FORM 10-12G

Initial general form for registration of a class of securities pursuant to Section 12(g)

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FILER

Winc, Inc.
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
Pursuant to Section 12(b) or (g) of The Securities Exchange Act of 1934

Winc, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**45-2988960**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1745 Berkeley St, Studio 1 Santa Monica, CA	**90404**
(Address of principal executive offices)	(Zip Code)

(800) 297-1760
(Registrant's telephone number, including area code)

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

None.

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

Common Stock, par value $0.0001 per share

Series D Preferred Stock, par value $0.0001 per share

Series E Preferred Stock, par value $0.0001 per share

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

INTRODUCTORY NOTE

Certain information required by this registration statement on Form 10 (this "Registration Statement") is incorporated by reference to the information statement filed as exhibit 99.1 hereto (the "Information Statement"). The Information Statement is incorporated herein by reference in its entirety.

Item 1. Business.

The information required by this item is contained under the section entitled "*Business*" of the Information Statement, which section is incorporated herein by reference.

Item 1A. Risk Factors.

The information required by this item is contained under the sections entitled "*Risks Associated with Our Business*" and "*Risk Factors*" of the Information Statement, which sections are incorporated herein by reference.

Item 2. Financial Information.

The information required by this item is contained under the section entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" of the Information Statement, which section is incorporated herein by reference.

Item 3. Properties.

The information required by this item is contained under the section entitled "*Business — Facilities*" of the Information Statement, which section is incorporated herein by reference.

Item 4. Security Ownership of Certain Beneficial Owners and Management.

The information required by this item is contained under the section entitled "*Principal Stockholders*" of the Information Statement, which section is incorporated herein by reference.

Item 5. Directors and Executive Officers.

The information required by this item is contained under the section entitled "*Management*" of the Information Statement, which section is incorporated herein by reference.

Item 6. Executive Compensation.

The information required by this item is contained under the sections entitled "*Executive and Director Compensation*" and "*Management — Compensation Committee Interlocks and Insider Participation*" of the Information Statement, which sections are incorporated herein by reference.

Item 7. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item is contained under the sections entitled "*Certain Relationships and Related Party Transactions*" and "*Management — Director Independence*" of the Information Statement, which sections are incorporated herein by reference.

Item 8. Legal Proceedings.

The information required by this item is contained under the section entitled "*Business — Legal Proceedings*" of the Information Statement, which section is incorporated herein by reference.

Item 9. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.

The information required by this item is contained under the section entitled "*Dividend Policy*" of the Information Statement, which section is incorporated herein by reference.

Item 10. Recent Sales of Unregistered Securities.

The information required by this item is contained under the section entitled "*Recent Sales of Unregistered Securities*" of the Information Statement, which section is incorporated herein by reference.

Item 11. Description of Registrant's Securities to be Registered.

The information required by this item is contained under the section entitled "*Description of Capital Stock*" of the Information Statement, which section is incorporated herein by reference.

Item 12. Indemnification of Directors and Officers.

The information required by this item is contained under the section entitled "*Indemnification of Directors and Officers*" of the Information Statement, which section is incorporated herein by reference.

Item 13. Financial Statements and Supplementary Data.

The information required by this item is contained under the section entitled "*Index to Consolidated Financial Statements*" of the Information Statement, which section is incorporated herein by reference.

Item 14. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 15. Financial Statements and Exhibits.

(a) The information set forth in Item 13 to this Registration Statement is incorporated herein by reference.

(b) The following documents are filed as exhibits to this Registration Statement.

Exhibit No.	Description
3.1	Ninth Amended and Restated Certificate of Incorporation, as amended to date
3.2	Amended and Restated Bylaws
3.2(a)	Certificate of Amendment of the Amended and Restated Bylaws
10.1	Seventh Amended and Restated Investors Rights Agreement by and between Winc, Inc. and certain security holders of Winc, Inc., dated as of April 6, 2021
10.2#	2013 Stock Plan
10.2(a)#	Form of Stock Option Agreement under 2013 Stock Plan
10.3	Credit Agreement, by and between Winc, Inc., BWSC, LLC and Pacific Mercantile Bank, dated as of December 15, 2020
10.4	Loan and Security Agreement, by and between Winc, Inc. and Multiplier Capital, dated as of December 29, 2017
10.4(a)	Consent and First Amendment to Loan and Security Agreement, by and between Winc, Inc. and Multiplier Capital, dated as of December 23, 2020
10.5	Asset Purchase Agreement, by and between BWSC, LLC, Natural Merchants, Inc. and Edward Field, dated as of May 12, 2021
21.1	Subsidiaries of the Registrant
99.1	Information Statement

# Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

WINC, INC.

Date: August 27, 2021

By: /s/ Geoffrey McFarlane

Geoffrey McFarlane
Chief Executive Officer

Exhibit 3.1

NINTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF WINC, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

WINC, INC., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "***General Corporation Law***"),

DOES HEREBY CERTIFY:

A. That the name of the corporation is Winc, Inc. The corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 11, 2011 under the name "Club W, Inc." An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on March 20, 2012. A Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on January 30, 2013 and a Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on July 10, 2013. A Third Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 25, 2014. A Fourth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on June 11, 2015 and a Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 7, 2016. A Fifth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on July 14, 2017. A Sixth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 23, 2019. A Seventh Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 5, 2019. An Eighth Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 8, 2020.

B. All amendments to the corporation's Certificate of Incorporation reflected herein have been duly authorized and adopted by the corporation's board of directors and stockholders in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

C. The corporation's Certificate of Incorporation, as amended to date, is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the corporation is Winc, Inc. (the "***Corporation***").

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, New Castle County, and the name of its registered agent at such address National Registered Agents, Inc.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law.

ARTICLE IV

The Corporation is authorized to issue two classes of stock designated "***Common Stock***" and "***Preferred Stock.***" The Corporation shall have authority to issue 115,490,000 shares of Common Stock, par value $0.0001 per share, and 80,083,971 shares of Preferred Stock, par value $0.0001 per share. 13,296,372 shares of the Preferred Stock are designated as "***Series Seed Preferred Stock***"; 8,276,928 shares of the Preferred Stock are designated as "***Series A Preferred Stock***"; 13,381,711 shares of the Preferred Stock are designated as "***Series B Preferred Stock***"; 7,736,552 shares of the Preferred Stock are designated as "***Series B-1 Preferred Stock***"; 8,209,586 shares of the Preferred Stock are designated as "***Series C Preferred Stock***"; 10,611,205 shares of the Preferred Stock are designated as "***Series D Preferred Stock***"; 10,000,000 shares of the Preferred Stock are designated as "***Series E Preferred Stock***"; and 8,571,428 shares of the Preferred Stock are designated as "***Series F Preferred Stock.***"

The rights, preferences and privileges of the Common Stock and Preferred Stock are as set forth in Article V and Article VI, respectively. The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

ARTICLE V

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

ARTICLE VI

Unless otherwise indicated, references to "sections" or "subsections" in this Article VI refer to sections and subsections of this Article VI.

1. Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall simultaneously receive a dividend on each outstanding share of Preferred Stock in an amount at least equal to (i) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the applicable Original Issue Price (as defined below) of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the applicable Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend. The "***Series F Original Issue Price***" shall mean $1.75 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series F Preferred Stock. The "***Series E Original Issue Price***" shall mean $1.75 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Preferred Stock. The "***Series D Original Issue Price***" shall mean $1.4136 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock. The "***Series C Original Issue Price***" shall

mean $1.218088 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock. The "***Series B-1 Original Issue Price***" shall mean $1.31 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B-1 Preferred Stock. The "***Series B Original Issue Price***" shall mean $1.309997 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. "***Series A Original Issue Price***" shall mean $1.2089 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. "***Series Seed Original Issue Price***" shall mean $0.2740 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed Preferred Stock. "***Original Issue Price***" means, as applicable, the Series F Original Issue Price, the Series E Original Issue Price, the Series D Original Issue Price, the Series C Original Issue Price, the Series B-1 Original Issue Price, the Series B Original Issue Price, the Series A Original Issue Price, or the Series Seed Original Issue Price.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Preferred Stock.

2.1.1 In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the holders of shares of Series F Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B-1 Preferred Stock, Series B Preferred Stock, Series A Preferred Stock, Series Seed Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Series F Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series F Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence to the Series F Preferred Stock is hereinafter referred to as the "***Series F Liquidation Amount***"). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series F Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1.1, the holders of Series F Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.1.2 In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of the amounts required under Subsection 2.1.1, the holders of shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, and Series B-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series B Preferred Stock, Series A Preferred Stock, Series Seed Preferred Stock or Common Stock by reason of their ownership thereof, and on *pari passu* basis, an amount per share equal to: (A) with respect to the Series E Preferred Stock and Series D Preferred Stock, the greater of (i) the applicable Original Issue Price for the corresponding series of such Preferred Stock, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, and Series B-1 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event; and (B) with respect to the Series C Preferred Stock and the Series B-1 Preferred Stock, the greater of (i) one and one-half (1.5) times the applicable Original Issue Price for the corresponding series of such Preferred Stock, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series E Preferred Stock Series D Preferred Stock, Series C Preferred Stock and Series B-1 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence to the applicable series of Preferred Stock is hereinafter referred to as the "***Senior Preferred Series Liquidation Amount***"). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, and Series B-1 Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1.3, the holders of shares of such series of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.1.3 In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of the amounts required under Subsection 2.1.1 and Subsection 2.1.3, the holders of shares of Series B Preferred Stock, Series A Preferred Stock and Series Seed Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, and on *pari passu* basis, an amount per share equal to the greater of (i) one times the applicable Original Issue Price for the corresponding series of such Preferred Stock, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series Seed Preferred Stock, Series A Preferred Stock and Series B Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence to the applicable series of Preferred Stock is hereinafter referred to as the "***Junior Preferred Series Liquidation Amount***"). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series Seed Preferred Stock, Series A Preferred Stock, and Series B Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1.3, the holders of shares of such series of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a "***Deemed Liquidation Event***" unless the holders of at least a majority of the outstanding shares of Preferred Stock, voting on an as-converted to Common Stock basis, elect otherwise by written notice sent to the Corporation at least ten (10) days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party, or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a fifty (50%) percent, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "***Merger Agreement***") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90^{th}) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the holders of at least a majority of the then outstanding shares of Preferred Stock so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation)**,** together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the "***Available Proceeds***"), on the one hundred fiftieth (150^{th}) day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Junior Preferred Series Liquidation Amount with respect to shares of Series Seed Preferred Stock, Series A Preferred Stock, and Series B Preferred Stock, at a price per share equal to the applicable Senior Preferred Series Liquidation Amount with respect to shares of Series B-1 Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, and at a price per share equal to the Series F Liquidation Amount with respect to shares of Series F Preferred Stock, in accordance with the schedule of payments described in Subsection 2.1. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall ratably redeem each holder's shares of Preferred Stock to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

2.3.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "***Additional Consideration***"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "***Initial Consideration***") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of

outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2 Election of Directors. The holders of record of the shares of Series C Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "***Series C Director***"). The holders of record of the shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "***Series B Director***"). The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "***Series A Director***" and, together with the Series C Director and the Series B Director, the "***Preferred Directors***"). The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of the applicable series of Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the applicable series of Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.

3.3 Protective Provisions – Preferred Stock. At any time when shares of Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

3.3.1 liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

3.3.2 amend, alter or repeal any provision of the Certificate of Incorporation or the bylaws of the Corporation;

3.3.3 purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (ii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or terms otherwise approved by the Corporation's board of directors, including the affirmative vote or consent of at least two Preferred Directors;

3.3.4 create, or authorize the creation of, or issue, or authorize the issuance of any debt security or other indebtedness, or permit any subsidiary to take any such action with respect to any debt security or other indebtedness, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed $250,000 other than trade incurred in the ordinary course of business, unless expressly approved by the board of directors, including the affirmative vote or consent of at least two Preferred Directors;

3.3.5 increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any other class or series of capital stock;

3.3.6 authorize or create (by reclassification, merger or otherwise) any new class or series of equity security (including any security convertible into or exercisable for any equity security) having rights, preferences or privileges with respect to dividends, or payments upon liquidation senior to or on a parity with the Series F Preferred Stock or having voting rights other than those granted to the Preferred Stock generally;

3.3.7 increase the number of shares authorized for issuance under any existing stock, option, or equity incentive plan or create any new stock, option, or equity incentive plan;

3.3.8 increase or decrease the authorized number of directors constituting the Board of Directors;

3.3.9 issue any equity interest in any direct or indirect subsidiary of the Corporation (other than to the Corporation or one of its wholly-owned direct or indirect subsidiaries); or

3.3.10 take any action with respect to any direct or indirect subsidiary of the Corporation, that if taken by the Corporation, would require approval pursuant to this Section 3.3.

4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the "***Conversion Rights***"):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable Conversion Price (as defined below) in effect at the time of conversion. The "***Series F Conversion Price***" shall initially be equal to $1.75. The "***Series E Conversion Price***" shall initially be equal to $1.75. The "***Series D Conversion Price***" shall initially be equal to $1.4136. The "***Series C Conversion Price***" shall initially be equal to $1.218088. The "***Series B-1 Conversion Price***" shall initially be equal to $1.31. The "***Series B Conversion Price***" shall initially be equal to $1.309997. The "***Series A Conversion Price***" shall initially be equal to $1.2089. The "***Series Seed Conversion Price***" shall initially be equal to $0.2740. The applicable "***Conversion Price***" shall be the Series A Conversion Price with respect to the Series A Preferred Stock, the Series B Conversion Price with respect to the Series B Preferred Stock, the Series B-1 Conversion Price with respect to the Series B-1 Preferred Stock, the Series C Conversion Price with respect to the Series C Preferred Stock, the Series D Conversion Price with respect to the Series D Preferred Stock, the Series E Conversion Price with respect to the Series E Preferred Stock, the Series F Conversion Price with respect to the Series F Preferred Stock, and the Series Seed Conversion Price with respect to the Series Seed Preferred Stock. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder's shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "***Conversion Time***"), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the applicable series of Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted applicable Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the applicable Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Applicable Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article VI, the following definitions shall apply:

(a) "***Option***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) "***Series F Original Issue Date***" shall mean the date on which the first share of Series F Preferred Stock was issued.

(c) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series F Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "***Exempted Securities***"):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8**;**

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation;

(vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation, including the affirmative vote or consent of at least two Preferred Directors;

(vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization

or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation, including the affirmative vote or consent of at least two Preferred Directors; or

(viii) shares of Common Stock, Options or Convertible Securities issued in connection with collaboration, development, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, including the affirmative vote or consent of at least two Preferred Directors.

4.4.2 No Adjustment of Conversion Price. No adjustment in the Conversion Price of (a) the Series Seed Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series Seed Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; (b) the Series A Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; (c) the Series B Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series B Preferred Stock (including the affirmative consent of each of the Lead Investors, as defined in the Series B Preferred Stock Purchase Agreement dated June 11, 2015, by and among the Corporation and the other parties thereto) agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; (d) the Series B-1 Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series B-1 Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; (e) the Series C Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series C Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; (f) the Series D Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series D Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; (g) the Series E Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series E Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock; and (h) the Series F Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series F Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series F Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or

Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such applicable Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the applicable Conversion Price to an amount which exceeds the lower of (i) the applicable Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series F Original Issue Date), are revised after the Series F Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4, the applicable Conversion Price shall be readjusted to such applicable Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the applicable Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the applicable Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the applicable Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Applicable Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series F Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the applicable Conversion Price in effect immediately prior to such issue, then the applicable Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "***CP2***" shall mean the applicable Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;

(b) "***CP1***" shall mean the applicable Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "***A***" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "***B***" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and

(e) "***C***" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the applicable Conversion Price pursuant to the terms of Subsection 4.4.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series F Original Issue Date effect a subdivision of the outstanding Common Stock, the applicable Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series F Original Issue Date combine the outstanding shares of Common Stock, the applicable Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series F Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the applicable Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of the applicable series of Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series F Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to

such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the applicable Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least $2.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $20,000,000 of gross proceeds to the Corporation or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least a majority of the then outstanding shares of Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "***Mandatory Conversion Time***"), then (i) all outstanding shares of Preferred Stock (including, without limitation, Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series Seed Preferred Stock) shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Subsection 4.1.1 and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption. Shares of Series Seed Preferred Stock shall not be redeemable at the option of the holder.

7. Waiver. (a) Any of the rights, powers, preferences, notice rights and other terms of the Preferred Stock as a class set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Preferred Stock then outstanding, voting together as a single class, (b) any of the rights, powers, preferences, notice rights and other terms of the Series A Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding, voting together as a separate series, (c) any of the rights, powers, preferences, notice rights and other terms of the Series B Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series B Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series B Preferred Stock then outstanding (including the affirmative vote or consent of each of the Lead Investors), voting together as a separate series, (d) any of the rights, powers, preferences, notice rights and other terms of the Series B-1 Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series B-1 Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series B-1 Preferred Stock then outstanding, voting together as a separate series, (e) any of the rights, powers, preferences, notice rights and other terms of the Series C Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series C Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series C Preferred Stock then outstanding, voting together as a separate series, (f) any of the rights, powers, preferences, notice rights and other terms of the Series D Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series D

Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series D Preferred Stock then outstanding, voting together as a separate series, (g) any of the rights, powers, preferences, notice rights and other terms of the Series E Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series E Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series E Preferred Stock then outstanding, voting together as a separate series, (h) any of the rights, powers, preferences, notice rights and other terms of the Series F Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series F Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series F Preferred Stock then outstanding, voting together as a separate series, and (i) any of the rights, powers, preferences, notice rights and other terms of the Series Seed Preferred Stock as a separate series set forth herein may be waived on behalf of all holders of Series Seed Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series Seed Preferred Stock then outstanding, voting together as a separate series.

8. Notices. Any notice required or permitted by the provisions of this Article VI to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE VII

Subject to any additional vote required by the Certificate of Incorporation or the bylaws of the Corporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the bylaws of the Corporation.

ARTICLE VIII

Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the bylaws of the Corporation.

ARTICLE IX

Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE X

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

ARTICLE XI

To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article XI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended. Any repeal or modification of the foregoing provisions of this Article XI by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE XII

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the General Corporation Law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General

Corporation Law. Any amendment, repeal or modification of the foregoing provisions of this Article XII shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

ARTICLE XIII

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "***Excluded Opportunity***" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "***Covered Persons***"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

ARTICLE XIV

For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Ninth Amended and Restated Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Ninth Amended and Restated Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).

* * *

D. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of the Corporation in accordance with Section 228 of the General Corporation Law.

E. That this Ninth Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Corporation's Eighth Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

IN WITNESS WHEREOF, this Ninth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on April 1, 2021.

By: /s/ Geoffrey McFarlane
Geoffrey McFarlane,
Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED BYLAWS
OF
CLUB W, INC.
ADOPTED APRIL 23, 2014

ARTICLE I
STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place (if any) within or without the State of Delaware as may be designated from time to time by the Board of Directors or the President and Chief Executive Officer.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date to be fixed by the Board of Directors at the time and place to be fixed by the Board of Directors and stated in the notice of the meeting. In lieu of holding an annual meeting of stockholders at a designated place, the Board of Directors may, in its sole discretion, determine that any annual meeting of stockholders may be held solely by means of remote communication.

1.3 Special Meetings. Special meetings of stockholders may be called at any time by the Board of Directors, the Chairman of the Board, the President or the holders of record of not less than 10% of all shares entitled to cast votes at the meeting, for any purpose or purposes prescribed in the notice of the meeting and shall be held at such place (if any), on such date and at such time as the Board may fix. In lieu of holding a special meeting of stockholders at a designated place, the Board of Directors may, in its sole discretion, determine that any special meeting of stockholders may be held solely by means of remote communication. Business transacted at any special meeting of stockholders shall be confined to the purpose or purposes stated in the notice of meeting. Upon request in writing sent by registered mail to the President or Chief Executive Officer by any stockholder or stockholders entitled to request a special meeting of stockholders pursuant to this Section 1.3, and containing the information required pursuant to Sections 1.10 and 2.15, as applicable, the Board of Directors shall determine a place and time for such meeting, which time shall be not less than 10 nor more than 30 days after the receipt of such request, and a record date for the determination of stockholders entitled to vote at such meeting shall be fixed by the Board of Directors, in advance, which shall not be more that 15 days nor less than 10 days before the date of such meeting. Following such receipt of a request and determination by the Secretary of the validity thereof, it shall be the duty of the Secretary to present the request to the Board of Directors, and upon Board action as provided in this Section 1.3, to cause notice to be given to the stockholders entitled to vote at such meeting, in the manner set forth in Section 1.4, hereof, that a meeting will be held at the place, if any, and time so determined, for the purposes set forth in the stockholder's request, as well as any purpose or purposes determined by the Board of Directors in accordance with this Section 1.3.

1.4 Notice of Meetings.

(a) Written notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or as required by law (meaning here and hereafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation). The notice of any meeting shall state the place, if any, date and hour of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

(b) Notice to stockholders may be given by personal delivery, mail, or, with the consent of the stockholder entitled to receive notice, by facsimile or other means of electronic transmission. If mailed, such notice shall be delivered by postage prepaid envelope directed to each stockholder at such stockholder's address as it appears in the records of the corporation and shall be deemed given when deposited in the United States mail. Notice given by electronic transmission pursuant to this subsection shall be deemed given: (1) if by facsimile telecommunication, when directed to a facsimile telecommunication number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by personal delivery, by mail, or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) Notice of any meeting of stockholders need not be given to any stockholder if waived by such stockholder either in a writing signed by such stockholder or by electronic transmission, whether such waiver is given before or after such meeting is held. If such a waiver is given by electronic transmission, the electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

1.5 Voting List. The officer who has charge of the stock ledger of the corporation shall prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order for each class of stock and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any such stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, in the manner provided by law. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present. This list shall determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 Quorum. Except as otherwise provided by law or these Bylaws, the holders of a majority of the shares of the capital stock of the corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate class vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

1.7 Adjournments. Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by the chairman of the meeting or, in the absence of such person, by any officer entitled to preside at or to act as secretary of such meeting, or by the holders of a majority of the shares of stock present or represented at the meeting and entitled to vote, although less than a quorum. When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or in the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or may authorize any other person or persons to vote or act for him by written proxy executed by the stockholder or his authorized agent or by a transmission permitted by law and delivered to the Secretary of the corporation. Any copy, facsimile transmission or other reliable reproduction of the writing or transmission created pursuant to this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile transmission or other reproduction shall be a complete reproduction of the entire original writing or transmission.

1.9 Action at Meeting. When a quorum is present at any meeting, any election of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote at the election, and any other matter shall be determined by a majority in voting power of the shares entitled to vote on the matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, a majority of the shares of each such class entitled to vote on the matter) shall decide such matter, except when a different vote is required by express provision of law, the Certificate of Incorporation or these Bylaws.

All voting, including on the election of directors, but excepting where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefor by a stockholder entitled to vote or his or her proxy, a vote by ballot shall be taken.

Each ballot shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. The corporation may, and to the extent required by law, shall, 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 an alternate inspector to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of his or her ability.

1.10 Conduct of Business. At every meeting of the stockholders, the Chairman of the Board, or, in his or her absence, the President, or, in his or her absence, such other person as may be appointed by the Board of Directors, shall act as chairman. The Secretary of the corporation or a person designated by the chairman of the meeting shall act as secretary of the meeting. Unless otherwise approved by the chairman of the meeting, attendance at the stockholders' meeting is restricted to stockholders of record, persons authorized in accordance with Section 1.8 of these Bylaws to act by proxy, and officers of the corporation.

The chairman of the meeting shall call the meeting to order, establish the agenda, and conduct the business of the meeting in accordance therewith or, at the chairman's discretion, it may be conducted otherwise in accordance with the wishes of the stockholders in attendance. 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.

The chairman shall also conduct the meeting in an orderly manner, rule on the precedence of, and procedure on, motions and other procedural matters, and exercise discretion with respect to such procedural matters with fairness and good faith toward all those entitled to take part. Without limiting the foregoing, the chairman may (a) restrict attendance at any time to bona fide stockholders of record and their proxies and other persons in attendance at the invitation of the presiding officer or Board of Directors, (b) restrict use of audio or video recording devices at the meeting, and (c) impose reasonable limits on the amount of time taken up at the meeting on discussion in general or on remarks by any one stockholder. Should any person in attendance become unruly or obstruct the meeting proceedings, the chairman shall have the power to have such person removed from the meeting. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 1.10. The chairman of a meeting may determine and declare to the meeting that any proposed item of business was not brought before the meeting in accordance with the provisions of this Section 1.10 and Section 1.9, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

1.11 Stockholder Action Without Meeting. Any action which may be taken at any annual or special meeting of stockholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the actions so taken, is signed by the holders of outstanding shares having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. All such consents shall be filed with the Secretary of the corporation and shall be maintained in the corporate records. Prompt notice of the taking of a corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

An electronic transmission consenting to an action to be taken and transmitted by a stockholder, or by a proxy holder or other person authorized to act for a stockholder, shall be deemed to be written, signed and dated for the purpose of this Section 1.11, provided that such electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the electronic transmission was transmitted by the stockholder or by a person authorized to act for the stockholder and (ii) the date on which such stockholder or authorized person transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the books in which proceedings of meetings of stockholders are recorded.

1.12 Meetings by Remote Communication. If authorized by the Board of Directors, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication, participate in the meeting and be deemed present in person and vote at the meeting, 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 proxy holder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxy holders 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 proxy holder 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.

ARTICLE II
BOARD OF DIRECTORS

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

2.2 Number and Term of Office. The initial number of directors shall be five. Unless otherwise set forth in the Certificate of Incorporation, that number may be changed from time to time upon amendment of this Section 2.2 by the board of directors or stockholders in accordance herewith (and subject to any restrictions on such amendments as may be set forth in the Certificate of Incorporation). Directors need not be stockholders of the Corporation. All directors shall hold office until the expiration of the term for which elected and until their respective successors are elected, except in the case of the death, resignation or removal of any director.

2.3 Vacancies and Newly Created Directorships. Subject to the rights of the holders of any series of Preferred Stock or Common Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification or other cause (including removal from office by a vote of the stockholders) may be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), or by the sole remaining director, or, to the extent required by the Certificate of Incorporation, by the stockholders**,** and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office of the class to which they have been elected expires or until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

2.4 Resignation. Any director may resign by delivering notice in writing or by electronic transmission to the President, Chairman of the Board or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.5 Removal. Subject to the rights of the holders of any series of Preferred Stock or Common Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.

2.6 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.7 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or two or more directors and may be held at any time and place, within or without the State of Delaware.

2.8 Notice of Special Meetings. Notice of any special meeting of directors shall be given to each director by whom it is not waived by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director by (i) giving notice to such director in person or by telephone, electronic transmission or voice message system at least 24 hours in advance of the meeting, (ii) sending a facsimile to his last known facsimile number, or delivering written notice by hand to his last known business or home address, at least 24 hours in advance of the meeting, or (iii) mailing written notice to his last known business or home address at least three days in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

2.9 Participation in Meetings by Telephone Conference Calls or Other Methods of Communication. Directors or any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.10 Quorum. A majority of the total number of authorized directors shall constitute a quorum at any meeting of the Board of Directors. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or at a meeting of a committee which authorizes a particular contract or transaction.

2.11 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these Bylaws.

2.12 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting if all members of the Board or committee, as the case may be, consent to the action in writing or by electronic transmission, and the writings or electronic transmissions are 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.

2.13 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation, with such lawfully delegated powers and duties as it therefor confers, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the Delaware General Corporation Law, shall have and may exercise all the powers and authority of the Board of Directors 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 which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors.

