action by the stockholders, to issue up to 500,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations, or restrictions thereon and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in our control that may otherwise benefit holders of our common stock and may adversely affect the market price of the common stock and the voting and other rights of the holders of common stock.

### ***Series A Convertible Preferred Stock***

As of September 30, 2025, 9,411 shares of Series A convertible preferred stock were outstanding. In connection with the Reverse Stock Split, the conversion terms of our Series A convertible preferred stock were adjusted automatically to cause each share of Series A convertible preferred stock to be convertible into the number of shares of common stock that would have been issuable if all of the outstanding shares of the Series A convertible preferred stock were converted into common stock immediately prior to the effective time of the Reverse Stock Split. Accordingly, each share of our Series A convertible preferred stock is convertible, at any time by the holder, into 0.0133 shares of our common stock, subject to further adjustment in the event of stock splits, reverse stock splits, stock dividends, recapitalization, reclassification, and similar transactions.

Dividends on our Series A convertible preferred stock are payable at the rate of 5% annually, pro-rata and non-cumulative. The dividend can be paid in cash or, at the discretion of our board of directors, in shares of common stock based on its then fair market value. We cannot declare or pay any dividend on shares of our common stock until the holders of the Series A convertible preferred stock have received their annual dividend. In addition, the holders of the Series A convertible preferred stock are entitled to receive pro rata distributions of dividends on an "as converted" basis with the holders of our common stock.

Except as provided by law, the holders of our Series A convertible preferred stock do not have the right to vote on any matters, including the election of directors. However, so long as any shares of the Series A convertible preferred stock are outstanding, we shall not, without the approval of holders holding a majority of the Series A convertible preferred stock, authorize or issue any equity security having a preference over the Series A convertible preferred stock with respect to dividends, liquidation, redemption or voting, including any other security convertible into or exercisable for any senior preferred stock.

In the event of any liquidation, dissolution or winding up of the company, or if there is a change of control event, the holders of our Series A convertible preferred stock are entitled to receive, prior to distributions to the holders of common stock, \$10.00 per share plus all accrued and unpaid dividends. Thereafter, all remaining assets are distributed pro rata among all security holders. Since June 30, 2008, we have the right, but not the obligation, to redeem all or any portion of the Series A convertible preferred stock at \$10.00 per share, the original issue price, plus all accrued and unpaid dividends.

**Options**

As of September 30, 2025, 47,072 shares of common stock were issuable upon the exercise of outstanding stock options, at a weighted-average exercise price of \$119.16 per share (after giving effect to the Reverse Stock Split).

**Warrants to Purchase Common Stock**

As of September 30, 2025, there were 91,550 shares of common stock issuable upon the exercise of warrants outstanding, at a weighted average exercise price of \$52.32 per share (after giving effect to the Reverse Stock Split). Each warrant entitles the registered holder to purchase one share of common stock at a price per share described below and subject to adjustment as discussed below.

**Exercisability**

The warrants may be converted into shares of common stock at the applicable holder's option.

**Exercise Price**

The exercise price per share of common stock purchasable upon exercise of the warrants (after giving effect to the Reverse Stock Split) is:

- \$192.00 as to 3,334 warrants outstanding;
- \$15.00 as to 52,225 warrants outstanding;
- \$138.00 as to 5,000 warrants outstanding; and
- \$86.34 as to 30,991 warrants outstanding.

**Expiration**

The warrants will expire on:

- December 11, 2025 as to 3,334 warrants outstanding;
- November 26, 2026 as to 52,225 warrants outstanding;
- September 13, 2027 as to 5,000 warrants outstanding; and
- May 19, 2026 as to 30,991 warrants outstanding.

**Transferability**

Subject to applicable laws, the warrants may be transferred at the option of the holders upon completion and delivery to us of a written assignment.

**Adjustments; Change in Control Transaction**

The exercise price and shares of common stock issuable upon exercise of the outstanding warrants are subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock. Further, the exercise price and shares of common stock issuable upon exercise of the warrants are subject to appropriate adjustment in the event we consummate certain change in control or capital reorganization transactions as set forth in such warrant.

In addition, with respect to 91,550 warrants outstanding as of September 30, 2025 (after giving effect to the Reverse Stock Split), in the event we grant, issue or sell any shares of common stock (or securities convertible or exchangeable into common stock) or rights to purchase stock, warrants, securities or other property pro rata to all (or substantially all) of the record holders of any class of shares of common stock (the "Purchase Rights"), then the holders of certain outstanding warrants will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the applicable holder could have acquired if such holder had held the number of shares of common stock acquirable upon complete exercise of the warrant immediately before the date of the grant, issuance or sale of such Purchase Rights.

## Registration Rights

Certain holders of shares of our common stock are entitled to certain rights with respect to registration of such shares under the Securities Act pursuant to the terms of certain registration rights agreements. The registration rights agreements also contain customary provisions relating to expenses and indemnification. We have filed registration statements on Form S-1 for the registration of such registrable securities for resale, and have agreed to maintain the effectiveness of such registration statements until the date on which all of such registrable securities have been sold by the holders or such securities have become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144, among other things.

## Anti-Takeover Effects of Provisions of Our Certificate of Incorporation, Our Second Amended and Restated Bylaws, and Delaware Law

### *Section 203 of the Delaware General Corporation Law*

We are subject to Section 203 of the DGCL. Section 203 generally prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time that such stockholder became an interested stockholder, unless:

- prior to such time the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 ⅔% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation or any direct or indirect majority-owned subsidiary of the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder (in one transaction or a series of transactions);
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested stockholder;
- any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation that has the effect, directly or indirectly, of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- any receipt by the interested stockholder of the benefit, directly or indirectly, of any loans, advances, guarantees, pledges, or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as any entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

### ***Certificate of Incorporation and Second Amended and Restated Bylaws***

Provisions of our Certificate and Bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock.

For example, our authorized but unissued shares of common stock are available for our board of directors to issue without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public or private offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of our authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or other transaction. Our authorized but unissued shares may be used to delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. The board of directors is also authorized to adopt, amend or repeal our Bylaws (provided, however, that no such adoption, amendment, or repeal shall be valid with respect to bylaw provisions which have been adopted, amended, or repealed by the stockholders; and further provided, that bylaw provisions adopted or amended by the board of directors and any powers thereby conferred may be amended, altered, or repealed by the stockholders) which could delay, defer or prevent a change in control.

#### **Choice of Forum**

Our Bylaws provide that, unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware and any appellate court therefrom shall be the sole and exclusive forum for: (a) any derivative claim or cause of action brought on behalf of the Company; (b) any claim or cause of action that is based upon a violation of a duty owed by any current or former director, officer, other employee or stockholder of the Company, to the Company or the Company's stockholders; (c) any claim or cause of action against the Company or any current or former director, officer or other employee of the Company, arising out of or pursuant to any provision of the Delaware General Corporation Law, the Certificate or Bylaws; (d) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of the Certificate or Bylaws (including any right, obligation, or remedy thereunder); (e) any claim or cause of action as to which the Delaware General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware; and (f) any claim or cause of action against the Company or any current or former director, officer or other employee of the Company, governed by the internal affairs doctrine or otherwise related to the Company's internal affairs, in all cases to the fullest extent permitted by applicable law; provided, however, that if such court does not have, or declines to accept, jurisdiction over such a claim or cause of action, then the United States District Court for the District of Delaware shall be the sole and exclusive forum for such claim or cause of action. In addition, the Bylaws provide that the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

#### **Listing**

Our common stock is listed on the OTCQX Best Market under the symbol "REED." We have applied to list our shares of common stock for trading on the NYSE American under the symbol "REED."

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Transfer Online, Inc., telephone (503) 227-2950.

## CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of certain material U.S. federal income tax consequences to non-U.S. holders (as defined below) of the ownership and disposition of our common stock issued pursuant to this offering. This discussion is not a complete analysis of all potential U.S. federal income tax consequences relating thereto, does not address any tax consequences arising under any state, local or non-U.S. tax laws, and does not address the potential application of the Medicare contribution tax on net investment income, any estate, gift, or alternative minimum tax consequences, or the special tax accounting rules under Section 451(b) of the Internal Revenue Code of 1986, as amended, or the Code. This discussion is based on the Code and applicable Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the Internal Revenue Service, or the IRS, all as in effect as of the date hereof. These authorities are subject to differing interpretations and may change, possibly retroactively, resulting in U.S. federal income tax consequences different from those discussed below. We have not requested, and do not intend to request, a ruling from the IRS with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS or a court will agree with such statements and conclusions.

This discussion is limited to non-U.S. holders that purchase our common stock pursuant to this offering and that hold our common stock as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all of the U.S. federal income tax consequences that may be relevant to a particular holder in light of such holder’s circumstances. This discussion also does not consider any specific facts or circumstances that may be relevant to holders subject to special rules under the U.S. federal income tax laws, including but not limited to:

- certain former citizens or long-term residents of the United States;
- partnerships, S corporations, or other pass-through entities or arrangements (and investors therein);
- “controlled foreign corporations;”
- “passive foreign investment companies;”
- corporations that accumulate earnings to avoid U.S. federal income tax;
- banks, financial institutions, investment funds, insurance companies, or brokers, dealers or traders in securities or foreign currencies;
- tax-exempt organizations;
- governmental organizations;
- tax-qualified retirement plans;
- persons that hold our common stock as “qualified small business stock” under Section 1202 of the Code or “Section 1244 stock” under Section 1244 of the Code;
- “qualified foreign pension funds” as defined in Section 897(1)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds;
- real estate investment trusts;
- regulated investment companies;
- persons that own, or have owned, actually or constructively, more than 5% of our common stock at any time (other than as expressly provided below); and
- persons holding our common stock as part of a hedging or conversion transaction, straddle, synthetic security, constructive sale, or other risk reduction strategy or integrated investment.

If a partnership (or an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes) holds our common stock, the U.S. federal income tax treatment of a partner in the partnership generally will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Partnerships holding our common stock and the partners in such partnerships are urged to consult their tax advisors about the particular U.S. federal income tax consequences to them of holding and disposing of our common stock.

**THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR NON-U.S. TAX LAWS, ANY U.S. FEDERAL NON-INCOME TAX LAWS, OR ANY APPLICABLE INCOME TAX TREATY.**

#### **Definition of Non-U.S. Holder**

For purposes of this discussion, a non-U.S. holder is any beneficial owner of our common stock that is neither a “U.S. holder” nor a partnership (including any entity or arrangement treated as a partnership) for U.S. federal income tax purposes. A U.S. holder is any beneficial owner of our common stock that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation (or any entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust (i) whose administration is subject to the primary supervision of a U.S. court and which has one or more “United States persons” (within the meaning of Section 7701(a)(30) of the Code) that have the authority to control all substantial decisions of the trust or (ii) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

#### **Distributions on Our Common Stock**

We have never declared or paid any cash dividends on our capital stock, and we have no present intention to pay cash dividends on our common stock for the foreseeable future. However, if we make cash or other property distributions on our common stock (other than certain pro rata distributions of our stock), such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Any portion of a distribution that exceeds our current and accumulated earnings and profits will constitute a return of capital and will first be applied against and reduce the non-U.S. holder’s tax basis in our common stock, but not below zero. Any amount distributed in excess of tax basis will be treated as gain realized on the sale or other disposition of our common stock and will be treated as described in the section titled “Gain on Sale or Other Taxable Disposition of Our Common Stock” below.

Subject to the discussions below regarding effectively connected income, backup withholding and FATCA (as defined below), dividends paid to a non-U.S. holder of our common stock generally will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty). To receive the benefit of a reduced treaty rate, a non-U.S. holder must furnish us or our paying agent with a valid IRS Form W-8BEN or IRS Form W-8BEN-E (or applicable successor form) and satisfy applicable certification and other requirements. This certification must be provided to us or our paying agent before the payment of dividends and must be updated periodically. If the non-U.S. holder holds our common stock through a financial institution or other agent acting on the non-U.S. holder’s behalf, the non-U.S. holder will be required to provide appropriate documentation to the financial institution or other agent, which then will be required to provide certification to us or our paying agent, either directly or through other intermediaries.

Non-U.S. holders that do not provide the required certification on a timely basis, but that qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If a non-U.S. holder holds our common stock in connection with the conduct of a trade or business in the United States, and dividends paid on our common stock are effectively connected with such non-U.S. holder's U.S. trade or business (and are attributable to such non-U.S. holder's permanent establishment or fixed base in the United States if required by an applicable tax treaty), the non-U.S. holder generally will be exempt from U.S. federal withholding tax. To claim the exemption, the non-U.S. holder must generally furnish a valid IRS Form W-8ECI (or applicable successor form) to the applicable withholding agent.

However, any such effectively connected dividends paid on our common stock generally will be subject to U.S. federal income tax on a net income basis at the regular U.S. federal income tax rates in the same manner as if the non-U.S. holder were a resident of the United States. A non-U.S. holder that is a non-U.S. corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, as adjusted for certain items. Non-U.S. holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

#### **Gain on Sale or Other Taxable Disposition of Our Common Stock**

Subject to the discussions below regarding backup withholding and FATCA, a non-U.S. holder generally will not be subject to U.S. federal income tax on any gain realized on the sale or other taxable disposition of our common stock, unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States, and if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base maintained by the non-U.S. holder in the United States;
- the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year of the sale or other taxable disposition, and certain other requirements are met; or
- our common stock constitutes a "United States real property interest" by reason of our status as a "United States real property holding corporation," or USRPHC, for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding the sale or other taxable disposition or the non-U.S. holder's holding period for our common stock.

Determining whether we are a USRPHC depends on the fair market value of our U.S. real property interests relative to the fair market value of our worldwide real property interests and our other assets used or held for use in a trade or business. We believe that we are not currently, and do not anticipate becoming, a USRPHC for U.S. federal income tax purposes, although there can be no assurance in this regard. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a non-U.S. holder of our common stock will not be subject to U.S. federal income tax so long as (a) the non-U.S. holder owned, directly, indirectly, and constructively, no more than 5% of our common stock at all times within the shorter of (i) the five-year period preceding the disposition or (ii) the holder's holding period and (b) our common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market. There can be no assurance that our common stock will qualify as regularly traded on an established securities market. If a non-U.S. holder's gain on disposition of our common stock is taxable because we are a USRPHC and such non-U.S. holder's ownership of our common stock exceeds 5%, such gain will be taxed on such disposition generally in the same manner as gain that is effectively connected with the conduct of a U.S. trade or business (subject to the provisions under an applicable income tax treaty), except that the branch profits tax generally will not apply to a corporate non-U.S. holder. Prospective investors are encouraged to consult their own tax advisors regarding the possible consequences to them if we are, or were to become, a USRPHC.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular U.S. federal income tax rates in the same manner as if the non-U.S. holder were a resident of the United States. A non-U.S. holder that is a foreign corporation also may be subject to an additional branch profits tax equal to 30% (or such lower rate specified by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, as adjusted for certain items. A non-U.S. holder described in the second bullet point above will be subject to U.S. federal income tax at a flat 30% rate on gain realized upon the sale or other taxable disposition of our common stock, which may be offset by certain U.S.-source capital losses (even though the individual is not considered a resident of the United States), provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses. Non-U.S. holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

#### **Information Reporting and Backup Withholding**

Annual reports are required to be filed with the IRS and provided to each non-U.S. holder indicating the amount of distributions on our common stock paid to such non-U.S. holder and the amount of any tax withheld with respect to those distributions. These information reporting requirements apply even if no withholding was required (because, for instance, the distributions were effectively connected with the non-U.S. holder's conduct of a U.S. trade or business, or withholding was reduced or eliminated by an applicable income tax treaty) and regardless of whether such distributions constitute dividends. This information also may be made available under a specific treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established. Backup withholding, currently at a 24% rate, generally will not apply to payments to a non-U.S. holder of distributions on or the gross proceeds of a disposition of our common stock provided that the non-U.S. holder furnishes the required certification for its non-U.S. status, such as by providing a valid IRS Form W-8BEN, IRS Form W-8BEN-E or IRS Form W-8ECI, or certain other requirements are met. Backup withholding may apply if the payor has actual knowledge, or reason to know, that the non-U.S. holder is a United States person that is not an exempt recipient.

Backup withholding is not an additional tax. If any amount is withheld under the backup withholding rules, non-U.S. holders are urged to consult their U.S. tax advisors regarding the possibility of and procedure for obtaining a refund or a credit against the non-U.S. holder's U.S. federal income tax liability, if any.

#### **Withholding on Foreign Entities**

Sections 1471 through 1474 of the Code, the Treasury Regulations thereunder, and other official guidance (commonly referred to as "FATCA") impose a U.S. federal withholding tax of 30% on certain payments made to a "foreign financial institution" (as specially defined under these rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities certain information regarding certain U.S. account holders of such institution (which include certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) or an exemption applies. FATCA also generally imposes a U.S. federal withholding tax of 30% on certain payments made to a non-financial foreign entity unless such entity provides the withholding agent a certification identifying certain direct and indirect U.S. owners of the entity or an exemption applies. An intergovernmental agreement between the United States and an applicable non-U.S. country may modify these requirements. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. FATCA currently applies to dividends paid on our common stock. The U.S. Treasury released proposed Treasury Regulations which, if finalized in their present form, would eliminate the U.S. federal withholding tax of 30% applicable to the gross proceeds of a sale or other disposition of our common stock. In its preamble to such proposed Treasury Regulations, the U.S. Treasury stated that taxpayers may generally rely on the proposed Treasury Regulations until final Treasury Regulations are issued.

Prospective investors are urged to consult with their tax advisors regarding the potential implications of FATCA on their investment in our common stock.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, AND LOCAL AND NON-U.S. INCOME AND NON-INCOME TAX CONSEQUENCES OF PURCHASING, HOLDING, AND DISPOSING OF OUR COMMON STOCK, INCLUDING ANY TAX REPORTING REQUIREMENTS AND THE CONSEQUENCES OF ANY POTENTIAL CHANGE IN APPLICABLE LAW.

## UNDERWRITING

Subject to the terms and conditions set forth in the underwriting agreement, dated \_\_\_\_\_, 2025 between us and A.G.P./Alliance Global Partners (“A.G.P.”), as representative of the underwriters named below (the “Representative”), we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the shares of our common stock shown opposite its name below:

<b>Underwriter</b>	<b>Number of Shares</b>
A.G.P./Alliance Global Partners	
Roberts & Ryan, Inc.	
<b>Total</b>	<b>1,326,260</b>

The underwriting agreement provides that the obligations of the underwriters are subject to certain conditions precedent such as the receipt by the underwriters of officers’ certificates and legal opinions and approval of certain legal matters by their counsel. The underwriting agreement provides that the underwriters will purchase all of the shares of our common stock if any of them are purchased. We have agreed to indemnify the underwriters and certain of their controlling persons against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares of our common stock subject to their acceptance of the shares of our common stock from us and subject to prior sale. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part. In addition, the underwriters have advised us that they do not intend to confirm sales to any account over which they exercise discretionary authority.

### Over-Allotment Option to Purchase Additional Shares

We have granted to the underwriters an option, exercisable 45 days from the date of this prospectus, to purchase, from time to time, in whole or in part, up to an aggregate of 198,939 shares from us at the public offering price set forth on the cover page of this prospectus, less underwriting discounts and commissions. If the underwriters exercise this option, each underwriter will be obligated, subject to certain conditions, to purchase a number of additional shares approximately proportionate to that underwriter’s initial purchase commitment as indicated in the table above.

### Underwriting Discount, Commission and Expenses

The underwriters have advised us that they propose to offer the shares of our common stock to the public at the public offering price set forth on the cover page of this prospectus and to certain dealers, which may include the underwriters, at that price less a concession not in excess of \$ \_\_\_\_\_ per share of our common stock. The underwriters may allow, and certain dealers may reallow, a discount from the concession not in excess of \$ \_\_\_\_\_ per share of our common stock to certain brokers and dealers. After the initial offering, the Representative may change the offering price and other selling terms.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is \$ \_\_\_\_\_ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters’ option to purchase additional shares.

	<b>Without Option to Purchase Additional Shares</b>	<b>With Full Option to Purchase Additional Shares</b>
<b>Per Share</b>	<b>\$</b>	<b>\$</b>
<b>Total</b>	<b>\$</b>	<b>\$</b>

We have agreed to reimburse the underwriters for accountable legal expenses in an amount equal to \$100,000 and non-accountable expenses not to exceed \$15,000. We estimate expenses payable by us in connection with this offering, other than the underwriting discounts, commissions and expenses referred to above, will be approximately \$300,000.

## Lock-Up Agreements

We have agreed, subject to certain specified exceptions, not to directly or indirectly, for a period of ninety (90) days after the closing of the offering, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, 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; (ii) file or cause to be filed any registration statement with the SEC 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; or (iii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of capital stock of the Company, whether any such transaction described in clause (i), (ii) or (iii) above is to be settled by delivery of shares of capital stock of the Company or such other securities. The foregoing restrictions do not apply to, among other things, and subject in certain cases to various conditions, (i) the filing of a registration statement on Form S-8 for registering an equity incentive plan, (ii) any of the Company's issuances of shares of common stock to employees and/or consultants under the Company's equity incentive plan, and/or (iii) commitments that exist at the time of entering the engagement agreement between the Company and the Representative, for securities to be issued in strategic transactions and/or transactions relating to the regular business activity of the Company.