2.14 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

2.15 Nomination of Director Candidates. Subject to the rights of holders of any class or series of Preferred Stock or rights of holders of Common Stock then outstanding, nominations for the election of Directors may be made by (i) the Board of Directors or a duly authorized committee thereof or (ii) any stockholder entitled to vote in the election of Directors.

ARTICLE III
OFFICERS

3.1 Enumeration. The officers of the corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer, a Chief Financial Officer and such other officers with such other titles as the Board of Directors shall determine, including, at the discretion of the Board of Directors, a Chairman of the Board and one or more Vice Presidents and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election. Officers shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Officers may be appointed by the Board of Directors at any other meeting.

3.3 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until his successor is elected and qualified, unless a different term is specified in the vote appointing him, or until his earlier death, resignation or removal.

3.5 Resignation and Removal. Any officer may resign by delivering his written resignation to the corporation at its principal office or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any officer elected by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors.

3.6 Chairman of the Board. The Board of Directors may appoint a Chairman of the Board. If the Board of Directors appoints a Chairman of the Board, he shall perform such duties and possess such powers as are assigned to him by the Board of Directors. Unless otherwise provided by the Board of Directors, he shall preside at all meetings of the Board of Directors.

3.7 Chief Executive Officer. The Chief Executive Officer of the corporation shall, subject to the direction of the Board of Directors, have general supervision, direction and control of the business and the officers of the corporation. He shall preside at all meetings of the stockholders and, in the absence or nonexistence of a Chairman of the Board, at all meetings of the Board of Directors. He shall have the general powers and duties of management usually vested in the chief executive officer of a corporation, including general supervision, direction and control of the business and supervision of other officers of the corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

3.8 President. Subject to the direction of the Board of Directors and such supervisory powers as may be given by these Bylaws or the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if such titles be held by other officers, the President shall have general supervision, direction and control of the business and supervision of other officers of the corporation. Unless otherwise designated by the Board of Directors, the President shall be the Chief Executive Officer of the corporation. The President shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. He or she shall have power to sign stock certificates, contracts and other instruments of the corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the corporation, other than the Chairman of the Board and the Chief Executive Officer.

3.9 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the President may from time to time prescribe. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and when so performing shall have at the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.10 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the Secretary, including, without limitation, the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to keep a record of the proceedings of all meetings of stockholders and the Board of Directors, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

3.11 Treasurer. The Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation, the duty and power to keep and be responsible for all funds and securities of the corporation, to maintain the financial records of the corporation, to deposit funds of the corporation in depositories as authorized, to disburse such funds as authorized, to make proper accounts of such funds, and to render as required by the Board of Directors accounts of all such transactions and of the financial condition of the corporation.

3.12 Chief Financial Officer. The Chief Financial Officer shall perform such duties and shall have such powers as may from time to time be assigned to him by the Board of Directors, the Chief Executive Officer or the President. Unless otherwise designated by the Board of Directors, the Chief Financial Officer shall be the Treasurer of the corporation.

3.13 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.14 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

ARTICLE IV
CAPITAL STOCK

4.1 Issuance of Stock. Subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

4.2 Certificates of Stock. The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series of its stock shall be uncertificated shares; provided, however, that no such resolution shall apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock of the corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

4.3 Stock Transfer Restrictions. Shares of Common Stock (other than Common Stock acquired upon conversion of any series of Preferred Stock then outstanding) shall not be sold, assigned, pledged or otherwise transferred (including by way of any arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock) without the express written consent of the Board of Directors (which consent may be granted or withheld in the sole and absolute discretion of the Board of Directors) except to the corporation and shares (i) by gift to immediate family members or to a trust for the sole benefit of the participant and his or her immediate family members, or (ii) pursuant to a participant's beneficiary designation, will or the laws of intestate succession, provided in all cases that the transferee agrees in writing to be bound by the same transfer restrictions. These transfer restrictions will terminate when the corporation's stock is publicly traded on an established securities market or upon closing of a change in control in which the successor corporation has equity securities that are publicly traded on an established securities market. The certificates representing the Common Stock shall bear the following legend so long as the foregoing restriction remains in effect:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER AS PROVIDED IN THE BYLAWS OF THE CORPORATION."

In addition to the transfer restrictions with respect to shares of Common Stock described above, each certificate for shares of stock which are subject to any other restriction on transfer pursuant to the Certificate of Incorporation, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

4.4 Effecting Transfers. Subject to applicable law and compliance with any restrictions on transfer set forth in the Certificate of Incorporation, these Bylaws and any applicable agreement among any number of stockholders or among such holders and the corporation, shares of stock may be transferred on the books of the corporation: (i) in the case of shares represented by a certificate, by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or authenticity of signature as the corporation or its transfer agent may reasonably require; and (ii) in the case of uncertificated shares, upon the receipt of proper transfer instructions from the registered owner thereof. Except as may be otherwise required by law, the Certificate of Incorporation or the Bylaws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these Bylaws.

4.5 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, or it may issue uncertificated shares if the shares represented by such certificate have been designated as uncertificated shares in accordance with Section 4.2, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.6 Record Date. The Board of Directors may fix in advance a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, concession or exchange of stock, or for the purpose of any other lawful action. Such record date shall not precede the date on which the resolution fixing the record date is adopted and shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed by the Board of Directors, 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 before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action by the Board of Directors is necessary shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

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 of Directors may fix a new record date for the adjourned meeting.

ARTICLE V
GENERAL PROVISIONS

5.1 Fiscal Year. The fiscal year of the corporation shall be as fixed by the Board of Directors.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by electronic transmission or any other method permitted under the Delaware General Corporation Law, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting to the timeliness of notice.

5.4 Actions with Respect to Securities of Other Corporations. Except as the Board of Directors may otherwise designate, the Chief Executive Officer or President or any officer of the corporation authorized by the Chief Executive Officer or President shall have the power to vote and otherwise act on behalf of the corporation, in person or proxy, and may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact to this corporation (with or without power of substitution) at any meeting of

stockholders or shareholders (or with respect to any action of stockholders) of any other corporation or organization, the securities of which may be held by this corporation and otherwise to exercise any and all rights and powers which this corporation may possess by reason of this corporation's ownership of securities in such other corporation or other organization.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.8 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9 Notices. Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by commercial courier service, or by facsimile or other electronic transmission, provided that notice to stockholders by electronic transmission shall be given in the manner provided in Section 232 of the Delaware General Corporation Law. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the corporation. The time when such notice shall be deemed to be given shall be the time such notice is received by such stockholder, director, officer, employee or agent, or by any person accepting such notice on behalf of such person, if delivered by hand, facsimile, other electronic transmission or commercial courier service, or the time such notice is dispatched, if delivered through the mails. Without limiting the manner by which notice otherwise may be given effectively, notice to any stockholder shall be deemed given: (1) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (2) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the stockholder; and (5) if by mail, when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

5.10 Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board of Directors, and each officer of the corporation shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or other records of the corporation as provided by law, including reports made to the corporation by any of its officers, by an independent certified public accountant, or by an appraiser selected with reasonable care.

5.11 Time Periods. In applying any provision of these Bylaws which require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

5.12 Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

5.13 Annual Report. For so long as the corporation has fewer than 100 holders of record of its shares, the mandatory requirement of an annual report under Section 1501 of the California Corporations Code, to the extent that it might otherwise apply, is hereby expressly waived.

ARTICLE VI
AMENDMENTS

6.1 By the Board of Directors. Except as otherwise set forth in these Bylaws, and subject to the rights of the holders of any series of Preferred Stock then outstanding, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

6.2 By the Stockholders. Except as otherwise set forth in these Bylaws, and subject to the rights of the holders of any series of Preferred Stock then outstanding, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of the holders of at least a majority of the voting power of all of the shares of capital stock of the corporation issued and outstanding and entitled to vote generally in any election of directors, voting together as a single class. Such vote may be held at any annual meeting of stockholders, or at any special meeting of stockholders provided that notice of such alteration, amendment, repeal or adoption of new Bylaws shall have been stated in the notice of such special meeting.

ARTICLE VII
INDEMNIFICATION OF DIRECTORS AND OFFICERS

7.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative ("proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer of another corporation, or as a controlling person of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, 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, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same 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 said Law permitted the corporation to provide prior to such amendment) against all expenses, liability and loss reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in Section 7.2 of this Article VII, the corporation shall indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) initiated by such person only if (a) such indemnification is expressly required to be made by law, (b) the proceeding (or part thereof) was authorized by the Board of Directors of the corporation, (c) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law, or (d) the proceeding (or part thereof) is brought to establish or enforce a right to indemnification or advancement under an indemnity agreement or any other statute or law or otherwise as required under Section 145 of the Delaware General Corporation Law. The rights hereunder shall be contract rights and shall include the right to be paid expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a director or officer of the corporation in his or her capacity as a director or officer (and not in any other capacity in which service was or is tendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately by final judicial decision from which there is no further right to appeal that such director or officer is not entitled to be indemnified under this Section or otherwise.

7.2 Right of Claimant to Bring Suit. If a claim under Section 7.1 is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, or 20 days in the case of a claim for advancement of expenses, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if such suit is not frivolous or brought in bad faith, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to this corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In 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 judicial decision from which there is no further right to appeal that the indemnitee

has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. In any suit brought by the indemnitee 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 indemnitee is not entitled to be indemnified, or to such advancement of expenses, shall be on the corporation.

7.3 Indemnification of Employees and Agents. The corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of related expenses, to any employee or agent of the corporation to the fullest extent of the provisions of this Article with respect to the indemnification of and advancement of expenses to directors and officers of the corporation.

7.4 Non-Exclusivity of Rights. The rights conferred on any person in this Article VII shall not be exclusive of any other right which such persons may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

7.5 Indemnification Contracts. The Board of Directors is authorized to enter into a contract with any director, officer, employee or agent of the corporation, or any person serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing for indemnification rights equivalent to or, if the Board of Directors so determines, greater than, those provided for in this Article VII.

7.6 Insurance. The corporation may maintain insurance to the extent reasonably available, at its expense, to protect itself and any such director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

7.7 Effect of Amendment. Any amendment, repeal or modification of any provision of this Article VII shall not adversely affect any right or protection of an indemnitee or his successor existing at the time of such amendment, repeal or modification.

CERTIFICATE OF SECRETARY OF
CLUB W. INC.
(a Delaware corporation)

I, Geoff McFarlane, the Secretary of Club W, Inc., a Delaware corporation (the "Corporation"), hereby certify that these Amended and Restated Bylaws to which this Certificate is attached are the bylaws of the Corporation, which were duly adopted on April 23, 2014.

/s/ Geoff McFarlane
Geoff McFarlane, Secretary

FIRST AMENDMENT TO THE AMENDED AND RESTATED BYLAWS OF CLUB W, INC. (the "Company")

On June 10, 2015, the first sentence of Section 2.2 of Article II of the Company's Amended and Restated Bylaws was amended by the Company's board of directors and stockholders to read as follows (and the remainder of Section 2.2 shall continue in effect without any change):

"The number of directors shall be six."

Exhibit 3.2(a)

CERTIFICATE OF AMENDMENT
OF THE AMENDED AND RESTATED BYLAWS OF WINC, INC.,

a Delaware corporation

The undersigned is the duly elected, qualified and acting Secretary of Winc, Inc., a Delaware corporation (the "**Company**"), and does hereby certify that, effective as of December 17, 2019, the board of directors and the stockholders of the Company have each approved an amendment to the Amended and Restated Bylaws of Club W, Inc., dated as of April 23, 2014, as amended by the First Amendment to the Amended and Restated Bylaws of Club W, Inc., dated as of June 10, 2015 (as amended, the "**Bylaws**"), whereby the first sentence of Section 2.2 of Article II of the Bylaws was amended and restated in its entirety to read as follows:

"The number of directors shall be seven (7)."

Except as specifically set forth in this certificate, the provisions of the Bylaws shall continue in effect without change.

IN WITNESS WHEREOF, the undersigned Secretary of the Company has executed this certificate as of the date set forth below.

Date: 12/17/2019

/s/ Matt Thelen
Matt Thelen
Secretary
Winc, Inc.

Exhibit 10.1

WINC, INC.

SEVENTH AMENDED AND RESTATED

INVESTORS' RIGHTS AGREEMENT

Effective Date: April 6, 2021

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SEVENTH AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT

THIS SEVENTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (this "***Agreement***"), is made as of April 6, 2021, by and among Winc, Inc., a Delaware corporation (the "***Company***"), and each of the investors listed on Schedule 1 hereto (each, an "***Investor***" and collectively, the "***Investors***").

RECITALS

WHEREAS, certain of the Investors (the "***Existing Investors***") hold shares of the Company's Series Seed Preferred Stock, Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series D Prefeerred Stock, Series E Preferred Stock, and/or shares of Common Stock issued upon conversion thereof and possess registration rights, information rights, rights of first offer, and other rights pursuant to the Sixth Amended and Restated Investors' Rights Agreement dated as of December 8, 2020, between the Company and such Investors (the "***Prior Agreement***");

WHEREAS, the Existing Investors are holders of (i) a majority of the Registrable Securities then outstanding and (ii) a majority of the Registrable Securities held by the Major Investors (as such terms are defined in the Prior Agreement), and desire to amend and

restate the Prior Agreement in its entirety and to accept the rights created pursuant to this Agreement in lieu of the rights granted to them under the Prior Agreement; and

WHEREAS, the Existing Investors and the Company desire to induce certain of the Investors to purchase shares of Series F Preferred Stock of the Company, par value $0.0001 per share ("***Series F Preferred Stock***") and warrants to purchase shares of Series F Preferred Stock ("***Series F Warrants***"), pursuant to a Series F Preferred Stock and Warrant Purchase Agreement (the "***Purchase Agreement***") by amending and restating the Prior Agreement to provide the Investors with the rights and privileges as set forth herein.

NOW, THEREFORE, the Existing Investors hereby agree that the Prior Agreement shall be amended and restated in its entirety as set forth in this Seventh Amended and Restated Investors' Rights Agreement, and the parties to this Agreement further agree as follows:

1. Definitions. For purposes of this Agreement:

1.1 "***Affiliate***" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer, director or trustee of such Person or any venture capital fund or other investment fund now or hereafter existing that is controlled by one or more general partners, managing members or investment adviser of, or shares the same management company or investment adviser with, such Person.

1.2 "***Bessemer Ventures***" means Bessemer Venture Partners VIII Institutional L.P.

1.3 "***Certificate of Incorporation***" means the Ninth Amended and Restated Certificate of Incorporation of the Company, as amended or restated from time to time in accordance therewith.

1.4 "***CJF***" means collectively Sake Ventures, LLC and Rice Wine Ventures, LLC.

1.5 "***Common Stock***" means shares of the Company's common stock, par value $0.0001 per share.

1.6 "***Damages***" means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.7 "***Deemed Liquidation Event***" means a Deemed Liquidation Event, as such term is defined in the Certificate of Incorporation.

1.8 "***Derivative Securities***" means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Stock, including options and warrants.

1.9 "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

1.10 "***Excluded Registration***" means (i) a registration relating to the sale or grant of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, equity incentive or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.11 "***Form S-1***" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.12 "***Form S-3***" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

1.13 "***Founder(s)***" means Geoffrey McFarlane and Brian Smith.

1.14 "***GAAP***" means generally accepted accounting principles in the United States.

1.15 "***Holder***" means any holder of Registrable Securities who is a party to this Agreement.

1.16 "***Immediate Family Member***" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.

1.17 "***Initiating Holders***" means, collectively, Holders who properly initiate a registration request under this Agreement.

1.18 "***IPO***" means the Company's first underwritten public offering of its Common Stock under the Securities Act.

1.19 "***Major Investor***" means Pacific Continental Insurance Co., Shining, Bessemer Ventures, Wahoowa Ventures LLC, 15 Angels II LLC, GoBlue Ventures, LLC, CrossCut Ventures 2, L.P., Kukac Limited, CJF, Kestrel Flight Fund LLC and Thomas Wetherald, and for purposes of Sections 3.1 and 3.2 only, Guild Capital – Club W LLC, in each case, for so long as each of such Investors (together with its Affiliates) continues to hold at least fifty percent (50.0%) of the shares of Preferred Stock held by such Investor (together with its Affiliates) as of the date hereof, and, for purposes of Section 3.1 only, each Series D Significant Investor. A Major Investor includes any general partners, managing members and Affiliates of a Major Investor.

1.20 "***New Securities***" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

1.21 "***Person***" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.22 "***Prefered Director***" has the meaning set forth in the Certificate of Incorporation.

1.23 "***Preferred Stock***" means, collectively, shares of the Company's Series F Preferred Stock, Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B-1 Preferred Stock, Series B Preferred Stock, Series A Preferred Stock and Series Seed Preferred Stock.

1.24 "***QIPO***" means an IPO which results in the conversion of all shares of Preferred Stock into Common Stock pursuant to Section 5.1(a) of Article VI of the Certificate of Incorporation.

1.25 "***Registrable Securities***" means (i) the Common Stock issuable or issued upon conversion of the Preferred Stock; (ii) any Common Stock, or any Common Stock issued or issuable (directly or indirectly) upon conversion and/or exercise of the Series F Warrants or any other securities of the Company, acquired by the Investors after the date hereof; and (iii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (ii) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Subsection 6.1, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Subsection 2.13 of this Agreement.

1.26 "***Registrable Securities then outstanding***" means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

1.27 "***Restricted Securities***" means the securities of the Company required to be notated with the legend set forth in Subsection 2.12(b) hereof.

1.28 "***SEC***" means the Securities and Exchange Commission.

1.29 "***SEC Rule 144***" means Rule 144 promulgated by the SEC under the Securities Act.

1.30 "***SEC Rule 145***" means Rule 145 promulgated by the SEC under the Securities Act.

1.31 ***"Securities Act"*** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.32 "***Selling Expenses***" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Subsection 2.6.

1.33 "***Series A Preferred Stock***" means shares of the Company's Series A Preferred Stock, par value $0.0001 per share.

1.34 "***Series B Preferred Stock***" means shares of the Company's Series B Preferred Stock, par value $0.0001 per share.

1.35 "***Series B-1 Preferred Stock***" means shares of the Company's Series B-1 Preferred Stock, par value $0.0001 per share.

1.36 "***Series C Preferred Stock***" means shares of the Company's Series C Preferred Stock, par value $0.0001 per share.

1.37 "***Series D Preferred Stock***" means shares of the Company's Series D Preferred Stock, par value $0.0001 per share.

1.38 "***Series D Signficant Investor***" means each Investor who holds at least 35,371 shares of Series D Preferred Stock (as presently constituted and subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits and the like), as listed on Schedule 2 hereto, for so long as each such Investor continues to hold at least fifty percent (50.0%) of such shares of Series D Preferred Stock.

1.39 "***Series E Preferred Stock***" means shares of the Company's Series E Preferred Stock, par value $0.0001 per share.

1.40 "***Series Seed Preferred Stock***" means shares of the Company's Series Seed Preferred Stock, par value $0.0001 per share.

1.41 "***Shining***" means collectively Shiningwine Limited (BVI), Dreamer Pathway Limited (BVI) and Dream Catcher Investments Limited (BVI).

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand Registration.

(a) Form S-1 Demand. If at any time after the earlier of (i) five (5) years after the date of this Agreement or (ii) one hundred eighty (180) days after the effective date of the registration statement for the IPO, the Company receives a request from Holders of at least forty percent (40.0%) of the Registrable Securities (including the Holders of a majority of the Registrable Securities held by Major Investors) then outstanding that the Company file a Form S-1 registration statement with respect to at least forty percent (40.0%) of the Registrable Securities then outstanding (or a lesser percent if the anticipated aggregate offering price, net of Selling Expenses, would exceed $15.0 million), then the Company shall (x) within ten (10) days after the date such request is given, give notice thereof (the "***Demand Notice***") to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least twenty (20.0%) percent of the Registrable Securities (including the Holders of a majority of the Registrable Securities held by Major Investors) then outstanding that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $5.0 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Subsection 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than sixty (60) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such sixty (60) day period other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a): (i) during the period that is sixty (60) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two (2) registrations pursuant to Subsection 2.1(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Subsection 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(b) (i) during the period that is thirty (30) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two (2) registrations pursuant to Subsection 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Subsection 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Subsection 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Subsection 2.1(d); provided, that if such withdrawal is during a period the Company has deferred taking action pursuant to Subsection 2.1(c), then the Initiating Holders may withdraw their request for registration and such registration will not be counted as "effected" for purposes of this Subsection 2.1(d).

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its securities under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Subsection 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Subsection 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Subsection 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Initiating Holders, subject only to the reasonable approval of the Company. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Subsection 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting; provided, however, that no Holder (or any of their assignees) shall be required to make any representations, warranties or indemnities except as they relate to such Holder's ownership of shares and authority to enter into the underwriting agreement and to such Holder's intended method of distribution, and the liability of such Holder shall be several and not joint, and limited to an amount equal to the net proceeds from the offering received by such Holder. Notwithstanding any other provision of this Subsection 2.3, if the managing underwriter(s) advise(s) the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

(b) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Subsection 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares. Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering, or (ii) the number of Registrable Securities included in the offering be reduced below thirty percent (30.0%) of the total number of securities included in such offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above and no other stockholder's securities are included in such offering. For purposes of the provision in this

Subsection 2.3(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

(c) For purposes of Subsection 2.1, a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Subsection 2.3(a), fewer than fifty percent (50.0%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended for up to an additional one hundred twenty (120) days, if necessary, to keep the registration statement effective until all such Registrable Securities are sold;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any managing underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company's directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable and documented fees and disbursements of one counsel for the selling Holders ("**Selling Holder Counsel**"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Subsection 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Subsections 2.1(a) or 2.1(b), as the case may be; provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Sections 2.1(a) or 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as

defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Subsections 2.8(b) and 2.8(d) exceed the net proceeds from the offering received by such Holder (i.e., net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Subsection 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Subsection 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Subsection 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Subsection 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Subsection 2.8(b), exceed the net proceeds from the offering received by such Holder (i.e., net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the shares of Preferred Stock then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that (i) would allow such holder or prospective holder (i) to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included; or (ii) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Subsection 6.9.

2.11 "Market Stand-off" Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company for its own behalf of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3, and ending on the date specified by the Company and the managing underwriter (such period not to exceed ninety (90) days, except in connection with the IPO, in wich case such period shall not exceed one hundred eighty (180) days), (i) lend; 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; or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock held immediately before the effective date of the registration statement for such offering or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Subsection 2.11 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, or the transfer of any shares to any trust for the direct or indirect benefit of the Holder or the immediate family of the Holder, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, and shall be applicable to the Holders only if all officers and directors are subject to the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all stockholders individually owning more than one percent (1.0%) of the Company's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock). The underwriters in connection with such registration are intended third-party beneficiaries of this Subsection 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Subsection 2.11 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders subject to such agreements, based on the number of shares subject to such agreements. At the election of the holders of a majority of the shares of Preferred Stock, the market stand-off period set forth in this Section 2.11 shall be extended for a period ending up to ninety (90) days following a public offering of Company securities which is consummated during the initial market stand-off period relating to the IPO.

2.12 Restrictions on Transfer.

(a) The Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate, instrument, or book entry representing (i) the Registrable Securities, and (ii) any other securities issued in respect of the securities referenced in clause (i), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Subsection 2.12(c)) be notated with a legend substantially in the following form:

> THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.

> THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Subsection 2.12.

(c) The holder of such Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effefcted without registration under the Securities Act; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with SEC Rule 144, it being understood that any such opinion as may be required by the Company's transfer agent to remove the restrictive legend identified in Section 2.12(b) for such Restricted Securities as may be sold pursuant to SEC Rule 144 shall be promptly provided by the Company's counsel and the expense of such opinion shall be borne by the Company; or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Subsection 2.12. Each certificate, instrument, or book entry representing the Restricted Securities transferred as above provided shall be notated with, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Subsection 2.12(b), except that such certificate instrument, or book entry shall not be notated with such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate upon the earliest to occur of:

(a) the closing of a Deemed Liquidation Event; and

(b) the fifth (5^{th}) anniversary of the QIPO.

3. Information and Observer Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor; provided that the Board of Directors has not reasonably determined that such Major Investor is a competitor of the Company (it being understood that a venture capital fund that is a Major Investor will not be determined to be a competitor of the Company):

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and a comparison between (x) the actual amounts as of and for such fiscal year and (y) the comparable amounts for the prior year and as included in the Budget (as defined in Subsection 3.1(e)) for such year, with an explanation of any material differences between such amounts and a schedule as to the sources and applications of funds for such year, and (iii) a statement of stockholders' equity as of the end of such year, all such financial statements audited and certified by independent public accountants of recognized standing selected by the Company and approved by the Company's Board of Directors;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of stockholders' equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(c) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, a statement showing the number of shares of each class and series of capital stock and securities convertible into or exercisable for shares of capital stock outstanding at the end of the period, the Common Stock issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Stock and the exchange ratio or exercise price applicable thereto, and the number of shares of issued stock options and stock options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Major Investors to calculate their respective percentage equity ownership in the Company, and certified by the chief financial officer or chief executive officer of the Company as being true, complete, and correct;

(d) as soon as practicable, but in any event within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet and statement of stockholders' equity as of the end of such month, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(e) as soon as practicable, but in any event thirty (30) days before the end of each fiscal year, a budget and business plan for the next fiscal year (collectively, the "**Budget**"), approved by the Board of Directors and prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company;

(f) with respect to the financial statements called for in Subsection 3.1(a), Subsection 3.1(b) and Subsection 3.1(d), an instrument executed by the chief financial officer and chief executive officer of the Company certifying that such financial statements were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (except as otherwise set forth in Subsection 3.1(b) and Subsection 3.1(d)) and fairly present the financial condition of the Company and its results of operation for the periods specified therein; and

(g) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company as any Major Investor may from time to time reasonably request; provided, however, that the Company shall not be obligated under this Subsection 3.1 to provide information (i) that the Company reasonably determines in good faith to be a trade secret

or confidential information (unless covered by an enforceable confidentiality agreement, in a form acceptable to the Company); or (ii) the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Subsection 3.1 to the contrary, the Company may cease providing the information set forth in this Subsection 3.1 during the period starting with the date thirty (30) days before the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company's covenants under this Subsection 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a competitor of the Company (it being understood that a venture capital fund that is a Major Investor will not be determined to be a competitor of the Company)), at such Major Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor; provided, however, that the Company shall not be obligated pursuant to this Subsection 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3 Observer Rights. As long as Thomas Wetherald owns not less than seventy five percent (75.0%) of the shares of the Series F Preferred Stock he is purchasing under the Purchase Agreement (or an equivalent amount of Common Stock issued upon conversion thereof), the Company shall Mr. Wetherald to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give Mr. Wetherald copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that Mr. Wetherald shall agree to hold in confidence all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude Mr. Wetherald from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest.

3.4 Termination of Rights. The covenants set forth in Subsection 3.1, Subsection 3.2 and Section 3.3 shall terminate and be of no further force or effect (i) immediately before the consummation of the QIPO, or (ii) upon a Deemed Liquidation Event, whichever event occurs first.

3.5 Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor or make decisions with respect to its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Subsection 3.5 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Subsection 3.5 (iii) to any existing or prospective Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

4. Rights to Future Stock Issuances.

4.1 Right of First Offer. Subject to the terms and conditions of this Subsection 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Major Investor. A Major Investor shall be entitled to apportion the right of first offer hereby granted to it in such proportions as it deems appropriate, among (i) itself, (ii) its Affiliates and (iii) its beneficial interest holders, such as limited partners, members or any other Person having "beneficial ownership," as such term is defined in Rule 13d-3 promulgated under the Exchange Act, of such Major Investor ("***Investor Beneficial Owners***"); provided that each such Affiliate or Investor Beneficial Owner agrees to enter into this Agreement and each of the Voting Agreement and Right of First Refusal and Co-Sale Agreement of even date herewith among the Company, the Investors and the other parties named therein, as an "***Investor***" under each such agreement.

(a) The Company shall give notice (the "***Offer Notice***") to each Major Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Major Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the Common Stock then held by such Major Investor (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held by such Major Investor) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other Derivative Securities). At the expiration of such twenty (20) day period, the Company shall promptly notify each Major Investor that elects to purchase or acquire all the shares available to it (each, a "***Fully Exercising Investor***") of any other Major Investor's failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Major Investors were entitled to subscribe but that were not subscribed for by the Major Investors which is equal to the proportion that the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Stock and any other Derivative Securities then held, by such Fully Exercising Investor bears to the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Subsection 4.1(b) shall occur within the later of ninety (90) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Subsection 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Subsection 4.1(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Subsection 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Major Investors in accordance with this Subsection 4.1.

(d) The right of first offer in this Subsection 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Certificate of Incorporation); (ii) shares of Common Stock issued in the QIPO; (iii) the issuance of shares of Series F Preferred Stock pursuant to the Purchase Agreement; or (iv) shares or securities which the Major Investors holding at least a majority of the Registrable Securities held by all Major Investors agree, retroactively or prospectively, shall not be deemed to be New Securities.

4.2 Termination. The covenants set forth in Subsection 4.1 shall terminate and be of no further force or effect (i) immediately before the consummation of the QIPO, or (ii) upon a Deemed Liquidation Event, whichever event occurs first.

5. Additional Covenants.

5.1 Insurance. The Company shall maintain, from financially sound and reputable insurers Directors and Officers liability insurance in an amount and from a carrier on terms and conditions satisfactory to Bessemer Ventures, Shining and CJF. The

Company will certify to Bessemer Ventures, Shining and CJF, at least annually, that it is complying with this Subsection 5.1 and shall deliver a current copy of such policy to Bessemer Ventures, Shining and CJF along with such certification.

5.2 Employee Agreements. The Company will cause (i) each person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) to enter into a nondisclosure and proprietary rights assignment agreement; and (ii) each person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a one (1) year nonsolicitation agreement, substantially in the form approved by the Board of Directors, including the affirmative consent of at least two Preferred Directors (except in the case of an executive officer, in which case the affirmative consent of all Preferred Directors shall be required). In addition, the Company shall not amend, modify, terminate, waive, or otherwise alter, in whole or in part, any of the above-referenced agreements or any restricted stock agreement between the Company and any employee, without the consent of the Company's Board of Directors, including the affirmative consent of at least two Preferred Directors (except in the case of an executive officer, in which case the affirmative consent of all Preferred Directors shall be required).

5.3 Employee Stock. Unless otherwise approved by the Board of Directors, including the affirmative consent of at least two Preferred Directors, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company's capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a four (4) year period, with the first twenty-five percent (25.0%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following thirty-six (36) months, and (ii) a market stand-off provision substantially similar to that in Subsection 2.11. In addition, unless otherwise approved by the Board of Directors, including the affirmative consent of at least two Preferred Directors, with respect to equity grants following the Initial Closing (as defined in the Purchase Agreement), the Company shall retain a "right of first refusal" on employee transfers until the Company's IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock.

5.4 Qualified Small Business Stock. The Company shall use commercially reasonable efforts to cause the shares of Preferred Stock, as well as any shares into which such shares are converted, within the meaning of Section 1202(f) of the Internal Revenue Code (the "***Code***"), to constitute "qualified small business stock" as defined in Section 1202(c) of the Code; provided, however, that such requirement shall not be applicable if the Board of Directors of the Company determines, in its good-faith business judgment, that such qualification is inconsistent with the best interests of the Company. The Company shall submit to its stockholders (including the Investors) and to the Internal Revenue Service any reports that may be required under Section 1202(d)(1)(C) of the Code and the regulations promulgated thereunder. In addition, within twenty (20) business days after any Investor's written request therefor, the Company shall, at its option, either (i) deliver to such Investor a written statement indicating whether (and what portion of) such Investor's interest in the Company constitutes "qualified small business stock" as defined in Section 1202(c) of the Code or (ii) deliver to such Investor such factual information in the Company's possession as is reasonably necessary to enable such Investor to determine whether (and what portion of) such Investor's interest in the Company constitutes "qualified small business stock" as defined in Section 1202(c) of the Code.

5.5 Matters Requiring Investor Director Approval.

(a) So long as the holders of Preferred Stock are entitled to elect three Preferred Directors, the Company hereby covenants and agrees with each of the Investors that it shall not, without approval of the Board of Directors, which approval must include the affirmative vote or consent of at least two Preferred Directors:

(i) make, or permit any subsidiary to make, any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(ii) make, or permit any subsidiary to make, any loan or advance to any Person, including, without limitation, any employee or director of the Company or any subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board of Directors, including the affirmative vote or consent of at least two Preferred Directors;

(iii) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;

(iv) implement or change (or make any investment inconsistent with) the Company's cash investment policy;

(v) incur any aggregate indebtedness in excess of five hundred thousand dollars ($500,000) that is not already included in the Budget (as defined in Subsection 3.1(e)), other than trade credit incurred in the ordinary course of business;

(vi) hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers;

(vii) change the principal business of the Company, enter new lines of business, or exit the current line of business;

(viii) sell, assign, license, pledge, or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business; or

(ix) enter into any corporate strategic relationship involving the payment, contribution or assignment by the Company or to the Company of money or assets greater than five hundred thousand dollars ($500,000).

(b) In addition, so long as the holders of Preferred Stock are entitled to elect three Preferred Directors, the Company hereby covenants and agrees with each of the Investors that it shall not, without approval of the Board of Directors, which approval must include the affirmative vote or consent of at least two Preferred Directors:

(i) enter into or be a party to any transaction with any director, officer, or Founder of the Company or any "associate" (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such Person, including without limitation any "management bonus" or similar plan providing payments to employees in connection with a Deemed Liquidation Event, as such term is defined in the Company's Certificate of Incorporation; or

(ii) approve any stock incentive or stock option plan or program, increase the number of shares of Common Stock reserved for issuance under any such plan or program, or accelerate vesting of any stock option, restricted stock, or other equity-based incentive.

5.6 Board of Directors and Committee Matters. Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse the nonemployee directors for all reasonable out-of-pocket travel expenses incurred (consistent with the Company's travel policy) in connection with attending meetings of the Board of Directors. The Company shall cause to be established, as soon as practicable after such request, and will maintain, an audit and compensation committee, each of which shall consist solely of non-management directors. Each non-employee director shall be entitled in such person's discretion to be a member of any committee of the Board of Directors.

5.7 Foreign Corrupt Practices Act. As soon as practicable, but in any event within 90 days of the date hereof, the Company shall institute and maintain, and shall cause each of its subsidiaries and affiliates to institute and maintain, systems or internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the Foreign Corrupt Practices Act of 1977, as amended or any other applicable anti-bribery or anti-corruption law (including without limitation Part 12 of the United States Anti-Terrorism, Crime and Security Act of 2001; the United States Money Laundering Control Act of 1986; the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001; the United States Foreign Corrupt Practices Act, as amended; and laws applicable in the United Kingdom that prohibit bribery, corrupt practices or money laundering, including, for the avoidance of doubt, the Bribery Act 2010).

5.8 Subsidiary Board Approval – General. No subsidiary of the Company shall take any action without the approval of the Board of Directors of the Company to the extent approval of the Board of Directors of the Company would be required in the event such action was to be taken by the Company itself, including the affirmative consent of at least two Preferred Directors.

5.9 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company's Bylaws, its Certificate of Incorporation, or elsewhere, as the case may be.

5.10 Indemnification Matters. The Company hereby acknowledges that one (1) or more of the directors nominated to serve on the Board of Directors by the Investors (each a "***Fund Director***") may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more of the Investors and certain of their affiliates (collectively, the "***Fund Indemnitors***"). The Company hereby agrees (a) that it is the indemnitor of first resort (*i.e.*, its obligations to any such Fund Director are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Fund Director are secondary), (b) that it shall be required to advance the full amount of expenses incurred by such Fund Director and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such Fund Director to the extent legally permitted and as required by the Company's Certificate of Incorporation or Bylaws of the Company (or any agreement between the Company and such Fund Director), without regard to any rights such Fund Director may have against the Fund Indemnitors, and, (c) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of any such Fund Director with respect to any claim for which such Fund Director has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Director against the Company.

5.11 Right to Conduct Activities. The Company hereby agrees and acknowledges that certain of the Holders (together with their respective Affiliates) are professional investment organizations, and as such review the business plans and related proprietary information of many enterprises, some of which may compete directly or indirectly with the Company's business (as currently conducted or as currently propose to be conducted). Nothing in this Agreement shall preclude or in any way restrict the Holders from evaluating or purchasing securities, including publicly traded securities, of a particular enterprise, or investing or participating in any particular enterprise whether or not such enterprise has products or services which compete with those of the Company; and the Company hereby agrees that, to the extent permitted under applicable law, the Holders (and their respective Affiliates) shall not be liable to the Company for any claim arising out of, or based upon, (i) the investment by any Holder (or their respective Affiliates) in any entity competitive with the Company, or (ii) actions taken by any partner, officer, employee or other representative of an Holder (or their respective Affiliates) to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any of the Holders from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

5.12 Termination of Covenants. The covenants set forth in this Section 5, except for Subsections 5.10 and 5.11, shall terminate and be of no further force or effect (i) immediately before the consummation of the QIPO; or (iii) upon a Deemed Liquidation Event, whichever event occurs first.

6. Miscellaneous.

6.1 Successors and Assigns. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder; (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members; or (iii) after such transfer, holds at least 250,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Subsection 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually

for assignment of rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.2 Governing Law. This Agreement and any controversy arising directly or indirectly out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

6.3 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes**.**

6.4 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail or facsimile during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their addresses as set forth on Schedule hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Subsection 6.5.

6.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of (i) the Company, (ii) the holders of a majority of the Registrable Securities then outstanding, and (iii) the holders a majority of the Registrable Securities then held by the Major Investors; provided that the Company may in its sole discretion waive compliance with Subsection 2.12(c) (and the Company's failure to object promptly in writing after notification of a proposed assignment allegedly in violation of Subsection 2.12(c) shall be deemed to be a waiver); and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party. Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction). The Company shall give prompt notice of any amendment or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination, or waiver. Any amendment, termination, or waiver effected in accordance with this Subsection 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.7 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.8 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.9 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Series F Preferred Stock after the date hereof, any purchaser of such shares of Series F Preferred Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, and thereafter shall be deemed an "Investor" for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an "***Investor***" hereunder.

6.10 Entire Agreement. This Agreement (including any Schedules and Exhibits hereto), together with the Purchase Agreement and the other agreements referenced therein, constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled. Upon the effectiveness of this Agreement, the Prior Agreement shall be deemed amended and restated and superseded and replaced in its entirety by this Agreement, and shall be of no further force or effect.

6.11 Dispute Resolution; Waiver of Jury Trial. The parties (a) hereby irrevocably and unconditionally submit to the sole and exclusive jurisdiction of the state courts of the State of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.12 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

(*Remainder of page intentionally left blank.*)

The parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

COMPANY:

WINC, INC.,
a Delaware corporation

By: /s/ Geoffrey McFarlane
Name: Geoffrey McFarlane
Title: Chief Executive Officer

Address:

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

15 ANGELS II LLC

By: /s/ Scott Ring
Name: Scott Ring
Title: Authorized Person

Address:

15 Angels II LLC
1865 Palmer Avenue, Suite 104
Larchmont, New York 10538

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

BESSEMER VENTURE PARTNERS VIII INSTITUTIONAL L.P.

By: Deer VIII & Co. L.P., its general partner
By: Deer VIII & Co. L.P., its general partner

By: /s/ Scott Ring
Name: Scott Ring

Title: Authorized Person

Address:

Bessemer Venture Partners VIII Institutional L.P.
c/o Bessemer Ventures
535 Middlefield Road, Suite 245
Menlo Park, California 94025

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

C2 CLUB W HOLDINGS LLC

By: /s/ Rick L. Smith
Name: Rick L. Smith
Title: Managing Member

Address:

C2 Club W Holdings LLC
c/o Crosscut Ventures
373 Rose Avenue
Venice, California 90291
Attention: Rick L. Smith
Email: risk@crosscutventures.com
Phone: (424) 222-9642

C2 CLUB W SPV LLC

By: /s/ Rick L. Smith
Name: Rick L. Smith
Title: Managing Member

Address:

C2 Club W Holdings LLC
c/o Crosscut Ventures
373 Rose Avenue
Venice, California 90291
Attention: Rick L. Smith
Email: risk@crosscutventures.com
Phone: (424) 222-9642

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

CROSSCUT VENTURES 2, L.P.

By: CROSSCUT FUND MANAGER 2, L.L.C.
Its: General Partner

By: /s/ Rick L. Smith
Name: Rick L. Smith
Title: Managing Member

Address:

C2 Club W Holdings LLC
c/o Crosscut Ventures
373 Rose Avenue
Venice, California 90291
Attention: Rick L. Smith
Email: risk@crosscutventures.com
Phone: (424) 222-9642

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

DREAM CATCHER INVESTMENTS LIMITED (BVI)

By: /s/ Xiangwei Weng
Name: Xiangwei Weng
Title: Director

Address:

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

DREAMER PATHWAY LIMITED (BVI)

By: /s/ Xiangwei Weng
Name: Xiangwei Weng
Title: Director

Address:

SHININGWINE LIMITED (BVI)

By: /s/ Xiangwei Weng
Name: Xiangwei Weng
Title: Director

Address:

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

GOBLUE VENTURES LLC

By: /s/ Sandy Grippo
Name: Sandy Grippo
Title: Authorized Person

Address:

GoBlue Ventures LLC
525 Brannan Street, Suite 100
San Francisco, California 94107

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

GEOFFREY MCFARLANE

By: /s/ Geoffrey McFarlane
Name:
Title:

Address:

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

MCFARLANE FAMILY TRUST

By: /s/ Geoffrey McFarlane
Name:
Title: Trustee

Address:

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

SAKE VENTURES, LLC

By: /s/ Akihiro Ishii
Name: Akihiro Ishii

Title: Manager

Address:

Sake Ventures, LLC.
c/o Cool Japan Fund Inc.
17F Roppongi Hills Mori Tower
6-10-1 Roppongi
Minato-ku
Tokyo, 106-6117
Japan

RICE WINE VENTURES, LLC

By: /s/ Shuhei Ohashi
Name: Shuhei Ohashi
Title: Manager

Address:

Rice Wine Ventures, LLC.
c/o Cool Japan Fund Inc.
17F Roppongi Hills Mori Tower
6-10-1 Roppongi
Minato-ku
Tokyo, 106-6117
Japan

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

BRIAN SMITH

By: /s/ Brian Smith
Name:
Title:

Address:

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

WAHOOWA VENTURES

By: /s/ R. Kent Bennett
Name: R. Kent Bennett
Title: Authorized Person

Address:

Wahoowa Ventures LLC
196 Broadway, 2nd Floor
Cambridge, Massachusetts 02139

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

By: /s/ Thomas Michael Violante
Name: Thomas Michael Violante

Address:

2927 N Halsted
Chicago, IL 60657

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

By: /s/ Thomas John Violante
Name: Thomas John Violante

Address:

2758 Amberly Lane
Troy, MI 48084

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Verbier SP Partnership, L.P.
Name of Investor

/s/ James J. Tiampo
Signature of Investor

James J. Tiampo
Name of signatory, if applicable

President of Verbier Management Corp. as General Partner
Title of signatory, if applicable

Address:

PO Box 2430
Blaine
WA 98231-2430
Attention: James J. Tiampo
Email: jtiampo@verbiermanagement.com

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

James J. Tiampo Money Purchase Plan & Trust (Keogh)
Name of Investor

/s/ James J. Tiampo
Signature of Investor

James J. Tiampo
Name of signatory, if applicable

Trustee
Title of signatory, if applicable

Address:

PO Box 2430
Blaine

WA 98231-2430
Attention: James J. Tiampo
Email: jtiampo@verbiermanagement.com

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

James J. Tiampo.
Name of Investor

/s/ James J. Tiampo
Signature of Investor

James J. Tiampo
Name of signatory, if applicable

Individual
Title of signatory, if applicable

Address:

PO Box 2430
Blaine
WA 98231-2430
Attention: James J. Tiampo
Email: jtiampo@verbiermanagement.com

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Matthew Tiampo
Name of Investor

/s/ Matthew Tiampo
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

510 6th ST SE
Minneapolis, MN
55414
Attention: Matt Tiampo
Email: matt.tiampo@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Eric & Laura Lamison Family Trust
Name of Investor

/s/ Eric Lamison
Signature of Investor

Eric Lamison
Name of signatory, if applicable

Trustee of the Eric & Laura Lamison Family Trust
Title of signatory, if applicable

Address:

516 Dalewood Drive
Orinda, California
94563
Attention: Eric Lamison
Email: elamison@lamisonpc.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

JAN Ventures, LLC
Name of Investor

/s/ Andrew Nigrelli
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

262 Winter Street
Weston, MA 02493
USA
Attention: Andrew Nigrelli
Email:anigrelli@janventurecapital.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Valerie Ells
Name of Investor

/s/ Valerie Ells
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

65145 Smokey Butte Drive
Bend OR 97703

Attention:Valerie Ells
Email:valerie.k.ells@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Ben Shuleva

Name of Investor

/s/ Ben Shuleva

Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

2 Arlington Street #1
Boston, MA 02116

Attention: Ben Shuleva
Email: Ben.shuleva@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

The Gregg and Amy Bogost Joint Revocable Trust

Name of Investor

/s/ Gregg Bogost

Signature of Investor

Gregg Bogost

Name of signatory, if applicable

Trustee

Title of signatory, if applicable

Address:

6203 S. Highlands Ave.
Madison, WI
53705
Attention: Gregg Bogost
Email: gbohost@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Richard Messina
Name of Investor

/s/ Richard Messina
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

340 East 93rd Street
Apt 14KLM
New York, NY 10128
Attention: Richard Messina
Email: rmessina@benchmarkcompany.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Benjamin Piggott
Name of Investor

/s/ Benjamin Piggott
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

69 St. George Street
Duxbury MA
02332
Attention: Benjamin Piggott
Email: Ben505@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Madison Trust Co Custodian FBO Michael Malouf M21026625
Name of Investor

/s/ Michael Malouf
Signature of Investor

Michael Malouf
Name of signatory, if applicable

IRA Account Holder
Title of signatory, if applicable

Address:

401 E 8th St. Suite 200
Sioux Falls, SD 57103

Attention: Michael Malouf
Email: mikemalouf@yahoo.com

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Harvey Boshart
Name of Investor

/s/ Harvey Boshart
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

80 Dean Rd
Weston, MA 02493

Attention:
Email: Hrboshart@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

John L Flood
Name of Investor

/s/ John Lawrence Flood
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

22695 Murray Street
Excelsior, MN
55331
Attention: John L Flood
Email: jflood@excelsior-equities

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Paul W. Hodge
Name of Investor

/s/ Paul W. Hodge
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

Paul Hodge
18080 Wanona Rd
Sisters, OR 97759
Attention: Paul Hodge
Email: solarguy@outlook.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Andrew McCormick
Name of Investor

/s/ Andrew McCormick
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

1050 N. Logan, Unit E
Denver CO
80203
Attention: Andrew McCormick
Email: amccormick@lairdsuperfood.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

James Scott McGuire
Name of Investor

/s/ James Scott McGuire
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

19368 Blue Mucket Lane
Bend OR 97702

Attention: James Scott McGuire
Email: mcguirescott@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Tracy Genesen
Name of Investor

/s/ Tracy Genesen
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

179 Crestview Dr
Orinda
California
Attention: Tracy Genesen
Email: tgenesen@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Thomas Wetherald

Name of Investor

/s/ Thomas Wetherald

Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

Thomas Wetherald
49 Red Gate Lane
Cohasset, MA 02025
Attention: Thomas Wetherald
Email: discovery9@mac.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Patrick Lin

Name of Investor

/s/ Patrick Lin

Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

45 Coachwood Ter
Orinda CA 94563
Patrick Lin
Attention: Patrick Lin WINC
Email: bzliteyear@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Tobias W. Welo

Name of Investor

/s/ Tobias W. Welo

Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

91 Dean Road
Weston, MA 02493
USA
Attention: Tobias W. Welo
Email: twelo@comcast.net

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Alisha Runckel

Name of Investor

/s/ Alisha Runckel

Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

64805 Laidlaw Ln
Bend, OR 97703
USA
Attention: Alisha Runckel
Email: alisha@lairdsuperfood.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Gregory Graves
Name of Investor

/s/ Gregory Graves
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

5000 France Ave., Unit 38
Edina, MN
55410
Attention: Greg Graves
Email: greggraves60@gmail.com

Signature Page to Seventh Amended and Restated
Investors' Rights Agreement of Winc, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

Kestrel Flight Fund LLC
Name of Investor

/s/ Albert Hanser
Signature of Investor

Albert Hanser
Name of signatory, if applicable

Managing Parnter
Title of signatory, if applicable

Address:

149 Meadowbrook Rd
Weston, MA 02493

Attention: Albert Hanser
Email: ahanser@kestrelmp.com

IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amended and Restated Investors' Rights Agreement as of the date first written above.

INVESTOR:

NuView IRA FBO John Seabern (#9912339)
Name of Investor

/s/ John Seabern
Signature of Investor

Name of signatory, if applicable

Title of signatory, if applicable

Address:

14 Walnut Ave
Mill Valley, CA
94941
Attention: John Seabern
Email: john@ridgecrestinvestments.net

Exhibit 10.2

WINC, INC.
(FORMERLY KNOWN AS CLUB W, INC.)

2013 STOCK PLAN
Adopted on August 29, 2013
As amended April 18, 2014,
July 14, 2017,
April 26, 2019,
And August 3, 2020

AMENDMENTS TO WINC, INC. 2013 STOCK PLAN

The following sets forth certain duly adopted amendments to the 2013 Stock Plan (the "Plan") of Winc, Inc. (formerly known as Club W, Inc.):

1. As of the April 18, 2014, the number of shares reserved for issuance under the Plan is 7,590,000 shares, and accordingly, the number of shares referenced in Section 4(a) of the Plan shall thereafter be 7,590,000.
2. As of the July 14, 2017, the number of shares reserved for issuance under the Plan is 9,590,000 shares, and accordingly, the number of shares referenced in Section 4(a) of the Plan shall thereafter be 9,590,000.
3. As of the April 26, 2019, the number of shares reserved for issuance under the Plan is 21,995,249 shares, and accordingly, the number of shares referenced in Section 4(a) of the Plan shall thereafter be 21,995,249.
4. As of the August 3, 2020, the number of shares reserved for issuance under the Plan is 24,4555,249 shares, and accordingly, the number of shares referenced in Section 4(a) of the Plan shall thereafter be 24,4555,249.

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WINC, INC.
(FORMERLY KNOWN AS CLUB W, INC.)
2013 STOCK PLAN

SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of this Plan is to offer persons selected by the Company an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by acquiring Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may be ISOs intended to qualify under Code Section 422 or Nonstatutory Options which are not intended to so qualify.

Capitalized terms are defined in Section 12.

SECTION 2. ADMINISTRATION.

(a) Committees of the Board of Directors. The Plan may be administered by one or more Committees. Each Committee shall consist, as required by applicable law, of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

(b) Authority of the Board of Directors. Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. Notwithstanding anything to the contrary in the Plan, with respect to the terms and conditions of awards granted to Participants outside the United States, the Board of Directors may vary from the provisions of the Plan to the extent it determines it necessary and appropriate to do so; provided that it may not vary from those Plan terms requiring stockholder approval pursuant to Section 11(d) below. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

SECTION 3. ELIGIBILITY.

(a) General Rule. Only Employees, Outside Directors and Consultants shall be eligible for the grant of Nonstatutory Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

(b) Ten-Percent Stockholders. A person who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for the grant of an ISO unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the Date of Grant and (ii) such ISO by its terms is not exercisable after the expiration of five years from the Date of Grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Code Section 424(d) shall be applied.

SECTION 4. STOCK SUBJECT TO PLAN.

(a) Basic Limitation. Not more than 7,590,000 Shares may be issued under the Plan, subject to Subsection (b) below and Section 8(a).[1] All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan may not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.

(b) Additional Shares. In the event that Shares previously issued under the Plan are reacquired by the Company, such Shares shall be added to the number of Shares then available for issuance under the Plan. In the event that Shares that otherwise would have been issuable under the Plan are withheld by the Company in payment of the Purchase Price, Exercise Price or withholding taxes, such Shares shall remain available for issuance under the Plan. In the event that an outstanding Option or other right for any reason expires or is canceled, the Shares allocable to the unexercised portion of such Option or other right shall be added to the number of Shares then available for issuance under the Plan.

SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES.

(a) Stock Grant or Purchase Agreement. Each award of Shares under the Plan shall be evidenced by a Stock Grant Agreement between the Grantee and the Company. Each sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Grant Agreement or Stock Purchase Agreement. The provisions of the various Stock Grant Agreements and Stock Purchase Agreements entered into under the Plan need not be identical.

(b) Duration of Offers and Nontransferability of Rights. Any right to purchase Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days (or such other period as may be specified in the Award Agreement) after the grant of such right was communicated to the Purchaser by the Company. Such right is not transferable and may be exercised only by the Purchaser to whom such right was granted.

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[1] Please refer to Exhibit A for a schedule of the initial share reserve and any subsequent increases in the reserve.

(c) Purchase Price. The Board of Directors shall determine the Purchase Price of Shares to be offered under the Plan at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

SECTION 6. TERMS AND CONDITIONS OF OPTIONS.

(a) Stock Option Agreement. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. The Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions that are not inconsistent with the Plan and that the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

(b) Number of Shares. Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

(c) Exercise Price. Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of an Option shall not be less than 100% of the Fair Market Value of a Share on the Date of Grant, and in the case of an ISO a higher percentage may be required by Section 3(b). Subject to the preceding sentence, the Exercise Price shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7. This Subsection (c) shall not apply to an Option granted pursuant to an assumption of, or substitution for, another option in a manner that complies with Code Section 424(a) (whether or not the Option is an ISO).

(d) Exercisability. Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. No Option shall be exercisable unless the Optionee (i) has delivered an executed copy of the Stock Option Agreement to the Company or (ii) otherwise agrees to be bound by the terms of the Stock Option Agreement. The Board of Directors shall determine the exercisability provisions of the Stock Option Agreement at its sole discretion.

(e) Basic Term. The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the Date of Grant, and in the case of an ISO, a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire.

(f) Termination of Service (Except by Death). If an Optionee's Service terminates for any reason other than the Optionee's death, then the Optionee's Options shall expire on the earliest of the following dates:

(i) The expiration date determined pursuant to Subsection (e) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability, or such earlier or later date as the Board of Directors may determine (but in no event earlier than 30 days after the termination of the Optionee's Service); or

(iii) The date six months after the termination of the Optionee's Service by reason of Disability, or such later date as the Board of Directors may determine.

The Optionee may exercise all or part of the Optionee's Options at any time before the expiration of such Options under the preceding sentence, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination). The balance of such Options shall lapse when the Optionee's Service terminates. In the event that the Optionee dies after the termination of the Optionee's Service but before the expiration of the Optionee's Options, all or part of such Options may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's Service terminated (or became exercisable as a result of the termination) and the underlying Shares had vested before the Optionee's Service terminated (or vested as a result of the termination).