Our directors, executive officers and 10% and greater stockholders will enter into lock-up agreements prior to the commencement of this offering pursuant to which each lock-up party agrees, subject to limited exceptions set forth below, not to: (i) offer, sell, assign, transfer, pledge, contract to sell or otherwise dispose 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 (the "Lock-Up Securities"), (ii) enter into any swap, hedge or similar agreement or arrangement that transfers in whole or in part, the economic risk of ownership of the Lock-Up Securities, or (iii) engage in any short selling of common stock for a period of ninety (90) days after the date of this prospectus, without the prior written consent of the Representative.

The restrictions in the immediately preceding paragraph do not apply to transfers in Lock-Up Securities, subject in certain cases to various conditions, in connection with, but not limited to, (a) transactions relating to Lock-Up Securities acquired in open market transactions after the completion of the offering; provided that no filing under Section 16(a) of the Exchange Act, shall be required or shall be voluntarily made in connection with such transactions; (b) transfers of Lock-Up Securities (i) as a bona fide gift to any member of the immediate family or to a trust for the benefit of a member of the immediate family (for purposes hereof, "immediate family" means a spouse, child, grandchild or other lineal descendant (including by adoption), father, mother, brother or sister), (ii) by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or an immediate family member, (iii) by operation of law, such as pursuant to a qualified domestic order or as required by a divorce settlement, or (iv) as a bona fide gift to a charity or educational institution; or (c) if the holder is a corporation, partnership, limited liability company or other business entity, any transfers or distributions of Lock-Up Securities to any shareholder, other equityholder, direct or indirect affiliate (as defined therein), general or limited partner, manager or member of, or owner of similar equity interests in, the undersigned, as the case may be, if, in any such case, such transfer is not for value.

## Listing

Our common stock is currently quoted on the OTCQX® Best Market under the symbol "REED." We have applied to list our common stock under the proposed symbol "REED" on the NYSE American. No assurance can be given that our application will be approved by the NYSE American or any other national securities exchange, and we will not consummate this offering unless our common stock is approved for listing on the NYSE American or another national securities exchange.

## Market Making, Stabilization and Other Transactions

The underwriters may make a market in the common stock as permitted by applicable laws and regulations. However, the underwriters are not obligated to do so, and the underwriters may discontinue any market-making activities at any time without notice in their sole discretion. Accordingly, no assurance can be given as to the liquidity of the trading market for the common stock, that you will be able to sell any of the common stock held by you at a particular time or that the prices that you receive when you sell will be favorable.

Pursuant to Regulation M under the Securities Exchange Act of 1934, as amended, the underwriters and certain persons participating in the offering may engage in short sale transactions, stabilizing transactions, syndicate covering transactions or the imposition of penalty bids in connection with this offering. These activities may have the effect of stabilizing or maintaining the market price of the common stock at a level above that which might otherwise prevail in the open market. Establishing short sales positions may involve either “covered” short sales or “naked” short sales.

“Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares of our common stock in this offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares of our common stock or purchasing shares of our common stock in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option to purchase additional shares.

“Naked” short sales are sales in excess of the option to purchase additional shares of our common stock. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares of our common stock in the open market after pricing that could adversely affect investors who purchase in this offering.

A stabilizing bid is a bid for the purchase of shares of our common stock on behalf of the underwriters for the purpose of fixing or maintaining the price of the common stock. A syndicate covering transaction is the bid for or the purchase of shares of our common stock on behalf of the underwriters to reduce a short position incurred by the underwriters in connection with the offering. Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. A penalty bid is an arrangement permitting the underwriters to reclaim the selling concession otherwise accruing to a syndicate member in connection with the offering if the common stock originally sold by such syndicate member are purchased in a syndicate covering transaction and therefore have not been effectively placed by such syndicate member.

Neither we, nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. The underwriters are not obligated to engage in these activities and, if commenced, may end any of these activities at any time.

#### **Passive Market Making**

The underwriters may also engage in passive market making transactions in our common stock on the NYSE American in accordance with Rule 103 of Regulation M during a period before the commencement of offers or sales of shares of our common stock in this offering and extending through the completion of distribution. A passive market maker must display its bid at a price not in excess of the highest independent bid of that security. However, if all independent bids are lowered below the passive market maker’s bid, that bid must then be lowered when specified purchase limits are exceeded. Passive market making may cause the price of our common stock to be higher than the price that otherwise would exist in the open market in the absence of those transactions. The underwriters are not required to engage in passive market making and, if commenced, may end passive market making activities at any time.

#### **Electronic Distribution**

This prospectus in electronic format may be made available on websites or through other online services maintained by the underwriters, or by their affiliates. Other than this prospectus in electronic format, the information on any underwriter’s website and any information contained in any other website maintained by any of the underwriters is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or the underwriters in their capacity as underwriters, and should not be relied upon by investors.

**Other Activities and Relationships**

The underwriters and certain of their respective affiliates are full service financial institutions engaged in a wide range of activities for their own accounts and the accounts of customers, which may include, among other things, corporate finance, mergers and acquisitions, merchant banking, equity and fixed income sales, trading and research, derivatives, foreign exchange, futures, asset management, custody, clearance and securities lending. The underwriters and certain of their affiliates have, from time to time, performed, and may in the future perform, various investment banking and financial advisory services for us and our affiliates, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of its business, the underwriters and their respective affiliates may, directly or indirectly, hold long or short positions, trade and otherwise conduct such activities in or with respect to debt or equity securities and/or bank debt of, and/or derivative products. Such investment and securities activities may involve our securities and instruments. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

**Selling Restrictions**

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 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 its knowledge and belief, result in compliance with any applicable laws and regulations and all offers and sales of securities by it will be made on the same terms.

## LEGAL MATTERS

The validity of the shares of common stock being offered by this prospectus will be passed upon for us by Cooley LLP, Chicago, Illinois. The underwriters are being represented by Thompson Hine LLP, New York, New York.

## EXPERTS

The financial statements of Reed's Inc. as of December 31, 2024 and 2023, and for the years then ended, appearing in Reed's Inc.'s Annual Report on Form 10-K for the year ended December 31, 2024, have been audited by Weinberg & Company, P.A., independent registered public accounting firm, as set forth in their report thereon and incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance upon such report of Weinberg & Company, P.A. pertaining to such financial statements given on the authority of such firm as experts in auditing and accounting.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1, including exhibits and schedules, under the Securities Act, with respect to the shares of common stock being offered by this prospectus. This prospectus, which constitutes part of the registration statement, does not contain all of the information in the registration statement and its exhibits. For further information with respect to us and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

We are subject to the information and periodic and current reporting requirements of the Exchange Act and we, in accordance therewith, file reports, proxy statements, and other information with the SEC. These reports, proxy statements, and other information are available at [www.sec.gov](http://www.sec.gov). We also maintain a website at <https://investor.reedsinc.com>, at which you may access these materials 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.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information from other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus.

We incorporate by reference into this prospectus and the registration statement of which this prospectus is a part the information or documents listed below that we have filed with the SEC (File No. 001-32501):

- our Annual Report on [Form 10-K](#) for the year ended December 31, 2024, filed with the SEC on March 28, 2025;
- our Quarterly Reports on Form 10-Q for the quarter ended [March 31, 2025](#), filed with the SEC on May 13, 2025, for the quarter ended [June 30, 2025](#), filed with the SEC on August 13, 2025, and for the quarter ended [September 30, 2025](#), filed with the SEC on November 4, 2025;
- our Current Reports on Form 8-K filed with the SEC on [January 6, 2025](#), [January 28, 2025](#), [February 6, 2025](#), [March 21, 2025](#), [April 17, 2025](#), [June 4, 2025](#), [July 8, 2025](#), [September 12, 2025](#), [September 16, 2025](#), [September 25, 2025](#), [September 26, 2025](#), [October 2, 2025](#) and [October 31, 2025](#) (each to the extent the information in such reports is filed and not furnished); and
- the description of our common stock contained in Exhibit 3(vi) of our Annual Report on [Form 10-K](#) for the year ended December 31, 2024, filed with the SEC on March 28, 2025, including any amendments or reports filed for the purpose of updating such description.

In addition, all documents (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) that are filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial registration statement of which this prospectus is a part and prior to the effectiveness of such registration statement and all documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of the offering (excluding any information furnished rather than filed) shall be deemed to be incorporated by reference into this prospectus.

Notwithstanding the statements in the preceding paragraphs, no document, report or exhibit (or portion of any of the foregoing) or any other information that we have “furnished” to the SEC pursuant to the Exchange Act shall be incorporated by reference into this prospectus.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference in this prospectus, including exhibits to these documents. You should direct any requests for documents to Reed’s, Inc., Attn: Corporate Secretary, 501 Merritt 7 Corporate Park, Norwalk, Connecticut 06851, telephone (800) 997-3337. You also may access these filings on our website at <https://investor.reedsinc.com>. We do not incorporate the information on our website into this prospectus and you should not consider any information on, or that can be accessed through, our website as part of this prospectus (other than those filings with the SEC that we specifically incorporate by reference into this prospectus).

Any statement contained in a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed modified, superseded or replaced for purposes of this prospectus to the extent that a statement contained in this prospectus modifies, supersedes or replaces such statement.

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1,326,260 Shares  
Common Stock



**Reed's, Inc.**

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PRELIMINARY PROSPECTUS

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*Sole-Book Running Manager*

**A.G.P.**

*Co-Manager*

**Roberts & Ryan**

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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 the underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the U.S. Securities and Exchange Commission (the "SEC") registration fee, the Financial Industry Regulatory Authority, Inc. ("FINRA") filing fee.

	<b>Amount Paid or to be Paid</b>
SEC registration fee	\$ 1,588
NYSE American listing fee	\$ 60,000
FINRA filing fee	\$ 3,433
Printing and engraving expenses	\$ 2,500
Legal fees and expenses	\$ 150,000
Accounting fees and expenses	\$ 75,000
Transfer agent and registrar fees and expenses	\$ 2,200
Miscellaneous fees and expense	\$ 5,279
Total	\$ 300,000

**Item 14. Indemnification of Directors and Officers.**

We are subject to the laws of Delaware on corporate matters, including their indemnification provisions. Section 102 of the DGCL 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 where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

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

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

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

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

We enter into indemnification agreements with our executive officers and directors, which provide that we shall, subject to certain exceptions, indemnify and pay, advance or reimburse the costs of defense of such person who is made party to a proceeding by reason of their indemnified capacities. Each indemnified party agrees to repay any payment, advance or reimbursement of expenses made by us to such person if it is determined, following the final disposition of the claim, that the person is not entitled to indemnification by us with respect to a claim for which indemnification was obtained.

#### **Item 15. Recent Sales of Unregistered Securities.**

Set forth below is information regarding all unregistered securities issued by us since January 1, 2022 through the date of this registration statement. The share information presented in this item is historical and does not give effect to the Reverse Stock Split.

- a) In January 2022, we issued 2,000 shares of common stock valued at approximately \$37,000 to John J. Bello, our former chairman and interim Chief Executive Officer, and Nancy E. Bello, as Co-Trustees of The John and Nancy Bello Revocable Living Trust, as consideration for pledge of securities.
- b) In March 2022, we entered into a securities purchase agreement with certain institutional and accredited investors pursuant to which the investors agreed to purchase 371,892 shares of our common stock and warrants to purchase 185,946 shares of common stock in a private placement (including 64,963 shares of our common stock and warrants to purchase 32,482 shares of common stock to investors who were our then officers and directors). The warrants have an exercise price of \$14.39 per share for a period of five years commencing six months from the closing date of March 11, 2022. The purchase price per share of common stock and associated warrant was \$14.00 for certain investors and was \$17.51 for investors who were officers and directors. The net proceeds to us, after deducting placement agent fees and other offering expenses, was approximately \$5.0 million. Our officers and directors purchased approximately \$1.1 million of the securities in this offering.
- c) In May 2022, we issued approximately \$11.2 million of convertible notes payable (the "Original Notes") to entities affiliated with Whitebox Advisors LLC ("Whitebox"). The Original Notes bear interest at 10% per annum (with 5% per annum payable in cash and 5% per annum payable in kind ("PIK")) by adding such PIK interest to the principal amount of the notes), are secured by substantially all of our assets (including all of its intellectual property) and are subject to a collateral sharing agreement with Alterna Capital, our then-existing secured lender. The Original Notes mature the earlier of September 30, 2025 or the scheduled maturity of any unsecured indebtedness incurred by us that is junior in right of payment.

At the time of issuance of the Original Notes, we also granted the investors an option to purchase up to an additional \$12.0 million aggregate principal amount of "Option Notes" (collectively with the Original Notes, the "Notes").

During 2022, we made interest payments of \$1.9 million, including the issuance of 229,871 shares of common stock valued at \$1.3 million pursuant to the Notes.

During 2023, we issued 82,438 shares of our common stock valued at approximately \$273,000 as inducement for a waiver under the Notes.

In October 2024, Whitebox sold and assigned its entire interest in the \$10.3 million of Notes, interest added to the Original Notes of \$1.1 million and the Option Notes of \$6.5 million to D&D Holdings Ltd. ("D&D"), including accrued interest of \$4.6 million in the aggregate amount of \$22.5 million.

In November 2024, we entered into an exchange agreement with D&D, wherein outstanding principal of the Notes amounting to \$17.9 million and accrued interest of \$4.6 million, or an aggregate of \$22.5 million, were converted into 22,478,074 shares of our common stock.

- d) In May 2023, we entered into a securities purchase agreement with D&D, as the lead investor, and certain of our affiliates pursuant to which the investors agreed to purchase an aggregate of 1,566,732 shares of common stock and warrants to purchase 313,346 shares of common stock. The purchase price was \$2.585 per share with the associated warrant. The net proceeds to us, after deducting offering expenses, was approximately \$4.0 million. The warrants are exercisable for a term of three years at an exercise price of \$2.50 per share.
- e) During the first quarter of 2024, we received approximately \$4.1 million in gross proceeds from three significant stockholders of our company pursuant to Simple Agreements for Future Equity ("SAFE") investments. The SAFE investments were to convert into the next equity financing on the same terms and conditions as investors in our next equity financing at the lesser of \$1.50 per share or the per share price in the financing.

In September 2024, as part of a securities purchase agreement described below, we issued 2,731,205 shares of common stock valued at \$4.1 million upon conversion of the SAFEs.

- f) In September 2024, we entered into a securities purchase agreement with various purchasers for the issuance of 4,000,000 common shares for total consideration of \$6.0 million. The various purchasers also held investment in our SAFEs as described above. In addition to the issuance of the 2,731,205 shares of common stock valued at \$4.1 million upon conversion of the SAFEs described above, we issued an additional 1,268,795 common shares to D&D for consideration of \$1.9 million. Subsequently, we issued and sold an additional 76,668 shares pursuant to this transaction for additional gross proceeds of approximately \$115,000.
- g) In December 2024, we entered into a securities purchase agreement with accredited investors. We issued 14,705,882 shares of common stock for aggregate gross proceeds of \$10 million. The price per share was \$0.68.
- h) In June 2025, we entered into a securities purchase agreement with accredited investors, including D&D. We issued 3,225,806 shares of common stock for aggregate gross proceeds of \$3.0 million. The price per share was \$0.93.
- i) In September 2025, we entered into a securities purchase agreement with accredited investors. We issued 5,000,000 shares of common stock for aggregate proceeds of \$5.0 million. The price per share was \$1.00.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. Unless otherwise specified above, we believe these transactions were exempt from registration under the Securities Act of 1933, as amended (the "Securities Act") in reliance on Section 4(a)(2) of the Securities Act (and Regulation D or Regulation S promulgated thereunder) or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or under benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed on the share certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us. The sales of these securities were made without any general solicitation or advertising.

**Item 16. Exhibits and Financial Statement Schedules.**

**(a) Exhibits.**

The exhibits listed below are filed as part of this registration statement.

<b>Exhibit No.</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed Herewith</b>
1.1	<a href="#">Form of Underwriting Agreement</a>					X
3.1	<a href="#">Certificate of Incorporation of Reed's, Inc., as amended through February 5, 2025</a>	10-K	001-32501	3(i)	3/28/2025	
3.2	<a href="#">Certificate of Amendment of the Certificate of Incorporation of Reed's, Inc., effective October 31, 2025.</a>	8-K	001-32501	3.1	10/31/2025	
3.3	<a href="#">Amended and Restated Bylaws of Reed's, Inc., as amended through February 1, 2025</a>	10-K	001-32501	3(ii)	3/28/2025	
3.4	<a href="#">Amendment to Amended and Restated Bylaws of Reed's, Inc., dated as of September 25, 2025.</a>	8-K	001-32501	3.1	9/25/2025	
3.5	<a href="#">Form of Second Amended and Restated Bylaws of Reed's Inc., to be effective upon the listing of our common stock on the NYSE American LLC.</a>					X
4.1	<a href="#">Form of Warrant, to Raptor / Harbor Reed's SPV LLC, issued on December 11, 2020</a>	10-K	001-32501	4.1	3/30/2021	
4.2	<a href="#">Form of Warrant to Union Square Park Partners, LP, issued on March 11, 2022</a>	8-K	001-32501	4.1	3/21/2022	
4.3	<a href="#">Form of Warrant 2022 PIPE, issued on March 11, 2022</a>	8-K	001-32501	4.1	3/14/2022	
4.4	<a href="#">Form of Secured Convertible Promissory Note, issued on May 9, 2022</a>	8-K	001-32501	4.1	5/10/2022	

<b>Exhibit No.</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed Herewith</b>
4.5	<a href="#">Form of Warrant, issued on May 25, 2023</a>	8-K	001-32501	4.1	5/31/2023	
4.6	<a href="#">Form of Common Stock Certificate</a>					X
5.1	<a href="#">Opinion of Cooley LLP</a>					X
10.1 <sup>+</sup>	<a href="#">Form of Reed's Inc. Indemnification Agreement</a>	10-K	001-32501	10.1	4/1/2024	
10.2 <sup>+</sup>	<a href="#">Reed's Inc. 2020 Equity Incentive Plan, as amended December 30, 2021</a>	10-K	001-32501	10.2	4/1/2024	
10.3 <sup>+</sup>	<a href="#">Reed's Inc. 2024 Inducement Plan</a>	10-K	001-32501	10.3	4/1/2024	
10.4 <sup>+</sup>	<a href="#">Employment Agreement by and between Reed's Inc. and Douglas W. McCurdy dated January 31, 2025</a>	10-K	001-32501	10.4	3/28/2025	
10.5 <sup>+</sup>	<a href="#">Amended and Restated Employment Agreement by and between Reed's Inc. and Norman E. Snyder, Jr. dated June 24, 2020</a>	10-K	001-32501	10.22	4/15/2022	
10.6	<a href="#">Lease by and between Merritt 7 Venture LLC and Reed's Inc. dated May 10, 2024</a>	10-Q	001-32501	10.2	8/13/2024	
10.7	<a href="#">Form of Securities Purchase Agreement by and among Reed's Inc. and certain investors dated March 10, 2022</a>	8-K	001-32501	10.1	3/14/2022	
10.8	<a href="#">Form of Registration Rights Agreement by and among Reed's Inc. and certain investors dated March 10, 2022</a>	8-K	001-32501	10.2	3/14/2022	
10.9	<a href="#">Registration Rights Agreement by and between Reed's Inc. and purchasers dated May 9, 2022</a>	8-K	001-32501	10.2	5/10/2022	

<b>Exhibit No.</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed Herewith</b>
10.10	<a href="#">Securities Purchase Agreement by and between Reed's Inc. and D&amp;D Source of Life Holding Ltd. and certain other investors, dated May 25, 2023</a>	8-K	001-32501	10.1	5/31/2023	
10.11	<a href="#">Shareholders Agreement by and between Reed's Inc. and D&amp;D Source of Life Holding Ltd., dated May 25, 2023</a>	8-K	001-32501	10.2	5/31/2023	
10.12	<a href="#">Amendment to Shareholders Agreement by and between Reed's Inc. and D&amp;D Source of Life Holding Ltd., dated January 24, 2025</a>	8-K	001-32501	10.1	1/28/2025	
10.13	<a href="#">Board Observer Agreement by and between Reed's Inc. and D&amp;D Source of Life Holding Ltd., dated January 24, 2025</a>	8-K	001-32501	10.2	1/28/2025	
10.14	<a href="#">Registration Rights Agreement by and between Reed's Inc., and D&amp;D Source of Life Holdings Ltd. and certain other investors, dated May 25, 2023</a>	8-K	001-32501	10.3	5/31/2023	
10.15	<a href="#">Securities Purchase Agreement by and between Reed's Inc. and certain investors, dated December 30, 2024</a>	8-K	001-32501	10.1	1/6/2025	
10.16	<a href="#">Registration Rights Agreement by and between Reed's Inc. and certain investors, dated December 30, 2024</a>	8-K	001-32501	10.2	1/6/2025	
10.17	<a href="#">Senior Secured Loan and Security Agreement among Reed's Inc., the lenders party thereto, and Cantor Fitzgerald Securities, as administrative agent and collateral agent, dated November 14, 2024</a>	8-K	001-32501	10.1	11/19/2024	
10.18	<a href="#">Grant of Security Interest in Copyright Rights by Reed's Inc. in favor of Cantor Fitzgerald Securities, as collateral agent, dated November 14, 2024</a>	8-K	001-32501	10.3	11/19/2024	

<b>Exhibit No.</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed Herewith</b>
10.19	<a href="#"><u>Grant of Security Interest in Patent Rights by Reed's Inc. in favor of Cantor Fitzgerald Securities, as collateral agent, dated November 14, 2024</u></a>	8-K	001-32501	10.4	11/19/2024	
10.20	<a href="#"><u>Grant of Security Interest in Trademark Rights by Reed's Inc. in favor of Cantor Fitzgerald Securities, as collateral agent, dated November 14, 2024</u></a>	8-K	001-32501	10.5	11/19/2024	
10.21	<a href="#"><u>Subordination Agreement by and among Reed's Inc., Wilmington Savings Fund society, FSB, as holder representative and collateral agent, D&amp;D Source of Life Holding Ltd. and Cantor Fitzgerald Securities, as administrative agent and collateral agent, dated November 14, 2024</u></a>	8-K	001-32501	10.6	11/19/2024	
10.22	<a href="#"><u>Pledge Agreement by Reed's Inc. in favor of Cantor Fitzgerald Securities, in its capacity as collateral agent, dated November 14, 2024</u></a>	8-K	001-32501	10.7	11/19/2024	
10.23	<a href="#"><u>Exchange Agreement by and between Reed's Inc. and D&amp;D Source of Life Holding Ltd., dated November 18, 2024</u></a>	8-K	001-32501	10.8	11/19/2024	
10.24	<a href="#"><u>Option Exercise and Sixth Amendment to the 10% Secured Convertible Notes by and between Reed's Inc. and each holder and Wilmington Savings Fund Society, FSB, holder representative and collateral agent, dated August 1, 2024</u></a>	10-Q	001-32501	10.1	8/13/2024	
10.25	<a href="#"><u>Securities Purchase Agreement by and between Reed's Inc. and investors, dated September 9, 2024</u></a>	8-K	001-32501	10.1	9/13/2024	
10.26	<a href="#"><u>Registration Rights Agreement by and between Reed's Inc. and investors, dated September 9, 2024</u></a>	8-K	001-32501	10.2	9/13/2024	
10.27	<a href="#"><u>Limited Waiver and Deferral Agreement by and between Reed's Inc. and each holder and Wilmington Savings Fund Society, FSB, holder representative and collateral agent, dated May 17, 2024</u></a>	10-Q	001-32501	10.3	5/20/2024	

<b>Exhibit No.</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Exhibit</b>	<b>Filing Date</b>	<b>Filed Herewith</b>
10.28	<a href="#">Amendment to Limited Waiver, Deferral, and Amendment and Restatement Agreement by and between Reed's Inc. and each holder and Wilmington Savings Fund Society, FSB, holder representative and collateral agent, dated April 1, 2024</a>	8-K/A	001-32501	10.1	4/3/2024	
10.29	<a href="#">Limited Waiver, Deferral, and Amendment and Restatement Agreement by and between Reed's Inc. and each holder and Wilmington Savings Fund Society, FSB, holder representative and collateral agent, dated February 12, 2024</a>	8-K	001-32501	10.3	2/13/2024	
10.30 <sup>+</sup>	<a href="#">Retirement, Transition and Separation Agreement by and between Reed's, Inc. and Norman E. Snyder, Jr. dated April 14, 2025</a>	8-K	001-32501	10.1	4/17/2025	
10.31 <sup>+</sup>	<a href="#">Executive Employment Agreement by and between Reed's, Inc. and Cyril Wallace dated April 16, 2025</a>	8-K	001-32501	10.2	4/17/2025	
10.32 <sup>+</sup>	<a href="#">Form of Indemnification Agreement, which is incorporated by reference to Exhibit 10.1 to Form 10-K as filed with the SEC April 1, 2024.</a>	8-K	001-32501	10.3	4/17/2025	
10.33 <sup>+</sup>	<a href="#">Form of Employee Confidentiality and Proprietary Rights Agreement</a>	8-K	001-32501	10.4	4/17/2025	
10.34	<a href="#">Form of Securities Purchase Agreement by and between Reed's, Inc. and certain accredited investors dated May 28, 2025.</a>	10-Q	001-32501	10.4	8/13/25	
10.35	<a href="#">Form of Registration Rights Agreement by and between Reed's, Inc. and certain accredited investors dated May 28, 2025.</a>	10-Q	001-32501	10.4	8/13/25	

Exhibit No.	Description	Form	File No.	Exhibit	Filing Date	Filed Herewith
10.36	<a href="#">Form of Securities Purchase Agreement, dated as of September 12, 2025, by and between Reed's, Inc. and certain accredited investors.</a>	8-K	001-32501	10.1	9/16/2025	
10.37	<a href="#">Form of Registration Rights Agreement, dated as of September 12, 2025, by and between Reed's, Inc. and certain accredited investors.</a>	8-K	001-32501	10.1	9/16/2025	
10.38	<a href="#">Amendment No. 1 to Senior Secured Loan and Security Agreement among Reed's, Inc., the lenders party thereto, and Cantor Fitzgerald Securities, as administrative agent and collateral agent, dated September 26, 2025</a>	8-K	001-32501	10.1	9/26/2025	
14	<a href="#">Code of Ethics</a>	10-K	001-32501	14	4/1/2024	
21.1	<a href="#">Subsidiaries of Reed's Inc.</a>	10-K	001-32501	21	3/28/2025	
23.1	<a href="#">Consent of Weinberg &amp; Co., PA, Independent Registered Public Accounting Firm</a>					X
23.2	<a href="#">Consent of Cooley LLP (included in Exhibit 5.1)</a>					X
23.3	<a href="#">Power of Attorney (included on the signature page)</a>					X
107	<a href="#">Filing Fee Table</a>					X

+ Indicates management contract or compensatory plan.

**(b) Financial statement schedules.**

No financial statement schedules are provided because the information called for is not required or is shown either in the financial statements or the notes thereto.

**Item 17. Undertakings.**

Insofar as indemnification for liabilities arising under 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 SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment 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 Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

- (a) 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.
- (b) 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.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Norwalk, State of Connecticut, on the 12th day of November, 2025.

**REED'S, INC.**

By: /s/ Cyril A. Wallace, Jr.  
Name: Cyril A. Wallace, Jr.  
Title: Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Cyril A. Wallace, Jr. and Douglas W. McCurdy and each of them, as his or her true and lawful attorney-in-fact and agents, each with the full power of substitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments), and to sign any registration statement for the same offering covered by this registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Cyril A. Wallace, Jr.</u> Cyril A. Wallace, Jr.	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	November 12, 2025
<u>/s/ Douglas W. McCurdy</u> Douglas W. McCurdy	Chief Financial Officer <i>(Principal Financial Officer and Principal Accounting Officer)</i>	November 12, 2025
<u>/s/ Shufen Deng</u> Shufen Deng	Chairperson of the Board of Directors	November 12, 2025
<u>/s/ Sam Van</u> Sam Van	Director	November 12, 2025
<u>/s/ Rudolf Bakker</u> Rudolf Bakker	Director	November 12, 2025
<u>/s/ Michael C. Tu</u> Michael C. Tu	Director	November 12, 2025

UNDERWRITING AGREEMENT

[ ], 2025

A.G.P./Alliance Global Partners  
590 Madison Avenue  
28th Floor  
New York, NY 10022

As Representative of the Underwriters  
named on Schedule 1 hereto

Ladies and Gentlemen:

The undersigned, Reed's, Inc., a corporation incorporated under the law of the State of Delaware (the "Company"), hereby confirms its agreement (this "Agreement") with the underwriter or underwriters, as the case may be, named in Schedule 1 hereto (each, an "Underwriter" and, collectively, the "Underwriters"), for whom A.G.P./Alliance Global Partners is acting as representative (in such capacity, the "Representative"), as follows:

1. Purchase and Sale of Shares.

(a) Shares.

(i) Nature and Purchase of Shares.

(A) On the basis of the representations and warranties herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell to the Underwriters an aggregate of [ ] shares of its common stock, par value \$0.0001 per share (the "Common Stock"). The [ ] shares of Common Stock referred to in this Section 1(a) are hereinafter referred to as the "Firm Shares."

(B) The Underwriters, severally and not jointly, agree to purchase from the Company the number of Firm Shares set forth on Schedule 1 attached hereto and made a part hereof at a purchase price of \$[ ] (the "Purchase Price") per Firm Share (or 93% of the public offering price per Firm Share). The Firm Shares are to be offered initially to the public at the offering price set forth on the cover page of the Prospectus (as defined in Section 2(a)(i)(A) hereof).

(C) The Underwriters undertake that the Firm Shares shall be allocated to a minimum of 400 U.S. beneficial holders.

(ii) Firm Share Payment and Delivery.

(A) Delivery and payment for the Firm Shares shall be made no later than 2:00 p.m., Eastern time, on the first (1st) Business Day following the effective date (the "Effective Date") of the Registration Statement (as defined in Section 2(a)(i)(A) below) (or the second (2nd) Business Day following the Effective Date if the Registration Statement is declared effective after 4:01 p.m., Eastern time) or at such earlier time as shall be agreed upon by the Representative and the Company, at the offices of Thompson Hine LLP, 300 Madison Avenue, 27<sup>th</sup> Floor, New York, New York ("Underwriters' Counsel"), or at such other place (or by electronic transmission) as shall be agreed upon by the Representative and the Company. The hour and date of delivery and payment for the Firm Shares is called the "Closing Date."

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(B) Payment for the Firm Shares shall be made on the Closing Date by wire transfer in federal (immediately available) funds, payable to the order of the Company prior to the Company's delivery of the Firm Shares, through the facilities of the Depository Trust Company ("DTC") or via a DWAC transfer, for the account of the Representative. If the Representative so elects, the Firm Shares shall be registered in such name or names and in such authorized denominations as the Representative may request in writing two full Business Days prior to the Closing Date. The Company shall not be obligated to sell or deliver the Firm Shares except upon tender of payment by the Representative for all of the Firm Shares or via delivery versus payment for the Firm Shares. The term "Business Day," means any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions are authorized or obligated by law to close in New York, New York.

(iii) Over-allotment Option.

(A) Option Shares. For the purposes of covering any over-allotments in connection with the distribution and sale of the Firm Shares, the Company hereby grants to the Representative an option (the "Over-allotment Option") to purchase, in the aggregate, up to [ ] additional shares of Common Stock (the "Option Shares"), representing fifteen percent (15%) of the Firm Shares sold in the offering, from the Company, at the Purchase Price. The Firm Shares and the Option Shares are collectively referred to as the "Securities." The Securities shall be issued directly by the Company and shall have the rights and privileges described in the Registration Statement, the Pricing Disclosure Package and the Prospectus referred to below. The offering and sale of the Securities is herein referred to as the "Offering."

(B) Exercise of Option. The Over-allotment Option granted pursuant to Section 1(a)(iii)(A) hereof may be exercised by the Representative as to all (at any time) or any part (from time to time) for any number of the Option Shares within 45 days after the Effective Date. The Representative shall not be under any obligation to purchase any of the Option Shares prior to the exercise of the Over-allotment Option. 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 email or facsimile or other electronic transmission setting forth the number of the Option Shares to be purchased and the date and time for delivery of and payment for the Option Shares (the "Option Closing Date"), which shall not be later than five (5) 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 Underwriters' Counsel or at such other place (including remotely by facsimile or 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, the Option Closing Date will be as set forth in the notice. Upon exercise of the Over-allotment Option with respect to all or any portion of the Option Shares subject to the terms and conditions set forth herein, (i) the Company shall become obligated to sell to the Underwriters the number of the Option Shares specified in such notice and (ii) the Underwriters shall purchase the number of Option Shares (subject to such adjustments to eliminate fractional shares as the Representative may determine) that bears the same proportion to the total number of Option Shares to be purchased as the number of the Firm Shares as set forth in Schedule 1 opposite the name of such Underwriters bears to the total number of Firm Shares.

(C) Payment and Delivery. Payment for the Option Shares shall be made on the Option Closing Date by wire transfer in Federal (immediately available) funds, payable to the order of the Company prior to the Company's delivery of the Option Shares, through the facilities of DTC or DWAC transfer, for the account of the Underwriters. If the Representative so elects, the Option Shares shall be registered in such name or names and in such authorized denominations as the Underwriters may request in writing at least two full Business Days prior to the Option Closing Date. The Company shall not be obligated to sell or deliver the Option Shares except upon tender of payment by the Underwriters for applicable Option Shares.

2. Representations and Warranties of the Company. The Company represents and warrants to the Underwriters as of the Applicable Time (as defined below) and as of the Closing Date and as of the Option Closing Date, if any, as follows (unless otherwise indicated, all references to the Company in this Section 2 shall refer to the Company and its subsidiary incorporated under the laws of the United States, if any):

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(a) Filing of Registration Statement

(i) Pursuant to the Securities Act

(A) The Company has filed with the U.S. Securities and Exchange Commission (the "Commission") a registration statement, and an amendment or amendments thereto, on Form S-1 (File No. 333-[●]), including any related prospectus or prospectuses, for the registration of the Securities under the Securities Act of 1933, as amended (the "Securities Act"), which registration statement and amendment or amendments have been prepared by the Company in conformity in all material respects with the requirements of the Securities Act and the rules and regulations of the Commission under the Securities Act (the "Securities Act Regulations") and, as of the Effective Date thereof, will contain all material statements that are required to be stated therein in accordance with the Securities Act and the Securities Act Regulations. Except as the context may otherwise require, such registration statement, as amended, on file with the Commission at the time the registration statement became effective (including the Preliminary Prospectus included in the registration statement, financial statements, schedules, exhibits and all other documents filed as a part thereof or incorporated therein by reference and all information deemed to be a part thereof as of the Effective Date pursuant to paragraph (b) of Rule 430A of the Securities Act Regulations (the "Rule 430A Information")), is referred to herein as the "Registration Statement." If the Company files any registration statement pursuant to Rule 462(b) of the Securities Act Regulations, then after such filing, the term "Registration Statement" shall include such registration statement filed pursuant to Rule 462(b). The Registration Statement has been declared effective by the Commission as of the Applicable Time (as defined below).

(B) Each prospectus used prior to the effectiveness of the Registration Statement, and each prospectus that omitted the Rule 430A Information that was used after such effectiveness and prior to the execution and delivery of this Agreement, is herein called a "Preliminary Prospectus." The Preliminary Prospectus that was included in the Registration Statement immediately prior to the Applicable Time is hereinafter called the "Pricing Prospectus." The final prospectus in the form first furnished to the Underwriters for use in the Offering is hereinafter called the "Prospectus." Any reference to the "most recent Preliminary Prospectus" shall be deemed to refer to the latest Preliminary Prospectus included in the Registration Statement.

(C) "Applicable Time" means 4:30 p.m., Eastern time, on the date of this Agreement.

(D) "Issuer Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 of the Securities Act Regulations ("Rule 433"), including without limitation any "free writing prospectus" (as defined in Rule 405 of the Securities Act Regulations) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the Offering that does not reflect the final terms, 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).

(E) "Issuer General Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a "*bona fide* electronic road show," as defined in Rule 433) (the "Bona Fide Electronic Road Show").

(F) "Issuer Limited Use Free Writing Prospectus" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

(G) "Pricing Disclosure Package" means any Issuer General Use Free Writing Prospectus issued at or prior to the Applicable Time, and the Pricing Prospectus, all considered together.

(ii) Pursuant to the Exchange Act. The Company has filed with the Commission a Form 8-A providing for the registration pursuant to Section 12(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), of the Common Stock. The Company has taken no action designed to, or 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.

(b) Stock Exchange Listing. The Common Stock has been approved for listing on the New York Stock Exchange American (the "Exchange"), subject to official notice of issuance, and the Company has taken no action designed to, or likely to have the effect of, delisting the Common Stock from the Exchange, nor has the Company received any notification that the Exchange is contemplating terminating such listing.

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(c) No Stop Orders, etc. Neither the Commission nor, to the Company's knowledge, any state regulatory authority has issued any order preventing or suspending the use of the Registration Statement, any Preliminary Prospectus or the Prospectus or has instituted or, to the Company's knowledge, threatened to institute, any proceedings with respect to such an order. The Company has complied with each request (if any) from the Commission for additional information.

(d) Disclosures in Registration Statement.

(i) Compliance with Securities Act and 10b-5 Representation.

(A) Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the Securities Act and the Securities Act Regulations. Each Preliminary Prospectus, including the prospectus filed as part of the Registration Statement as originally filed or as part of any amendment or supplement thereto, and the Prospectus, at the time each was filed with the Commission, complied in all material respects with the requirements of the Securities Act and the Securities Act Regulations. Each Preliminary Prospectus delivered to the Underwriters for use in connection with this Offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(B) Neither the Registration Statement nor any amendment thereto, at its effective time, as of the Applicable Time, at the Closing Date or at any Option Closing Date (if any), contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to statements made or statements omitted in reliance upon and in conformity with written information furnished to the Company with respect to the Underwriters by the Underwriters expressly for use in the Registration Statement, the Pricing Prospectus or the Prospectus or any amendment thereof or supplement thereto. The parties acknowledge and agree that such information provided by or on behalf of any Underwriter consists solely of the disclosure contained in the "Underwriting" section of the Prospectus (the "Underwriters' Information"); and

(C) The Pricing Disclosure Package, as of the Applicable Time, at the Closing Date or at any Option Closing Date (if any), did not, does not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Issuer Limited Use Free Writing Prospectus does not conflict in any material respect with the information contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, and each such Issuer Limited Use Free Writing Prospectus, as supplemented by and taken together with the Pricing Prospectus as of the Applicable Time, did not include an 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; provided, however, that this representation and warranty shall not apply to the Underwriters' Information.

(D) Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Date or at any Option Closing Date, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to the Underwriters' Information.

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(ii) Disclosure of Agreements. The agreements and documents described in the Registration Statement, the Pricing Disclosure Package and the Prospectus conform in all material respects to the descriptions thereof contained therein and there are no agreements or other documents required by the Securities Act and the Securities Act Regulations to be described in the Registration Statement, the Pricing 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 or other instrument (however characterized or described) to which the Company is a party or by which it is or may be bound or affected and (i) that is referred to in the Registration Statement, the Pricing Disclosure Package and the Prospectus, and (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 therefor may be brought. None of such agreements or instruments has been assigned by the Company, and neither the Company nor, to the Company's knowledge, any other party is in material default thereunder and, to the Company's knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a material default thereunder, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus. To the Company's knowledge, performance by the Company of the material provisions of such agreements or instruments 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 assets or business (each, a "Governmental Entity"), including, without limitation, those relating to environmental laws and regulations, that would reasonably be expected to constitute a Material Adverse Change.

(iii) Prior Securities Transactions. Since January 1, 2025, no securities of the Company have been sold by the Company or by or on behalf of, or for the benefit of, any person or persons controlling, controlled by or under common control with the Company, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Preliminary Prospectus.

(iv) Regulations. The disclosures in the Registration Statement, the Pricing Disclosure Package and the Prospectus concerning the effects of federal, state, local and all foreign laws, rules and regulations relating to the Company's business as currently contemplated are correct in all material respects.

(e) Changes after Dates in Registration Statement.

(i) No Material Adverse Change. Except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, since the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except as otherwise specifically stated therein: (i) there has been no material adverse change in the financial position or results of operations of the Company, nor to the Company's knowledge, any change or development that, singularly or in the aggregate, would reasonably be expected to involve a material adverse change, in or affecting the condition (financial or otherwise), results of operations, business, assets or prospects of the Company and its subsidiaries, considered as one entity (a "Material Adverse Change"); and (ii) there have been no material transactions entered into by the Company that are not in the ordinary course of business, other than as contemplated pursuant to this Agreement; and (iii) no officer or director of the Company has resigned from any position with the Company.

(ii) Recent Securities Transactions, etc. Subsequent to the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Prospectus, and except as may otherwise be indicated or contemplated herein or disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has not: (i) issued any securities (other than (i) grants under any stock compensation plan and (ii) shares of common stock issued upon exercise or conversion of option, warrants or convertible securities described in the Registration Statement, the Pricing Disclosure Package and the Prospectus) or incurred any material 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.

(f) Independent Accountants. To the knowledge of the Company, Weinberg & Company, P.A. (the "Auditor"), whose report is filed with the Commission as part of the Registration Statement, the Pricing Disclosure Package and the Prospectus, is an independent registered public accounting firm as required by the Securities Act and the Securities Act Regulations and the Public Company Accounting Oversight Board.