(g) Leaves of Absence. For purposes of Subsection (f) above, Service shall be deemed to continue while the Optionee is on a bona fide leave of absence, if such leave was approved by the Company in writing and if continued crediting of Service for this purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company).

(h) Death of Optionee. If an Optionee dies while the Optionee is in Service, then the Optionee's Options shall expire on the earlier of the following dates:

(i) The expiration date determined pursuant to Subsection (e) above; or

(ii) The date 12 months after the Optionee's death, or such earlier or later date as the Board of Directors may determine (but in no event earlier than six months after the Optionee's death).

All or part of the Optionee's Options may be exercised at any time before the expiration of such Options under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that such Options had become exercisable before the Optionee's death (or became exercisable as a result of the death) and the underlying Shares had vested before the Optionee's death (or vested as a result of the Optionee's death). The balance of such Options shall lapse when the Optionee dies.

(i) Pre-Exercise Restrictions on Transfer of Options or Shares. An Option shall be transferable by the Optionee only by (i) a beneficiary designation, (ii) a will or (iii) the laws of descent and distribution, except as provided in the next sentence. If the applicable Stock Option Agreement so provides, a Nonstatutory Option shall also be transferable by gift or domestic relations order to a Family Member of the Optionee. An ISO may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. In addition, an Option shall comply with all conditions of Rule 12h-1(f)(1) under the Exchange Act until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. Such conditions include, without limitation, the transferability restrictions set forth in Rule 12h-1(f)(1)(iv) and (v) under the Exchange Act, which shall apply to an Option and, prior to exercise, to the Shares to be issued upon exercise of such Option during the period commencing on the Date of Grant and ending on the earlier of (i) the date when the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act or (ii) the date when the Company makes a determination that it will cease to rely on the exemption afforded by Rule 12h-1(f)(1) under the Exchange Act. During such period, an Option and, prior to exercise, the Shares to be issued upon exercise of such Option shall be restricted as to any pledge, hypothecation or other transfer by the Optionee, including any short position, any "put equivalent position" (as defined in Rule 16a-1(h) under the Exchange Act) or any "call equivalent position" (as defined in Rule 16a-1(b) under the Exchange Act).

(j) No Rights as a Stockholder. An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

(k) Modification, Extension and Assumption of Options. Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options or a different type of award for the same or a different number of Shares and at the same or a different Exercise Price (if applicable). The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

(l) Company's Right to Cancel Certain Options. Any other provision of the Plan or a Stock Option Agreement notwithstanding, the Company shall have the right at any time to cancel an Option that was not granted in compliance with Rule 701 under the Securities Act. Prior to canceling such Option, the Company shall give the Optionee not less than 30 days' notice in writing. If the Company elects to cancel such Option, it shall deliver to the Optionee consideration with an aggregate Fair Market Value equal to the excess of (i) the Fair Market Value of the Shares subject to such Option as of the time of the cancellation over (ii) the Exercise Price of such Option. The consideration may be delivered in the form of cash or cash equivalents, in the form of Shares, or a combination of both. If the consideration would be a negative amount, such Option may be cancelled without the delivery of any consideration.

SECTION 7. PAYMENT FOR SHARES.

(a) General Rule. The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7. In addition, the Board of Directors in its sole discretion may also permit payment through any of the methods described in (b) through (g) below:

(b) Services Rendered. Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award.

(c) Promissory Note. All or a portion of the Purchase Price or Exercise Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. The Shares shall be pledged as security for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

(d) Surrender of Stock. All or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value as of the date when the Option is exercised.

(e) Exercise/Sale. If the Stock is publicly traded, all or part of the Exercise Price and any withholding taxes may be paid by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company.

(f) Net Exercise. An Option may permit exercise through a "net exercise" arrangement pursuant to which the Company will reduce the number of Shares issued upon exercise by the largest whole number of Shares having an aggregate Fair Market Value (determined by the Board of Directors as of the exercise date) that does not exceed the aggregate Exercise Price or the sum of the aggregate Exercise Price plus all or a portion of the minimum amount required to be withheld under applicable tax law (with the Company accepting from the Optionee payment of cash or cash equivalents to satisfy any remaining balance of the aggregate Exercise Price and, if applicable, any additional withholding obligation not satisfied through such reduction in Shares); *provided* that to the extent Shares subject to an Option are withheld in this manner, the number of Shares subject to the Option following the net exercise will be reduced by the sum of the number of Shares withheld and the number of Shares delivered to the Optionee as a result of the exercise.

(g) Other Forms of Payment. To the extent that an Award Agreement so provides, the Purchase Price or Exercise Price of Shares issued under the Plan may be paid in any other form permitted by the Delaware General Corporation Law, as amended.

SECTION 8. ADJUSTMENT OF SHARES.

(a) General. In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a reclassification, or any other increase or decrease in the number of issued shares of Stock effected without receipt of consideration by the Company, proportionate adjustments shall automatically be made in each of (i) the number and kind of Shares available for future grants under Section 4, (ii) the number and kind of Shares covered by each outstanding Option and any outstanding and unexercised right to purchase Shares that has not yet expired pursuant to Section 5(b), (iii) the Exercise Price under each outstanding Option and the Purchase Price applicable to any unexercised stock purchase right described in clause (ii) above, and (iv) any repurchase price that applies to Shares granted under the Plan pursuant to the terms of a Company repurchase right under the applicable Award Agreement. In the event of a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a recapitalization, a spin-off, or a similar occurrence, the Board of Directors at its sole discretion may make appropriate adjustments in one or more of the items listed in clauses (i) through (iv) above; provided, however, that the Board of Directors shall in any event make such adjustments as may be required by Section 25102(o) of the California Corporations Code. No fractional Shares shall be issued under the Plan as a result of an adjustment under this Section 8(a), although the Board of Directors in its sole discretion may make a cash payment in lieu of fractional Shares.

(b) Corporate Transactions. In the event that the Company is a party to a merger or consolidation, or in the event of a sale of all or substantially all of the Company's stock or assets, all Shares acquired under the Plan and all Options and other Plan awards outstanding on the effective date of the transaction shall be treated in the manner described in the definitive transaction agreement (or, in the event the transaction does not entail a definitive agreement to which the Company is party, in the manner determined by the Board of Directors in its capacity as administrator of the Plan, with such determination having final and binding effect on all parties), which agreement or determination need not treat all Options and awards (or all portions of an Option or an award) in an identical manner. The treatment specified in the transaction agreement may include (without limitation) one or more of the following with respect to each outstanding Option or award:

(i) Continuation of the Option or award by the Company (if the Company is the surviving corporation).

(ii) Assumption of the Option by the surviving corporation or its parent in a manner that complies with Code Section 424(a) (whether or not the Option is an ISO).

(iii) Substitution by the surviving corporation or its parent of a new option for the Option in a manner that complies with Code Section 424(a) (whether or not the Option is an ISO).

(iv) Cancellation of the Option and a payment to the Optionee with respect to each Share subject to the portion of the Option that is vested as of the transaction date equal to the excess of (A) the value, as determined by the Board of Directors in its absolute discretion, of the property (including cash) received by the holder of a share of Stock as a result of the transaction, over (B) the per-Share Exercise Price of the Option (such excess, the "Spread"). Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent having a value equal to the Spread. In addition, any escrow, holdback, earn-out or similar provisions in the transaction agreement may apply to such payment to the same extent and in the same manner as such provisions apply to the holders of Stock. If the Spread applicable to an Option is zero or a negative number, then the Option may be cancelled without making a payment to the Optionee.

(v) Cancellation of the Option without the payment of any consideration; provided that the Optionee shall be notified of such treatment and given an opportunity to exercise the Option (to the extent the Option is vested or becomes vested as of the effective date of the transaction) during a period of not less than five (5) business days preceding the effective date of the transaction, unless (A) a shorter period is required to permit a timely closing of the transaction and (B) such shorter period still offers the Optionee a reasonable opportunity to exercise the Option. Any exercise of the Option during such period may be contingent upon the closing of the transaction.

(vi) Suspension of the Optionee's right to exercise the Option during a limited period of time preceding the closing of the transaction if such suspension is administratively necessary to permit the closing of the transaction.

(vii) Termination of any right the Optionee has to exercise the Option prior to vesting in the Shares subject to the Option (i.e., "early exercise"), such that following the closing of the transaction the Option may only be exercised to the extent it is vested.

For the avoidance of doubt, the Board of Directors has discretion to accelerate, in whole or part, the vesting and exercisability of an Option or other Plan award in connection with a corporate transaction covered by this Section 8(b).

(c) Reservation of Rights. Except as provided in this Section 8, a Participant shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 9. PRE-EXERCISE INFORMATION REQUIREMENT.

(a) Application of Requirement. This Section 9 shall apply only during a period that (i) commences when the Company begins to rely on the exemption described in Rule 12h-1(f)(1) under the Exchange Act, as determined by the Company in its sole discretion, and (ii) ends on the earlier of (A) the date when the Company ceases to rely on such exemption, as determined by the Company in its sole discretion, or (B) the date when the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. In addition, this Section 9 shall in no event apply to an Optionee after he or she has fully exercised all of his or her Options.

(b) Scope of Requirement. The Company shall provide to each Optionee the information described in Rule 701(e)(3), (4) and (5) under the Securities Act. Such information shall be provided at six-month intervals, and the financial statements included in such information shall not be more than 180 days old. The foregoing notwithstanding, the Company shall not be required to provide such information unless the Optionee has agreed in writing, on a form prescribed by the Company, to keep such information confidential.

SECTION 10. MISCELLANEOUS PROVISIONS.

(a) Securities Law Requirements. Shares shall not be issued under the Plan unless, in the opinion of counsel acceptable to the Board of Directors, the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded. The Company shall not be liable for a failure to issue Shares as a result of such requirements.

(b) No Retention Rights. Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Participant) or of the Participant, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

(c) Treatment as Compensation. Any compensation that an individual earns or is deemed to earn under this Plan shall not be considered a part of his or her compensation for purposes of calculating contributions, accruals or benefits under any other plan or program that is maintained or funded by the Company, a Parent or a Subsidiary.

(d) Governing Law. The Plan and all awards, sales and grants under the Plan shall be governed by, and construed in accordance with, the laws of the State of Delaware, as such laws are applied to contracts entered into and performed in such State.

(e) Conditions and Restrictions on Shares. Shares issued under the Plan shall be subject to such forfeiture conditions, rights of repurchase, rights of first refusal, other transfer restrictions and such other terms and conditions as the Board of Directors may determine. Such conditions and restrictions shall be set forth in the applicable Award Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. In addition, Shares issued under the Plan shall be subject to conditions and restrictions imposed either by applicable law or by Company policy, as adopted from time to time, designed to ensure compliance with applicable law or laws with which the Company determines in its sole discretion to comply including in order to maintain any statutory, regulatory or tax advantage.

(f) Tax Matters.

(i) As a condition to the award, grant, issuance, vesting, purchase, exercise or transfer of any award, or Shares issued pursuant to any award, granted under this Plan, the Participant shall make such arrangements as the Board of Directors may require or permit for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such event.

(ii) Unless otherwise expressly set forth in an Award Agreement, it is intended that awards granted under the Plan shall be exempt from Code Section 409A, and any ambiguity in the terms of an Award Agreement and the Plan shall be interpreted consistently with this intent. To the extent an award is not exempt from Code Section 409A (any such award, a "**409A Award**"), any ambiguity in the terms of such award and the Plan shall be interpreted in a manner that to the maximum extent permissible supports the award's compliance with the requirements of that statute. Notwithstanding anything to the contrary permitted under the Plan, in no event shall a modification of an Award not already subject to Code Section 409A be given effect if such modification would cause the Award to become subject to Code Section 409A unless the parties explicitly acknowledge and consent to the modification as one having that effect. A 409A Award shall be subject to such additional rules and requirements as specified by the Board of Directors from time to time in order for it to comply with the requirements of Code Section 409A. In this regard, if any amount under a 409A Award is payable upon a "separation from service" to an individual who is considered a "specified employee" (as each term is defined under Code Section 409A), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the Participant's separation from service or (ii) the Participant's death, but only to the extent such delay is necessary to prevent such payment from being subject to Section 409A(a)(1). In addition, if a transaction subject to Section 8(b) constitutes a payment event with respect to any 409A Award, then the transaction with respect to such award must also constitute a "change in control event" as defined in Treasury Regulation Section 1.409A- 3(i)(5) to the extent required by Code Section 409A.

(iii) Neither the Company nor any member of the Board of Directors shall have any liability to a Participant in the event an award held by the Participant fails to achieve its intended characterization under applicable tax law.

SECTION 11. DURATION AND AMENDMENTS; STOCKHOLDER APPROVAL.

(a) Term of the Plan. The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to approval of the Company's stockholders under Subsection (d) below. The Plan shall terminate automatically 10 years after the later of (i) the date when the Board of Directors adopted the Plan or (ii) the date when the Board of Directors approved the most recent increase in the number of Shares reserved under Section 4 that was also approved by the Company's stockholders. The Plan may be terminated on any earlier date pursuant to Subsection (b) below.

(b) Right to Amend or Terminate the Plan. Subject to Subsection (d) below, the Board of Directors may amend, suspend or terminate the Plan at any time and for any reason.

(c) Effect of Amendment or Termination. No Shares shall be issued or sold and no Option granted under the Plan after the termination thereof, except upon exercise of an Option (or any other right to purchase Shares) granted under the Plan prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

(d) Stockholder Approval. To the extent required by applicable law, the Plan will be subject to approval of the Company's stockholders within 12 months of its adoption date. To the extent required by applicable law, any amendment of the Plan will be subject to the approval of the Company's stockholders within 12 months of the amendment date if it (i) increases the number of

Shares available for issuance under the Plan (except as provided in Section 8), or (ii) materially changes the class of persons who are eligible for the grant of ISOs. In addition, an amendment effecting any other material change to the Plan terms will be subject to approval of the Company's stockholder only if required by applicable law. Stockholder approval shall not be required for any other amendment of the Plan.

SECTION 12. DEFINITIONS.

(a) "**Award Agreement**" means a Stock Grant Agreement, Stock Option Agreement or Stock Purchase Agreement.

(b) "**Board of Directors**" means the Board of Directors of the Company, as constituted from time to time.

(c) "**Code**" means the Internal Revenue Code of 1986, as amended.

(d) "**Committee**" means a committee of the Board of Directors, as described in Section 2(a).

(e) "**Company**" means Winc, Inc. (formerly known as Club W, Inc.), a Delaware corporation.

(f) "**Consultant**" means a person, excluding Employees and Outside Directors, who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor and who qualifies as a consultant or advisor under Rule 701(c)(1) of the Securities Act or under Instruction A.1.(a)(1) of Form S-8 under the Securities Act.

(g) "**Date of Grant**" means the date of grant specified in the applicable Stock Option Agreement, which date shall be the later of (i) the date on which the Board of Directors resolved to grant the Option or (ii) the first day of the Optionee's Service.

(h) "**Disability**" means that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

(i) "**Employee**" means any individual who is a common-law employee of the Company, a Parent[2] or a Subsidiary.

(j) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(k) "**Exercise Price**" means the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(l) "**Fair Market Value**" means the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(m) "**Family Member**" means (i) any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in- law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, (ii) any person sharing the Optionee's household (other than a tenant or employee), (iii) a trust in which persons described in Clause (i) or (ii) have more than 50% of the beneficial interest, (iv) a foundation in which persons described in Clause (i) or (ii) or the Optionee control the management of assets and (v) any other entity in which persons described in Clause (i) or (ii) or the Optionee own more than 50% of the voting interests.

(n) "**Grantee**" means a person to whom the Board of Directors has awarded Shares under the Plan.

(o) "**ISO**" means an Option that qualifies as an incentive stock option as described in Code Section 422(b). Notwithstanding its designation as an ISO, an Option that does not qualify as an ISO under applicable law shall be treated for all purposes as a Nonstatutory Option.

[2] Note that special considerations apply if the Company proposes to grant awards to an Employee of a Parent company.

(p) "**Nonstatutory Option**" means an Option that does not qualify as an incentive stock option as described in Code Section 422(b) or 423(b).

(q) "**Option**" means an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(r) "**Optionee**" means a person who holds an Option.

(s) "**Outside Director**" means a member of the Board of Directors who is not an Employee.

(t) "**Parent**" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(u) "**Participant**" means a Grantee, Optionee or Purchaser.

(v) "**Plan**" means this Winc, Inc. (formerly known as Club W, Inc.) 2013 Stock Plan.

(w) "**Purchase Price**" means the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(x) "**Purchaser**" means a person to whom the Board of Directors has offered the right to purchase Shares under the Plan (other than upon exercise of an Option).

(y) "**Securities Act**" means the Securities Act of 1933, as amended.

(z) "**Service**" means service as an Employee, Outside Director or Consultant.

(aa) "**Share**" means one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(bb) "**Stock**" means the Common Stock of the Company.

(cc) "**Stock Grant Agreement**" means the agreement between the Company and a Grantee who is awarded Shares under the Plan that contains the terms, conditions and restrictions pertaining to the award of such Shares.

(dd) "**Stock Option Agreement**" means the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to the Optionee's Option.

(ee) "**Stock Purchase Agreement**" means the agreement between the Company and a Purchaser who purchases Shares under the Plan that contains the terms, conditions and restrictions pertaining to the purchase of such Shares.

(ff) "**Subsidiary**" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

EXHIBIT A
SCHEDULE OF SHARES RESERVED FOR ISSUANCE UNDER THE PLAN

Date of Board Approval	Date of Stockholder Approval	Number of Shares Added	Cumulative Number of Shares
August 29, 2013	August 29, 2013	Not Applicable	4,495,000
April 18, 2014	April 18, 2014	3,095,000	7,590,000
July 14, 2017	July 14, 2017	2,000,000	9,590,000
April 26, 2019	April 26, 2019	12,365,249	21,955,249
August 3, 2020	August 3, 2020	2,500,000	24,455,249

Exhibit 10.2(a)

Winc, Inc. 2013 Stock Plan

Notice of Stock Option Grant (Installment Exercise)

The Optionee has been granted the following option to purchase shares of the Common Stock of Winc, Inc. (formerly known as Club W, Inc.):

Name of Optionee:	<<**Name**>>
Total Number of Shares:	<<**Number of Shares**>>
Type of Option:	<<**Incentive Stock Option (ISO) or Nonstatutory Option (NSO)**>>
Exercise Price per Share:	<<**$Price per Share**>>
Date of Grant:	<<**Date of Grant**>>
Date Exercisable:	This option may be exercised with respect to the first 25% of the Shares subject to this option when the Optionee completes 12 months of continuous Service beginning with the Vesting Commencement Date set forth below. This option may be exercised with respect to an additional 2.0833% of the Shares subject to this option when the Optionee completes each month of continuous Service thereafter until fully vested. [Notwithstanding the foregoing, if, within twenty-four (24) months after the closing date of the Corporate Transaction, the Optionee's continuous Service is terminated (i) by the Company or successor entity, as applicable, without Cause or (ii) by the optionee with Good Reason, 100% of the Shares shall vest and this option shall be exercisable with respect to all of the Shares. As used herein, "**Cause**," "**Good Reason**" and "**Corporate Transaction**" have the following meanings:

"**Cause**" shall mean Optionee's: (i) embezzlement, theft, fraud, misappropriation or any other intentional act of dishonesty involving the Company or any of its customers, vendors, agents or employees, (ii) conviction (including a plea of nolo contendere) of any felony or other crime or misdemeanor involving moral turpitude, (iii) continued and deliberate failure, for thirty (30) days after written notice, to substantially perform Optionee's duties and responsibilities to the Company that materially and adversely affects the business or reputation of the Company, (iv) unauthorized use or intentional disclosure of any proprietary information or trade secrets of the Company outside the ordinary course of business, provided such use or disclosure materially damages the Company or its business or reputation, or (v) breach of any of material obligations under any material written agreement Optionee has with the Company; provided that the termination of the Optionee's employment under (iii), (iv) or (v) shall not be deemed to be for Cause unless and until there shall have been delivered to the Optionee a copy of a resolution duly adopted by a vote of all of the non-Optionee members of the Board specifying the particular act or acts or failure to act that is the basis of such notice, and the Optionee fails, within thirty (30) days of her receipt of such notice, to substantially correct such breach, or provide a plan,

acceptable to the non-Optionee members of the Board, for correcting such breach (to the extent correctable). For clarity, a termination without "Cause" does not include any termination that occurs as a result of the Optionee's death or disability.

"**Good Reason"** means (i) a material diminution by the Company in the Optionee's base salary, other than a diminution in the Optionee's base salary in connection with a Company-wide reduction in executive management's salaries; (ii) the assignment of Optionee without his consent to a position, responsibilities, or duties that is substantially less than that of a senior Company executive, or a material reduction in the level of Company management to which the Optionee reports immediately prior to such change such that it causes the Optionee's position, responsibility, or duties to be substantially less than that of a senior Company executive; (iii) any requirement by the Company for Optionee to be principally based at any office or location more than fifty (50) miles from the Optionee's principal place of employment immediately prior to such relocation, and (iv) deliberate action by the Company that has the effect of excluding the Optionee's participation from the Company's benefit plans and programs that are made available to similarly situated employees, as they may be amended from time to time in the sole discretion of the Company (other than a diminution in the Optionees' benefit plans and programs in connection with a Company-wide reduction in benefit plans and programs); which, in each case continues uncured for a period of thirty (30) days following written notice from Optionee to the Company.

"**Corporate Transaction**" means (i) a Deemed Liquidation Event as defined in the Company's certificate of incorporation, as in effect on the date hereof or (ii) a transaction or series of related transactions in which a person, or a group of related persons, acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company, other than a bona fide equity financing for capital raising purposes.]

Vesting Commencement Date:	<<**Vesting Commencement Date**>>
Expiration Date:	<<**Expiration Date**>> This option expires earlier if the Optionee's Service terminates earlier, as provided in Section 6 of the Stock Option Agreement, or if the Company engages in certain corporate transactions, as provided in Section 8(b) of the Plan.

By signing below, the Optionee and the Company agree that this option is granted under, and governed by the terms and conditions of, the 2013 Stock Plan and the Stock Option Agreement. Both of these documents are attached to, and made a part of, this Notice of Stock Option Grant. **Section 13 of the Stock Option Agreement includes important acknowledgements of the Optionee**.

Optionee:	**Winc,Inc.**
By: _____	By: _____
	Title: _____

THE OPTION GRANTED PURSUANT TO THIS AGREEMENT AND THE SHARES ISSUABLE UPON THE EXERCISE THEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED.

Winc, Inc. (formerly known as Club W, Inc.) 2013 Stock Plan:
Stock Option Agreement (Installment Exercise)

SECTION 1. GRANT OF OPTION.

(a) **Option**. On the terms and conditions set forth in the Notice of Stock Option Grant and this Agreement, the Company grants to the Optionee on the Date of Grant the option to purchase at the Exercise Price the number of Shares set forth in the Notice of Stock Option Grant. The Exercise Price is agreed to be at least 100% of the Fair Market Value per Share on the Date of Grant (110% of Fair Market Value if this option is designated as an ISO in the Notice of Stock Option Grant and Section 3(b) of the Plan applies). This option is intended to be an ISO or an NSO, as provided in the Notice of Stock Option Grant.

(b) **$100,000 Limitation**. Even if this option is designated as an ISO in the Notice of Stock Option Grant, it shall be deemed to be an NSO to the extent (and only to the extent) required by the $100,000 annual limitation under Section 422(d) of the Code.

(c) **Stock Plan and Defined Terms**. This option is granted pursuant to the Plan, a copy of which the Optionee acknowledges having received. The provisions of the Plan are incorporated into this Agreement by this reference. Capitalized terms are defined in Section 14 of this Agreement.

SECTION 2. RIGHT TO EXERCISE.

(a) **Exercisability**. Subject to Subsection (b) below and the other conditions set forth in this Agreement, all or part of this option may be exercised prior to its expiration at the time or times set forth in the Notice of Stock Option Grant.

(b) **Stockholder Approval**. Any other provision of this Agreement notwithstanding, no portion of this option shall be exercisable at any time prior to the approval of the Plan by the Company's stockholders.

SECTION 3. NO TRANSFER OR ASSIGNEMENT OF OPTION.

Except as otherwise provided in this Agreement, this option and the rights and privileges conferred hereby shall not be sold, pledged or otherwise transferred (whether by operation of law or otherwise) and shall not be subject to sale under execution, attachment, levy or similar process.

SECTION 4. EXERCISE PROCEDURES.

(a) **Notice of Exercise**. The Optionee or the Optionee's representative may exercise this option by giving written notice to the Company pursuant to Section 12(c). The notice shall specify the election to exercise this option, the number of Shares for which it is being exercised and the form of payment. The person exercising this option shall sign the notice. In the event that this option is being exercised by the representative of the Optionee, the notice shall be accompanied by proof (satisfactory to the Company) of the representative's right to exercise this option. The Optionee or the Optionee's representative shall deliver to the Company, at the time of giving the notice, payment in a form permissible under Section 5 for the full amount of the Purchase Price.

(b) **Issuance of Shares**. After receiving a proper notice of exercise, the Company shall cause to be issued one or more certificates evidencing the Shares for which this option has been exercised. Such Shares shall be registered (i) in the name of the person exercising this option, (ii) in the names of such person and his or her spouse as community property or as joint tenants with the right

of survivorship or (iii) with the Company's consent, in the name of a revocable trust. The Company shall cause such certificates to be delivered to or upon the order of the person exercising this option.

(c) **Withholding Taxes**. In the event that the Company determines that it is required to withhold any tax as a result of the exercise of this option, the Optionee, as a condition to the exercise of this option, shall make arrangements satisfactory to the Company to enable it to satisfy all withholding requirements. The Optionee shall also make arrangements satisfactory to the Company to enable it to satisfy any withholding requirements that may arise in connection with the disposition of Shares purchased by exercising this option.

SECTION 5. PAYMENT FOR STOCK.

(a) **Cash**. All or part of the Purchase Price may be paid in cash or cash equivalents.

(b) **Surrender of Stock**. At the discretion of the Board of Directors, all or any part of the Purchase Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value as of the date when this option is exercised.

(c) **Exercise/Sale**. All or part of the Purchase Price and any withholding taxes may be paid by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company. However, payment pursuant to this Subsection (c) shall be permitted only if (i) Stock then is publicly traded and (ii) such payment does not violate applicable law.

SECTION 6. TERM AND EXPIRATION.

(a) **Basic Term**. This option shall in any event expire on the expiration date set forth in the Notice of Stock Option Grant, which date is 10 years after the Date of Grant (five years after the Date of Grant if this option is designated as an ISO in the Notice of Stock Option Grant and Section 3(b) of the Plan applies).

(b) **Termination of Service (Except by Death)**. If the Optionee's Service terminates for any reason other than death, then this option shall expire on the earliest of the following occasions:

(i) The expiration date determined pursuant to Subsection (a) above;

(ii) The date three months after the termination of the Optionee's Service for any reason other than Disability; or

(iii) The date six months after the termination of the Optionee's Service by reason of Disability.

The Optionee may exercise all or part of this option at any time before its expiration under the preceding sentence, but only to the extent that this option had become exercisable before the Optionee's Service terminated. When the Optionee's Service terminates, this option shall expire immediately with respect to the number of Shares for which this option is not yet exercisable. In the event that the Optionee dies after termination of Service but before the expiration of this option, all or part of this option may be exercised (prior to expiration) by the executors or administrators of the Optionee's estate or by any person who has acquired this option directly from the Optionee by beneficiary designation, bequest or inheritance, but only to the extent that this option had become exercisable before the Optionee's Service terminated.

(c) **Death of the Optionee**. If the Optionee dies while in Service, then this option shall expire on the earlier of the following dates:

(i) The expiration date determined pursuant to Subsection (a) above; or

(ii) The date 12 months after the Optionee's death.

All or part of this option may be exercised at any time before its expiration under the preceding sentence by the executors or administrators of the Optionee's estate or by any person who has acquired this option directly from the Optionee by beneficiary

designation, bequest or inheritance, but only to the extent that this option had become exercisable before the Optionee's death. When the Optionee dies, this option shall expire immediately with respect to the number of Shares for which this option is not yet exercisable.

(d) **Part-Time Employment and Leaves of Absence**. If the Optionee commences working on a part-time basis, then the Company may adjust the vesting schedule set forth in the Notice of Stock Option Grant. If the Optionee goes on a leave of absence, then the Company may adjust the vesting schedule set forth in the Notice of Stock Option Grant in accordance with the Company's leave of absence policy or the terms of such leave. Except as provided in the preceding sentence, Service shall be deemed to continue for any purpose under this Agreement while the Optionee is on a *bona fide* leave of absence, if (i) such leave was approved by the Company in writing and (ii) continued crediting of Service for such purpose is expressly required by the terms of such leave or by applicable law (as determined by the Company). Service shall be deemed to terminate when such leave ends, unless the Optionee immediately returns to active work.

(e) **Notice Concerning ISO Treatment**. Even if this option is designated as an ISO in the Notice of Stock Option Grant, it ceases to qualify for favorable tax treatment as an ISO to the extent that it is exercised:

(i) More than three months after the date when the Optionee ceases to be an Employee for any reason other than death or permanent and total disability (as defined in Section 22(e)(3) of the Code);

(ii) More than 12 months after the date when the Optionee ceases to be an Employee by reason of permanent and total disability (as defined in Section 22(e)(3) of the Code); or

(ii) More than three months after the date when the Optionee has been on a leave of absence for 90 days, unless the Optionee's reemployment rights following such leave were guaranteed by statute or by contract.

SECTION 7. RIGHT OF FIRST REFUSAL.

(a) **Right of First Refusal**. In the event that the Optionee proposes to sell, pledge or otherwise transfer to a third party any Shares acquired under this Agreement, or any interest in such Shares, the Company shall have the Right of First Refusal with respect to all (and not less than all) of such Shares. If the Optionee desires to transfer Shares acquired under this Agreement, the Optionee shall give a written Transfer Notice to the Company describing fully the proposed transfer, including the number of Shares proposed to be transferred, the proposed transfer price, the name and address of the proposed Transferee and proof satisfactory to the Company that the proposed sale or transfer will not violate any applicable federal, State or foreign securities laws. The Transfer Notice shall be signed both by the Optionee and by the proposed Transferee and must constitute a binding commitment of both parties to the transfer of the Shares. The Company shall have the right to purchase all, and not less than all, of the Shares on the terms of the proposal described in the Transfer Notice (subject, however, to any change in such terms permitted under Subsection (b) below) by delivery of a notice of exercise of the Right of First Refusal within 30 days after the date when the Transfer Notice was received by the Company.

(b) **Transfer of Shares**. If the Company fails to exercise its Right of First Refusal within 30 days after the date when it received the Transfer Notice, the Optionee may, not later than 90 days following receipt of the Transfer Notice by the Company, conclude a transfer of the Shares subject to the Transfer Notice on the terms and conditions described in the Transfer Notice, provided that any such sale is made in compliance with applicable federal, State and foreign securities laws and not in violation of any other contractual restrictions to which the Optionee is bound. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by the Optionee, shall again be subject to the Right of First Refusal and shall require compliance with the procedure described in Subsection (a) above. If the Company exercises its Right of First Refusal, the parties shall consummate the sale of the Shares on the terms set forth in the Transfer Notice within 60 days after the date when the Company received the Transfer Notice (or within such longer period as may have been specified in the Transfer Notice); provided, however, that in the event the Transfer Notice provided that payment for the Shares was to be made in a form other than cash or cash equivalents paid at the time of transfer, the Company shall have the option of paying for the Shares with cash or cash equivalents equal to the present value of the consideration described in the Transfer Notice.

(c) **Additional or Exchanged Securities and Property**. In the event of a merger or consolidation of the Company, a sale of all or substantially all of the Company's stock or assets, any other corporate reorganization, a stock split, the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spinoff, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed with respect to, any Shares subject to this Section 7 shall immediately be subject to the Right of First Refusal. Appropriate adjustments to reflect the exchange or distribution of such securities or property shall be made to the number and/or class of the Shares subject to this Section 7.

(d) **Termination of Right of First Refusal**. Any other provision of this Section 7 notwithstanding, in the event that the Stock is readily tradable on an established securities market when the Optionee desires to transfer Shares, the Company shall have no Right of First Refusal, and the Optionee shall have no obligation to comply with the procedures prescribed by Subsections (a) and (b) above.

(e) **Permitted Transfers**. This Section 7 shall not apply to (i) a transfer by beneficiary designation, will or intestate succession or (ii) a transfer to one or more members of the Optionee's Immediate Family or to a trust established by the Optionee for the benefit of the Optionee and/or one or more members of the Optionee's Immediate Family, provided in either case that the Transferee agrees in writing on a form prescribed by the Company to be bound by all provisions of this Agreement. If the Optionee transfers any Shares acquired under this Agreement, either under this Subsection (e) or after the Company has failed to exercise the Right of First Refusal, then this Agreement shall apply to the Transferee to the same extent as to the Optionee.

(f) **Termination of Rights as Stockholder**. If the Company makes available, at the time and place and in the amount and form provided in this Agreement, the consideration for the Shares to be purchased in accordance with this Section 7, then after such time the person from whom such Shares are to be purchased shall no longer have any rights as a holder of such Shares (other than the right to receive payment of such consideration in accordance with this Agreement). Such Shares shall be deemed to have been purchased in accordance with the applicable provisions hereof, whether or not the certificate(s) therefor have been delivered as required by this Agreement.

(g) **Assignment of Right of First Refusal**. The Board of Directors may freely assign the Company's Right of First Refusal, in whole or in part. Any person who accepts an assignment of the Right of First Refusal from the Company shall assume all of the Company's rights and obligations under this Section 7.

SECTION 8. LEGALITY OF INITIAL ISSUANCE.

No Shares shall be issued upon the exercise of this option unless and until the Company has determined that:

(a) It and the Optionee have taken any actions required to register the Shares under the Securities Act or to perfect an exemption from the registration requirements thereof;

(b) Any applicable listing requirement of any stock exchange or other securities market on which Stock is listed has been satisfied; and

(c) Any other applicable provision of federal, State or foreign law has been satisfied.

SECTION 9. NO REGISTRATION RIGHTS.

The Company may, but shall not be obligated to, register or qualify the sale of Shares under the Securities Act or any other applicable law. The Company shall not be obligated to take any affirmative action in order to cause the sale of Shares under this Agreement to comply with any law.

SECTION 10. RESTRICTION ON TRANSFER OF SHARES.

(a) **Securities Law Restrictions**. Regardless of whether the offering and sale of Shares under the Plan have been registered under the Securities Act or have been registered or qualified under the securities laws of any State, the Company at its discretion may

impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates or the imposition of stoptransfer instructions) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the securities laws of any State or any other law.

(b) **Market Stand-Off**. In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the Company's initial public offering, the Optionee or a Transferee shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer, or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Agreement without the prior written consent of the Company or its managing underwriter. Such restriction (the "Market Stand-Off") shall be in effect for such period of time following the date of the final prospectus for the offering as may be requested by the Company or such underwriter. In no event, however, shall such period exceed 180 days plus such additional period as may reasonably be requested by the Company or such underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports or (ii) analyst recommendations and opinions, including (without limitation) the restrictions set forth in Rule 2711(f)(4) of the National Association of Securities Dealers and Rule 472(f)(4) of the New York Stock Exchange, as amended, or any similar successor rules. The Market Stand-Off shall in any event terminate two years after the date of the Company's initial public offering. In the event of the declaration of a stock dividend, a spinoff, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding securities without receipt of consideration, any new, substituted or additional securities which are by reason of such transaction distributed with respect to any Shares subject to the Market Stand-Off, or into which such Shares thereby become convertible, shall immediately be subject to the Market Stand-Off. In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Shares acquired under this Agreement until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Subsection (b). This Subsection (b) shall not apply to Shares registered in the public offering under the Securities Act.

(c) **Investment Intent at Grant**. The Optionee represents and agrees that the Shares to be acquired upon exercising this option will be acquired for investment, and not with a view to the sale or distribution thereof.

(d) **Investment Intent at Exercise**. In the event that the sale of Shares under the Plan is not registered under the Securities Act but an exemption is available that requires an investment representation or other representation, the Optionee shall represent and agree at the time of exercise that the Shares being acquired upon exercising this option are being acquired for investment, and not with a view to the sale or distribution thereof, and shall make such other representations as are deemed necessary or appropriate by the Company and its counsel.

(e) **Legends**. All certificates evidencing Shares purchased under this Agreement shall bear the following legend:

"THE SHARES REPRESENTED HEREBY MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF, EXCEPT IN COMPLIANCE WITH THE TERMS OF A WRITTEN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER OF THE SHARES (OR THE PREDECESSOR IN INTEREST TO THE SHARES). SUCH AGREEMENT GRANTS TO THE COMPANY CERTAIN RIGHTS OF FIRST REFUSAL UPON AN ATTEMPTED TRANSFER OF THE SHARES. THE SECRETARY OF THE COMPANY WILL UPON WRITTEN REQUEST FURNISH A COPY OF SUCH AGREEMENT TO THE HOLDER HEREOF WITHOUT CHARGE."

All certificates evidencing Shares purchased under this Agreement in an unregistered transaction shall bear the following legend (and such other restrictive legends as are required or deemed advisable under the provisions of any applicable law):

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

(f) **Removal of Legends**. If, in the opinion of the Company and its counsel, any legend placed on a stock certificate representing Shares sold under this Agreement is no longer required, the holder of such certificate shall be entitled to exchange such certificate for a certificate representing the same number of Shares but without such legend.

(g) **Administration**. Any determination by the Company and its counsel in connection with any of the matters set forth in this Section 10 shall be conclusive and binding on the Optionee and all other persons.

SECTION 11. ADJUSTMENT OF SHARES.

In the event of any transaction described in Section 8(a) of the Plan, the terms of this option (including, without limitation, the number and kind of Shares subject to this option and the Exercise Price) shall be adjusted as set forth in Section 8(a) of the Plan. In the event that the Company is a party to a merger or consolidation or in the event of a sale of all or substantially all of the Company's stock or assets, this option shall be subject to the treatment provided by the Board of Directors in its sole discretion, as provided in Section 8(b) of the Plan.

SECTION 12. MISECELLANEOUS PROVISIONS.

(a) **Rights as a Stockholder**. Neither the Optionee nor the Optionee's representative shall have any rights as a stockholder with respect to any Shares subject to this option until the Optionee or the Optionee's representative becomes entitled to receive such Shares by filing a notice of exercise and paying the Purchase Price pursuant to Sections 4 and 5.

(b) **No Retention Rights**. Nothing in this option or in the Plan shall confer upon the Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Optionee) or of the Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

(c) **Notice**. Any notice required by the terms of this Agreement shall be given in writing. It shall be deemed effective upon (i) personal delivery, (ii) deposit with the United States Postal Service, by registered or certified mail, with postage and fees prepaid or (iii) deposit with Federal Express Corporation, with shipping charges prepaid. Notice shall be addressed to the Company at its principal executive office and to the Optionee at the address that he or she most recently provided to the Company in accordance with this Subsection (c).

(d) **Modifications and Waivers**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Optionee and by an authorized officer of the Company (other than the Optionee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(e) **Entire Agreement**. The Notice of Stock Option Grant, this Agreement and the Plan constitute the entire contract between the parties hereto with regard to the subject matter hereof. They supersede any other agreements, representations or understandings (whether oral or written and whether express or implied) that relate to the subject matter hereof.

(f) **Choice of Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, as such laws are applied to contracts entered into and performed in such State.

SECTION 13. ACKNOWLEDGEMENTS OF THE OPTIONEE.

(a) **Tax Consequences**. The Optionee agrees that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes the Optionee's tax liabilities. The Optionee shall not make any claim against the Company or its Board of Directors, officers or employees related to tax liabilities arising from this option or the Optionee's other compensation. In particular, the Optionee acknowledges that this option is exempt from Section 409A of the Code only if the Exercise

Price is at least equal to the Fair Market Value per Share on the Date of Grant. Since Shares are not traded on an established securities market, the determination of their Fair Market Value is made by the Board of Directors or by an independent valuation firm retained by the Company. The Optionee acknowledges that there is no guarantee in either case that the Internal Revenue Service will agree with the valuation, and the Optionee shall not make any claim against the Company or its Board of Directors, officers or employees in the event that the Internal Revenue Service asserts that the valuation was too low.

(b) **Electronic Delivery of Documents**. The Optionee agrees to accept by email all documents relating to the Company, the Plan or this option and all other documents that the Company is required to deliver to its security holders (including, without limitation, disclosures that may be required by the Securities and Exchange Commission). The Optionee also agrees that the Company may deliver these documents by posting them on a website maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a website, it shall notify the Optionee by email of their availability. The Optionee acknowledges that he or she may incur costs in connection with electronic delivery, including the cost of accessing the internet and printing fees, and that an interruption of internet access may interfere with his or her ability to access the documents. This consent shall remain in effect until this option expires or until the Optionee gives the Company written notice that it should deliver paper documents.

(c) **No Notice of Expiration Date**. The Optionee agrees that the Company and its officers, employees, attorneys and agents do not have any obligation to notify him or her prior to the expiration of this option pursuant to Section 6, regardless of whether this option will expire at the end of its full term or on an earlier date related to the termination of the Optionee's Service. The Optionee further agrees that he or she has the sole responsibility for monitoring the expiration of this option and for exercising this option, if at all, before it expires. This Subsection (c) shall supersede any contrary representation that may have been made, orally or in writing, by the Company or by an officer, employee, attorney or agent of the Company.

SECTION 14. DEFINITIONS.

(a) "**Agreement**" shall mean this Stock Option Agreement.

(b) "**Board of Directors**" shall mean the Board of Directors of the Company, as constituted from time to time or, if a Committee has been appointed, such Committee.

(c) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(d) "**Committee**" shall mean a committee of the Board of Directors, as described in Section 2 of the Plan.

(e) "**Company**" shall mean Winc, Inc. (formerly known as Club W, Inc.), a Delaware corporation.

(f) "**Consultant**" shall mean a person, excluding Employees and Outside Directors, who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor and who qualifies as a consultant or advisor under Rule 701(c)(1) of the Securities Act or under Instruction A.1.(a)(1) of Form S-8 under the Securities Act.

(g) "**Date of Grant**" shall mean the date of grant specified in the Notice of Stock Option Grant, which date shall be the later of (i) the date on which the Board of Directors resolved to grant this option or (ii) the first day of the Optionee's Service.

(h) "**Disability**" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

(i) "**Employee**" shall mean any individual who is a commonlaw employee of the Company, a Parent or a Subsidiary.

(j) "**Exercise Price**" shall mean the amount for which one Share may be purchased upon exercise of this option, as specified in the Notice of Stock Option Grant.

(k) "**Fair Market Value**" shall mean the fair market value of a Share, as determined by the Board of Directors in good faith. Such determination shall be conclusive and binding on all persons.

(l) "**Immediate Family**" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law and shall include adoptive relationships.

(m) "**ISO**" shall mean an employee incentive stock option described in Section 422(b) of the Code.

(n) "**Notice of Stock Option Grant**" shall mean the document so entitled to which this Agreement is attached.

(o) "**NSO**" shall mean a stock option not described in Section 422(b) or 423(b) of the Code.

(p) "**Optionee**" shall mean the person named in the Notice of Stock Option Grant.

(q) "**Outside Director**" shall mean a member of the Board of Directors who is not an Employee.

(r) "**Parent**" shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(s) "**Plan**" shall mean the Winc, Inc. (formerly known as Club W, Inc.) 2013 Stock Plan, as in effect on the Date of Grant.

(t) "**Purchase Price**" shall mean the Exercise Price multiplied by the number of Shares with respect to which this option is being exercised.

(u) "**Right of First Refusal**" shall mean the Company's right of first refusal described in Section 7.

(v) "**Securities Act**" shall mean the Securities Act of 1933, as amended.

(w) "**Service**" shall mean service as an Employee, Outside Director or Consultant.

(x) "**Share**" shall mean one share of Stock, as adjusted in accordance with Section 8 of the Plan (if applicable).

(y) "**Stock**" shall mean the Common Stock of the Company.

(z) "**Subsidiary**" shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(aa) "**Transferee**" shall mean any person to whom the Optionee has directly or indirectly transferred any Share acquired under this Agreement.

(bb) "**Transfer Notice**" shall mean the notice of a proposed transfer of Shares described in Section 7.

Exhibit 10.3

CREDIT AGREEMENT
dated as of
December 15, 2020

between

WINC, INC.
a Delaware corporation,
doing business in California as CLUB W, INC.

and

BWSC, LLC,
a California limited liability company,
as Borrowers,

and

PACIFIC MERCANTILE BANK,
a California state-chartered commercial bank,
as Bank

$7,000,000

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Annexes, Exhibits and Schedules

SUMMARY OF CREDIT TERMS

Section 1.1 – Revolving Credit Commitment	**$7,000,000**
Section 1.1 – Revolving Loans Maturity Date	**March 31, 2022**
Section 1.1- Inventory Sublimit	**$4,500,000**
Section 1.4(a)(i) – Prime Lending Rate for Revolving Loans	**Prime Rate plus 1.25% (125 basis points) per annum**
Section 1.14(a)(i) – Revolving Credit Commitment Fee	**An amount equal to 0.25% of the Revolving Credit Commitment in effect on the date such fee is due**
Section 2.1(a) – Letter of Credit Sublimit	**$0**
Section 6.15(a) – Minimum Liquidity	**$1,500,000**

This CREDIT AGREEMENT, dated as of December 15, 2020, is entered into between WINC, INC., a Delaware corporation, doing business in California as CLUB W, INC. ("*Parent*"), and BWSC, LLC, a California limited liability company ("*BWSC*") (Parent and BWSC are sometimes collectively referred to herein as "*Borrowers*" and each individually as a "*Borrower*"), and PACIFIC MERCANTILE BANK, a California state-chartered commercial bank ("*Bank*"). Initially capitalized terms used in this Agreement have the meanings ascribed to such terms in **Annex 1**. In addition, interpretation of UCC terms, accounting terms, and other matters of construction are set forth in **Annex 1**.

The parties hereto hereby agree as follows:

ARTICLE I

LOAN FACILITIES

1.1 *Revolving Loans*. Provided that no Event of Default or Default has occurred and is continuing, and subject to the other terms and conditions hereof, Bank agrees to make revolving loans ("*Revolving Loans*") jointly and severally to Borrowers, upon notice in accordance with Section 1.5(b), from the Closing Date up to but not including the Revolving Loans Maturity Date, the proceeds of which shall be used only for the purposes allowed in Section 6.1(a), subject to the following conditions and limitations:

(a) the aggregate principal amount of Revolving Loans outstanding after giving effect to any proposed Borrowing of a Revolving Loan *plus* the Letter of Credit Usage on such date shall not exceed the lesser of (i) the Borrowing Base, or (ii) the Revolving Credit Commitment;

(b) Borrowers shall not be permitted to borrow, and Bank shall not be obligated to make, any Revolving Loans to Borrowers, unless and until all of the conditions for a Borrowing set forth in Section 3.2 have been met to the satisfaction of Bank; and

(c) if, at any time or for any reason, the amount of Revolving Loans outstanding plus the Letter of Credit Usage exceeds the lesser of (i) the Borrowing Base, or (ii) the Revolving Credit Commitment (an "*Overadvance*"), Borrowers shall promptly, but in any event within 1 Business Day pay to Bank, upon Bank's election and demand, in cash, the amount of such Overadvance to be used by Bank to repay outstanding Revolving Loans.

Borrowers may repay and, subject to the terms and conditions hereof, reborrow Revolving Loans. All such repayments shall be without penalty or premium. On the Revolving Loans Maturity Date, Borrowers shall pay to Bank the entire unpaid principal balance of the Revolving Loans together with all accrued but unpaid interest thereon.

1.2 *Reserved*.

1.3 *Reserved*.

1.4 *Interest Rates; Payments of Interest*.

(a) *Interest Rates*.

(i) *Revolving Loans*. Subject to the terms and conditions hereof, all Revolving Loans shall bear interest at the greater of (x) the Prime Lending Rate for Revolving Loans, or (y) 4% per annum.

(ii) *Reserved*.

(iii) *Reserved*.

(b) *Default Rate*. Upon the occurrence and during the continuance of an Event of Default, in addition to and not in substitution of any of Bank's other rights and remedies with respect to such Event of Default, at the option of Bank the entire unpaid principal balance of the Loans shall bear interest at the otherwise applicable rate(s) *plus* 500 basis points. In addition, if Borrowers shall

fail to comply with Section 5.11, in addition to and not in substitution of Bank's other rights and remedies with respect to such failure to comply, at the option of Bank the entire unpaid principal balance of the Loans shall bear interest at the otherwise applicable rate(s) plus an additional 100 basis points. In addition, if Borrowers shall fail to comply with Section 1.12, in addition to and not in substitution of Bank's other rights and remedies with respect to such failure to comply, at the option of Bank the entire unpaid principal balance of the Loans shall bear interest at the otherwise applicable rate(s) plus an additional 25 basis points. In addition, interest, Expenses, the Fees, and other amounts due hereunder not paid when due shall, at the option of Bank, bear interest at the Prime Lending Rate for Revolving Loans *plus* 500 basis points until such overdue payment is paid in full.

(c) *Computation of Interest*. All computations of interest shall be calculated on the basis of a year of 360 days for the actual days elapsed. In the event that the Prime Rate announced is, from time to time, changed, adjustment in the Prime Lending Rate shall be made as of 12:01 a.m. (Pacific time) on the effective date of the change in the Prime Rate. Interest shall accrue from the Closing Date to the date of repayment of the Loans in accordance with the provisions of this Agreement; *provided*, *however*, if a Loan is repaid on the same day on which it is made, then 1 day's interest shall be paid on that Loan. Any and all interest not paid when due shall, at the option of Bank, be added to the principal balance of the applicable Loan and shall bear interest thereafter as provided for in Section 1.4(b).

(d) *Maximum Interest Rate*. Under no circumstances shall the interest rate and other charges hereunder exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Bank has received interest and other charges hereunder in excess of the highest rate applicable hereto, such excess shall be deemed received on account of, and shall automatically be applied to reduce, FIRST, the Obligations, other than interest and Bank Product Obligations, in the inverse order of maturity, and SECOND, Bank Product Obligations, and the provisions hereof shall be deemed amended to provide for the highest permissible rate. If there are no Obligations outstanding, Bank shall refund to Borrowers such excess.

(e) *Payments of Interest*. All accrued but unpaid interest on the Loans, calculated in accordance with this Section 1.4, shall be due and payable, in arrears, on each and every Interest Payment Date.

1.5 *Notice of Borrowing Requirements*.

(a) Each Borrowing shall be made on a Business Day.

(b) Each Borrowing shall be made upon email or fax notice given by an Authorized Officer of Borrowers. Bank shall be given such notice no later than 11:00 a.m., Pacific time, 1 Business Day prior to the day on which such Borrowing is to be made.

(c) So long as all of the conditions for a Borrowing of a Loan set forth herein have been satisfied, Bank shall credit the proceeds of such Loan on the applicable Borrowing date into Borrowers' Account, or as otherwise directed in writing by an Authorized Officer.

1.6 *Reserved*.

1.7 *Increased Costs*.

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Bank;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (c) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on Bank any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by Bank or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to Bank or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of Bank or other Recipient, Borrowers will pay to Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements*. If Bank determines that any Change in Law affecting Bank or any lending office of Bank or Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Bank's capital or on the capital of Bank's holding company, if any, as a consequence of this Agreement, the Commitments of Bank or the Loans made by Bank, or the Letters of Credit, to a level below that which Bank or Bank's holding company could have achieved but for such Change in Law (taking into consideration Bank's policies and the policies of Bank's holding company with respect to capital adequacy), then from time to time Borrowers will pay to Bank such additional amount or amounts as will compensate Bank or Bank's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement*. A certificate of Bank setting forth the amount or amounts necessary to compensate Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to Administrative Borrower, shall be conclusive absent manifest error. Borrowers shall pay Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) *Delay in Requests*. Failure or delay on the part of Bank to demand compensation pursuant to this Section shall not constitute a waiver of Bank's right to demand such compensation; *provided* that Borrowers shall not be required to compensate Bank pursuant to this Section 1.7 for any increased costs incurred or reductions suffered more than 9 months prior to the date that Bank notifies Administrative Borrower of the Change in Law giving rise to such increased costs or reductions, and of Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 9-month period referred to above shall be extended to include the period of retroactive effect thereof).

1.8 *Reserved*.

1.9 *Reserved*.

1.10 *Statements of Obligations*. The Loans and Borrowers' obligation to repay the same shall be evidenced by this Agreement and the books and records of Bank. Bank shall render monthly statements of the Loans to Borrowers, including statements of all principal and interest owing on the Loans, and all Fees and Expenses owing, and such statements shall be presumed to be correct and accurate and constitute an account stated between Borrowers and Bank unless, within 30 days after receipt thereof by Borrowers, Administrative Borrower delivers to Bank, at the address specified in Section 8.1, written objection thereof specifying the error or errors, if any, contained in any such statement.

1.11 *Holidays*. Any principal or interest in respect of the Loans which would otherwise become due on a day other than a Business Day, shall instead become due on the next succeeding Business Day and such adjustment shall be reflected in the computation of interest; *provided*, *however*, that in the event that such due date shall, subsequent to the specification thereof by Bank, for any reason no longer constitute a Business Day, Bank may change such specified due date in accordance with this Section 1.11.

1.12 *Time and Place of Payments*.

(a) All payments due hereunder shall be made available to Bank in immediately available Dollars, not later than 12:00 p.m., Pacific time, on the day of payment, to the following address or such other address as Bank may from time to time specify by notice to Borrowers:

Pacific Mercantile Bank
949 South Coast Drive, Third Floor
Costa Mesa, CA 92626

(b) Borrowers hereby authorize Bank to charge Borrowers' Account, or any other demand deposit account maintained by any Borrower with Bank, for the amount of any payment due or past due hereunder or under any Loan Document, for the full amount thereof. Should there be insufficient funds in any such demand deposit account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable in cash by Borrowers.

(c) In addition, Borrowers hereby authorize Bank at its option, without prior notice to Borrowers, to advance a Revolving Loan for any payment due or past due hereunder, including principal and interest owing on the Loans, the Fees and all Expenses, and to pay the proceeds of such Revolving Loan to Bank for application toward such due or past due payment.

1.13 *Reserved*.

1.14 *Fees*.

(a) Borrowers shall pay to Bank (i) a fee (the "*Revolving Credit Commitment Fee*") in the amount set forth in Section 1.14(a)(i) of the Summary of Credit Terms. The Revolving Credit Commitment Fee shall be fully earned and nonrefundable, and shall be due and payable, on the Closing Date, and each anniversary of the Closing Date.

(b) Reserved.