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(g) Financial Statements, etc. The financial statements, including the notes thereto and supporting schedules included or incorporated by reference in the Registration Statement, the Pricing Disclosure Package and the Prospectus, fairly present in all material respects the financial position and the results of operations of the Company at the dates and for the periods to which they apply; and such financial statements have been prepared in conformity with United States generally accepted accounting principles (“GAAP”), consistently applied throughout the periods involved (provided that unaudited interim financial statements are subject to year-end audit adjustments that are not expected to be material in the aggregate and do not contain all footnotes required by GAAP); and the supporting schedules included in the Registration Statement present fairly in all material respects the information required to be stated therein. Except as included therein, no historical or pro forma financial statements are required to be included in the Registration Statement, the Pricing Disclosure Package or the Prospectus under the Securities Act or the Securities Act Regulations. The pro forma and pro forma as adjusted financial information and the related notes, if any, included in the Registration Statement, the Pricing Disclosure Package and the Prospectus have been properly compiled and prepared in all material respects in accordance with the applicable requirements of the Securities Act and the Securities Act Regulations and present fairly in all material respects the information shown therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. All disclosures contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission), if any, comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Securities Act, to the extent applicable. Each of the Registration Statement, the Pricing Disclosure Package and the Prospectus discloses all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the Company with unconsolidated entities or other persons that may have a material current or future effect on the Company’s financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, (a) the Company has not incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions other than in the ordinary course of business, (b) the Company has not declared or paid any dividends or made any distribution of any kind with respect to its capital stock, (c) there has not been any change in the capital stock of the Company (other than (i) grants under any stock compensation plan and (ii) shares of common stock issued upon exercise or conversion of option, warrants or convertible securities described in the Registration Statement, the Pricing Disclosure Package and the Prospectus), and (d) there has not been any Material Adverse Change in the Company’s long-term or short-term debt.

(h) Authorized Capital; Options, etc. The Company had, at the date or dates indicated in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the duly authorized, issued and outstanding capitalization as set forth therein (other than for subsequent issuances, if any, pursuant to employee benefit plans, or upon the exercise of outstanding options or warrants or the settlement of restricted stock units, in each case described in the Registration Statement, the Pricing Disclosure Package and the Prospectus). Based on the assumptions stated in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company will have on the Closing Date the adjusted stock capitalization set forth therein. There are no stock options, warrants, or other rights to purchase or otherwise acquire any authorized, but unissued shares of Common Stock of the Company or any security convertible or exercisable into shares of Common Stock of the Company other than those described in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(i) Valid Issuance of Securities, etc.

(i) Outstanding Securities. All issued and outstanding securities of the Company issued prior to the transactions contemplated by this Agreement have been duly authorized and validly issued and are fully paid and non-assessable; and except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, none of such securities were issued in violation of the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company. The authorized shares of Common Stock and other securities of the Company to be outstanding upon consummation of the Offering conform in all material respects to all statements relating thereto contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus. The offers and sales of the outstanding shares of Common Stock 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 of such shares, exempt from such registration requirements.

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(ii) Securities Sold Pursuant to this Agreement. The Securities have been duly authorized for issuance and sale and, when issued and paid for, will be validly issued, fully paid and non-assessable; the Securities 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, except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and all corporate action required to be taken for the authorization, issuance and sale of the Securities has been duly and validly taken; the Securities conform in all material respects to all statements with respect thereto contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(j) Registration Rights of Third Parties. Except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, no holders of any securities of the Company or any rights exercisable for or convertible or exchangeable into securities of the Company have the right to require the Company to register any such securities of the Company under the Securities Act or to include any such securities in a registration statement to be filed by the Company (except for any such rights that have been waived).

(k) Validity and Binding Effect of Agreements. This Agreement has been duly and validly authorized by the Company, and, when executed and delivered and assuming due execution and delivery by the other parties thereto, will constitute, the valid and binding agreements of the Company, enforceable against the Company in accordance with its respective terms, except: (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally; (ii) as enforceability of any indemnification or contribution provision may be limited under the federal and state securities laws; and (iii) 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 therefor may be brought.

(l) No Conflicts, etc. The execution, delivery and performance by the Company of this Agreement and all ancillary documents, the consummation by the Company of the transactions herein and therein contemplated and the compliance by the Company with the terms hereof and thereof do not and will not, with or without the giving of notice or the lapse of time or both: (i) result in a breach of, or conflict with any of the terms and provisions of, or constitute a material default under, or result in the creation, modification, termination or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any agreement or instrument to which the Company is a party; (ii) result in any violation of the provisions of the Company's Certificate of Incorporation (as the same may be amended or restated from time to time, the "Charter") or the by-laws of the Company (as the same may be amended or restated from time to time, the "Bylaws"); or (iii) violate any existing applicable law, rule, regulation, judgment, order or decree of any Governmental Entity having jurisdiction over the Company as of the date hereof, except in the cases of clauses (i) and (iii) for such breaches, conflicts or violations which would not reasonably be expected to have a Material Adverse Change.

(m) Regulatory. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus or as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change: (i) the Company has not received notice from any Governmental Entity alleging or asserting noncompliance with any Applicable Laws (as defined in clause (ii) below) or Authorizations (as defined in clause (iii) below); (ii) the Company is and has been in material compliance with federal, state or foreign statutes, laws, ordinances, rules and regulations applicable to the Company (collectively, "Applicable Laws"); (iii) the Company possesses all material licenses, certificates, approvals, clearances, consents, authorizations, qualifications, registrations, permits, and supplements or amendments thereto required by any such Applicable Laws and/or to carry on its businesses as now conducted ("Authorizations") and to the Company's knowledge, such Authorizations are valid and in full force and effect and the Company is not in violation of any term of any such Authorizations; (iv) the Company has not received notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Entity or third party alleging that any product, operation or activity is in violation of any Applicable Laws or Authorizations or has any knowledge that any such Governmental Entity or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding, nor, to the Company's knowledge, has there been any material noncompliance with or violation of any Applicable Laws by the Company that would reasonably be expected to require the issuance of any such communication or result in an investigation, corrective action, or enforcement action by any Governmental Entity; and (v) the Company has not received notice that any Governmental Entity has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations or has any knowledge that any such Governmental Entity has threatened or is considering such action. Neither the Company nor, to the Company's knowledge, any of its directors, officers, employees or agents has been convicted of any crime under any Applicable Laws.

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(n) No Defaults; Violations. To the Company's knowledge, no material default exists in the due performance and observance of any term, covenant or condition of any material license, contract, indenture, mortgage, deed of trust, note, loan or credit agreement, or any other agreement or instrument evidencing an obligation for borrowed money, or any other material agreement or instrument to which the Company is a party or by which the Company may be bound or to which any of the properties or assets of the Company is subject. The Company is not, to its knowledge, (i) in violation of any term or provision of its Charter or Bylaws, or (ii) in violation of any franchise, license, permit, applicable law, rule, regulation, judgment or decree of any Governmental Entity applicable to the Company, except for such defaults or violations the consequences of which would not reasonably be expected to result in a Material Adverse Change.

(o) Corporate Power; Licenses; Consents.

(i) Conduct of Business. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has all requisite corporate power and authority, and has all necessary authorizations, approvals, orders, licenses, certificates and permits of and from all governmental regulatory officials and bodies that it needs as of the date hereof to conduct its business purpose as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, except where such failure would not reasonably be expected to result in a Material Adverse Change.

(ii) Transactions Contemplated Herein. The Company has all corporate power and authority to enter into this Agreement and to carry out the provisions and conditions hereof, and all consents, authorizations, approvals and orders required in connection therewith have been obtained. No consent, authorization or order of, and no filing with, any court, government agency or other body is required for the valid issuance, sale and delivery of the Securities and the consummation of the transactions and agreements contemplated by this Agreement and as contemplated by the Registration Statement, the Pricing Disclosure Package and the Prospectus, except with respect to applicable federal and state securities laws and the rules and regulations of the Financial Industry Regulatory Authority, Inc. ("FINRA").

(p) D&O Questionnaires. To the Company's knowledge, all information contained in the questionnaires (the "Questionnaires") completed by each of the Company's directors, officers and 5% shareholders immediately prior to the Offering (the "Insiders") as supplemented by all information concerning the Company's directors, officers and principal stockholders as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, provided to the Representative, is true and correct in all material respects and the Company has not become aware of any information which would cause the information disclosed in the Questionnaires to become materially inaccurate and incorrect.

(q) Litigation; Governmental Proceedings. There is no material action, suit, proceeding, inquiry, arbitration, investigation, litigation or governmental proceeding pending or, to the Company's knowledge, threatened against, or involving the Company or, to the Company's knowledge, any executive officer or director which has not been disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus which is required to be disclosed, in each case which individually or in the aggregate, is reasonably expected to result in a Material Adverse Change.

(r) Good Standing. The Company has been duly organized and is validly existing as a corporation and is in good standing under the laws of the State of Delaware as of the date hereof, and is duly qualified to do business and is in good standing in each other jurisdiction in which its ownership or lease of property or the conduct of business requires such qualification, except where the failure to qualify, singularly or in the aggregate, would not have or reasonably be expected to result in a Material Adverse Change.

(s) Insurance. The Company will carry insurance in such amounts and covering such risks which the Company believes are reasonably adequate and as is customary for companies engaged in similar businesses in similar industries. The Company has no reason to believe that it will not be able to obtain comparable coverage from insurers as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected to result in a Material Adverse Change.

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(t) Transactions Affecting Disclosure to FINRA.

(i) Finder's Fees. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, there are no claims, payments, arrangements, agreements or understandings relating to the payment of a finder's, consulting or origination fee by the Company or any Insider with respect to the sale of the Securities hereunder or any 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.

(ii) Payments Within Twelve (12) Months. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, 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; (ii) any FINRA member; or (iii) any person or entity that has any direct or indirect affiliation or association with any FINRA member, within the twelve (12) Months period immediately preceding the Effective Date.

(iii) Use of Proceeds. None of the net proceeds of the Offering will be paid by the Company to any participating FINRA member or its affiliates, except as specifically authorized herein.

(iv) FINRA Affiliation. There is no (i) officer or director of the Company, (ii) to the Company's knowledge, beneficial owner of 10% or more of any class of the Company's securities or (iii) to the Company's knowledge, beneficial owner of the Company's unregistered equity securities which were acquired during the 180-day period immediately preceding the original filing of the Registration Statement that, in each case, is an affiliate or associated person of a FINRA member participating in the Offering (as determined in accordance with the rules and regulations of FINRA).

(v) Information. All information provided by the Company in its FINRA Questionnaire to Underwriters' Counsel specifically for use by Underwriters' Counsel in connection with its Public Offering System filings (and related disclosure) with FINRA is true, correct and complete in all material respects.

(u) Foreign Corrupt Practices Act. Neither the Company nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any other person acting on behalf of the Company, has, directly or indirectly, given or agreed to give any money, gift or similar benefit (other than legal price concessions to customers in the ordinary course of business) to any customer, supplier, employee or agent of a customer or supplier, or official or employee of any governmental agency or instrumentality of any government (domestic or foreign) or any political party or candidate for office (domestic or foreign) or other person who was, is, or may be in a position to help or hinder the business of the Company (or assist it in connection with any actual or proposed transaction) that (i) might subject the Company to any damage or penalty in any civil, criminal or governmental litigation or proceeding, (ii) if not given in the past, might have had a Material Adverse Change or (iii) if not continued in the future, might adversely affect the assets, business, operations or prospects of the Company. 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 Foreign Corrupt Practices Act of 1977, as amended.

(v) Compliance with OFAC. Neither the Company nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any other person acting on behalf of the Company, is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"), and the Company will not, directly or indirectly, use the proceeds of the Offering hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(w) Money Laundering Laws. The operations of the Company are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "Money Laundering Laws"); and no action, suit or proceeding by or before any Governmental Entity involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

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(x) Officers' Certificate. Any certificate signed by any duly authorized officer of the Company and delivered to the Representative or to Underwriters' Counsel pursuant to this Agreement shall be deemed a representation and warranty by the Company to the Representative as to the matters covered thereby.

(y) Lock-Up Agreements, Schedule 2 hereto contains a complete and accurate list of the Company's officers, directors and certain shareholders (collectively, the "Lock-Up Parties"). The Company has caused each of the Lock-Up Parties to deliver to the Underwriter an executed Lock-Up Agreement, in the form attached hereto as Exhibit A (the "Lock-Up Agreement"), prior to the execution of this Agreement.

(z) Subsidiaries. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has no direct or indirect subsidiaries or variable interest entities and does not hold any equity interests in any other entity.

(aa) Related Party Transactions. There are no business relationships or related party transactions involving the Company or any other person required to be described in the Registration Statement, the Pricing Disclosure Package and the Prospectus that have not been described as required.

(bb) Board of Directors. The Board of Directors of the Company comprises the persons set forth under the heading of the Pricing Prospectus and the Prospectus captioned "Management." The qualifications of the persons serving as board members and the overall composition of the board comply with the Exchange Act, the rules and regulations promulgated under the Exchange Act (the "Exchange Act Regulations"), the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder (the "Sarbanes-Oxley Act") applicable to the Company and the listing rules of the Exchange.

(cc) Sarbanes-Oxley Compliance.

(i) Disclosure Controls. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has developed and currently maintains disclosure controls and procedures that will comply with Rule 13a-15 or 15d-15 under the Exchange Act Regulations applicable to it, and such controls and procedures are effective to ensure that all material information concerning the Company will be made known on a timely basis to the individuals responsible for the preparation of the Company's Exchange Act filings and other public disclosure documents.

(ii) Compliance. Except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company is, or at the Applicable Time and on the Closing Date will be, in material compliance with the provisions of the Sarbanes-Oxley Act applicable to it, and has implemented or will implement such programs and taken reasonable steps to ensure the Company's future compliance (not later than the relevant statutory and regulatory deadlines therefor) with all of the material provisions of the Sarbanes-Oxley Act.

(dd) Accounting Controls. Except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company maintains systems of "internal control over financial reporting" (as defined under Rules 13a-15 and 15d-15 under the Exchange Act Regulations) that comply in all material respects with the requirements of the Exchange Act and have been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to, 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. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company is not aware of any material weaknesses in its internal controls. The Company's auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies and material weaknesses, if any, in the design or operation of internal controls over financial reporting which are known to the Company's management and that have adversely affected or are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and (ii) any fraud, if any, known to the Company's management, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

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(ee) No Investment Company Status. The Company is not and, after giving effect to the Offering and the application of the proceeds thereof as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, will not be, required to register as an “investment company,” as defined in the Investment Company Act of 1940, as amended.

(ff) No Labor Disputes. No material labor dispute with the employees of the Company exists or, to the knowledge of the Company, is imminent.

(gg) Intellectual Property Rights. To the Company’s knowledge, the Company has, or can acquire on reasonable terms, ownership of and/or license to, or otherwise has the right to use, all inventions, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), patents and patent rights trademarks, service marks and trade names, copyrights, (collectively “Intellectual Property”) material to carrying on its businesses as described in the Pricing Prospectus. The Company has not received any correspondence relating to any Intellectual Property, including notice of: (A) infringement or misappropriation of, or conflict with, any Intellectual Property of a third party; (B) asserted rights of others with respect to any Intellectual Property of the Company; or (C) assertions that any Intellectual Property of the Company is invalid or otherwise inadequate to protect the interest of the Company. There are no third parties who have been able to establish any material rights to any Intellectual Property, except for the retained rights of the owners or licensors of any Intellectual Property that is licensed to the Company. There is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the validity, enforceability or scope of any Intellectual Property of the Company or (B) challenging the Company’s rights in or to any Intellectual Property or (C) that the Company materially infringes, misappropriates or otherwise violates or conflicts with any Intellectual Property or other proprietary rights of others, that in each case (if the subject of any unfavorable decision, ruling or finding), individually or in the aggregate, would have or would reasonably be expected to have a Material Adverse Change.

(hh) Taxes. The Company has filed all returns (as hereinafter defined) required to be filed with taxing authorities prior to the date hereof or has duly obtained extensions of time for the filing thereof. Except as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus, the Company has paid all taxes (as hereinafter defined) shown as due and payable on such returns that were filed and has paid all taxes imposed on or assessed against the Company, except for such exceptions as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Change. The provisions for taxes payable, if any, shown on the financial statements included or incorporated by reference in 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. Except as disclosed in writing to the Underwriters, (i) no issues have been raised (and are currently pending) by any taxing authority in connection with any of the returns or taxes asserted as due from the Company, and (ii) no waivers of statutes of limitation with respect to the returns or collection of taxes have been given by or requested from the Company. The term “taxes” means 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 whatever, 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.

(ii) Employee Benefit Laws. To its knowledge, the Company is not in violation of or has not received notice of any violation with respect to any federal or state law relating to discrimination in the hiring, promotion or pay of employees, nor any applicable federal or state wages and hours law, nor any state law precluding the denial of credit due to the neighborhood in which a property is situated, the violation of any of which would reasonably be expected to have a Material Adverse Change.

(jj) Industry Data. The statistical and market-related data included in each of the Registration Statement, the Pricing Disclosure Package and the Prospectus are based on or derived from sources that the Company reasonably and in good faith believes are reliable and accurate or represent the Company’s good faith estimates that are made on the basis of data derived from such sources.

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(kk) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Pricing Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(ll) Export and Import Laws. The Company, and, to the Company's knowledge, any director, officer, agent or employee of, or other person associated with or acting on behalf of the Company, has acted at all times in compliance with applicable Export and Import Laws (as defined below) in all material respects and there are no claims, complaints, charges, investigations or proceedings pending or expected or, to the knowledge of the Company, threatened between the Company or its Subsidiary and any governmental authority under any Export or Import Laws. The term "Export and Import Laws" means the Arms Export Control Act, the International Traffic in Arms Regulations, the Export Administration Act of 1979, as amended, the Export Administration Regulations, and all other laws and regulations of the United States government regulating the provision of services to non-U.S. parties or the export and import of articles or information from and to the United States of America, and all similar laws and regulations of any foreign government regulating the provision of services to parties not of the foreign country or the export and import of articles and information from and to the foreign country to parties not of the foreign country.

(mm) Integration. Neither the Company, nor any of its affiliates, nor 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 the Offering to be integrated with prior offerings by the Company for purposes of the Securities Act that would require the registration of any such securities under the Securities Act.

(nn) Confidentiality and Non-Competition. To the Company's knowledge, no director, officer, key employee or consultant of the Company is subject to any confidentiality, non-disclosure, non-competition agreement or non-solicitation agreement with any employer or prior employer that would reasonably be expected to materially affect his ability to be and act in his respective capacity with the Company or be expected to result in a Material Adverse Change.

(oo) Smaller Reporting Company. As of the time of filing of the Registration Statement, the Company was a "smaller reporting company," as defined in Rule 12b-2 of the Exchange Act Regulations.

(pp) Compliance. (i) At the earliest time after the filing of the Registration Statement that the Company made a bona fide offer (within the meaning of Rule 164(h)(2) of the Securities Act) and (ii) at the date of this Agreement, neither the Company nor any subsidiary of the Company in the preceding three years has: (w) been convicted of a felony or misdemeanor or has been made the subject of a judicial or administrative decree or order as described in Rule 405, (x) been the subject of a bankruptcy petition or insolvency or similar proceeding, (y) had a registration statement be the subject of a proceeding under Section 8 of the Securities Act, or (z) been, and is not currently, the subject of a proceeding under Section 8A of the Securities Act in connection with the offering of the Securities, all as described in Rule 405.

(qq) Controlled Entities. The principal subsidiaries and consolidated entities listed on Exhibit 21 of the Registration Statement shall be referred to hereinafter each as a "Controlled Entity" and collectively as "Controlled Entities." Each Controlled Entity has been duly organized and is validly existing under the laws of the jurisdiction of its organization (to the extent such concept exists in such jurisdiction), with power and authority (corporate and other) to own its properties and conduct its business as described in the Registration Statement, the Pricing Disclosure Package and the Prospectus; and, to the extent applicable, each Controlled Entity is duly qualified to do business as a foreign corporation in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not be reasonably likely to result in a Material Adverse Effect; the constitutive documents of each Controlled Entity comply with the requirements of applicable laws of the jurisdiction of its organization and are in full force and effect. Except as may not be required by applicable law, all of the issued and outstanding share capital of each Controlled Entity has been duly authorized and validly issued and is fully paid (to the extent such concept exists or is applicable in such jurisdiction), and such share capital is owned, directly or indirectly, by the Company as set forth in the Registration Statement, the Pricing Disclosure Package and Prospectus, free from liens, encumbrances and claims, except to the extent that such liens, encumbrances or claims would not reasonably be expected to have a Material Adverse Effect. Except as disclosed in the Registration Statement, the Pricing Disclosure and the Prospectus, (i) no Controlled Entities is currently prohibited, directly or indirectly, from paying any dividends to the Company (or the Company's subsidiary that holds the outstanding equity interest of such Controlled Entity); and (ii) no Controlled Entity is prohibited, directly or indirectly, from making any other distribution on such Controlled Entity's equity capital, from repaying to the Company any loans or advances to such Controlled Entity from the Company or any of the Company's subsidiaries. To the Company's knowledge, none of the Controlled Entities or any of their properties, assets or revenues are entitled to any right of immunity on the grounds of sovereignty from any legal action, suit or proceeding, from set-off or counterclaim, from the jurisdiction of any court, from services of process, from attachment prior to or in aid of execution of judgment, or from any other legal process or proceeding for the giving of any relief or for the enforcement of any judgment.

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3. Covenants of the Company. The Company covenants and agrees as follows:

(a) Amendments to Registration Statement. During the period when a prospectus relating to the Shares is required by the Securities Act to be delivered, the Company shall deliver to the Underwriters, prior to filing, any amendment or supplement to the Registration Statement or Prospectus proposed to be filed after the Effective Date and not file any such amendment or supplement to which the Underwriters shall reasonably object in writing; provided however, that this Section 3(a) shall not be applicable with respect to any supplements to the Registration Statement filed solely for the purpose of supplementing the Registration Statement or Prospectus with a report filed with the Commission by the Company pursuant to the Exchange Act.

(b) Federal Securities Laws.

(i) Compliance. The Company, subject to Section 3 (b)(ii), shall comply with the requirements of Rule 430A of the Securities Act Regulations, and will notify the Underwriters promptly, and confirm the notice in writing (which may be by electronic mail), (i) when any post-effective amendment to the Registration Statement shall become effective or any amendment or supplement to the Prospectus shall have been filed; (ii) of the receipt of any comments from the Commission; (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information; (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or, to the Company's knowledge, threatening, of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the Securities Act concerning the Registration Statement and (v) if the Company becomes the subject of a proceeding under Section 8A of the Securities Act in connection with the Offering of the Securities. The Company shall effect all filings required under Rule 424(b) of the Securities Act Regulations, in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and shall take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order, prevention or suspension and, if any such order is issued, to obtain the lifting thereof at the earliest possible moment.

(ii) Continued Compliance. The Company shall comply with the Securities Act, the Securities Act Regulations, the Exchange Act and the Exchange Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the Pricing Disclosure Package and the Prospectus. If at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the Securities Act Regulations ("Rule 172"), would be) required by the Securities Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) amend or supplement the Pricing Disclosure Package or the Prospectus in order that the Pricing Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the Pricing Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the Securities Act or the Securities Act Regulations, the Company will promptly (A) give the Underwriters notice of such event; (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the Pricing Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any proposed filing or use, furnish the Underwriters with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Underwriters or Underwriters' Counsel shall reasonably object. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Underwriters notice of any filings made pursuant to the Exchange Act or the Exchange Act Regulations within 48 hours prior to the Applicable Time. The Company shall give the Underwriters notice of its intention to make any such filing from the Applicable Time until the later of the Closing Date and the exercise in full or expiration of the Over-allotment Option specified in Section 1(a)(iii) hereof and will furnish the Underwriters with copies of the related document(s) a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Underwriters or Underwriters' Counsel shall reasonably object.

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(c) Delivery to the Underwriters of Registration Statements. The Company has delivered or made available or shall deliver or make available to the Underwriters and the Underwriters' Counsel, without charge, signed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith) and signed copies of all consents and certificates of experts, and will also deliver to the Underwriters, without charge, a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) Delivery to the Underwriters of Prospectuses. The Company has delivered or made available or will deliver or make available to each Underwriter, without charge, as many copies of each Preliminary Prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the Securities Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriter will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) Listing. The Company shall use its commercially reasonable efforts to effect the listing of the Common Stock on the Exchange.

(f) Reports to the Underwriters; Transfer Agent.

(i) Periodic Reports, etc. For a period of one (1) year after the date of this Agreement, at the Underwriters' request, the Company shall furnish or make available to the Underwriters copies of such financial statements and other periodic and special reports as the Company from time to time furnishes generally to holders of any class of its securities and also promptly furnish or make available to the Underwriters: (i) a copy of each periodic report the Company shall be required to file with the Commission under the Exchange Act and the Exchange Act Regulations; (ii) a copy of every press release and every news item and article with respect to the Company or its affairs which was released by the Company and filed or furnished on a Current Report on Form 8-K; (iii) a copy of each Current Report on Form 8-K prepared and filed by the Company; and (iv) five copies of each registration statement filed by the Company under the Securities Act. Documents filed with the Commission pursuant to its EDGAR system or otherwise filed with the Commission or made publicly available shall be deemed to have been delivered to the Underwriter pursuant to this Section 3(f)(i).

(ii) Transfer Agent. The Company shall maintain a transfer agent and registrar for the Common Stock.

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(g) Payment of Expenses.

(i) General Expenses Related to the Offering. The Company hereby agrees to pay 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 Securities to be sold in the Offering with the Commission; (b) all actual Public Offering Filing System filing fees associated with the review of the Offering by FINRA; (c) all fees and expenses relating to the listing of the Common Stock on the Exchange; (d) all fees, expenses and disbursements, if any, relating to the registration or qualification of the Securities under the "blue sky" securities laws of such states and other jurisdictions as the Representative may reasonably designate (including, without limitation, all filing and registration fees, and the reasonable fees and disbursements of "blue sky" counsel); (e) all actual fees, expenses and disbursements relating to the registration, qualification or exemption of the Securities under the securities laws of such foreign jurisdictions as the Representative may reasonably designate; (f) the costs of all mailing and printing of the Registration Statements, Prospectuses and all amendments, supplements and exhibits thereto and as many preliminary and final Prospectuses as the Representative may reasonably deem necessary; (g) the costs of preparing, printing and delivering certificates representing the Securities as the Representative may reasonably deem necessary; (h) fees and expenses of the transfer agent for the Common Stock; (i) stock transfer and/or stamp taxes, if any, payable upon the transfer of securities from the Company to the Representative; (j) the fees and expenses of the Company's Auditor; (k) the fees and expenses of the Company's legal counsel and other agents; and (l) the due diligence fees and expenses of the Representative (including, without limitation, domestic and foreign legal counsel, background checks, travel expenses and other diligence expenses), provided, however, that such fees and expenses, taken together with (A) the fees described in clause (d) above, and (B) the costs, fees and expenses incurred by the Underwriters in connection with determining their compliance with the rules and regulations of FINRA related to the Underwriters' participation in the offering and distribution of the Shares, including any related filing fees and the legal fees of, and disbursements by, counsel to the Underwriters, shall not exceed a total of \$100,000. The Representative may deduct from the net proceeds of the Offering payable to the Company on the Closing Date, or any Option Closing Date, if any, the expenses set forth herein (as limited by this Section 3(g)(i)) to be paid by the Company to the Representative, provided, however, that in the event that the Offering is terminated, the Company agrees to reimburse the Underwriters pursuant to Section 8(c) hereof.

(ii) Non-accountable Expenses. The Company further agrees that, in addition to the expenses payable pursuant to Section 3(g)(i), on the Closing Date it shall pay to the Representative, by deduction from the net proceeds of the Offering contemplated herein, a non-accountable expense allowance up to \$15,000 pursuant to the Terms of Engagement between the Company and the Representative.

(h) Application of Net Proceeds. The Company shall apply the net proceeds from the Offering received by it in a manner consistent with the application thereof described under the caption "Use of Proceeds" in the Registration Statement, the Pricing Disclosure Package and the Prospectus.

(i) Rule 158. The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its security holders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, Rule 158(a) under Section 11(a) of the Securities Act.

(j) Stabilization. Neither the Company nor, to its knowledge, any of its employees, directors or stockholders (without the consent of the Representative) has taken or shall take, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result in, under Regulation M of 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 Securities.

(k) Internal Controls. The Company shall 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.

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(l) Accountants. The Company shall continue to retain an independent registered public accounting firm for a period of at least three (3) years after the date of this Agreement or for such shorter period as the Company may be subject to the requirements of the Securities Act or Exchange Act, as applicable.

(m) FINRA. For a period of 60 days from the later of the Closing Date or the Option Closing Date, the Company shall advise the Representative (who shall make an appropriate filing with FINRA) if it is or becomes aware that (i) any officer or director of the Company, (ii) any beneficial owner of 10% or more of any class of the Company's securities or (iii) any beneficial owner of the Company's unregistered equity securities which were acquired during the 180 days immediately preceding the original filing of the Registration Statement is or becomes an affiliate or associated person of a FINRA member participating in the Offering (as determined in accordance with the rules and regulations of FINRA).

(n) No Fiduciary Duties. The Company acknowledges and agrees that the Underwriters' responsibility to the Company is solely contractual in nature and that none of the Underwriters or their affiliates or any selling agent 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.

(o) Company Lock-Up Agreements.

(i) The Company, on behalf of itself and any successor entity, agrees that, without the prior written consent of the Representative, it will not, for a period of ninety (90) days after the closing of the offering (the "Lock-Up Period"), (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, 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; (ii) 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 (other than pursuant to a registration statement on Form S-8 for employee benefit plans); or (iii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of capital stock of the Company, whether any such transaction described in clause (i), (ii) or (iii) above is to be settled by delivery of shares of capital stock of the Company or such other securities, in cash or otherwise.

(ii) The restrictions contained in this Section 3(o) shall not apply to (i) the Securities to be sold hereunder; (ii) the issuance by the Company of shares of Common Stock upon the exercise of an outstanding stock option or warrant or the conversion of a security outstanding on the date hereof and disclosed in the Registration Statement and the Pricing Disclosure Package, (iii) the filing of any registration statement on Form S-8, and the issuance of securities registered thereunder, the grant by the Company of stock options, stock awards, restricted stock units or other equity awards, or the issuance of shares of capital stock of the Company or securities convertible into or exercisable for capital stock (whether upon the exercise of stock options or otherwise) to employees, officers, directors, advisors, or consultants of the Company pursuant to the terms of a plan in effect on the date hereof and disclosed in the Pricing Prospectus, or (iv) the offer or issuance or agreement to issue by the Company of Common Stock or securities convertible into, exercisable for or which are otherwise exchangeable for or represent the right to receive Common Stock in connection with mergers, acquisitions, joint ventures, strategic alliances, commercial or other collaborative relationships or licensing arrangements or any other similar non-capital raising transactions.

(p) Blue Sky Qualifications. The Company shall use its commercially reasonable efforts, in cooperation with the Representative, if necessary, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representative may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(q) Reporting Requirements. The Company, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the Securities Act, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act and Exchange Act Regulations. Additionally, the Company shall report the use of proceeds from the issuance of the Securities as may be required under Rule 463 under the Securities Act Regulations.

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4. Conditions of Underwriters' Obligations. The obligations of the Underwriters to purchase and pay for the Securities, as provided herein, shall be subject to (i) the continuing accuracy of the representations and warranties of the Company as of the date hereof and as of each of the Closing Date and the Option Closing Date, if any; (ii) the accuracy of the statements of officers of the Company made pursuant to the provisions hereof; (iii) the performance by the Company of its obligations hereunder; and (iv) the following conditions:

(a) Regulatory Matters.

(i) Effectiveness of Registration Statement; Rule 430A Information. The Registration Statement has become effective not later than 5:00 p.m., Eastern time, on the date of this Agreement or such later date and time as shall be consented to in writing by the Underwriters, and, at each of the Closing Date and any Option Closing Date, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto shall have been issued under the Securities Act, no order preventing or suspending the use of any Preliminary Prospectus or the Prospectus shall have been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated by the Commission. The Company has complied with each request (if any) from the Commission for additional information. The Prospectus containing the Rule 430A Information shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) (without reliance on Rule 424(b)(8)) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430A.

(ii) FINRA Clearance. On or before the date of this Agreement, 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.

(iii) Exchange Clearance. On the Closing Date, the Firm Shares shall have been approved for listing on the Exchange, subject only to official notice of issuance. On each Option Closing Date (if any), the Option Shares shall have been approved for listing on the Exchange, subject only to official notice of issuance.

(b) Company Counsel Matters.

(i) Closing Date Opinion of U.S. Counsel. On the Closing Date and on each Option Closing Date (if any), the Underwriters shall have received (i) the opinion of Cooley LLP, the U.S. counsel to the Company, dated the Closing Date or Option Closing Date, as applicable, and addressed to the Underwriters, and (ii) a written statement providing certain "10b-5" negative assurances, addressed to the Underwriters and dated the Closing Date and any Option Closing Date (if such date is other than the Closing Date), each in a form reasonably satisfactory to the Underwriter and Underwriters' Counsel.

(c) Comfort Letters.

(i) Comfort Letter. At the time this Agreement is executed, the Underwriters shall have received a cold comfort letter from the Auditor containing statements and information of the type customarily included in accountants' comfort letters with respect to the financial statements and certain financial information contained in the Registration Statement, the Pricing Disclosure Package and the Prospectus, addressed to the Underwriters and in form and substance satisfactory in all respects to the Underwriters and to the Auditor, dated as of the date of this Agreement.

(ii) Bring-down Comfort Letter. At the Closing Date and on each Option Closing Date (if any), the Underwriters shall have received from the Auditor, a letter, dated as of the Closing Date or Option Closing Date, as applicable, to the effect that such Auditor reaffirms the statements made in the letter furnished pursuant to Section 4(c)(i), except that the specified date referred to shall be a date not more than three (3) business days prior to the Closing Date or Option Closing Date, as applicable.

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(iii) CFO Certificate. On the date of this Agreement and on the Closing Date, the Company shall have furnished to the Underwriters, a certificate on behalf of the Company, dated the respective dates of delivery thereof and addressed to the Underwriters, of its Chief Financial Officer with respect to certain financial data contained in the Registration Statement and the Prospectus, providing “management comfort” with respect to such information, in form and substance reasonably satisfactory to the Underwriters.

(d) Officers’ Certificates.

(i) Officers’ Certificate. The Company shall have furnished to the Underwriters a certificate, dated the Closing Date or Option Closing Date, as applicable, of its Chief Executive Officer, and its Chief Financial Officer stating on behalf of the Company and not in an individual capacity that (i) to their knowledge after reasonable investigation, as of the Closing Date or Option Closing Date, as applicable, the representations and warranties of the Company in this Agreement are true and correct in all material respects (except for those representations and warranties qualified as to materiality, which shall be true and correct in all respects and except for those representations and warranties which refer to facts existing at a specific date, which shall be true and correct as of such date) and the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date and any Option Closing Date (if such date is other than the Closing Date) and (ii) there has not been, subsequent to the date of this Agreement, any Material Adverse Change in the financial position or results of operations of the Company, or any change or development that, singularly or in the aggregate, would involve a Material Adverse Change, in or affecting the condition (financial or otherwise), results of operations, business, assets or prospects of the Company, except as set forth in the Prospectus.

(ii) Secretary’s Certificate. On the Closing Date and any Option Closing Date, the Underwriters shall have received a certificate of the Company signed by the Secretary of the Company, dated the Closing Date, certifying: (i) that each of the Charter and Bylaws is true and complete, has not been modified and is in full force and effect; (ii) that the resolutions of the Company’s Board of Directors relating to the Offering are in full force and effect and have not been modified; (iii) the good standing of the Company; and (iv) as to the incumbency of the officers of the Company. The documents referred to in such certificate shall be attached to such certificate.

(e) No Material Changes. For the period from and after the date of this Agreement and through and including the Closing Date and, if applicable, the Option Closing Date: (i) there shall have been no Material Adverse Change or development involving a prospective Material Adverse Change in the condition or the business activities, financial or otherwise, of the Company or any subsidiary of the Company from the latest dates as of which such condition is set forth in the Registration Statement, the Pricing 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 Insider before or by any court or federal or state commission, board or other administrative agency wherein an unfavorable decision, ruling or finding would reasonably be expected to result in a Material Adverse Change, except as set forth in the Registration Statement, the Pricing Disclosure Package and the Prospectus; (iii) no stop order 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 Pricing 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 the Securities Act Regulations and shall conform in all material respects to the requirements of the Securities Act and the Securities Act Regulations, and neither the Registration Statement, the Pricing Disclosure Package nor 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.

(f) Lock-Up Agreements. On or before the date of this Agreement, the Company shall have delivered to the Underwriters executed copies of the Lock-Up Agreements from each of the persons/entities listed in Schedule 2 hereto.

(g) Additional Documents. At the Closing Date, Underwriters’ Counsel shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling Underwriters’ Counsel to deliver an opinion to the Underwriters, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Underwriters and Underwriters’ Counsel.

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## 5. Indemnification.

(a) Indemnification of the Underwriters. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates and each person controlling such Underwriters (within the meaning of Section 15 of the Securities Act), and the directors, officers, agents and employees of each Underwriter, its affiliates and each such controlling person (each Underwriter, and each such entity or person hereafter is referred to as an "Underwriter Indemnified Person") from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, the "Liabilities"), and shall reimburse each Underwriter Indemnified Person for all fees and expenses (including the reasonable fees and expenses of counsel for the Underwriter Indemnified Persons, except as otherwise expressly provided in this Agreement) (collectively, the "Expenses") as they are incurred in connection with such Indemnified Person's enforcement of his or its rights under this Agreement, and agrees to advance payment of such Expenses as they are incurred by an Underwriter Indemnified Person in investigating, preparing, pursuing or defending any actions, whether or not any Indemnified Person is a party thereto, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in (i) the Registration Statement, the Pricing Disclosure Package, the Preliminary Prospectus, the Prospectus or in any Issuer Free Writing 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, 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 Section 5, collectively called "application") executed by the Company or based upon written information furnished by the Company in any jurisdiction in order to qualify the Securities under the securities laws thereof or filed with the Commission, any state securities commission or agency, the Exchange or any other national 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 the 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, the Underwriters' Information.

(b) Procedure. Upon receipt by an indemnified person under this section 5 (an "Indemnified Person") of actual notice of an action against such Indemnified Person with respect to which indemnity may reasonably be expected to be sought under this Agreement, such Indemnified Person shall promptly notify the indemnifying person (the "Indemnifying Person") in writing; provided that failure by any Indemnified Person so to notify the Indemnifying Person shall not relieve the Indemnifying Person from any obligation or liability which the Indemnifying Person may have on account of this Section 5 or otherwise to such Indemnified Person, except to the extent the Indemnifying Person is materially prejudiced as a proximate result of such failure. An Indemnified Person shall have the right to require that the Indemnifying Person assume the defense of any such action (including the employment of counsel designated by the Indemnifying Person and reasonably satisfactory to the Indemnified Person). Any Indemnified Person shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Indemnifying Person has failed promptly to assume the defense and employ counsel reasonably satisfactory to the Indemnified Person for the benefit of the Indemnified Person or (ii) such Indemnified Person shall have been advised that in the opinion of counsel that there is an actual or potential conflict of interest that prevents (or makes it imprudent for) the counsel engaged by the Indemnifying Person for the purpose of representing the Indemnified Person, to represent both such Indemnified Person and any other person represented or proposed to be represented by such counsel. The Indemnifying Person shall not be liable for the fees and expenses of more than one separate counsel (together with local counsel), representing all Indemnified Persons who are parties to such action), which counsel (together with any local counsel) for the Indemnified Persons shall be selected by the Indemnified Person, subject to the Indemnifying Person's approval (which shall not be unreasonably withheld). The Indemnifying Person shall not be liable for any settlement of any action effected without its written consent (which shall not be unreasonably withheld). In addition, the Indemnifying Person shall not, without the prior written consent of each Indemnified Person, settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened action in respect of which advancement, reimbursement, indemnification or contribution may be sought hereunder (whether or not such Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination (i) includes an unconditional release of that Indemnified Person, from all Liabilities arising out of such action for which indemnification or contribution may be sought hereunder and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any Indemnified Person. The advancement, reimbursement, indemnification and contribution obligations of the Indemnifying Person required hereby shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as every Liability and Expense is incurred and is due and payable, and in such amounts as fully satisfy each and every Liability and Expense as it is incurred (and in no event later than 30 days following the date of any invoice therefore).

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(c) Indemnification of the Company. Each Underwriter, severally and not jointly, agrees to indemnify and hold harmless the Company, its directors, its officers who signed the Registration Statement and persons 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 Liabilities, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions made in the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package or Prospectus or any amendment or supplement thereto or in any application, in reliance upon, and in strict conformity with, the Underwriters' Information. In case any action shall be brought against the Company or any other person so indemnified based on any Preliminary Prospectus, the Registration Statement, the Pricing Disclosure Package or Prospectus or any amendment or supplement thereto or in any application, and in respect of which indemnity may be sought against any 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 the Underwriters by the provisions of Section 5(a). The Company agrees promptly to notify the Underwriters of the commencement of any litigation or proceedings against the Company or any of its officers, directors or any person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, in connection with the issuance and sale of the Securities or in connection with the Registration Statement, the Pricing Disclosure Package, the Prospectus or any Issuer Free Writing Prospectus; provided that failure by the Company so to notify the Underwriters shall not relieve any Underwriters from any obligation or liability which such Underwriters may have on account of this Section 5 or otherwise to the Company, except to the extent such Underwriters is materially prejudiced as a proximate result of such failure.

(d) Contribution. If the indemnification provided for in this Section 5 shall for any reason be unavailable to or insufficient to hold harmless an indemnified party under Section 5(a) or 5(c) in respect of any Liabilities and Expenses referred to therein, then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such Liabilities and Expenses, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and each of the Underwriter, on the other hand, from the Offering, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the matters as to which such Liabilities or Expenses relate, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriter, on the other hand, with respect to such Offering shall be deemed to be in the same proportion as the total proceeds from the Offering purchased under this Agreement (before deducting expenses) received by the Company bear to the total underwriting discount and commissions actually received by the Underwriters in connection with the Offering, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement, omission, act or failure to act; provided that the parties hereto agree that the written information furnished to the Company through the Underwriters by or on behalf of any Underwriter for use in any Preliminary Prospectus, any Registration Statement or the Prospectus, or in any amendment or supplement thereto, consists solely of the Underwriters' Information. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to above in this subsection (d). Notwithstanding the above, no person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act shall be entitled to contribution from a party who was not guilty of fraudulent misrepresentation.