(c) If any payment due hereunder, whether for principal, interest, or otherwise, is not paid on or before the 10th day after the date such payment is due, in addition to and not in substitution of any of Bank's other rights and remedies with respect to such nonpayment, Borrowers shall pay to Bank a late payment fee (the "*Late Payment Fee*") equal to the greater of 5% of the amount of such overdue payment, or $10. The Late Payment Fee shall be due and payable on the 11th day after the due date of the overdue payment with respect thereto.

1.15 *Protective Advances*. Borrowers hereby authorize Bank, from time to time in Bank's sole discretion, (A) after the occurrence and during the continuance of an Event of Default or Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 3.2 are not satisfied, to make Revolving Loans to Borrowers in an aggregate amount not to exceed 10% of the Revolving Credit Commitment that Bank, in its discretion deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, (2) to enhance the likelihood of repayment of the Obligations, or (3) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement and/or any Loan Document, including Expenses (any of the Revolving Loans described in this Section 1.15 shall be referred to as "*Protective Advances*"). Each Protective Advance shall be deemed to be a Revolving Loan hereunder. The Protective Advances shall be repayable on demand, secured by the Collateral, constitute Obligations hereunder, and bear interest at the Prime Lending Rate for Revolving Loans. The provisions of this Section 1.15 are for the exclusive benefit of Bank and are not intended to benefit Borrowers in any way.

1.16 *Taxes*.

(a) *Defined Terms*. For purposes of this Section 1.16 the term "applicable law" includes FATCA.

(b) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments

made under any Loan Document shall deliver to Administrative Borrower, at the time or times reasonably requested by Administrative Borrower, such properly completed and executed documentation reasonably requested by Administrative Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by Administrative Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by Administrative Borrower as will enable Administrative Borrower to determine whether or not Bank is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing,

(i) a Recipient that is a U.S. Person shall deliver to Administrative Borrower on or prior to the Closing Date or later date on which such Recipient becomes a lender under this Agreement (and from time to time thereafter upon the reasonable request of Administrative Borrower), executed originals of IRS Form W-9 certifying that such Recipient is exempt from U.S. federal backup withholding Tax; and

(ii) a Recipient that is not a U.S. Person shall, deliver to Administrative Borrower (in such number of copies as shall be requested by Administrative Borrower) on or prior to the Closing Date or later date on which such Recipient becomes a lender under this Agreement (and from time to time thereafter upon the reasonable request of Administrative Borrower), whichever of the following is applicable, to establish that Recipient is exempt from U.S. federal withholding tax: (A) in the case such Recipient is claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN-E establishing an exemption from U.S. federal withholding Tax pursuant to the "interest" article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E establishing an exemption from U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such Tax treaty, and establishing compliance with FATCA; (B) executed originals of IRS Form W-8ECI; (C) in the case such Recipient is claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate to the effect that Bank is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of Borrowers within the meaning of Section 881(c)(3)(B) of the IRC, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC and (y) executed originals of IRS Form W-8BEN-E, and establishing compliance with FATCA; or (D) if such Recipient is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by any certifications or documents required by Section 1.16(b)(i) or (ii) with respect to the beneficial owner, and establishing compliance with FATCA. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Administrative Borrower in writing of its legal inability to do so.

(c) *Payment of Other Taxes by Borrowers*. Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Bank timely reimburse it for the payment of, any Other Taxes.

(d) *Indemnification by Borrowers*. Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 1.16) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Administrative Borrower by Bank shall be conclusive absent manifest error.

(e) *Evidence of Payments*. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 1.16, such Loan Party shall deliver to Bank the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Bank.

(f) *Treatment of Certain Refunds*. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 1.16 (including by the payment of additional amounts pursuant to this Section 1.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding

anything to the contrary in this paragraph, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) *Survival*. Each party's obligations under this Section 1.16 shall survive the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

1.17 *Reserved*.

1.18 *Termination of Commitment*. The Revolving Credit Commitment shall terminate on the Revolving Loans Maturity Date. Borrowers may terminate the Revolving Credit Commitment at any time, upon 3 Business Days' written notice to Bank. In the event of any termination of the Revolving Credit Commitment, Borrowers shall, concurrent with such termination, pay to Bank, in immediately available funds, the entire outstanding balance of the Obligations.

1.19 *Collections From Account Debtors*. The provisions of this Section 1.19 shall take effect upon written notice from Bank to Administrative Borrower at any time and from time to time, that a Cash Dominion Event has occurred.

(a) *Lockbox*. As quickly as commercially practicable but in any event no later than 30 days after written notice from Bank to Borrower that a Cash Dominion Event has occurred, Borrowers shall establish the Lockbox and the Control Accounts. Borrowers shall deliver to Bank a detailed cash receipts journal on Friday of each week until the Lockbox is operational. Borrowers shall instruct all Account Debtors to make payments either directly to the Lockbox for deposit by Bank directly to the Control Account, or instruct them to deliver such payments to Bank by wire transfer, ACH, or other means as Bank may direct for deposit to the Lockbox or Control Account or for direct application to reduce the outstanding Loans. If any Borrower receives a payment of the Proceeds of Collateral directly, such Borrower will promptly deposit the payment or Proceeds into the Control Account. Until so deposited, such Borrower will hold all such payments and Proceeds in trust for Bank without commingling with other funds or property.

(b) *Crediting Payments*. Unless otherwise agreed between Borrowers and Bank, each payment shall be deposited into Borrowers' Account on the first Business Day following the Business Day of deposit to the Control Account of immediately available funds or other receipt of immediately available funds by Bank; *provided* such payment is received in accordance with Bank's usual and customary practices as in effect from time to time; *provided further* that If an Event of Default has occurred and is continuing, at Bank's option, in its sole and absolute discretion, Bank shall apply all amounts that are deposited into the Control Account in immediately available funds against the Obligations in such order as Bank shall determine in its sole discretion.

ARTICLE II

LETTERS OF CREDIT

2.1 *Letters of Credit*.

(a) Provided that no Event of Default or Default is continuing and subject to the other terms and conditions hereof, Bank agrees to issue letters of credit ("*Letters of Credit*") for the account of Borrowers in such form as may be approved from time to time by Bank, subject to the following limitations:

(i) The face amount of the Letter of Credit if and when issued must not cause the sum of the aggregate principal amount outstanding of all Revolving Loans *plus* the Letter of Credit Usage to exceed the lesser of (i) the Borrowing Base, or (ii) the Revolving Credit Commitment;

(ii) The face amount of the Letter of Credit if and when issued must not cause the Letter of Credit Usage to exceed the Letter of Credit Sublimit;

(iii) The Letter of Credit may not have an expiry date or draw period which extends beyond the date which is 30 days prior to the Revolving Loans Maturity Date; and

(iv) The conditions specified in Section 3.2 shall have been satisfied on the date of issuance of such Letter of Credit.

(b) Each Letter of Credit shall (i) be denominated in Dollars, and (ii) be a standby or documentary letter of credit issued to support obligations of Borrowers or any Subsidiary, contingent or otherwise, to finance the working capital and business needs of Borrowers or such Subsidiary in the ordinary course of business.

(c) Each Letter of Credit shall be subject to the Uniform Customs or the ISP, as determined by Bank, in its Permitted Discretion, and, to the extent not inconsistent therewith, the laws of the State of California.

(d) Bank shall not at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause Bank to exceed any limits imposed by its organizational or governing documents or by any Applicable Law or determination of an arbitrator or a court or other Governmental Authority to which Bank is subject.

2.2 *Procedure for Issuance of Letters of Credit*. Borrowers may request that Bank issue a Letter of Credit at any time prior to the date that is 30 days prior to the Revolving Loans Maturity Date by delivering to Bank a Letter of Credit Application at its address for notices specified herein therefor, completed to the satisfaction of Bank, together with such other certificates, documents and other papers and information as Bank may request. Upon receipt of any Letter of Credit Application, Bank will process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall Bank be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by Bank and Borrowers. Bank shall furnish a copy of such Letter of Credit to Borrowers promptly following the issuance thereof.

2.3 *Fees, Commissions and Other Charges*.

(a) With respect to each and every standby Letter of Credit, Borrowers shall pay to Bank, a fee in an amount equal to the face amount of such standby Letter of Credit times 4% per annum, pro-rated for the tenor of such standby Letter of Credit on the basis of a year of 360 days (the "*Standby Letter of Credit Fee*"). The Standby Letter of Credit Fee shall be due and payable upon issuance of the applicable standby Letter of Credit, and if applicable, upon each renewal thereof.

(b) With respect to each and every documentary Letter of Credit, Borrowers shall pay to Bank, a fee in an amount equal to the greater of (i) the product of (x) the face amount of such documentary Letter of Credit times (y) 0.125%, or (ii) $125, pro-rated for the tenor of such documentary Letter of Credit on the basis of a year of 360 days (the "*Documentary Letter of Credit Fee*"). The Documentary Letter of Credit Fee shall be due and payable upon issuance of the applicable documentary Letter of Credit, and if applicable, upon each renewal thereof.

(c) In addition to the foregoing, Borrowers shall pay or reimburse Bank for such normal and customary costs and expenses as are reasonably incurred or charged by Bank in issuing, effecting payment under, amending or otherwise administering any Letter of Credit.

2.4 *Reimbursement Obligations*.

(a) Borrowers shall reimburse Bank on the same Business Day on which a draft is presented under any Letter of Credit and paid by Bank, *provided* that Bank provides notice to Borrowers prior to 11:00 a.m., Pacific time, on such Business Day and

otherwise Borrowers shall reimburse Bank on the next succeeding Business Day; *provided*, *further*, that the failure to provide such notice shall not affect Borrowers' absolute and unconditional obligation to reimburse Bank when required hereunder for any draft paid under any Letter of Credit. Bank shall provide notice to Borrowers on such Business Day as a draft is presented and paid by Bank indicating the amount of (i) such draft so paid and (ii) any taxes, fees, charges or other costs or expenses incurred by Bank in connection with such payment. Each such payment shall be made to Bank at its address specified in Section 1.12 in Dollars and in immediately available funds.

(b) Interest shall be payable on any and all amounts remaining unpaid by Borrowers under this Section from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full at the Prime Lending Rate for Revolving Loans, subject to Section 1.4(b), if applicable.

(c) Each drawing under any Letter of Credit shall constitute a request by Borrowers to Bank for a Borrowing of a Revolving Loan. The date of such drawing shall be deemed the date on which such Borrowing is made.

2.5 *Obligations Absolute*.

(a) Borrowers' obligations under this Article II shall be absolute and unconditional under any and all circumstances and irrespective of any set-off, counterclaim or defense to payment which Borrowers may have or have had against Bank or any beneficiary of a Letter of Credit.

(b) Borrowers agree with Bank that Borrowers' Reimbursement Obligations under Section 2.4 shall not be affected by, among other things, (i) the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or (ii) any dispute between or among Borrowers and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or (iii) any claims whatsoever of Borrowers against the beneficiary of such Letter of Credit or any such transferee.

(c) Bank shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions caused by Bank's gross negligence or willful misconduct.

(d) Borrowers agree that any action taken or omitted by Bank under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with the standards of care specified in the UCC, shall be binding on Borrowers and shall not result in any liability of Bank to Borrowers.

2.6 *Letter of Credit Payments*. If any draft shall be presented for payment under any Letter of Credit, the responsibility of Bank to Borrowers in connection with such draft shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are in conformity with such Letter of Credit. In determining whether to pay under any Letter of Credit, only Bank shall be responsible for determining that the documents and certificates required to be delivered under the Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit.

2.7 *Outstanding Letters of Credit Following Event of Default or on the Revolving Loans Maturity Date*.

(a) With respect to all Letters of Credit outstanding upon the occurrence and during the continuance of a Default or Event of Default, Borrowers shall either (i) replace such Letters of Credit, whereupon such Letters of Credit shall be canceled, with letters of credit issued by another issuer acceptable to the beneficiary of such Letter of Credit, or (ii) Cash Collateralize such Letters of Credit for so long as such Letters of Credit remain outstanding during the continuance of such Default or Event of Default.

(b) With respect to all Letters of Credit outstanding on the Revolving Loans Maturity Date, Borrowers shall either (i) replace such Letters of Credit, whereupon such Letters of Credit shall be canceled, with letters of credit issued by another issuer acceptable to the beneficiary of such Letter of Credit, or (ii) Cash Collateralize such Letters of Credit until such time as no Letters of Credit remain outstanding, all draw periods with respect to all Letters of Credit have expired, and all Reimbursement Obligations with respect thereto have been paid in full in cash.

(c) Each Borrower hereby grants to Bank a security interest in all cash collateral provided pursuant to Sections 2.7(a) and (b) to secure the Obligations. Amounts held in such cash collateral account shall be applied by Bank to the payment of drafts drawn under such Letters of Credit and the payment of customary costs and expenses charged or incurred by Bank in connection therewith, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other Obligations shall have been paid in full in cash, and the obligations of Bank hereunder have terminated, the balance, if any, in such cash collateral account shall be returned to Borrowers. Borrowers shall execute and deliver to Bank, such further documents and instruments as Bank may request to evidence the creation and perfection of the within security interest in such cash collateral account.

2.8 *Letter of Credit Applications.* In the event of any conflict between the terms of this Article II and the terms of any Letter of Credit Application, the terms of such Letter of Credit Application shall govern and control any such conflict.

ARTICLE III

CONDITIONS TO CLOSING

3.1 *Conditions to Initial Loans or Letter of Credit*. Bank's obligation to make the initial Loans and/or to issue the initial Letter of Credit is subject to and contingent upon the fulfillment of each of the conditions set forth in **Annex 2** to the satisfaction of Bank and its counsel.

3.2 *Conditions to all Loans and Letters of Credit*. Bank's obligation hereunder to make any Loans (including the initial Loans), and/or to issue any Letters of Credit (including the initial Letter of Credit), is further subject to and contingent upon the fulfillment of each of the following conditions to the satisfaction of Bank:

(a) (i) in the case of a Borrowing of a Revolving Loan, receipt by Bank of notice as required by Section 1.5(b), and (ii) in the case of a Letter of Credit, receipt by Bank of a Letter of Credit Application and the other papers and information required under Section 2.2;

(b) the fact that, immediately before and after such Borrowing or issuance of Letter of Credit, as the case may be, no Event of Default or Default shall have occurred or be continuing; and

(c) the fact that the representations and warranties of Loan Parties contained in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, or issuance of Letter of Credit, as the case may be, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects on and as of the date of such Borrowing, or issuance of Letter of Credit, as the case may be, and except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date.

3.3 *Conditions* Subsequent to all Loans and Letters of Credit. Bank's obligation hereunder to make any Loans to Borrower, and Bank's obligation to issue any Letters of Credit, is further subject to and contingent upon the fulfillment of each of the conditions set forth in **Annex 3** to the satisfaction of Bank and its counsel. In the event that Borrowers shall fail to fulfill any or all of the conditions subsequent set forth in **Annex 3** on or before the applicable due date indicated therein to the satisfaction of Bank, in its sole and absolute discretion, each such failure shall constitute a separate and independent Event of Default.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce Bank to enter into this Agreement and to make Loans and/or issue any Letters of Credit, each Borrower represents and warrants to Bank that on the Closing Date and on the date of each Borrowing or issuance of a Letter of Credit:

4.1 *Legal Status*. Each Corporate Loan Party is the type of organization indicated in **Schedule 4.1**, and is duly organized and existing under the laws of the state of its organization, as indicated in **Schedule 4.1**. Each Corporate Loan Party has the power and authority to own its own Assets and to transact the business in which it is engaged, and is properly licensed, qualified to do business and in good standing in every jurisdiction in which it is doing business where failure to so qualify would reasonably be expected to have a Material Adverse Effect, as set forth in **Schedule 4.1**. Each Corporate Loan Party has delivered to Bank accurate and complete copies of its Governing Documents which are operative and in effect as of the Closing Date.

4.2 *No Violation; Compliance*. The execution, delivery and performance of the Loan Documents to which each Corporate Loan Party is a party, and the consummation of the transactions contemplated hereby and thereby, are within such Corporate Loan Party's powers, are not in conflict with the terms of the Governing Documents of such Corporate Loan Party, and do not result in a breach of or constitute a default under any contract, obligation, indenture or other instrument to which such Corporate Loan Party is a party or by which such Corporate Loan Party is bound or affected, which breach or default would reasonably be expected to have a Material Adverse Effect. There is no law, rule or regulation (including Regulations T, U and X of the Federal Reserve Board), nor is there any judgment, decree or order of any court or Governmental Authority binding on any Corporate Loan Party which would be contravened by the execution, delivery, performance or enforcement of the Loan Documents to which any Corporate Loan Party is a party.

4.3 *Authorization; Enfo*rceability. Each Corporate Loan Party has taken all corporate, partnership or limited liability company, as applicable, action necessary to authorize the execution and delivery of the Loan Documents to which such Corporate Loan Party is a party, and the consummation of the transactions contemplated hereby and thereby. Upon their execution and delivery in accordance with the terms hereof, the Loan Documents to which each Loan Party is a party will constitute legal, valid and binding agreements and obligations of such Loan Party enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, and similar laws and equitable principles affecting the enforcement of creditors' rights generally.

4.4 *Approvals; Consents*. No approval, consent, exemption or other action by, or notice to or filing with, any Governmental Authority is necessary in connection with the execution, delivery, performance or enforcement of the Loan Documents except those that have been obtained or which the failure to obtain would not reasonably be expected to have a Material Adverse Effect. All requisite Governmental Authorities and third parties have approved or consented to the transactions contemplated by the Loan Documents, and all applicable waiting periods have expired, to the extent the failure to obtain such approval or consent, or satisfy such waiting period, would reasonably be likely to have a Material Adverse Effect, and there is no governmental or judicial action, actual or threatened, that has or could have a reasonable likelihood of restraining, preventing or imposing burdensome conditions on the transactions contemplated by the Loan Documents.

4.5 *Liens*. Each Corporate Loan Party and each of its Subsidiaries has good and marketable title to, or valid leasehold interests in, or licenses to, all of its Assets, free and clear of all Liens or rights of others, except for Permitted Liens.

4.6 *Debt*. Each Corporate Loan Party and each of its Subsidiaries has no Debt other than Permitted Debt.

4.7 *Litigation*. Except as set forth in **Schedule 4.7**, there are no suits, proceedings, claims or disputes pending or, to the Knowledge of Borrowers, threatened, against or affecting any Loan Party or any of any Loan Party's Assets, or any Subsidiary or any of such Subsidiary's Assets (a) that seeks damages in excess of $75,000 over applicable insurance, and as to which no reservation of rights has been taken by the insurer thereunder, or (b) which seek injunctive relief. No Loan Party or any of any Loan Party's Assets, or any Subsidiary or any of such Subsidiary's Assets, is subject to any injunction, writ, temporary restraining order or any other order of any court or other Governmental Authority.

4.8 *No Default*. No Event of Default or Default has occurred and is continuing or would result from the incurring of obligations by any Loan Party or any Subsidiary under this Agreement or the Loan Documents to which it is a party.

4.9 *Capitalization*.

(a) Set forth on **Schedule 4.9(a)** is a complete and accurate list showing the number of shares of each class of Equity Interests of Parent authorized, the number outstanding, and the number and percentage of the outstanding shares of each such class

owned (directly or indirectly) by each Owner of Parent (except for any such Equity Interests that are publicly-traded). Except as set forth on **Schedule 4.9(a)**, all of the outstanding Equity Interests of Parent have been validly issued, are fully paid and non-assessable, and are owned by the Owner indicated on **Schedule 4.9(a)**, free and clear of all Liens (other than Permitted Liens), options, warrants, rights of conversion or purchase or any similar rights. Except as set forth on **Schedule 4.9(a)**, neither Parent nor any Owner of Parent is a party to, or has Knowledge of, any agreement restricting the transfer or hypothecation of any Equity Interests of Parent.

(b) Set forth on **Schedule 4.9(b)** is a complete and accurate list showing all Subsidiaries of Parent and, as to each such Subsidiary, the jurisdiction of its organization, the number of shares of each class of Equity Interests authorized (if applicable), the number outstanding, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by its Owner(s). Except as set forth on **Schedule 4.9(b)**, all of the outstanding Equity Interests of each Subsidiary of Parent owned (directly or indirectly) by Parent have been validly issued, are fully paid and non-assessable (to the extent applicable) and are owned by Parent or a Subsidiary of Parent, free and clear of all Liens (other than Permitted Liens), options, warrants, rights of conversion or purchase or any similar rights. Except as set forth on **Schedule 4.9(b)**, neither Parent nor any such Subsidiary of Parent is a party to, or has Knowledge of, any agreement restricting the transfer or hypothecation of any Equity Interests of any such Subsidiary, other than the Loan Documents. Neither Parent nor any Subsidiary of Parent owns or holds, directly or indirectly, any Equity Interests of any Person other than such Subsidiaries and Permitted Investments.

4.10 *Taxes*. All tax returns required to be filed by each Corporate Loan Party and each of its Subsidiaries in any jurisdiction have in fact been filed, except for such tax returns where the failure to file would not reasonably be expected to have a Material Adverse Effect. All material taxes, assessments, fees and other governmental charges upon each Corporate Loan Party and each of its Subsidiaries or upon any of their Assets, income or franchises, which are due and payable have been paid, other than such taxes, assessments, fees and other governmental charges being contested in good faith by appropriate proceedings, and for which adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture. The provisions for taxes on the books of each Corporate Loan Party and each of its Subsidiaries are adequate for all open years, and for each Corporate Loan Party's and each of its Subsidiaries current fiscal period.

4.11 *Correctness of Financial Statements; No Material Adverse Change*. Borrowers' audited Financial Statement as of the Fiscal Year ended December 31, 2019, and Borrowers' internally-prepared Financial Statements for the Fiscal Month ended September 30, 2020, and all other information and data furnished by Borrowers to Bank in connection therewith, taken as a whole, are complete and correct in all material respects, and accurately and fairly present the financial condition and results of operations of Borrowers in all material respects as of their respective dates. Any forecasts of future financial performance delivered by Borrowers to Bank have been made in good faith and are based on reasonable assumptions and investigations by Borrowers. All Financial Statements have been prepared in accordance with GAAP, subject to year-end adjustments and absence of footnotes in the case of monthly and quarterly Financial Statements. Since the date of the most recent Financial Statements delivered to Bank, there has been no change in any Loan Party's financial condition or results of operations, taken as a whole, sufficient to have a Material Adverse Effect. No Loan Party has any contingent obligations, liabilities for taxes or other outstanding financial obligations which are material in the aggregate, except as disclosed in such Financial Statements.

4.12 *Employee Benefits*.

(a) Except as set forth on **Schedule 4.12**, no Loan Party, none of its Subsidiaries, nor any of their respective ERISA Affiliates maintains or contributes to any Employee Benefit Plan.

(b) Each Loan Party and each of the ERISA Affiliates has complied in all material respects with ERISA, the IRC and all applicable laws regarding each Employee Benefit Plan.

(c) Each Employee Benefit Plan is, and has been, maintained in substantial compliance with ERISA, the IRC, all applicable laws and the terms of each such Employee Benefit Plan.

(d) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the IRC is the subject of a favorable opinion, advisory or determination letter from the Internal Revenue Service or an application for such letter is currently being processed by the Internal Revenue Service. To the Knowledge of each Loan Party and the ERISA Affiliates after due inquiry, nothing has occurred which would prevent, or cause the loss of, such qualification.

(e) No liability to the PBGC (other than for the payment of current premiums which are not past due) by any Loan Party or ERISA Affiliate has been incurred or is expected by any Loan Party or ERISA Affiliate to be incurred with respect to any Pension Plan.

(f) No Notification Event exists or has occurred in the past 6 years.

(g) No Loan Party or ERISA Affiliate sponsors, maintains, or contributes to any Employee Benefit Plan, including, without limitation, any such plan maintained to provide benefits to former employees of such entities that may not be terminated by any Loan Party or ERISA Affiliate in its sole discretion at any time without material liability.

(h) No Loan Party or ERISA Affiliate has provided any security under Section 436 of the IRC.

4.13 *Full Disclosure*. Each Loan Party has disclosed to Bank all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. All information furnished in writing by or on behalf of any Loan Party and delivered to Bank in connection with this Agreement or the consummation of the transactions contemplated hereunder or thereunder (such information taken as a whole) does not, as of the time of delivery of such information, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading in light of the circumstances under which they were made (excluding projections made by Borrowers in good faith and used by Borrowers internally which are forwarded to Bank for which Borrowers may represent and warrant that the same were prepared on the basis of information and estimates that Borrowers believed to be reasonable at the time made, and such projections do not constitute a representation or warranty that the results set forth therewith be met; it being acknowledged and agreed by Bank that uncertainty is inherent in any forecasts, projections and other forward-looking information, projections as to future events or conditions are not to be viewed as facts, and the actual results during the period or periods covered by such forecasts may differ materially from the projected results).

4.14 *Other Obligations*. Neither any Loan Party nor any Subsidiary is in default on any Debt, other than defaults which individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

4.15 *Investment Company Act*. Neither any Loan Party nor any Subsidiary is an investment company, or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.16 *Patents, Trademarks, Copyrights, and Intellectual Property, etc*. Except as set forth in **Schedule 4.7**, each Loan Party has all necessary patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights, copyrights, permits, and franchises in order for it to conduct its business and to operate its Assets, without known conflict with the rights of third Persons, and all of same are valid and subsisting. Other than the Liens granted to Bank pursuant to the Loan Documents, the consummation of the transactions contemplated by this Agreement will not alter or impair any of such rights of any Loan Party or any Subsidiary. Except as set forth in **Schedule 4.7**, each Loan Party and each Subsidiary has not been charged or, to Borrowers' Knowledge, threatened to be charged with any infringement or, after due inquiry, infringed on any, unexpired trademark, trademark registration, trade name, patent, copyright, copyright registration, or other proprietary right of any Person, which either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

4.17 *Environmental Condition*. Except as set forth on **Schedule 4.17**, (a) to Borrowers' Knowledge, no Loan Party's nor any of its Subsidiaries' Assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Borrowers' Knowledge, after due inquiry, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any real property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any

Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.18 *Solvency*. Each Borrower and each other Loan Party and each Subsidiary is Solvent. No transfer of property is being made by any Loan Party or any Subsidiary and no obligation is being incurred by any Loan Party or any Subsidiary in connection with the transactions contemplated by this Agreement or the Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party or any Subsidiary.

4.19 *Labor Matters*. There are no strikes, lockouts, slowdowns or other material labor disputes against Borrowers pending or, to the Knowledge of Borrowers, threatened. The hours worked by and payments made to employees of Borrowers comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign law dealing with such matters, except to the extent failure to comply would not reasonably be expected to result in a Material Adverse Effect. Borrowers have not incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state law which remains unpaid or unsatisfied. All payments due from Borrowers, or for which any claim may be made against Borrowers, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of Borrowers except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Except as set forth on **Schedule 4.19**, Borrowers are not a party to or bound by any collective bargaining agreement. There are no representation proceedings pending or, to Borrowers' Knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of Borrowers has made a pending demand for recognition that would reasonably be expected to result in a Material Adverse Effect. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against Borrowers pending or, to the Knowledge of Borrowers, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of Borrowers, which either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by this Agreement and the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Borrower is bound.

4.20 *Brokers*. Except as set forth on **Schedule 4.20**, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and neither Borrowers nor any Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

4.21 *Customer and Trade Relations*. There exists no actual or, to the Knowledge of Borrowers, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of Borrowers with any supplier material to its operations which either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

4.22 *Material Contracts*. Set forth on **Schedule 4.22** is a reasonably detailed description of the Material Contracts of each Loan Party and each of its Subsidiaries. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or the applicable Subsidiary and, to Borrower's Knowledge, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 6.23), and (c) is not in default due to the action or inaction of the applicable Loan Party or the applicable Subsidiary.