(e) Survival & Third-Party Beneficiaries. The advancement, reimbursement, indemnity and contribution obligations set forth in this Section 5 shall remain in full force and effect regardless of any termination of, or the completion of any Indemnified Person's services under or in connection with, this Agreement. Each Indemnified Person is an intended third-party beneficiary of this Section 5, and has the right to enforce the provisions of Section 5 as if he/she/it was a party to this Agreement.

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6. Default by an Underwriter.

(a) Default Not Exceeding 10% of Securities. If any Underwriter or Underwriters shall default in its or their obligations to purchase the Firm Shares or the Option Shares, if the over-allotment is exercised, and if the number of the Firm Shares or Option Shares with respect to which such default relates does not exceed in the aggregate 10% of the number of Firm Shares or Option Shares that all Underwriters have agreed to purchase hereunder, then such Firm Shares or Option Shares to which the default relates shall be purchased by each non-defaulting Underwriter, acting severally and not jointly, in proportion to their respective commitments hereunder.

(b) Default Exceeding 10% of Securities. In the event that the default addressed in Section 6(a) relates to more than 10% of the Firm Shares or Option Shares, the Representative may in its discretion arrange for itself or for another party or parties to purchase such Firm Shares or Option Shares to which such default relates on the terms contained herein. If, within one (1) Business Day after such default relating to more than 10% of the Firm Shares or Option Shares, the Representative does not arrange for the purchase of such Firm Shares or Option Shares, then the Company shall be entitled to a further period of one (1) Business Day within which to procure another party or parties satisfactory to the Representative to purchase said Firm Shares on such terms. In the event that neither the Representative nor the Company arrange for the purchase of the Firm Shares to which a default relates as provided in this Section 6, this Agreement will be terminated by the Representative or the Company without liability on the part of the Company (except as provided in Sections 3(g) and 5 hereof) or the Underwriters (except as provided in Section 5 hereof); provided, however, that if such default occurs with respect to the Option Shares, this Agreement will not terminate as to the Firm Shares; and provided, further, that nothing herein shall relieve a defaulting Underwriter of its liability, if any, to the other Underwriters and to the Company for damages occasioned by its default hereunder.

(c) Postponement of Closing Date. In the event that the Firm or Option Shares to which the default relates are to be purchased by the non-defaulting Underwriter, or are to be purchased by another party or parties as aforesaid, the Representative or the Company shall have the right to postpone the Closing Date or Option Closing Date for a reasonable period, but not in any event exceeding five (5) Business Days, in order to effect whatever changes may thereby be made necessary in the Registration Statement, the Pricing Disclosure Package or the Prospectus or in any other documents and arrangements, and the Company agrees to file promptly any amendment to the Registration Statement, the Pricing Disclosure Package or the Prospectus that in the opinion of Underwriters' Counsel for the Underwriters may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any party substituted under this Section 6 with like effect as if it had originally been a party to this Agreement with respect to such Securities.

7. Prohibition on Press Releases and Public Announcements. The Company shall not issue press releases or engage in any other publicity, without the Representative's prior written consent (such consent not to be unreasonably withheld), for a period ending at 5:00 p.m., Eastern time, on the earlier of (i) the first (1<sup>st</sup>) Business Day following the forty-fifth (45<sup>th</sup>) day after the Closing Date or (ii) the Option Closing Date, other than normal and customary releases issued in the ordinary course of the Company's business.

8. Effective Date of this Agreement and Termination Thereof.

(a) Effective Date. This Agreement shall become effective when both the Company and the Representative have executed the same and delivered counterparts of such signatures to the other party.

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(b) Termination. 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 Representative's opinion will in the immediate future materially disrupt, general securities markets in the United States; or (ii) if trading on the New York Stock Exchange or the NASDAQ Stock Market LLC 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 any United States national securities exchange or national securities association, 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 Representative's opinion, make it inadvisable to proceed with the delivery of the Firm 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 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 Securities or to enforce contracts made by the Representative for the sale of the Securities. Section 5 of this Agreement shall survive any termination of this Agreement.

(c) Expenses. Notwithstanding anything to the contrary in this Agreement, except in the case of a default by the Underwriters pursuant to Section (6)(b) above, in the event that this Agreement shall not be carried out for any reason whatsoever, within the time specified herein or any extensions thereof pursuant to the terms herein, the Company will, subject to demand by the Representative, reimburse the Representative for only those documented out-of-pocket expenses (including the reasonable fees and expenses of their counsel), actually incurred by the Representative in connection herewith as allowed under FINRA Rule 5110 less any amounts previously paid by the Company); *provided, however*, that all such expenses, including the costs and expenses set forth in Section 3(h) which were actually paid, shall not to exceed \$100,000 in the aggregate.

(d) Survival of Indemnification, Advancement, Hold Harmless & Contribution Provisions. 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 Section 5 shall remain in full force and effect and shall not be in any way affected by, such election or termination or failure to carry out the terms of this Agreement or any part hereof.

(e) Representations, Warranties, Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers or directors or any person controlling the Company or (ii) delivery of and payment for the Securities.

## 9. Miscellaneous.

(a) 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 Business 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 on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, (c) the second (2nd) 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.

If to the Representative:

A.G.P./Alliance Global Partners  
590 Madison Avenue  
28th Floor  
New York, NY 10022  
Attention: Thomas Higgins, Managing Director  
Email: [thiggins@allianceg.com](mailto:thiggins@allianceg.com)

*with copies to (which shall not constitute notice):*

Thompson Hine LLP  
300 Madison Avenue  
27<sup>th</sup> Floor  
New York, NY 10017  
Attention: Faith L. Charles, Esq.  
Email: [faith.charles@thompsonhine.com](mailto:faith.charles@thompsonhine.com)

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If to the Company:

Reed's, Inc.  
501 Merritt 7 Corporate Park  
Norwalk, CT 06851  
Attention: Cyril Wallace, CEO  
Email: cwallace@reedsinc.com

with copies to (which shall not constitute notice):

Cooley LLP  
110 North Wacker Drive, Suite 4200  
Chicago, IL 60606  
Attn: Yvan-Claude Pierre, Esq.  
Email: ypierre@cooley.com

(b) Headings. The headings contained herein are for the sole purpose of convenience of reference, and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

(c) Amendment. This Agreement may only be amended by a written instrument executed by each of the parties hereto.

(d) Entire Agreement. This Agreement (together with the other agreements and documents being delivered pursuant to or in connection with this Agreement) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and thereof, and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof. This Agreement shall replace and supersede the engagement letter agreement dated September 16, 2025, by and between the Company and the Representative, as amended, including, without limitation, any terms which survive termination thereof pursuant to Section 16 thereof.

(e) Binding Effect. This Agreement shall inure solely to the benefit of and shall be binding upon the Representative, the Underwriters, each Indemnified Person referred to in Section 5, the Company and the controlling persons, directors and officers referred to in Section 5 hereof, and their respective successors, heirs and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provisions herein contained. The term "successors and assigns" shall not include a purchaser, in its capacity as such, of securities from any of the Underwriters.

(f) Governing Law; Consent to Jurisdiction; Trial by Jury. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to conflict of laws principles thereof. The Company hereby agrees that any action, proceeding or claim against it arising out of, or relating in any way to this Agreement shall be brought and enforced in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum. Any such process or summons to be served upon the Company may be served by transmitting a copy thereof by registered or certified mail, return receipt requested, postage prepaid, addressed to it at the address set forth in Section 9(a) hereof. Such mailing shall be deemed personal service and shall be legal and binding upon the Company in any action, proceeding or claim. The Company agrees that the prevailing party(ies) in any such action shall be entitled to recover from the other party(ies) all of its reasonable attorneys' fees and expenses relating to such action or proceeding and/or incurred in connection with the preparation therefor. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriter 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.

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(g) Execution in Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts has been signed by each of the parties hereto and delivered to each of the other parties hereto. Delivery of a signed counterpart of this Agreement by email/pdf transmission shall constitute valid and sufficient delivery thereof.

(h) Waiver, etc. The failure of any of the parties hereto to at any time enforce any of the provisions of this Agreement shall not be deemed or construed to be a waiver of any such provision, nor to in any way effect the validity of this Agreement or any provision hereof or the right of any of the parties hereto to thereafter enforce each and every provision of this Agreement. No waiver of any breach, non-compliance or non-fulfillment of any of the provisions of this Agreement shall be effective unless set forth in a written instrument executed by the party or parties against whom or which enforcement of such waiver is sought; and no waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach, non-compliance or non-fulfillment.

*[Signature Page Follows]*

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If the foregoing correctly sets forth the understanding between the Underwriters and the Company, please so indicate in the space provided below.

Very truly yours,

**REED'S, INC.**

By: \_\_\_\_\_  
Name: Cyril Wallace  
Title: Chief Executive Officer

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Confirmed as of the date first written above mentioned, on behalf of itself and as Underwriters named on Schedule 1 hereto:

**A.G.P./Alliance Global Partners**

By: \_\_\_\_\_  
Name: Thomas J. Higgins  
Title: Managing Director

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**SCHEDULE 1**

Underwriter	Total Number of Firm Shares to be Purchased
A.G.P./Alliance Global Partners	[ ]
<b>Total</b>	<b>[ ]</b>

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**SCHEDULE 2**

**List of Lock-Up Parties**

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**EXHIBIT A**

**Form of Lock-Up Agreement**

A.G.P./Alliance Global Partners  
590 Madison Avenue  
28th Floor  
New York, NY 10022

Ladies and Gentlemen:

The undersigned understands that A.G.P./Alliance Global Partners (the "**Representative**") proposes to enter into an Underwriting Agreement (the "**Underwriting Agreement**") with Reed's, Inc., a corporation incorporated under the law of the State of Delaware (the "**Company**"), providing for the initial public offering in the United States (the "**Initial Public Offering**") of a certain number of the Company's common stock, par value \$0.0001 per share (the "**Shares**"). For purposes of this letter agreement, "Securities" shall mean the Company's Shares.

In order to induce the Underwriters (as defined in the Underwriting Agreement) to continue their efforts in connection with the Offering, and in light of the benefits that the Offering will confer upon the undersigned in its capacity as a shareholder and/or an officer, director or employee of the Company, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees with the Representative that, during the period beginning on and including the date of this Agreement through and including the date that is ninety (90) days from the date of the Underwriting Agreement (the "**Lock-Up Period**"), the undersigned will not, without the prior written consent of the Representative, directly or indirectly, (i) offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of, or announce the intention to otherwise dispose of, any Securities owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (including, without limitation, Securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations promulgated under the Securities Act of 1933, as amended, and as the same may be amended or supplemented on or after the date hereof from time to time (the "**Securities Act**")) (such shares, the "**Beneficially Owned Shares**") or securities convertible into or exercisable or exchangeable for Securities, (ii) enter into any swap, hedge or similar agreement or arrangement that transfers in whole or in part, the economic risk of ownership of the Beneficially Owned Shares or securities convertible into or exercisable or exchangeable for Securities, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition, or (iii) engage in any short selling of the Shares.

The restrictions set forth in the immediately preceding paragraph shall not apply to:

(1) if the undersigned is a natural person, any transfers made by the undersigned (a) as a bona fide gift to any member of the immediate family (as defined below) of the undersigned or to a trust the beneficiaries of which are exclusively the undersigned or members of the undersigned's immediate family, (b) by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or an immediate family member of the undersigned, (c) as a bona fide gift to a charity or educational institution, (d) any transfer pursuant to a qualified domestic relations order or in connection with a divorce; (e) to any corporation, partnership, limited liability company, investment fund, trust or other entity controlled or managed, or under common control or management by, the undersigned or (f) if the undersigned is or was an officer, director or employee of the Company, to the Company pursuant to the Company's right of repurchase upon termination of the undersigned's service with the Company;

(2) if the undersigned is a corporation, partnership, limited liability company or other business entity, any transfers or distributions to any shareholder, other equityholder, direct or indirect affiliate (as defined below), general or limited partner, manager or member of, or owner of a similar equity interest in, the undersigned, as the case may be, if, in any such case, such transfer is not for value;

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(3) if the undersigned is a corporation, partnership, limited liability company or other business entity, any transfer made by the undersigned (a) in connection with the sale or other bona fide transfer in a single transaction of all or substantially all of the undersigned's share capital, partnership interests, membership interests or other similar equity interests, as the case may be, or all or substantially all of the undersigned's assets, in any such case not undertaken for the purpose of avoiding the restrictions imposed by this Agreement or (b) to another corporation, partnership, limited liability company or other business entity so long as the transferee is an affiliate (as defined below) of the undersigned and such transfer is not for value;

(4) (a) exercises of stock options or equity awards granted pursuant to an equity incentive or other plan or warrants to purchase Shares or other securities (including by cashless exercise to the extent permitted by the instruments representing such stock options or warrants so long as such cashless exercise is effected solely by the surrender of outstanding stock options or warrants to the Company and the Company's cancellation of all or a portion thereof to pay the exercise price), provided that in any such case the securities issued upon exercise shall remain subject to the provisions of this Agreement (as defined below); or (b) transfers of Shares or other securities to the Company in connection with the vesting or exercise of any equity awards granted pursuant to an equity incentive or other plan and held by the undersigned to the extent, but only to the extent, as may be necessary to satisfy tax withholding obligations pursuant to the Company's equity incentive or other plans;

(5) the exercise by the undersigned of any warrant(s) issued by the Company prior to the date of this Agreement, including any exercise effected by the delivery of shares of Securities of the Company held by the undersigned; provided, that, the Shares received upon such exercise shall remain subject to the restrictions provided for in this Agreement;

(6) the occurrence after the date hereof of any of (a) an acquisition by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of effective control (whether through legal or beneficial ownership of share capital of the Company, by contract or otherwise) of 50% of the voting securities of the Company, (b) the Company merges into or consolidates with any other entity, or any entity merges into or consolidates with the Company, (c) the Company sells or transfers all or substantially all of its assets to another person, or (d) provided, that, the Securities received upon any of the events set forth in clauses (a) through (c) above shall remain subject to the restrictions provided for in this Agreement;

(7) the Offering;

(8) transfers consented to, in writing by the Representative;

(9) transactions relating to Shares acquired in open market transactions after the completion of the Offering; provided that, no filing by any party under the Exchange Act or other public announcement shall be required or shall be voluntarily made in connection with such transactions;

provided however, that in the case of any transfer described in clauses (1), (2) or (3) above, it shall be a condition to the transfer that the transferee executes and delivers to the Representative, acting on behalf of the Underwriters, not later than one business day prior to such transfer, a written agreement, in substantially the form of this Agreement (it being understood that any references to "immediate family" in the agreement executed by such transferee shall expressly refer only to the immediate family of the undersigned and not to the immediate family of the transferee) and otherwise satisfactory in form and substance to the Representative. For purposes of this paragraph, "immediate family" shall mean a spouse, child, grandchild or other lineal descendant (including by adoption), father, mother, brother or sister of the undersigned; and "affiliate" shall have the meaning set forth in Rule 405 under the Securities Act.

In addition, the restrictions set forth herein shall not prevent the undersigned from entering into a sales plan pursuant to Rule 10b5-1 under the Exchange Act after the date hereof, provided that (i) no sales or transfers may be made under such plan until the Lock-Up Period ends or this Agreement is terminated in accordance with its terms.

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If the undersigned is an officer or director of the Company, (i) the Representative agrees that at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a Transfer of Securities, the Representative will notify the Company of the impending release or waiver and (ii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release substantially in the form of Annex II thereto through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representative hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this Lock-Up Agreement to the extent and for the duration that such terms remain in effect at the time of the transfer.

In furtherance of the foregoing, (1) the undersigned also agrees and consents to the entry of stop transfer instructions with any duly appointed transfer agent for the registration or transfer of the securities described herein against the transfer of any such securities except in compliance with the foregoing restrictions, and (2) the Company, and any duly appointed transfer agent for the registration or transfer of the securities described herein, are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement and that this Agreement has been duly authorized (if the undersigned is not a natural person), executed and delivered by the undersigned and is a valid and binding agreement of the undersigned. This Agreement and all authority herein conferred are irrevocable and shall survive the death or incapacity of the undersigned (if a natural person) and shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned for the term of the Lock-Up Period.

This Agreement shall automatically terminate upon the earliest to occur, if any, of (1) either the Representative, on the one hand, or the Company, on the other hand, advising the other that they have determined not to proceed with the Offering, (2) termination of the Underwriting Agreement before the sale of Securities, (3) the withdrawal of the Registration Statement or (4) if the transactions contemplated by the Underwriting Agreement are not consummated by December 31, 2025.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to the conflict of laws principles thereof.

*[ Signature Page Follows ]*

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Very truly yours,

\_\_\_\_\_  
(Name - Please Print)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Signatory, in the case of entities - Please Print)

\_\_\_\_\_  
(Title of Signatory, in the case of entities - Please Print)

Address: \_\_\_\_\_  
\_\_\_\_\_

# of Shares by Signatory: \_\_\_\_\_  
\_\_\_\_\_

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Annex I

**FORM OF PRESS RELEASE**

REED'S, INC.

\_\_\_\_\_, 202\_

Reed's, Inc. (the "Company") announced today that A.G.P./Alliance Global Partners, the representative of the underwriters in the Company's recent public sale of \_\_\_\_\_ shares of its common stock, are [waiving][releasing] a lock-up restriction with respect to \_\_\_\_ shares of its common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver][release] will take effect on \_\_\_\_\_, 202\_ and the shares of its common stock may be sold on or after such date.

**This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.**

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## SECOND AMENDED AND RESTATED BYLAWS

OF

REED'S, INC.

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(A DELAWARE CORPORATION)

## SECTION 1.

## OFFICES

**Section 1.1 Registered Office.** The registered office of Reed's, Inc. (the "Corporation") in the State of Delaware and the name of the Corporation's registered agent at such address shall be as set forth in the certificate of incorporation of the Corporation (as the same may be amended and/or restated from time to time, the "Certificate of Incorporation").

**Section 1.2 Other Offices.** The Corporation may at any time establish other offices both within and without the State of Delaware.

## SECTION 2.

## CORPORATE SEAL

**Section 2.1 Corporate Seal.** The Board of Directors of the Corporation (the "Board") may adopt a corporate seal. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## SECTION 3.

## STOCKHOLDERS' MEETINGS

**Section 3.1 Place of Meetings.** Meetings of the stockholders of the Corporation may be held at such place, if any, either within or without the State of Delaware, as may be determined from time to time by the Board (or its designee). 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 as provided under the General Corporation Law of the State of Delaware ("DGCL") and Section 3.9 below.

**Section 3.2 Annual Meetings.**

(a) The annual meeting of the stockholders of the Corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and time as may be determined from time to time by the Board (or its designee). Any annual meeting of stockholders may be postponed, rescheduled or cancelled by the Board, or any director or officer of the Corporation to whom the Board delegates such authority, at any time before or after notice of such meeting has been given to stockholders. Nominations of persons for election to the Board and proposals of other business to be considered by the stockholders may be made at an annual meeting of stockholders:

- (i) pursuant to the Corporation's notice of meeting of stockholders (or any supplement thereto);
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(ii) by or at the direction of the Board (or a duly authorized committee thereof); or

(iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 3.2(b) of these bylaws (as may be amended and/or restated from time to time, the "Bylaws") and who is a stockholder of record at the time of the annual meeting of stockholders, who is entitled to vote at the meeting and who complied with the procedures and requirements set forth in this Section 3.2.

For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under the DGCL, the Certificate of Incorporation and the Bylaws, and only such nominations shall be made and such other business shall be conducted as shall have been properly brought before the meeting in accordance with the procedures below.

(1) For nominations for the election to the Board to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.2(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the Corporation on a timely basis as set forth in Section 3.2(b)(3) and must update and supplement the information contained in such written notice on a timely basis as set forth in Section 3.2(c). In addition to all of the information required by Section 3.2(b)(4), such stockholder's notice shall include as to each nominee such stockholder proposes to nominate at the meeting:

(A) the name, age, business address and residence address of such nominee,

(B) the principal occupation or employment of such nominee,

(C) the class or series and number of shares of each class or series of capital stock of the Corporation that are owned of record and beneficially by such nominee and list of any pledge of or encumbrances on such shares,

(D) the date or dates on which such shares were acquired and the investment intent of such acquisition,

(E) the questionnaire, representation and agreement required by Section 3.2(e), completed and signed by such nominee, and

(F) all other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved and whether or not proxies are being or will be solicited), or that is otherwise required to be disclosed or provided to the Corporation pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "1934 Act") (including such person's written consent to being named in a proxy statement, associated proxy card and other filings as a nominee and to serving as a director if elected).

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The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or to serve on any committee or sub-committee of the Board, in either case under any applicable stock exchange listing requirements, applicable law or the Policies (as defined below). The number of nominees a stockholder may nominate for election at an annual meeting on its own behalf (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at an annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. A stockholder may not designate any substitute or alternate nominees unless the stockholder provides timely notice of such substitute or alternate nominee(s) in accordance with this Section 3.2, in the case of an annual meeting, or Section 3.3, in the case of a special meeting (and such notice contains all of the information, representations, questionnaires and certifications with respect to such substitute or alternate nominee(s) that are required by the Bylaws with respect to nominees for director).

(2) For business other than nominations for the election to the Board to be properly brought before an annual meeting by a stockholder pursuant to clause (ii) of Section 3.2(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the Corporation on a timely basis as set forth in Section 3.2(b)(3), and must update and supplement the information contained in such written notice on a timely basis as set forth in Section 3.2(c). In addition to all of the information required by Section 3.2(b)(4), such stockholder's notice shall include as to each matter such stockholder proposes to bring before the meeting:

(A) a brief description of the business desired to be brought before the meeting,

(B) 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, the language of the proposed amendment),

(C) the reasons for conducting such business at the meeting, and

(D) any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the Corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent.

(3) To be timely, the written notice required by Section 3.2(b)(1) or 3.2(b)(2) must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90<sup>th</sup> day, nor earlier than the 120<sup>th</sup> day, prior to the first anniversary of the immediately preceding year's annual meeting; provided, however, that, subject to the last sentence of this Section 3.2(b)(3), in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 70 days after the anniversary of the preceding year's annual meeting, or if no annual meeting was held (or deemed to have been held), notice by the stockholder to be timely must be so received not earlier than the 120<sup>th</sup> day prior to such annual meeting and not later than the later of the close of business on (i) the 90<sup>th</sup> day prior to such annual meeting or (ii) the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation.

In no event shall an adjournment or postponement (or the public announcement thereof) of an annual meeting for which notice has been given, or for which a public announcement of the date of the meeting has been made by the Corporation, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

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(4) The written notice required by Sections 3.2(b)(1) or 3.2(b)(2) shall also include, as of the date of the notice and as to the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made and any affiliate who controls (as such term is defined in Rule 405 under the Securities Act of 1933, as amended (the “1933 Act”) either of the foregoing stockholder or beneficial owner, directly or indirectly (each, a “Proponent” and collectively, the “Proponents”):

(A) the name and address of each Proponent, including, if applicable, such name and address as they appear on the Corporation’s books and records;

(B) the class, series and number of shares of each class or series of the capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the 1934 Act) by each Proponent (provided, that for purposes of this Section 3.2(b)(4), such Proponent shall in all events be deemed to beneficially own all shares of any class or series of capital stock of the Corporation as to which such Proponent or any of its affiliates or associates has a right to acquire beneficial ownership whether immediately or at any time in the future);

(C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal (and/or the voting of shares of any class or series of capital stock of the Corporation, other than a revocable proxy given in response to a proxy solicitation made to 10 or more persons) between or among any Proponent and any of its affiliates or associates, and/or any other persons (including their names) including without limitation, any agreements, arrangements or understandings required to be disclosed pursuant to Item 5 or Item 6 of 1934 Act Schedule 13D, regardless of whether the requirement to file a Schedule 13D is applicable;

(D) a representation that the stockholder is a holder of record of shares of the Corporation at the time of giving notice, will be entitled to vote at the meeting, and that such stockholder (or a qualified representative thereof) intends to appear at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 3.2(b)(1)) or to propose the business that is specified in the notice (with respect to a notice under Section 3.2(b)(2));

(E) a representation whether any Proponent or any other participant (as defined in Item 4 of Schedule 14A under the 1934 Act) will engage in a solicitation with respect to such nomination or proposal and, if so, the name of each participant in such solicitation and the amount of the cost of solicitation that has been and will be borne, directly or indirectly, by each participant in such solicitation, and a representation as to whether the Proponents intend or are part of a group which intends to:

(x) deliver, or make available, a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation’s voting shares required to approve or adopt the proposal or elect the nominee,

(y) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination and/or

(z) solicit proxies in support of any proposed nominee in accordance with Rule 14a-19 promulgated under the 1934 Act;

(F) a description of all Derivative Transactions (as defined below) by each Proponent during the previous 12-month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic or voting terms of, such Derivative Transactions;

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(G) a certification regarding whether each Proponent has complied with all applicable federal, state and other legal requirements in connection with such Proponent's acquisition of shares of capital stock or other securities of the Corporation and/or such Proponent's acts or omissions as a stockholder or beneficial owner of the Corporation; and

(H) any other information relating to each Proponent required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14 of the 1934 Act and the rules and regulations promulgated thereunder.

(c) A stockholder providing the written notice required by Section 3.2(b)(1) or (2) shall update and supplement such notice in writing, if necessary, so that the information (other than the representations required by Section 3.2(b)(4)(E)) provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the determination of stockholders entitled to notice of the meeting and (ii) the date that is five Business Days (as defined below) prior to the meeting and, in the event of any adjournment or postponement thereof, five Business Days prior to such adjourned or postponed meeting; provided, that no such update or supplement shall cure or affect the accuracy (or inaccuracy) of any representations made by any Proponent, any of its affiliates or associates, or a nominee or the validity (or invalidity) of any nomination or proposal that failed to comply with this Section 3.2 or is rendered invalid as a result of any inaccuracy therein.

In the case of an update and supplement pursuant to clause (i) of this Section 3.2(c), such update and supplement must be received by the Secretary at the principal executive offices of the Corporation not later than five Business Days after the later of the record date for the determination of stockholders entitled to notice of the meeting or the public announcement of such record date. In the case of an update and supplement pursuant to clause (ii) of this Section 3.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than two Business Days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two Business Days prior to such adjourned or postponed meeting (or if there are fewer than two Business Days between the date for the meeting, or the date of the immediately preceding adjournment or postponement thereof, and the date for the adjourned or postponed meeting, not later than the day prior to such adjourned or postponed meeting).

(d) Notwithstanding anything in Section 3.2(b)(3) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least 10 days before the last day a stockholder may deliver a notice of nomination in accordance with Section 3.2(b)(3), a stockholder's notice required by this Section 3.2 and that complies with the requirements in Section 3.2(b)(1), other than the timing requirements in Section 3.2(b)(3), shall also be considered timely, but only with respect to nominees for the new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

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(e) To be eligible to be a nominee for election or re-election as a director of the Corporation pursuant to a nomination under clause (iii) of Section 3.2(a) or clause (ii) of Section 3.3(c), each Proponent must deliver (in accordance with the time periods prescribed for delivery of notice under Sections 3.2(b)(3), 3.2(d) or 3.3(c), as applicable) to the Secretary at the principal executive offices of the Corporation a completed written questionnaire with respect to the background, qualifications, stock ownership and independence of such proposed nominee (in the form provided by the Secretary within 10 days following a written request therefor by a stockholder of record) and a written representation and agreement (in the form provided by the Secretary within 10 days following written request therefor by a stockholder of record) that such person:

(i) is not and will not become a party to any agreement, arrangement or understanding (whether oral or in writing) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question that (x) has not been disclosed in the questionnaire or (y) could limit or interfere with such person's ability to comply with such person's fiduciary duties under applicable law;

(ii) is not and will not become a party to any agreement, arrangement or understanding (whether oral or in writing) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation or a nominee that has not been disclosed in such questionnaire;

(iii) would be in compliance, if elected as a director of the Corporation (and a statement as to whether such person, if elected, intends to comply with), all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation that are publicly disclosed or which were provided by the Secretary with the written representation and agreement required by this Section 3.2(e) (together, the "Policies"); and

(iv) if elected as a director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election.

(f) Notwithstanding anything to the contrary in the Bylaws, unless otherwise required by applicable law, in the event that any Proponent (i) provides notice pursuant to Rule 14a-19(b) promulgated under the 1934 Act with respect to one or more proposed nominees and (ii) subsequently fails to

(x) comply with the requirements of Rule 14a-19 promulgated under the 1934 Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such Proponent has met the requirements of Rule 14a-19(a)(3) promulgated under the 1934 Act in accordance with the next sentence) or

(y) inform the Corporation that they no longer plan to solicit proxies in accordance with the requirements of Rule 14a-19 under the 1934 Act by delivering a written notice to the Secretary at the principal executive offices of the Corporation within two (2) Business Days after the occurrence of such change,

then the nomination of each such proposed nominee shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that the nominee is included (as applicable) as a nominee in the Corporation's proxy statement, notice of meeting or other proxy materials for any stockholder meeting (or any supplement thereto) and notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded).

If any Proponent provides notice pursuant to Rule 14a-19(b) promulgated under the 1934 Act, such Proponent shall deliver to the Corporation, no later than five (5) Business Days prior to the applicable meeting, reasonable evidence sufficient to demonstrate that it has met the requirements of Rule 14a-19(a)(3) promulgated under the 1934 Act.

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Notwithstanding anything to the contrary set forth herein, and for the avoidance of doubt, the nomination of any person whose name is included (as applicable) as a nominee in the Corporation's proxy statement, notice of meeting or other proxy materials for any stockholder meeting (or any supplement thereto) as a result of any notice provided by any Proponent pursuant to Rule 14a-19(b) promulgated under the 1934 Act with respect to such proposed nominee and whose nomination is not made by or at the direction of the Board or any authorized committee thereof shall not be deemed (for purposes of clause (i) of Section 3.2(a) or otherwise) to have been made pursuant to the Corporation's notice of meeting (or any supplement thereto) and any such nominee may only be nominated by a Proponent pursuant to clause (iii) of Section 3.2(a) and, in the case of a special meeting of stockholders, pursuant to and to the extent permitted under Section 3.3(c).

A person shall not be eligible for election or re-election as a director at an annual meeting unless the person is nominated in accordance with clause (ii) or (iii) of Section 3.2(a) and in accordance with the procedures and requirements set forth in Section 3.2(b), Section 3.2(c), Section 3.2(d), Section 3.2(e) and Section 3.2(f), as applicable. Only such business shall be conducted at any annual meeting of the stockholders of the Corporation as shall have been brought before the meeting in accordance with Section 3.2(a) and in accordance with the procedures and requirements set forth in Section 3.2(b), Section 3.2(c) and Section 3.2(f), as applicable. Except as otherwise required by applicable law, and subject to the supervision, direction and control of the Board of Directors, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures and requirements set forth in the Bylaws (including, without limitation, compliance with Rule 14a-19 promulgated under the 1934 Act) and, if any proposed nomination or business is not in compliance with the Bylaws, or the Proponent does not act in accordance with the representations required in this Section 3.2, to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and such nominee disqualified from standing for election or re-election), or that such business shall not be transacted, notwithstanding that such proposal or nomination is set forth in (as applicable) the Corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such nomination or such business may have been solicited or received.

Notwithstanding the foregoing provisions of this Section 3.2, unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded (and such nominee disqualified from standing for election or re-election) and such proposed business shall not be transacted, notwithstanding that such nomination or proposed business is set forth in (as applicable) the Corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such vote may have been solicited or received by the Corporation.

(g) For purposes of Sections 3.2 and 3.3,

- (1) "affiliates" and "associates" shall have the meanings set forth in Rule 405 under the 1933 Act;
  - (2) "Business Day" means any day other than Saturday, Sunday or a day on which banks are closed in New York City, New York;
  - (3) "close of business" means 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a Business Day;
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(4) **“Derivative Transaction”** means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the Corporation;

(B) that otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the Corporation;

(C) the effect or intent of which is to mitigate loss, manage risk or benefit from changes in value or price with respect to any securities of the Corporation; or

(D) that provides the right to vote (other than a revocable proxy given in response to a proxy solicitation made to 10 or more persons) or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, directly or indirectly, with respect to any securities of the Corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation or similar right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the Corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member; and

(5) **“public announcement”** means disclosure in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, GlobeNewswire or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act or by such other means reasonably designed to inform the public or security holders in general of such information, including, without limitation, posting on the Corporation’s investor relations website

(6) a **“qualified representative”** of a stockholder shall mean (A) a duly authorized officer, manager, trustee or partner of such stockholder or (B) a 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 writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, shall be provided to the Secretary of the Corporation at least five Business Days prior to the meeting of stockholders.

### Section 3.3 Special Meetings.

(a) Special meetings of the stockholders of the Corporation may only be called in the manner provided in the Certificate of Incorporation. Any special meeting of stockholders previously scheduled by the Board may be postponed, rescheduled or cancelled by the Board, or any director or officer to whom the Board has delegated such authority, at any time before or after notice of such meeting has been given to stockholders.

(b) The Board (or its designee) shall determine the date and time of such special meeting. Upon determination of the date, time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4.

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(c) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected

(i) by or at the direction of the Board or a duly authorized committee thereof or

(ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving notice provided for in this paragraph and who is a stockholder of record at the time of the special meeting, who is entitled to vote at the meeting and who complies with Sections 3.2(b)(1), 3.2(b)(4), 3.2(c), 3.2(e) and 3.2(f).

The number of nominees a stockholder may nominate for election at a special meeting on its own behalf (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at a special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In the event the Corporation calls a special meeting of stockholders for the purpose of submitting a proposal to stockholders for the election of one or more directors, any such stockholder of record entitled to vote in such election of directors may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if written notice setting forth the information required by Sections 3.2(b)(1) and 3.2(b)(4) shall be received by the Secretary at the principal executive offices of the Corporation not earlier than the close of business on 120<sup>th</sup> day prior to such special meeting and not later than the close of business on the later of (i) the 90<sup>th</sup> day prior to such meeting or (ii) the tenth day following the day on which the Corporation first makes a public announcement of the date of the special meeting at which directors are to be elected. The stockholder shall also update and supplement such information as required under Section 3.2(c).

In no event shall an adjournment or a postponement (or the public announcement thereof) of a special meeting for which notice has been given, or for which a public announcement of the date of the meeting has been made by the Corporation, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) A person shall not be eligible for election or re-election as a director at the special meeting unless the person is nominated either in accordance with clause (i) or clause (ii) of Section 3.3(c). Except as otherwise required by applicable law, and subject to the supervision, direction and control of the Board of Directors, the chairperson of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures and requirements set forth in the Bylaws and, if any proposed nomination is not in compliance with the Bylaws (including, without limitation, compliance with Rule 14a-19 under the 1934 Act), or if the Proponent does not act in accordance with the representations required in Section 3.2, to declare that such nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that such nomination is set forth in (as applicable) the Corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such nomination may have been solicited or received.

Notwithstanding the foregoing provisions of this Section 3.3, unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder) does not appear at the special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that the nomination is set forth (as applicable) in the Corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such nomination may have been solicited or received by the Corporation.

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(e) Notwithstanding the foregoing provisions of Sections 3.2 and 3.3, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations promulgated thereunder with respect to the matters set forth in Sections 3.2 and 3.3, and any failure to comply with such requirements shall be deemed a failure to comply with Sections 3.2 or 3.3, as applicable; provided, however, that, to the fullest extent not prohibited by applicable law, any references in the Bylaws to the 1934 Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Sections 3.2(a)(iii) and 3.3(c). Nothing in the Bylaws shall be deemed to affect any rights of holders of any class or series of preferred stock to nominate and elect directors pursuant to and to the extent provided in any applicable provision of the Certificate of Incorporation.

**Section 3.4 Notice of Meetings.** Except as otherwise provided by applicable law, the Certificate of Incorporation or the Bylaws, notice of each meeting of stockholders shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of such meeting. Such notice shall specify the date, time and place, if any, of the meeting, the record date for determining stockholders entitled to vote at the meeting, if such record date is different from the record date for determining stockholders entitled to notice of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting, and, in the case of special meetings, the purpose or purposes of the meeting. Notice shall be deemed given as provided in Section 232 of the DGCL.

**Section 3.5 Quorum and Vote Required.** At all meetings of stockholders, except where otherwise required by law or by the Certificate of Incorporation, or by the Bylaws, the presence, in person, by remote communication, if applicable, or by proxy, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote at the meeting shall constitute a quorum for the transaction of business. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Unless a different or minimum vote is provided by law or by applicable stock exchange rules, or by the Certificate of Incorporation or the Bylaws, in which case such different or minimum vote shall be the applicable vote on the matter, in all matters other than the election of directors, the affirmative vote of a majority of the votes cast on such matter, voting affirmatively or negatively (excluding abstentions and broker non-votes) shall be the act of the stockholders. Except as otherwise required by law, the Certificate of Incorporation or the Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote in the election of directors. Where a separate vote by a class or classes or series is required, except as required by law or by the Certificate of Incorporation or the Bylaws, the holders of a majority of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

Unless a different or minimum vote is provided by law or by the Certificate of Incorporation or the Bylaws or any applicable stock exchange rules, in which case such different or minimum vote shall be the applicable vote on the matter, the affirmative vote of the holders of a majority (or plurality, in the case of the election of directors) of the votes cast on such matter, voting affirmatively or negatively (excluding abstentions and broker non-votes) shall be the act of such class or classes or series.

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**Section 3.6 Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairperson of the meeting or by the stockholders by the affirmative vote of a majority of the votes cast, voting affirmatively or negatively (excluding abstentions and broker non-votes). When a meeting is adjourned to another time or place, if any, (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed present in person and may vote at such meeting are announced at the meeting at which the adjournment is taken or are

- (i) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or
- (ii) set forth in the notice of meeting given in accordance with Section 3.4.

At the adjourned meeting, the Corporation may transact any business that 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 adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

**Section 3.7 Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders or adjournment thereof, except as otherwise provided by applicable law, only persons in whose names shares stand on the stock records of the Corporation on the record date shall be entitled to vote at any meeting of stockholders. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. No proxy shall be voted after three years from its date of creation unless the proxy provides for a longer period. Voting at meetings of stockholders need not be by written ballot. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

**Section 3.8 List of Stockholders.** The corporation shall prepare, no later than the tenth day before each meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder; provided, however, if the record date for determining the stockholders entitled to vote is less than ten days before the meeting date, the list shall reflect all of the stockholders entitled to vote as of the tenth day before the meeting date. Nothing in this Section 3.8 shall require the corporation 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 ten days ending on the day before the meeting date:

- (a) 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
- (b) during ordinary business hours, at the principal place of business of the Corporation.

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.

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**Section 3.9 Remote Communication; Delivery to the Corporation.**

(a) If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a stockholder meeting may, by means of remote communication:

(1) participate in a meeting of stockholders; and

(2) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(b) Whenever Section 3.2 or 3.3 requires one or more persons (including a record or beneficial owner of capital 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.

**Section 3.10 Organization.**

(a) At every meeting of stockholders, a person designated by the Board shall act as chairperson of the meeting of stockholders. If no chairperson of the meeting of stockholders is so designated, then the Chairperson of the Board, or if no Chairperson has been appointed, is absent or refuses to act, the Chief Executive Officer, or if no Chief Executive Officer is then serving or the Chief Executive Officer is absent or refuses to act, the President, or, if the President is absent or refuses to act, a chairperson of the meeting chosen by the stockholders by the affirmative vote of a majority of the votes cast, voting affirmatively or negatively (excluding abstentions and broker non-votes), shall act as chairperson of the meeting of stockholders. A person designated by the Board shall act as secretary of the meeting. If no secretary of the meeting is designated, then the Secretary, or, in the Secretary's absence, an Assistant Secretary or other officer or other person directed to do so by the chairperson of the meeting, shall act as secretary of the meeting.

(b) The Board shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board, if any, the chairperson of the meeting 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 and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters that are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

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(c) The Corporation may and shall, if required by applicable law, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspectors shall:

- (1) ascertain the number of shares outstanding and the voting power of each;
- (2) determine the shares represented at a meeting and the validity of proxies and ballots;
- (3) count all votes and ballots;
- (4) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and
- (5) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Sections 211(e) or 212(c)(2) of the DGCL, or any information provided pursuant to Sections 211(a)(2)b.(i) or (iii) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to Section 231(b)(5) of the DGCL shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

#### **SECTION 4.**

##### **DIRECTORS**

**Section 4.1 Number.** The authorized number of directors of the Corporation shall be fixed in accordance with the Certificate of Incorporation.

**Section 4.2 Powers.** The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as may be otherwise provided by the Certificate of Incorporation or the DGCL.

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**Section 4.3 Terms.** The terms of directors shall be as set forth in the Certificate of Incorporation.

**Section 4.4 Vacancies; Newly Created Directorships.** Vacancies and newly created directorships on the Board shall be filled as set forth in the Certificate of Incorporation, except as otherwise required by applicable law.

**Section 4.5 Resignation.** Any director may resign at any time by delivering such director's notice in writing or by electronic transmission to the Board or the Secretary. Such resignation shall take effect at the time of delivery of the notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign from the Board, effective at 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 for the unexpired portion of the term of the director whose place shall be vacated and until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal.

**Section 4.6 Removal.** Directors shall be removed as set forth in the Certificate of Incorporation.

**Section 4.7 Meetings.**

**(a) Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board may be held at any time or date and at any place, if any, within or outside of the State of Delaware that 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 electronic means. No further notice shall be required for regular meetings of the Board.

**(b) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board may be held at any time and place, if any, within or without the State of Delaware as designated and called by the Chairperson of the Board, the Chief Executive Officer or by any two directors.