4.23 *Casualty*. Neither the businesses nor the Assets of any Borrower or any of its Subsidiaries have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

4.24 *Eligible Accounts*. Each Account included in the Borrowing Base is an "Eligible Account" as defined herein, and conforms to the definition thereof.

4.25 *Eligible Inventory*. All Inventory included in the Borrowing Base constitutes "Eligible Inventory" as defined herein, and conforms to the definition thereof.

4.26 *Compliance with Sanctions and Anti-Terrorism Laws*. As of the Closing Date and in the three years prior thereto, none of the Loan Parties nor any Subsidiary, either directly or through a third party acting on its behalf, nor, to the Knowledge of the Loan Parties, any of their respective directors, officers or employees (i) has or has had any of its assets in a country (a "*Sanctioned Country*") that is subject to a sanctions program (a "*Sanctions Program*") maintained by the U.S. Treasury Department/Office of Foreign Asset Control, the U.S. Treasury Department/Financial Crimes Enforcement Network, the U.S. State Department/Directorate of Defense Trade Controls, the U.S. Commerce Department/Bureau of Industry and Security or the U.S. Justice Department, (ii) does or has done business with or derives or has derived any of its operating income from investments in or transactions with any individual, entity, group or regime subject to, or specially designated under, any Sanctions Program (each, a "*Sanctioned Person*"), (iii) uses or has used any of its assets to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country or (iv) is or was in violation of the Patriot Act, the Bank Secrecy Act of 1970, as amended, the Trading with the Enemy Act, the Racketeer Influenced and Corrupt Organizations Act, the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or the Iran Threat Reduction and Syria Human Rights Act of 2012, any other applicable Anti-Terrorism Law, any foreign asset control regulations of the United States Treasury Department or any enabling legislation or executive orders related to any of the foregoing (including, without limitation, Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) and Executive Order 13382 of June 28, 2005 Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters (70 Fed. Reg. (2005))) and the transactions contemplated hereby and use of the proceeds of the Loans will not violate any such law. The Loan Parties and their Subsidiaries have instituted and maintain appropriate policies, procedures and internal controls designed to ensure continued compliance with such laws.

4.27 *OFAC*. No Loan Party (i) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), or Executive Order 13382 of June 28, 2005 Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters (70 Fed. Reg. (2005)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise, to the Knowledge of the Loan Parties, associated with any such Person in any manner violative of such Section 2 of such executive order, or (iii) is a Person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

4.28 *Patriot Act*. Each Loan Party is in compliance with the Patriot Act. No part of the proceeds of the Loans or the Letters of Credit will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.29 *No Material Adverse Effect*. Since the Closing Date, there has been no event, change, circumstance or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

ARTICLE V

AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees that from the Closing Date and thereafter until the payment, performance and satisfaction in full, in cash, of the Obligations, all of Bank's obligations hereunder have been terminated and no Letters of Credit are outstanding, such Borrower shall:

5.1 *Punctual Payments*. Punctually pay the interest and principal on the Loans, the Fees and all Expenses and any other fees and liabilities due under this Agreement and the Loan Documents at the times and place and in the manner specified in this Agreement or the Loan Documents.

5.2 *Books and Records; Collateral Audits; Appraisals; Account Verification*.

(a) Maintain, and cause each of its Subsidiaries to maintain, adequate books and records in accordance with GAAP, and permit any officer, employee or agent of Bank, at any time and from time to time, to inspect, audit and examine such books and records, and to make copies of the same.

(b) Permit Bank (through any of its officers, employees, or agents), from time to time hereafter (but in any event no less frequently than twice per calendar year)**,** to audit the Accounts and the Inventory in order to verify each Borrower's financial condition or the amount, quality, value, condition of, or any other matter relating to, the Accounts and the Inventory. In connection therewith, Borrowers shall pay to Bank its standard and customary audit fee ("*Audit Fee*") for each audit plus all Expenses in connection therewith, payable upon demand; *provided* that, so long as no Event of Default has occurred and is continuing, Borrower shall not be responsible for reimbursing Bank for more than 2 such audits per calendar year.

(c) Permit Bank (through any of its officers, employees, or agents), from time to time hereafter (but in any event no less frequently than twice per calendar year)**,** to obtain at Borrowers' expense, an appraisal of the Inventory by an appraiser acceptable to Bank in its sole discretion. In connection therewith, Borrowers shall pay to Bank its standard and customary appraisal fee ("*Appraisal Fee*") for each appraisal, plus all Expenses in connection therewith, payable upon demand; *provided* that, so long as no Event of Default has occurred and is continuing, Borrower shall not be responsible for reimbursing Bank for more than 2 such appraisals per calendar year.

(d) Whether or not a Default or Event of Default exists, permit Bank at any time and from time to time, in the name of Bank or Borrowers, to verify the validity, amount or any other matter relating to any Accounts of Borrowers by mail, telephone or otherwise. Borrowers shall cooperate fully with Bank in an effort to facilitate and promptly conclude any such verification process.

5.3 *Collateral and Financial Reporting*. Deliver to Bank the following, all in form and detail satisfactory to Bank:

(a) (i) as soon as available but not later than 15 days after the end of each Fiscal Month, (x) a detailed aging, by total, of the Accounts, together with a reconciliation to the detailed calculation of the Borrowing Base previously provided to Bank, (y) a summary aging, by vendor, of Borrowers' accounts payable and any book overdraft, (z) an Inventory listing, and (aa) a Borrowing Base Certificate, (ii) upon Bank's request, copies of invoices in connection with the Accounts, customer statements, credit memos, remittance advices, reports and deposit slips, and (iii) on a quarterly basis, a detailed list of Borrowers' customers;

(b) as soon as available but not later than 30 days after the end of each Fiscal Month, (i) a Consolidating and Consolidated internally prepared Financial Statement for Parent and its Subsidiaries which shall include Parent's and its Subsidiaries' Consolidating and Consolidated balance sheet as of the close of such period, and Parent's and its Subsidiaries' Consolidating and Consolidated statement of income and retained earnings and statement of cash flow for such period and year to date, in each case setting forth in comparative form, as applicable, the figures for the corresponding Fiscal Quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by the Chief Financial Officer of each Corporate Loan Party, to the best of his or her Knowledge after due and diligent inquiry, as being complete and correct and fairly presenting in all material respects Parent's and its Subsidiaries' financial condition and results of operations for such period, in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, (ii) a management prepared narrative discussion, in reasonable detail, signed by the Chief Financial Officer of Parent, describing the operations and financial condition of Parent and its Subsidiaries for the Fiscal Quarter and the portion of the Fiscal Year then ended, (iii) a detailed listing of all contingent liabilities incurred by any of the Corporate Loan Parties, and (iv) an updated listing of all rights each Corporate Loan Party has obtained to any new patentable inventions, trademarks, servicemarks, copyrightable works or other new Intellectual Property;

(c) concurrent with the Financial Statements required under Sections 5.3(b) and (e), a Compliance Certificate from the Chief Financial Officer of Parent, stating, among other things, that he or she has reviewed the provisions of the Loan Documents and that, to the best of his or her Knowledge after due and diligent inquiry there exists no Event of Default or Default, and containing the calculations and other details necessary to demonstrate compliance with Section 6.15;

(d) as soon as available but not later than 60 days after the end of each Fiscal Year, or sooner as Bank may reasonably request, an annual operating budget (including monthly balance sheet, statement of income and retained earnings, and statement of cash flows) for the following Fiscal Year;

(e) as soon as available but not later than 150 days after the end of each Fiscal Year, a complete copy of Parent's and its Subsidiaries' Consolidated and Consolidating audited Financial Statement, which shall include at least Parent's and its Subsidiaries' balance sheet as of the close of such Fiscal Year, and Parent's and its Subsidiaries' statement of income and retained earnings and statement of cash flow for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, accompanied by (i) a report and opinion of a certified public accountant selected by Parent and satisfactory to Bank, which report and opinion shall not be subject to any "going concern" or like qualification or exception or any qualifications or exceptions as to the scope of such audit, and (ii) a certificate of such certified public accountant certifying such Financial Statements and stating that in making the examination necessary for their certification of such Financial Statements, such certified public accountant has not obtained any knowledge of the existence of any Default or Event of Default or, if any such Default or Event of Default shall exist, stating the nature and status of such event;

(f) to the extent applicable, as soon as available copies of all (i) annual or quarterly reports provided to the Mezzanine Lender not otherwise referenced herein, and (ii) press releases;

(g) promptly upon receipt by Borrowers, copies of any and all reports and management letters submitted to Borrowers or any Subsidiary by any certified public accountant in connection with any examination of Borrowers' or any Subsidiary's financial records made by such accountant;

(h) (i) promptly after the filing thereof with the United States Secretary of Labor, the Internal Revenue Service or the PBGC, copies of each annual and other report with respect to each Pension Plan or any trust created thereunder, (ii) promptly upon becoming aware of the occurrence of any Notification Event or of any "prohibited transaction," as described in section 406 of ERISA or in section 4975 of the IRC in connection with any Pension Plan or any trust created thereunder, a written notice signed by a chief financial officer of Parent, specifying the nature thereof, what action the Loan Parties propose to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto, (iii) promptly upon receipt thereof, copies of any notice of the PBGC's intention to terminate or to have a trustee appointed to administer any Pension Plan, (iv) no later than March 15 of each year during the term of the Agreement, proof that each Loan Party submitted a request for a Withdrawal Liability estimate to each Multiemployer Plan no later than February 15 of each year during the term of the Agreement, and (v) promptly upon its receipt thereof, a copy of each estimate of Withdrawal Liability received by any Loan Party or ERISA Affiliate from a Multiemployer Plan; and

(i) from time to time, operating statistics, operating plans and any other information as Bank may reasonably request, promptly upon such request including, without limitation, all information that any Governmental Authority with regulatory oversight over Bank may request or require.

5.4 *Existence; Preservation of Licenses; Compliance with Law*. Preserve and maintain, and cause each Subsidiary to preserve and maintain, its corporate, limited liability company, or other entity existence and good standing in the state of its organization, qualify and remain qualified, and cause each Subsidiary to qualify and remain qualified, as a foreign corporation, limited liability company, or other entity existence in every jurisdiction except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect; and preserve, and cause each of its Subsidiaries to preserve, all of its licenses, permits, governmental approvals, rights, privileges and franchises required for its operations; and comply, and cause each of its Subsidiaries to comply, with the provisions of its Governing Documents; and comply, and cause each of its Subsidiaries to comply, with the requirements of all Applicable Laws of any Governmental Authority having authority or jurisdiction over it; and comply, and cause each of its Subsidiaries to comply, with all requirements for the maintenance of its business, insurance, licenses, permits, governmental approvals, rights, privileges and franchises, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect.

5.5 *Insurance*.

(a) Maintain with financially sound and reputable insurance companies, at Borrowers' expense, and cause each Subsidiary to maintain at its expense, insurance respecting its Assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrowers also shall maintain, and cause each Subsidiary to maintain, business interruption, public liability, and product liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation and directors and officers liability insurance. All such policies of insurance shall be in such amounts and with such insurance companies as are reasonably satisfactory to Bank. Borrowers shall deliver

copies of all such policies to Bank with a satisfactory lender's loss payable endorsements (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage), and shall contain a waiver of warranties. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than 30 days' (or 10 days in the case of non-payment) prior written notice to Bank in the event of cancellation of the policy, and the insurer's agreement that any loss payable thereunder shall be payable notwithstanding any act or negligence of Borrowers or Bank which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment.

(b) Copies of policies or certificates thereof reasonably satisfactory to Bank evidencing such insurance shall be delivered to Bank at least 30 days prior to the expiration of the existing or preceding policies. Borrowers shall give Bank prompt notice of any loss covered by such insurance. Upon the occurrence and during the continuance of an Event of Default, Bank shall have the exclusive right to adjust any losses payable under any such insurance policies, without any liability to Borrowers whatsoever in respect of such adjustments. Any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid over to Bank to be applied at the option of Bank either to the prepayment of the Obligations or shall be disbursed to Borrowers under staged payment terms reasonably satisfactory to Bank for application to the cost of repairs, replacements, or restorations. Any such repairs, replacements, or restorations shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed prior to such damage or destruction. Borrowers shall, concurrently with the annual Financial Statements required to be delivered by Borrowers pursuant to Section 5.3(e), deliver to Bank, as Bank may reasonably request, copies of certificates describing all insurance of Borrowers and its Subsidiaries then in effect.

5.6 *Assets*. Maintain, keep and preserve, and cause each Subsidiary to maintain, keep and preserve, all of its Assets (tangible or intangible) which are necessary to its business in good repair and condition (normal wear and tear, and casualty excepted, and from time to time make necessary repairs, renewals and replacements thereto so that such Assets shall be fully and efficiently preserved and maintained.

5.7 *Taxes and Other Liabilities*. Pay and discharge when due, and cause each Subsidiary to pay and discharge when due, (a) any and all assessments and taxes, both real or personal and including federal and state income taxes, other than such taxes and assessments being contested in good faith by appropriate proceedings, and for which adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture, and (b) any and all of its other obligations and liabilities, other than obligations or liabilities being contested in good faith by appropriate proceedings, and for which adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture.

5.8 *Notices to Bank*. Promptly, upon Borrowers acquiring Knowledge thereof, give written notice to Bank of:

(a) all litigation affecting any Loan Party or any Subsidiary that (i) seeks damages in excess of $75,000 or where the amount of damages is undetermined or unspecified, or (ii) seeks injunctive relief;

(b) any dispute which may exist between any Loan Party or any Subsidiary, on the one hand, and any Governmental Authority, on the other hand which would reasonably be expected to result in liabilities in excess of $75,000 or otherwise result in a Material Adverse Effect;

(c) any labor controversy resulting in or threatening to result in a strike against any Loan Party or any Subsidiary;

(d) any proposal by any Governmental Authority to acquire the Assets or business of any Loan Party or any Subsidiary, or to compete with Borrowers or any Subsidiary;

(e) (i) any Environmental Lien has been filed against any of the real or personal property of Parent or its Subsidiaries, (ii) the commencement of any Environmental Action or written notice that an Environmental Action will be filed against Parent or its Subsidiaries, and (iii) any written notice of a material violation, citation, or other administrative order from a Governmental Authority.

(f) all notices alleging default received or sent by a Loan Party or any Subsidiary thereof to or from the holders of any Mezzanine Obligations;

(g) any amendment, supplement, waiver or other modification with respect to any material Mezzanine Loan Document;

(h) any Event of Default or Default; and

(i) any other matter which has resulted or could reasonably be expected to result in a Material Adverse Effect.

5.9 *Compliance with ERISA and the IRC*. In addition to and without limiting the generality of Section 5.4, (a) comply in all material respects with applicable provisions of ERISA and the IRC with respect to all Employee Benefit Plans, (b) without the prior written consent of Bank, not take any action or fail to take action the result of which could result in a Loan Party or ERISA Affiliate incurring a material liability to the PBGC or to a Multiemployer Plan (other than to pay contributions or premiums payable in the ordinary course), (c) not allow any facts or circumstances to exist with respect to one or more Employee Benefit Plans that, in the aggregate, would reasonably be expected to result in a Material Adverse Effect, (d) not participate in any prohibited transaction that could result in other than a de minimis civil penalty, excise tax, fiduciary liability or correction obligation under ERISA or the IRC, (e) operate each Employee Benefit Plan in such a manner that will not incur any material tax liability under the IRC (including Section 4980B of the IRC), and (f) furnish to Bank upon Bank's written request such additional information about any Employee Benefit Plan for which any Loan Party or ERISA Affiliate could reasonably expect to incur any material liability. With respect to each Pension Plan (other than a Multiemployer Plan) except as could not reasonably be expected to result in liability to the Loan Parties, the Loan Parties and the ERISA Affiliates shall (i) satisfy in full and in a timely manner, without incurring any late payment or underpayment charge or penalty and without giving rise to any Lien, all of the contribution and funding requirements of the IRC and of ERISA, and (ii) pay, or cause to be paid, to the PBGC in a timely manner, without incurring any late payment or underpayment charge or penalty, all premiums required pursuant to ERISA.

5.10 *Further Assurances*. Execute and deliver, or cause to be executed and delivered, upon the request of Bank and at Borrowers' expense, such additional documents, instruments and agreements as Bank may reasonably determine to be necessary or advisable to carry out the provisions of this Agreement and the Loan Documents, and the transactions and actions contemplated hereunder and thereunder.

5.11 *Cash Management Services*. As soon as practicable but in any event no later than 90 days following the Closing Date, and at all times thereafter, maintain its primary Cash Management Services with Bank. Borrowers shall (a) close all deposit accounts maintained with any other financial institution(s) as soon as possible but in no event later than 90 days following the Closing Date, and (b) provide Bank, as soon as possible but in no event later than 90 days following the Closing Date, with bank account statements reflecting a "closed" status evidencing that all of Borrower's previous business deposits accounts and Cash Management Services with any other financial institution(s) have been closed. Notwithstanding the foregoing, Borrowers and its Subsidiaries shall be permitted to maintain cash in deposit accounts at depository institutions other than with Bank, *provided* that (i) such deposit accounts are listed on **Schedule 1** to the Security Agreement, (ii) the aggregate cash on deposit in all of such deposit accounts does not exceed $10,000, in the aggregate, at any time, and (iii) if requested by Bank at any time, Borrowers shall promptly deliver to Bank a deposit account control agreement covering such deposit accounts, duly executed by the applicable Borrower and the depository institution where such deposit accounts are maintained and otherwise in form and content satisfactory to Bank in its Permitted Discretion.

5.12 *Environment*.

(a) Keep, and cause each of its Subsidiaries to keep, any property either owned or operated by Parent or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens;

(b) Comply, and cause each of its Subsidiaries to comply, in all material respects, with Environmental Laws and provide to Bank documentation of such compliance which Bank reasonably requests; and

(c) Promptly notify Bank of any release of which any Borrower has Knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Parent or its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law.

5.13 *Additional Collateral*. With respect to any Assets (or any interest therein) acquired after the Closing Date by any Loan Party that are of a type covered by the Lien created by any of the Loan Documents but which are not so subject, promptly (and in any event within 30 days after the acquisition thereof): (i) execute and deliver, or cause such Loan Party to execute and deliver, to Bank such amendments to the relevant Loan Documents or such other documents as Bank shall deem in its Permitted Discretion necessary or advisable to grant to Bank a Lien on such Assets (or such interest therein), (ii) take all actions, or cause such Subsidiary to take all actions, necessary or advisable to cause such Lien to be duly perfected in accordance with all Applicable Laws, including, without limitation, the filing of financing statements in such jurisdictions as may be reasonably requested by Bank, and (iii) if reasonably requested by Bank, deliver to Bank evidence of insurance as required by Section 5.5.

5.14 *Subsidiaries*.

(a) Cause each and every now existing and hereafter acquired or formed Domestic Subsidiary to become either a Borrower or a Guarantor, and execute and deliver to Bank each of the following, concurrent with any such acquisition or formation:

(i) an Addendum if such Domestic Subsidiary will be a Borrower, or a Facility Guaranty in all other cases;

(ii) a joinder to the Security Agreement in the form of **Annex 2** thereto;

(iii) a supplement to the Intercompany Subordination Agreement in the form of **Annex 1** thereto; and

(iv) such other agreements, instruments and documents as Bank shall reasonably request in connection therewith.

(b) Cause each and every now existing and hereafter acquired or formed Foreign Subsidiaries to execute and deliver to Bank each of the following, concurrent with any such acquisition or formation:

(i) a supplement to the Intercompany Subordination Agreement in the form of **Annex 1** thereto; and

(ii) such other agreements, instruments and documents as Bank shall reasonably request in connection therewith.

5.15 *Material Contracts*. Maintain, and cause each of its Subsidiaries to maintain, all Material Contracts in full force and effect and not default in the payment or performance of any obligations thereunder.

ARTICLE VI

NEGATIVE COVENANTS

Each Borrower further covenants and agrees that from the Closing Date and thereafter until the payment, performance and satisfaction in full, in cash, of the Obligations, all of Bank's, obligations hereunder have been terminated and no Letters of Credit are outstanding, such Borrower shall not:

6.1 *Use of Funds; Margin Regulation*.

(a) Use any proceeds of the Revolving Loans for any purpose other than for working capital;

(b) Reserved;

(c) Reserved; or

(d) Use any portion of the proceeds of the Loans in any manner which might cause the Loans, the application of the proceeds thereof, or the transactions contemplated by this Agreement to violate Regulation T, U, or X of the Board of Governors of the Federal Reserve System, or any other regulation of such board, or to violate the Securities and Exchange Act of 1934, as amended or supplemented.

6.2 *Debt*. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Debt except Permitted Debt.

6.3 *Liens*. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Lien (including the Lien of an attachment, judgment or execution) on any of its Assets, whether now owned or hereafter acquired, except Permitted Liens; or authorize, or permit any Subsidiary to authorize, the filing under the UCC as adopted in any jurisdiction, a financing statement which names such Borrower or such Subsidiary as a debtor, except with respect to Permitted Liens, or sign, or permit any Subsidiary to sign, any security agreement authorizing any secured party thereunder to file such a financing statement, except with respect to Permitted Liens.

6.4 *Merger, Consolidation, and Transfer or Acquisition of Assets*. Wind up, liquidate or dissolve, reorganize, reincorporate, divide, merge or consolidate with or into any other Person, or directly or indirectly acquire all or substantially all of the Assets or the business of any other Person or any business or division of any other Person, or permit any Subsidiary to do so.

6.5 *Reserved*.

6.6 *Sales and Leasebacks*. Sell, transfer, or otherwise dispose of, or permit any Subsidiary to sell, transfer, or otherwise dispose of, any real or personal property to any Person, and thereafter directly or indirectly leaseback the same or similar property.

6.7 *Dispositions*. Conduct, or permit any Subsidiary to conduct, any Dispositions, other than Permitted Dispositions.

6.8 *Investments*. Make, or permit any Subsidiary to make, directly or indirectly, any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment, other than Permitted Investments.

6.9 *Character of Business*. Engage in any business activities or operations substantially different from or unrelated to its present business activities and operations, or permit any Subsidiary to do so.

6.10 *Restricted Payments*. Declare or pay, or permit any Subsidiary to declare or pay, any Distributions, or pay any other Restricted Payments, other than Permitted Restricted Payments.

6.11 *Guarantee*. Except for Permitted Debt or any Guarantee of Permitted Debt, assume, Guarantee, endorse (other than checks and drafts received by such Borrower in the ordinary course of business), or otherwise be or become directly or contingently responsible or liable, or permit any Subsidiary to assume, Guarantee, endorse, or otherwise be or become directly or contingently responsible or liable (including, any agreement to purchase any obligation, stock, Assets, goods, or services or to supply or advance any funds, Assets, goods, or services, or any agreement to maintain or cause such Person to maintain, a minimum working capital or net worth, or otherwise to assure the creditors of any Person against loss) for the obligations of any other Person; or pledge or hypothecate, or permit any Subsidiary to pledge or hypothecate, any of its Assets as security for any liabilities or obligations of any other Person.

6.12 *Reserved* .

6.13 *Transactions with Affiliates*. Enter into any transaction, including borrowing or lending and the purchase, sale, or exchange of property or the rendering of any service (including management services), with any Affiliate, or permit any Subsidiary to enter into any transaction, including borrowing or lending and the purchase, sale, or exchange of property or the rendering of any service (including management services), with any Affiliate, other than in the ordinary course of and pursuant to the reasonable requirements of Borrowers' or such Subsidiary's business and upon fair and reasonable terms no less favorable to such Borrower or such Subsidiary than would obtain in a comparable arm's length transaction with a Person not an Affiliate.

6.14 *Stock Issuance*. Permit any Pledged Company to issue any additional Equity Interests.

6.15 *Financial Condition*. Permit or suffer:

(a) Liquidity, measured as of the end of each Fiscal Month, at any time to be less than the amount set forth in Section 6.15(a) of the Summary of Credit Terms.

6.16 *OFAC*. Permit or cause any of its Subsidiaries to, (i) become a Person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079(2001), (ii) engage in any dealings or transactions prohibited by Section 2 of such executive order, or be otherwise, to the Knowledge of such Borrower, associated with any such person in any manner violative of such Section 2 of such executive order, or (iii) otherwise become a Person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

6.17 *Fiscal Year*. Change its Fiscal Year.

6.18 *Reserved*.

6.19 *Burdensome Agreements*. Enter into or permit to exist any contractual obligation (other than any Loan Document or Mezzanine Loan Document) that: (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other Distributions to any Corporate Loan Party or to otherwise transfer property to or invest in a Corporate Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of Bank; (b) would be violated or breached by the Loan Parties' performance and payment of the Obligations; or (c) requires the grant of a Lien (other than a Permitted Lien) to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

6.20 *Reserved*.

6.21 *Amendments of Certain Documents*. Amend or otherwise modify, or waive any rights under (a) any provisions of any Subordinate Debt (other than as expressly permitted by the applicable Subordination Agreement), (b) any provisions of any Mezzanine Loan Document in a manner prohibited by the Intercreditor Agreement, or (c) any Governing Document other than amendments, modifications and waivers that are not materially adverse to the interests of Bank.

6.22 *Employee Benefits*.

(a) Terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could reasonably be expected to result in any liability of any Loan Party or ERISA Affiliate to the PBGC.

(b) Fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Employee Benefit Plan, agreement relating thereto or applicable Law, any Loan Party or ERISA Affiliate is required to pay if such failure could reasonably be expected to have a Material Adverse Effect.

(c) Permit to exist, or allow any ERISA Affiliate to permit to exist, any accumulated funding deficiency within the meaning of section 302 of ERISA or section 412 of the IRC, whether or not waived, with respect to any Pension Plan which exceeds $10,000 with respect to all Pension Plans in the aggregate.

(d) Acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to a Loan Party or with respect to any ERISA Affiliate if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to, (i) any Pension Plan or (ii) any Multiemployer Plan.

(e) Contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any Multiemployer Plan not set forth on Schedule 4.12.

(f) Amend, or permit any ERISA Affiliate to amend, a Pension Plan resulting in a material increase in current liability such that a Loan Party or ERISA Affiliate is required to provide security to such Pension Plan under the IRC.