**(c) Meetings by Electronic Communications Equipment.** Any member of the Board, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

**(d) Notice of Special Meetings.** Notice of the time and place, if any, of all special meetings of the Board shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or by electronic mail or other means of electronic transmission at least 24 hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, postage prepaid, at least three days before the date of the meeting. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board need be specified in any such notice.

**Section 4.8 Quorum and Voting.**

**(a)** Except as otherwise required by the DGCL, the Certificate of Incorporation or the Bylaws, a quorum of the Board shall consist of a majority of the authorized number of directors fixed from time to time by the Board in accordance with the Certificate of Incorporation; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn the meeting to another time, without notice other than by announcement at the meeting.

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(b) At each meeting of the Board at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by applicable law, the Certificate of Incorporation or the Bylaws.

**Section 4.9 Action without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or the 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, such consent or consents shall be filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 4.10 Fees and Compensation.** Unless otherwise restricted by the Certificate of Incorporation or the Bylaws, the Board, or any duly authorized committee thereof, shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

**Section 4.11 Committees.**

(a) **Committees.** The Board may, from time to time, appoint such committees as may be permitted by applicable law. Such committees appointed by the Board shall consist of one or more members of the Board and to the extent permitted by applicable law and provided in the resolution of the Board 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; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending 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) adopting, amending or repealing any Bylaw of the Corporation.

(b) **Term.** The Board, subject to any requirements of any outstanding series of preferred stock and the provisions of subsection (a) of this Section 4.11, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of such committee member's death, such person's resignation from the committee or on such date that the committee member, for any reason, is no longer a member of the Board. The Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the 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, and, in addition, in the absence or disqualification of any 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.

(c) **Meetings.** Unless the Board shall otherwise provide, regular meetings of any committee appointed pursuant to this Section 4.11 shall be held at such times and places, if any, as are determined by the Board, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at such place, if any, that has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place, if any, of such special meeting given in the manner provided for the giving of notice to members of the Board of the time and place, if any, of special meetings of the Board. Unless otherwise provided by the Board in the resolutions authorizing the creation of the committee, the presence of at least a majority of the members of the committee then serving shall be necessary to constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by the affirmative vote of a majority of the members present at a meeting of the committee at which a quorum is present.

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**Section 4.12 Duties of Chairperson of the Board.** The Board shall elect from its ranks a Chairperson of the Board. The Chairperson of the Board shall perform such other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board shall designate from time to time. The Chairperson of the Board, when present, shall preside at all meetings of the Board in accordance with Section 4.13 of the Bylaws.

**Section 4.13 Organization.** At every meeting of the directors, the Chairperson of the Board shall act as chairperson of the meeting. If a Chairperson has not been appointed or is absent, the Chief Executive Officer (if a director), or, if no Chief Executive Officer is then serving or the Chief Executive Officer is absent, the President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in the Secretary's absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

## SECTION 5.

### OFFICERS

**Section 5.1 Officers Designated.** The officers of the Corporation shall include, if and when designated by the Board, the Chief Executive Officer, the President, the Secretary and the Treasurer. The Board may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem appropriate or necessary. The Board may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by applicable law, the Certificate of Incorporation or the Bylaws.

#### **Section 5.2 Tenure and Duties of Officers.**

**(a) General.** All officers shall hold office at the pleasure of the Board and until their successors shall have been duly elected and qualified, subject to such officer's earlier death, resignation or removal. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board or by a committee thereof to which the Board has delegated such responsibility.

**(b) Duties of Chief Executive Officer.** The Chief Executive Officer shall preside, if a director, at all meetings of the Board, unless a Chairperson of the Board has been appointed and is present thereat. The Chief Executive Officer shall be the chief executive officer of the Corporation and, subject to the supervision, direction and control of the Board, shall have the general powers and duties of supervision, direction, management and control of the business and officers of the Corporation as are customarily associated with the position of Chief Executive Officer. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in the Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board shall designate from time to time.

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**(c) Duties of President.** The President shall preside, if a director, at all meetings of the Board, unless a Chairperson of the Board or Chief Executive Officer has been appointed and is present and willing to act. Unless another officer has been appointed Chief Executive Officer of the Corporation, the President shall be the chief executive officer of the Corporation and, subject to the supervision, direction and control of the Board, shall have the general powers and duties of supervision, direction, management and control of the business and officers of the Corporation as are customarily associated with the position of chief executive officer. The President shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board (or the Chief Executive Officer, if the Chief Executive Officer and President are not the same person and the Board has delegated the designation of the President's duties to the Chief Executive Officer) shall designate from time to time.

**(d) Duties of Secretary and Assistant Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board and shall record, or cause to be recorded, all acts, votes and proceedings thereof in the minute books of the Corporation. The Secretary shall give, or cause to be given, notice in conformity with the Bylaws of all meetings of the stockholders and of all meetings of the Board and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in the Bylaws and other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

**(e) Duties of Treasurer and Assistant Treasurer.** The Treasurer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board, the Chief Executive Officer or the President. The Treasurer, subject to the order of the Board, shall have the custody of all funds and securities of the Corporation. The Treasurer shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Treasurer or other officer to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each Assistant Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

**Section 5.3 Delegation of Authority.** The Board may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 5.4 Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board, the Chairperson of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract with the resigning officer.

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**Section 5.5 Contracts and Other Documents.** The Chief Executive Officer, the Secretary and any Executive or Senior Vice President, or such other officer or officers as may from time to time be authorized by the Board or any other committee given specific authority in the premises by the Board of Directors during the intervals between the meetings of the Board, shall have power to sign and execute on behalf of the Corporation deeds, conveyances and contracts, and any and all other documents requiring execution by the Corporation.

**Section 5.6 Removal.** Any officer may be removed from office at any time, either with or without cause, by the Board, or by any duly authorized committee thereof or any officer upon whom such power of removal may have been conferred by the Board.

## SECTION 6.

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 6.1 Execution of Corporate Instruments.** The Board may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute, sign or endorse on behalf of the Corporation any corporate instrument or document, or to sign on behalf of the Corporation the corporate name without limitation, or to enter into contracts on behalf of the Corporation, except where otherwise provided by applicable law or the Bylaws, and such execution or signature shall be binding upon the Corporation.

(a) All checks and drafts drawn on banks or other depositories on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board shall from time to time authorize so to do.

(b) Unless otherwise specifically determined by the Board or otherwise required by applicable law, the execution, signing or endorsement of any corporate instrument or document by or on behalf of the Corporation may be effected manually, by facsimile or (to the extent not prohibited by applicable law and subject to such policies and procedures as the Corporation may have in effect from time to time) by electronic signature.

(c) Unless authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 6.2 Voting of Securities Owned by the Corporation.** All stock and other securities of or interests in other corporations or entities owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted, and all proxies and consents with respect thereto shall be executed, by the person authorized so to do by resolution of the Board, or, in the absence of such authorization, by the Chairperson of the Board, the Chief Executive Officer, or the President.

## SECTION 7.

### SHARES OF STOCK

**Section 7.1 Form and Execution of Certificates.** The shares of the Corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board. Certificates for the shares of stock of the Corporation, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation (including, without limitation, the Chairperson of the Board, the Chief Executive Officer, the President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary), certifying the number, and the class or series, of shares owned by such holder in the Corporation in certificated form. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

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**Section 7.2 Lost Certificates.** The Corporation may issue a new certificate or certificates or uncertificated shares in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The Corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to give the Corporation a bond (or other adequate security) sufficient to indemnify the Corporation against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, or destroyed or the issuance of such new certificate(s) or uncertificated shares.

**Section 7.3 Transfers.**

(a) Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) 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 or series owned by such stockholders in any manner not prohibited by the DGCL.

**Section 7.4 Fixing Record Dates.**

(a) In order that the Corporation may determine the stockholders entitled to notice of 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, subject to applicable law, not be more than 60 nor less than ten days before the date of such meeting. If the Board so fixes a record date for determining the stockholders entitled to notice of any meeting of stockholders, 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 the record date for determining the stockholders entitled to notice of such meeting, that a later date on or before the date of the meeting shall be the record date for determining the stockholders entitled to vote at such meeting. 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 at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next 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 determining the 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 determining the stockholders entitled to vote in accordance with the provisions of this Section 7.4(a).

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(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, in advance, 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 to such action.

**Section 7.5 Registered Stockholders.** The Corporation 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 shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

**Section 7.6 Additional Powers of the Board.** In addition to, and without limiting, the powers set forth in the Bylaws, the Board shall have power and authority to make all such rules and regulations as it shall deem expedient concerning the issue, transfer, and registration of certificates for shares of stock of the Corporation, including the use of uncertificated shares of stock, subject to the provisions of the DGCL, other applicable law, the Certificate of Incorporation and the Bylaws. The Board may appoint and remove transfer agents and registrars of transfers, and may require all stock certificates to bear the signature of any such transfer agent and/or any such registrar of transfers.

## SECTION 8.

### OTHER SECURITIES OF THE CORPORATION

**Section 8.1 Execution of Other Securities.** All bonds, debentures and other corporate securities of the Corporation, other than stock certificates (covered in Section 7.1), may be signed by the Chairperson of the Board, the Chief Executive Officer, or the President, or such other person as may be authorized by the Board; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation or such other person as may be authorized by the Board, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

## SECTION 9.

### DIVIDENDS

**Section 9.1 Declaration of Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board. Dividends may be paid in cash, in property, or in shares of capital stock or other securities of the Corporation, subject to the provisions of the Certificate of Incorporation and applicable law.

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**Section 9.2 Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, determines proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose or purposes as the Board shall determine to be conducive to the interests of the Corporation, and the Board may modify or abolish any such reserve in the manner in which it was created.

#### SECTION 10.

##### FISCAL YEAR

**Section 10.1 Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

#### SECTION 11.

##### INDEMNIFICATION

**Section 11.1 Indemnification of Directors, Officers, Employees and Other Agents.**

**(a) Directors and Officers.** The Corporation shall indemnify to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), any person who was or is made or is threatened to be made a party or is otherwise involved in a Proceeding, by reason of the fact that such person is or was a director or officer of the Corporation, or while serving as 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 corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, whether the basis of such Proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that the Corporation will not be required to indemnify or advance expenses to any director or officer in connection with any Proceeding (or part thereof) initiated by such person unless (i) the Proceeding (or part thereof) was authorized by the Board or (ii) the Proceeding (or part thereof) is initiated to enforce rights to indemnification or advancement of expenses as provided under subsection (d) of this Section 11.1 or is a compulsory counterclaim brought by such person.

**(b) Employees and Other Agents.** The Corporation shall have power to indemnify and advance expenses to its employees and other agents to the fullest extent permitted by the DGCL.

**(c) Expenses.** The Corporation shall advance to any current or former director or officer of the Corporation, or to any person, who while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, prior to the final disposition of the Proceeding, promptly following request therefor, all expenses incurred by such person in defending (or participating as a witness in) any Proceeding referred to in Section 11.1(a), or in connection with a Proceeding (or part thereof) brought to establish or enforce a right to indemnification or advancement of expenses under subsection (d) of this Section 11.1, provided, however, that any advancement of expenses incurred by a current or former director or officer will be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it is ultimately determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified or entitled to advancement for such expenses under this Section 11.1 or otherwise.

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**(d) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to current and former directors and officers under this Section 11.1 will be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and such director or officer. Any right to indemnification or advancement of expenses granted by this Section 11.1 to a current or former director or officer will be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if

- (i) the claim for indemnification or advancement of expenses is denied, in whole or in part,
- (ii) no disposition of a claim for indemnification is made within 60 days of request therefor, or
- (iii) no disposition of a claim for an advance is made within 30 days of request therefor.

The indemnitee in such enforcement action, if successful in whole or in part, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, will be entitled to be paid also the expense of prosecuting or defending the claim to the fullest extent permitted by the DGCL.

In (i) any suit brought to enforce a right to indemnification hereunder (but not in a suit brought to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL.

Neither the failure of the Corporation (including its Board, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the indemnitee is proper in the circumstances because such person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, will be a defense to the action or create a presumption that the indemnitee has not met the applicable standard of conduct. In any suit brought by a current or former director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 11.1 or otherwise is on the Corporation.

**(e) Non-Exclusivity of Rights.** The rights conferred on any person by this Section 11.1 are not exclusive of any other right that such person may have or hereafter acquire under any applicable law, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL.

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**(f) Survival of Rights.** The rights conferred on any person by this Section 11.1 will continue as to a person who has ceased to be a director or officer and will inure to the benefit of the heirs, executors and administrators of such a person.

**(g) Insurance.** To the fullest extent permitted by the DGCL, the Corporation may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 11.1.

**(h) Amendments.** Any repeal or modification of this Section 11.1 is only prospective and does not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Proceeding against any current or former director or officer of the Corporation.

**(i) Saving Clause.** If this Section 11 or any portion hereof is invalidated on any ground by any court of competent jurisdiction, then the Corporation will nevertheless indemnify and advance expenses to each director and officer to the full extent not prohibited by any applicable portion of this Section 11 that has not been invalidated, or by any applicable law. If this Section 11 is invalid due to the application of the indemnification and advancement provisions of another jurisdiction, then the Corporation will indemnify and advance expenses to each director and officer to the full extent under applicable law.

**(j) Certain Definitions.** For the purposes of this Section 11, the following definitions apply:

- (1)** The term “**Proceeding**” is to be broadly construed and includes, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.
- (2)** The term “**expenses**” is to be broadly construed and includes, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.
- (3)** The term the “**Corporation**” includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was 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, stands in the same position under the provisions of this Section 11 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.
- (4)** References to “**fines**” include any excise taxes assessed on a person with respect to an employee benefit plan.

## SECTION 12.

### NOTICES

#### Section 12.1 Notices.

**(a) Notice to Stockholders.** Notice to stockholders of stockholder meetings shall be given as provided in Section 3.4. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by applicable law, notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or courier service, facsimile or by electronic mail or other means of electronic transmission in accordance with Section 232 of the DGCL.

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**(b) Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a) or as otherwise provided in the Bylaws, with notice other than one that is delivered personally to be sent to such address or electronic mail address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known address or electronic mail address of such director.

**(c) Affidavit of Mailing.** An affidavit of notice, executed by a duly authorized and competent employee of the Corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

**(d) Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**(e) Notice to Person with Whom Communication is Unlawful.** Whenever notice is required to be given, under applicable law or any provision of the Certificate of Incorporation or Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(f) Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the Corporation within 60 days of having been given notice by the Corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the Corporation.

**(g) Waiver.** Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or the 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 stated therein, 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. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or the Bylaws.

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#### SECTION 13.

**Section 13.1 Internal Corporate Claims.** Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware and any appellate court therefrom shall be the sole and exclusive forum for: (a) any derivative claim or cause of action brought on behalf of the Corporation; (b) any claim or cause of action that is based upon a violation of a duty owed by any current or former director, officer, other employee or stockholder of the Corporation, to the Corporation or the Corporation's stockholders; (c) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, arising out of or pursuant to any provision of the Delaware General Corporation Law, the Corporation's Certificate of Incorporation or Bylaws; (d) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of the Corporation's Certificate of Incorporation or Bylaws (including any right, obligation, or remedy thereunder); (e) any claim or cause of action as to which the Delaware General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware; and (f) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, governed by the internal-affairs doctrine or otherwise related to the Corporation's internal affairs, in all cases to the fullest extent permitted by applicable law; provided, however, that if such court does not have, or declines to accept, jurisdiction over such a claim or cause of action, then the United States District Court for the District of Delaware shall be the sole and exclusive forum for such claim or cause of action.

**Section 13.2 Securities Act Claims.** Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by applicable law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the 1933 Act, as amended, including all causes of action asserted against any defendant named in such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters for any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

#### SECTION 14.

##### AMENDMENTS

**Section 14.1 Amendments.** Subject to the limitations set forth in Section 11.1(h) or the Certificate of Incorporation, 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, in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock (as defined in the Certificate of Incorporation)), such action by stockholders shall require the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote thereon, voting together as a single class.

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# REED'S INC

DRINK SMART. DRINK REAL.

NUMBER

SHARES

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

CUSIP 758338 40 4

SEE REVERSE FOR CERTAIN DEFINITIONS AND LEGENDS

This certifies that

is the record holder of

FULLY PAID AND NONASSESSABLE SHARES OF COMMON STOCK, \$0.0001 PAR VALUE PER SHARE, OF  
REED'S, INC.

transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:

*Cyril Wallace*

CHIEF EXECUTIVE OFFICER



*Doug McLurdy*

CHIEF FINANCIAL OFFICER

COUNTERSIGNED AND REGISTERED:  
TRANSFER ONLINE, INC.  
TRANSFER AGENT  
AND REGISTRAR

AUTHORIZED SIGNATURE

HURFACH BANKNOTE

The Corporation shall furnish without charge to each stockholder who so requests a statement of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock of the Corporation or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Such requests shall be made to the Corporation's Secretary at the principal office of the Corporation.

KEEP THIS CERTIFICATE IN A SAFE PLACE. IF IT IS LOST, STOLEN, OR DESTROYED THE CORPORATION WILL REQUIRE A BOND INDEMNITY AS A CONDITION TO THE ISSUANCE OF A REPLACEMENT CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with right of survivorship and not as tenants in common  
COM PROP - as community property

UNIF GIFT MIN ACT - ..... Custodian .....  
(Cust) (Minor)  
under Uniform Gifts to Minors  
Act .....  
(State)  
UNIF TRF MIN ACT - ..... Custodian (until age .....)  
(Cust) (Minor)  
under Uniform Transfers  
to Minors Act .....  
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ shares of the capital stock represented by within Certificate, and do hereby irrevocably constitute and appoint

\_\_\_\_\_ attorney-in-fact to transfer the said stock on the books of the within named Corporation with full power of the substitution in the premises.

Dated \_\_\_\_\_

Signature(s) Guaranteed:

X \_\_\_\_\_  
X \_\_\_\_\_

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

By \_\_\_\_\_

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION, (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15. GUARANTEES BY A NOTARY PUBLIC ARE NOT ACCEPTABLE. SIGNATURE GUARANTEES MUST NOT BE DATED.



Courtney Tygesson  
T: (312) 881-6680  
ctygesson@cooley.com

November 12, 2025

Reed's, Inc.  
501 Merritt 7 Corporate Park  
Norwalk, Connecticut 06851

Ladies and Gentlemen:

We have acted as counsel to Reed's, Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement on Form S-1 (the "**Registration Statement**") with the Securities and Exchange Commission (the "**Commission**") pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), including a related prospectus included in the Registration Statement (the "**Prospectus**"), covering an underwritten public offering of up to 1,525,199 shares (the "**Shares**") of the Company's common stock, par value \$0.0001 per share, including up to 198,939 Shares that may be sold pursuant to the exercise of an option to purchase additional Shares granted to the underwriters.

In connection with this opinion, we have (i) examined and relied upon (a) the Registration Statement and the Prospectus, (b) the Company's certificate of incorporation and bylaws, each as currently in effect, and (c) such other records, documents, opinions, certificates, memoranda and instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below and (ii) assumed that the Shares to be sold to the underwriters by the Company will be sold at a price established by the Board of Directors of the Company or a duly authorized committee thereof. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials and the due authorization, execution and delivery of all documents by all persons other than the Company. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. 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.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued against payment therefor as described in the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

Cooley LLP 110 N. Wacker Drive, Suite 4200 Chicago, IL 60606  
t: +1 312 818 6500 f: +1 312 818 6598 cooley.com

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Reed's, Inc.  
November 12, 2025  
Page Two

This opinion is limited to the matters expressly set forth in this letter, and no opinion has been or should be implied, or may be inferred, beyond the matters expressly stated. This opinion speaks only as to law and facts in effect or existing as of the date hereof, and we have no obligation or responsibility to update or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We consent to the reference to our firm under the heading "Legal Matters" in the Prospectus included in the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement. In giving such consents, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Sincerely,

Cooley LLP

By: /s/ Courtney Tygesson  
Courtney Tygesson

Cooley LLP 110 N. Wacker Drive, Suite 4200 Chicago, IL 60606  
t: +1 312 818 6500 f: +1 312 818 6598 cooley.com

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-1 of our report dated March 28, 2025, relating to the financial statements of Reed's Inc. appearing in the Annual Report on Form 10-K of Reed's Inc. for the year ended December 31, 2024. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ Weinberg & Company, P.A.  
Los Angeles, California  
November 12, 2025

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## Calculation of Filing Fee Table

Form S-1  
(Form Type)

Reed's, Inc.  
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

		Security Type	Security Class Title	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price(1)	Fee Rate	Amount of Registration Fee
Fees to Be Paid	1	Equity	Common Stock, par value \$0.0001 per share	457(o)	—	—	\$ 11,500,000	0.0001381	\$ 1,588.15
			<b>Total Offering Amounts</b>		—	—	\$ 11,500,000	—	\$ 1,588.15
			<b>Total Fees Previously Paid</b>		—	—	—	—	—
			<b>Total Fee Offsets</b>		—	—	—	—	—
			<b>Net Fee Due</b>		—	—	—	—	\$ 1,588.15

(1) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes 1,326,260 shares of common stock offered by the registrant and 198,939 shares of common stock that the underwriters have the option to purchase from the registrant.