6.23 *Material Contracts*. Directly or indirectly, amend, modify, or change any of the terms or provisions of any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of Bank.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

7.1 *Events of Default*. The occurrence of any one or more of the following events, acts or occurrences shall constitute an event of default (an "*Event of Default*") hereunder:

(a) Borrowers fail to pay when due any payment of principal or interest due on the Loans, the Fees, any Expenses, or any other amount payable hereunder or under any Loan Document;

(b) Borrowers fail to observe or perform any of the covenants and agreements set forth in Section 1.19, 3.3, 5.2 or 5.3, or any Section within Article VI;

(c) Any Loan Party fails to observe or perform any covenant or agreement set forth in this Agreement or the Loan Documents (other than those covenants and agreements described in Sections 7.1(a) and 7.1(b)), and such failure continues for 30 days after the earlier to occur of (i) Borrowers obtaining Knowledge of such failure or (ii) Bank's dispatch of notice to Administrative Borrower of such failure;

(d) Any representation, warranty or certification made by any Loan Party or any officer or employee of any Loan Party in this Agreement or any Loan Document, in any certificate, financial statement or other document delivered pursuant to this Agreement or any Loan Document proves to have been misleading or untrue in any material respect when made or if any such representation, warranty or certification is withdrawn;

(e) Any Loan Party fails to pay when due any payment in respect of its Debt (other than under this Agreement) in excess of $75,000 after giving effect to any applicable grace period;

(f) Any event or condition occurs that: (i) results in the acceleration of the maturity of any of any Loan Party's Debt (other than under this Agreement) in excess of $75,000; or (ii) permits (or, with the giving of notice or lapse of time or both, would permit) the holder or holders of such Debt or any Person acting on behalf of such holder or holders to accelerate the maturity thereof;

(g) Any Loan Party commences a voluntary Insolvency Proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debt or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official over it or any substantial part of its property, or consents to any such relief or to the appointment of or taking possession by any such official in an involuntary Insolvency Proceeding or fails generally to pay its Debt as it becomes due, or takes any action to authorize any of the foregoing;

(h) An involuntary Insolvency Proceeding is commenced against any Loan Party seeking liquidation, reorganization or other relief with respect to it or its Debt or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and any of the following events occur: (i) the petition commencing the Insolvency Proceeding is not timely controverted; (ii) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof; (iii) an interim trustee is appointed to take possession of all or a substantial portion of the Assets of, or to operate all or any substantial portion of the business of, such Loan Party; or (iv) an order for relief shall have been issued or entered therein;

(i) Any one or more Loan Parties suffers (i) one or more judgments in the aggregate amount in excess of $75,000 which are not otherwise covered by insurance, or (ii) one or more writs, warrant of attachment, or similar process which are not released, vacated or fully bonded within 15 days of its issue or levy;

(j) A judgment creditor obtains possession of any of the Assets valued in the aggregate in excess of $75,000 of any one or more Loan Parties by any means, including levy, distraint, replevin, or self-help;

(k) (i) Any order, judgment or decree is entered decreeing the dissolution of any Loan Party, or (ii) any individual Guarantor dies or becomes incompetent, and the Facility Guaranty of such Guarantor is not reaffirmed by his or her estate or legal guardian within 30 days of such death or incompetency pursuant to documentation in form and substance satisfactory to Bank;

(l) Any Loan Party is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or any Loan Party voluntarily ceases to conduct its business as a going concern;

(m) A notice of lien, levy or assessment is filed of record with respect to any or all of any Loan Party's Assets valued in the aggregate in excess of $75,000 by any Governmental Authority, or any taxes or debts owing at any time hereafter to any Governmental Authority becomes a Lien, whether inchoate or otherwise, upon any or all of any Loan Party's Assets and the same is not paid on the payment date thereof;

(n) Any Loan Party makes any payment on account of (i) any Subordinate Debt except as otherwise permitted under the terms of the applicable Subordination Agreement, or (ii) the Mezzanine Obligations, except as otherwise permitted under the terms of the Intercreditor Agreement;

(o) The occurrence of any of the following events: (i) any Loan Party or ERISA Affiliate fails to make full payment when due of all amounts which any Loan Party or ERISA Affiliate is required to pay as contributions, installments, or otherwise to or with respect to a Pension Plan or Multiemployer Plan, and such failure could reasonably be expected to result in liability in excess of $10,000, (ii) an accumulated funding deficiency or funding shortfall in excess of $10,000 occurs or exists, whether or not waived, with respect to any Pension Plan, individually or in the aggregate, (iii) a Notification Event, which could reasonably be expected to result in liability in excess of $10,000, either individually or in the aggregate, or (iv) any Loan Party or ERISA Affiliate completely or partially withdraws from one or more Multiemployer Plans and incurs Withdrawal Liability in excess of $10,000 in the aggregate, or fails to make any Withdrawal Liability payment when due;

(p) Any Change of Control occurs;

(q) Any of the Loan Documents fails to be in full force and effect for any reason, or Bank fails to have a perfected, first priority Lien (subject only to Permitted Liens) in and upon all of the Collateral, or a breach, default or an event of default occurs under any Loan Document not otherwise described in this Section 7.1 which, if capable of cure, continues for 30 days after the earlier to occur of (x) Borrowers obtaining Knowledge of such breach, default or an event of default, or (y) Bank's delivery of notice to Borrowers of such breach, default or an event of default;

(r) Any Guarantor revokes or disputes the validity of, or liability under, his, her or its Facility Guaranty;

(s) Any "Event of Default" shall occur under and as defined in the Mezzanine Loan Agreement;

(t) A breach, default or an event of default occurs under any Bank Product Agreement that is not cured within an applicable cure period; or

(u) (i) There occurs a nonpayment by any Loan Party of any Swap Obligation when due, after taking into account any applicable grace periods or (ii) there occurs an early termination date resulting from (A) any event of default under such Swap Obligation as to which any Loan Party is the defaulting party or (B) any termination event as to which any Loan Party is an affected party, and, in either event, the Swap Termination Value owed by the Loan Party is not paid within 10 days after when due after, in each case, taking into account any applicable grace periods; or

(v) Any other Material Adverse Effect occurs.

7.2 *Remedies*. Upon the occurrence of any Event of Default described in Section 7.1(g) or 7.1(h), the Commitments shall immediately terminate, Bank's obligation hereunder to make Loans to Borrowers and/or Bank's obligation to issue Letters of Credit shall immediately terminate, and the Obligations (other than Swap Obligations) shall become immediately due and payable without any election or action on the part of Bank, without presentment, demand, protest or notice of any kind, all of which each Borrower hereby expressly waives, and Borrowers shall Cash Collateralize all outstanding L/C Obligations and Bank Product Obligations. Upon the occurrence and continuance of any other Event of Default, either or both of the following actions may be taken: (i) Bank may without notice of its election and without demand, immediately terminate the Commitments, whereupon Bank's obligation to make Loans to Borrowers and/or to issue Letters of Credit shall immediately terminate; (ii) Bank may, without notice of its election and without demand, declare the Obligations to be due and payable, whereupon the Obligations (other than Swap Obligations) shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which each Borrower hereby expressly waives, and (iii) Borrowers shall Cash Collateralize all outstanding L/C Obligations and Bank Product Obligations. Any demand in respect of any Swap Obligation shall be made in accordance with the terms of the Swap Documents relating thereto.

7.3 *Reserved*.

7.4 *Appointment of Receiver or Trustee*. Each Borrower hereby irrevocably agrees that Bank has the right under this Agreement, upon the occurrence and during the continuance of an Event of Default, to seek the appointment of a receiver, trustee or similar official over such Borrower to effect the transactions contemplated by this Agreement, and that Bank is entitled to seek such relief. Each Borrower hereby irrevocably agrees not to object to such appointment on any grounds.

7.5 *Power of Attorney*. Each Borrower hereby appoints Bank (and all Persons designated by Bank) as such Borrower's true and lawful attorney (and agent-in-fact) for the purposes provided in this section. Bank, or Bank's designee, may, without notice and in either its or such Borrower's name, but at the cost and expense of Borrowers:

(a) Endorse such Borrower's name on any payment item or other proceeds of Collateral (including proceeds of insurance) that come into Bank's possession or control; and

(b) During the continuance of an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Bank deems advisable; (iv) collect, liquidate and receive balances in deposit accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign such Borrower's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to such Borrower, and notify postal authorities to deliver any such mail to an address designated by Bank; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use such Borrower's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which such Borrower is a beneficiary; and (xii) take all other actions as Bank reasonably deems appropriate to fulfill such Borrower's obligations under this Agreement and the Loan Documents.

7.6 *Remedies Cumulative*. The rights and remedies of Bank herein and in the Loan Documents are cumulative, and are not exclusive of any other rights, powers, privileges, or remedies, now or hereafter existing, at law, in equity or otherwise.

ARTICLE VIII

MISCELLANEOUS

8.1 *Notices; Effectiveness; Electronic Communication*.

(a) *Notices Generally*. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

(i) if to Borrowers, to:

c/o Winc, Inc.
5340 Alla Road, Suite 105
Los Angeles, CA, 90066
Attn: Carol Brault, VP Finance
Telephone: 614 406-0525
Email: Carol.brault@winc.com

(ii) if to Bank, to:

Pacific Mercantile Bank
949 South Coast Drive, 1st Floor
Costa Mesa, CA 92626
Attn: George Burnett
Telephone: 714.438.2506
Email: george.burnett@pmbank.com

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) *Electronic Communications*. Notices and other communications to Bank hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by Bank. Bank or Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless Bank otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) *Change of Address, etc*. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

8.2 *No Waivers*. No failure or delay by Bank in exercising any right, power or privilege hereunder or under any Loan Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.3 *Expenses; Indemnification; Damage Waiver*.

(a) *Costs and Expenses*. Borrowers shall pay all Expenses.

(b) *Indemnification by Borrowers*. Borrowers shall indemnify Bank, and each Related Party of Bank (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee incurred by any Indemnitee or asserted against any Indemnitee by any Person (including Borrowers or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 8.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) *Reserved*.

(d) *Waiver of Consequential Damages, Etc*. To the fullest extent permitted by applicable law, Borrowers shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) *Payments*. All amounts due under this Section 8.3 shall be payable not later than 1 Business Day after demand therefor.

(f) *Survival*. Each party's obligations under this Section 8.3 shall survive the termination of the Loan Documents and payment of the Obligations and are in addition to, and not in substitution of, any other of its obligations set forth in the Loan Documents.

8.4 *Amendments and Waivers*. Neither this Agreement nor any Loan Document (other than Bank Product Agreements), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 8.4. Bank may from time to time, (a) enter into with Borrowers or any other Person written amendments, supplements or modifications hereto and to the Loan Documents or (b) waive, on such terms and conditions as Bank may specify in such instrument, any of the requirements

of this Agreement or the Loan Documents or any Event of Default or Default and its consequences, if, but only if, such amendment, supplement, modification or waiver is in writing and is signed by the party asserted to be bound thereby, and then such amendment, supplement, modification or waiver shall be effective only in the specific instance and the specific purpose for which given. Any such waiver and any such amendment, supplement or modification shall be binding upon Borrowers, Bank and all future holders of the Loans.

8.5 *Successors and Assigns; Participations; Disclosure; Register*.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrowers may not assign or transfer any of their rights or obligations under this Agreement without the prior written consent of Bank and any such prohibited assignment or transfer by Borrowers shall be void.

(b) Bank may make, carry or transfer the Loans at, to or for the account of, any of its branch offices or the office of an Affiliate of Bank or to any Federal Reserve Bank, all without Borrowers' consent.

(c) Bank may, at its own expense, assign to one or more banks or other financial institutions all or a portion of its rights (including voting rights) and obligations under this Agreement and the Loan Documents; *provided* that, except in the case of an assignment to an Affiliate of Bank, Administrative Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld, delayed or conditioned); *provided further* that no consent of Administrative Borrower shall be required if an Event of Default has occurred and is continuing. In the event of any such assignment by Bank pursuant to this Section 8.5(c), Bank's obligations under this Agreement arising after the effective date of such assignment shall be released and concurrently therewith, transferred to and assumed by Bank's assignee to the extent provided for in the document evidencing such assignment. The provisions of this Section 8.5 relate only to absolute assignments (whether or not arising as the result of foreclosure of a security interest) and such provisions do not prohibit assignments creating security interests, including, without limitation, any pledge or assignment by Bank of any Loan or any Note to any Federal Reserve Bank in accordance with Applicable Law.

(d) Bank may at any time sell to one or more banks or other financial institutions (each a "*Participant*") participating interests in the Loans, the Letters of Credit and in any other interest of Bank hereunder. In the event of any such sale by Bank of a participating interest to a Participant, Bank's obligations under this Agreement shall remain unchanged, Bank shall remain solely responsible for the performance thereof, and Borrowers shall continue to deal solely and directly with Bank in connection with Bank's rights and obligations under this Agreement. Borrowers agree that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Section 1.16 with respect to its participating interest subject to the requirements and limitations therein, including the requirements under Section 1.16 (it being understood that the documentation required under Section 1.16 shall be delivered to Bank) to the same extent as if it were a Recipient and had acquired its interest by assignment pursuant to paragraph (c) of this Section 8.5; *provided* that such Participant shall not be entitled to receive any greater payment under Sections 1.7 or 1.16, with respect to any participation, than Bank would have been entitled to receive except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. If Bank sells a participation then it shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "*Participant Register*"). The entries in the Participant Register shall be conclusive absent manifest error, and Bank shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Borrowers authorize Bank to disclose to any assignee under Section 8.5(c) or any Participant (either, a "*Transferee*") and any prospective Transferee any and all financial information in Bank's possession concerning Borrowers that has been delivered to Bank by Borrowers pursuant to this Agreement or that has been delivered to Bank by Borrowers in connection with Bank's credit evaluation prior to entering into this Agreement.

(f) Bank, acting solely for this purpose as an agent of Borrowers, shall maintain at its office in Irvine, California, a register for the recordation of the names and addresses of Bank, and the commitments of, and principal amounts of the loans owing to Bank pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and Borrowers and Bank shall treat the Person whose name is recorded in the Register pursuant to the terms hereof as a lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrowers and lenders at any reasonable time and from time to time upon reasonable prior notice. The obligations of Borrowers under this Agreement

and the Loan Documents are registered obligations and the right, title and interest of Bank and its assignees in and to such obligations shall be transferable only upon notation of such transfer in the Register. This Section 8.5(f) shall be construed so that such obligations are at all times maintained in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any other relevant or successor provisions of the IRC or such regulations).

(g) Borrowers agree that Bank may use Borrowers' and their Subsidiaries' name(s) in advertising and promotional materials, and in conjunction therewith, Bank may disclose the amount of the Loans and the purpose thereof; provided that Administrative Borrower has given its prior written consent, which shall not be unreasonably withheld, delayed, or conditioned.

8.6 *Reserved*.

8.7 *Counterparts; Integration*. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission (including by e-mail delivery of a ".pdf" format data file) shall be as effective as delivery of an original counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic transmission also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

8.8 *Severability*. The provisions of this Agreement are severable. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions. If one or more provisions hereof shall be declared invalid or unenforceable, the remaining provisions shall remain in full force and effect and shall be construed in the broadest possible manner to effectuate the purposes hereof.

8.9 *Knowledge*. For purposes of this Agreement, an individual will be deemed to have knowledge of a particular fact or other matter if: (a) such individual is actually aware of such fact or other matter; or (b) a prudent individual would reasonably be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter. Each Borrower will be deemed to have knowledge of a particular fact or other matter if the president, chief executive officer, chief operating officer, chief financial officer, controller, treasurer, president, senior vice president or other Authorized Officer of such Borrower has, or at any time had, knowledge of such fact or other matter.

8.10 *Additional Waivers*.

(a) Borrowers agree that checks and other instruments received by Bank in payment or on account of the Obligations constitute only conditional payment until such items are actually paid to Bank and Borrowers waive the right to direct the application of any and all payments at any time or times hereafter received by Bank on account of the Obligations and Borrowers agree that Bank shall have the continuing exclusive right to apply and reapply such payments in any manner as Bank may deem advisable, notwithstanding any entry by Bank upon its books.

(b) Borrowers waive demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrowers may in any way be liable.

(c) So long as Bank complies with its obligations, if any, under the UCC, (i) Bank shall not in any way or manner be liable or responsible for (x) the safekeeping of the Collateral; (y) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (z) any diminution in the value thereof; or (aa) any act or default of any carrier, warehouseman, bailee, forwarding agency or other person whomsoever, and (ii) all risk of loss, damage or destruction of the Collateral shall be borne by Borrowers.

(d) Borrowers waive the right and the right to assert a confidential relationship, if any, it may have with any accountant, accounting firm and/or service bureau or consultant in connection with any information requested by Bank pursuant to or in accordance with this Agreement, and agrees that Bank may contact directly any such accountants, accounting firm and/or service bureau or consultant in order to obtain such information.

8.11 *Destruction Of Borrowers' Documents*. Any documents, schedules, invoices or other papers delivered to Bank may be destroyed or otherwise disposed of by Bank 6 months after they are delivered to or received by Bank, unless Borrowers request, in writing, the return of the said documents, schedules, invoices or other papers and makes arrangements, at Borrowers' expense, for their return.

8.12 *CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; CLASS ACTION WAIVER*.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD FOR PRINCIPLES OF CONFLICTS OF LAWS.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, *PROVIDED*, *HOWEVER*, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT BANK'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE BANK ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWERS AND BANK WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS *SECTION 8.12*.

(c) BORROWERS AND BANK HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWERS AND BANK REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) IF PERMITTED BY APPLICABLE LAW, EACH PARTY ALSO WAIVES THE RIGHT TO LITIGATE IN COURT OR AN ARBITRATION PROCEEDING ANY DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL. EACH PARTY (I) CERTIFIES THAT NO ONE HAS REPRESENTED TO SUCH PARTY THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE JURY AND CLASS ACTION WAIVERS IN THE EVENT OF SUIT, AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS, AGREEMENTS, AND CERTIFICATIONS IN THIS SECTION.

8.13 *Reference Provision*. In the event the Jury Trial Waiver set forth above is not enforceable, the parties elect to proceed under this Judicial Reference Provision.

(a) With the exception of the items specified in clause (b) below, any controversy, dispute or claim (each, a "*Claim*") between the parties arising out of or relating to this Agreement or any other Loan Document will be resolved by a reference

proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("*CCP*"), or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in the Loan Documents, venue for the reference proceeding will be in the state or federal court in the county or district where the real property involved in the action, if any, is located or in the state or federal court in the county or district where venue is otherwise appropriate under applicable law (the "*Court*").

(b) The matters that shall not be subject to a reference are the following: (i) nonjudicial foreclosure of any security interests in real or personal property, (ii) exercise of self-help remedies (including, without limitation, set-off), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including, without limitation, writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions). This reference provision does not limit the right of any party to exercise or oppose any of the rights and remedies described in clauses (i) and (ii) or to seek or oppose from a court of competent jurisdiction any of the items described in clauses (iii) and (iv). The exercise of, or opposition to, any of those items does not waive the right of any party to a reference pursuant to this reference provision as provided herein.

(c) The referee shall be a retired judge or justice selected by mutual written agreement of the parties. If the parties do not agree within 10 days of a written request to do so by any party, then, upon request of any party, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP § 170.6, each party shall have one peremptory challenge to the referee selected by the Presiding Judge of the Court (or his or her representative).

(d) The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 15 days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within 120 days after the date of the conference and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(e) The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon 7 days written notice, and all other discovery shall be responded to within 15 days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

(f) Except as expressly set forth herein, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

(g) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. Pursuant to CCP § 644, such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding and conclusive. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(h) If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or justice, in accordance with the California Arbitration Act §1280

through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

(i) THE PARTIES RECOGNIZE AND AGREE THAT ALL CONTROVERSIES, DISPUTES AND CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS, HIS OR HER OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY CONTROVERSY, DISPUTE OR CLAIM BETWEEN OR AMONG THEM ARISING OUT OF OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

8.14 *Revival and Reinstatement of Obligations*. If the incurrence or payment of the Obligations by any Loan Party or the transfer to Bank or any Bank Product Provider of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of Debtor Relief Laws relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "*Voidable Transfer*"), and if Bank or such Bank Product Provider is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Bank or such Bank Product Provider is required or elects to repay or restore, and as to all reasonable costs, Expenses, and reasonable attorneys' fees of Bank and such Bank Product Provider related thereto, the liability of each Loan Party automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

8.15 *Updating Disclosure Schedules*. To the extent necessary to cause the representations and warranties set forth in Article IV to remain true, complete and accurate as of the Closing Date, the date of each and every Borrowing and the date of each issuance of a Letter of Credit, Borrowers shall update in writing any Schedules provided for in Article IV to the extent they have Knowledge of any circumstance which may have the effect of making any representation or warranty contained in Article IV untrue or incomplete in any material respect. The requirement of Borrowers to update the Schedules provided for herein shall not have the effect of a cure of any Event of Default occurring prior to any such update or existing at the time of any such update without the written waiver of such Event of Default by Bank.

8.16 *Patriot Act Notification*. Bank is subject to the Patriot Act and hereby notifies Borrowers that pursuant to the requirements of the Patriot Act, Bank is required to obtain, verify and record information that identifies Borrowers, which information includes the names and addresses of Borrowers and other information that will allow Bank to identify Borrowers in accordance with the Patriot Act.

8.17 *Debtor-Creditor Relationship*. The relationship between Bank, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. Bank has no (nor shall be deemed to have any) fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between Bank, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

8.18 *Amendment to Mezzanine Loan Documents*. If any amendment or modification to the Mezzanine Loan Documents amends or modifies any covenant (including any financial covenant) or event of default contained in the Mezzanine Loan Documents (or any related definitions), in each case, in a manner that is more restrictive than the applicable provisions permit as of the date thereof, or if any amendment or modification to the Mezzanine Credit Agreement or other Mezzanine Loan Document adds an additional covenant or event of default therein, Borrowers acknowledge and agree that this Agreement or the other Loan Documents, as the case may be, shall be automatically amended or modified to affect similar amendments or modifications with respect to this Agreement or such Loan Documents, without the need for any further action or consent by any Borrower or any other party. In furtherance of the foregoing, Borrowers shall permit Bank to document each such similar amendment or modification to this Agreement or such other Loan Document or insert a corresponding new covenant or event of default in this Agreement or such other Loan Document without any need for any further action or consent by Borrowers.

ARTICLE IX

JOINT AND SEVERAL LIABILITY; SINGLE LOAN ACCOUNT

9.1 *Joint and Several Liability.* Each Borrower agrees that it is jointly and severally, directly and primarily liable to Bank for payment, performance and satisfaction in full of the Obligations and that such liability is independent of the duties, obligations, and liabilities of the other Borrower. Bank may bring a separate action or actions on each, any, or all of the Obligations against any Borrower, whether action is brought against the other Borrowers or whether the other Borrowers are joined in such action. In the event that any Borrower fails to make any payment of any Obligations on or before the due date thereof, the other Borrowers immediately shall cause such payment to be made or each of such Obligations to be performed, kept, observed, or fulfilled.

9.2 *Primary Obligation; Waiver of Marshaling.* This Agreement and the Loan Documents to which Borrowers are a party are a primary and original obligation of each Borrower, are not the creation of a surety relationship, and are an absolute, unconditional, and continuing promise of payment and performance which shall remain in full force and effect without respect to future changes in conditions, including any change of law or any invalidity or irregularity with respect to this Agreement or the Loan Documents to which Borrowers are a party. Each Borrower agrees that its liability under this Agreement and the Loan Documents which Borrowers are a party shall be immediate and shall not be contingent upon the exercise or enforcement by Bank of whatever remedies they may have against the other Borrowers, or the enforcement of any lien or realization upon any security Bank may at any time possess. Each Borrower consents and agrees that Bank shall be under no obligation to marshal any assets of any Borrower against or in payment of any or all of the Obligations.

9.3 *Financial Condition of Borrowers.* Each Borrower acknowledges that it is presently informed as to the financial condition of the other Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower hereby covenants that it will continue to keep informed as to the financial condition of the other Borrowers, the status of the other Borrowers and of all circumstances which bear upon the risk of nonpayment. Absent a written request from any Borrower to Bank for information, each Borrower hereby waives any and all rights it may have to require Bank to disclose to such Borrower any information which Bank may now or hereafter acquire concerning the condition or circumstances of the other Borrowers.

9.4 *Continuing Liability.* The liability of each Borrower under this Agreement and the Loan Documents to which Borrowers are a party includes Obligations arising under successive transactions continuing, compromising, extending, increasing, modifying, releasing, or renewing the Obligations, changing the interest rate, payment terms, or other terms and conditions thereof, or creating new or additional Obligations after prior Obligations have been satisfied in whole or in part. To the maximum extent permitted by law, each Borrower hereby waives any right to revoke its liability under this Agreement and Loan Documents as to future indebtedness, and in connection therewith, each Borrower hereby waives any rights it may have under Section 2815 of the California Civil Code.

9.5 *Additional Waivers.* Each Borrower absolutely, unconditionally, knowingly, and expressly waives:

(a) (1) notice of acceptance hereof; (2) notice of any Loans or other financial accommodations made or extended under this Agreement and the Loan Documents to which Borrowers are a party or the creation or existence of any Obligations; (3) notice of the amount of the Obligations, subject, however, to each Borrower's right to make inquiry of Bank to ascertain the amount of the Obligations at any reasonable time; (4) notice of any adverse change in the financial condition of the other Borrowers or of any other fact that might increase such Borrower's risk hereunder; (5) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents to which Borrowers are a party; and (6) all other notices (except if such notice is specifically required to be given to Borrowers hereunder or under the Loan Documents to which Borrowers are a party) and demands to which such Borrower might otherwise be entitled.

(b) its right, under Sections 2845 or 2850 of the California Civil Code, or otherwise, to require Bank to institute suit against, or to exhaust any rights and remedies which Bank has or may have against, the other Borrowers or any third party, or against any collateral for the Obligations provided by the other Borrowers, or any third party. Each Borrower further waives any defense arising by reason of any disability or other defense (other than the defense that the Obligations shall have been fully and finally performed and indefeasibly paid) of the other Borrowers or by reason of the cessation from any cause whatsoever of the liability of the other Borrowers in respect thereof.

(c) (1) any rights to assert against Bank any defense (legal or equitable), set-off, counterclaim, or claim which such Borrower may now or at any time hereafter have against the other Borrowers or any other party liable to Bank; (2) any defense, set-

off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor; (3) any defense such Borrower has to performance hereunder, and any right such Borrower has to be exonerated, provided by Sections 2819, 2822, or 2825 of the California Civil Code, or otherwise, arising by reason of: the impairment or suspension of Bank's rights or remedies against the other Borrowers; the alteration by Bank of the Obligations; any discharge of the other Borrowers' obligations to Bank by operation of law as a result of Bank's intervention or omission; or the acceptance by Bank of anything in partial satisfaction of the Obligations; and (4) the benefit of any statute of limitations affecting such Borrower's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Borrower's liability hereunder.

(d) Each Borrower absolutely, unconditionally, knowingly, and expressly waives any defense arising by reason of or deriving from (i) any claim or defense based upon an election of remedies by Bank including any defense based upon an election of remedies by Bank under the provisions of Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure or any similar law of California or any other jurisdiction; or (ii) any election by Bank under Section 1111(b) of the Bankruptcy Code to limit the amount of, or any collateral securing, its claim against Borrowers. Pursuant to California Civil Code Section 2856(b):

(i) Each Borrower waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Borrower's rights of subrogation and reimbursement against the other Borrowers by the operation of Section 580(d) of the California Code of Civil Procedure or otherwise.

(ii) Each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by real property. This means, among other things: (1) Bank may collect from such Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and (2) if Bank forecloses on any real property collateral pledged by the other Borrowers: (A) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Bank may collect from such Borrower even if Bank, by foreclosing on the real property collateral, has destroyed any right such Borrower may have to collect from the other Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(e) Each Borrower hereby absolutely, unconditionally, knowingly, and expressly waives: (i) any right of subrogation such Borrower has or may have as against the other Borrowers with respect to the Obligations; (ii) any right to proceed against the other Borrowers or any other Person, now or hereafter, for contribution, indemnity, reimbursement, or any other suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether arising under express or implied contract or by operation of law, which such Borrower may now have or hereafter have as against the other Borrowers with respect to the Obligations; and (iii) any right to proceed or seek recourse against or with respect to any property or asset of the other Borrowers.

(f) WITHOUT LIMITING THE GENERALITY OF ANY OTHER WAIVER OR OTHER PROVISION SET FORTH IN THIS AGREEMENT, EACH BORROWER HEREBY ABSOLUTELY, KNOWINGLY, UNCONDITIONALLY, AND EXPRESSLY WAIVES AND AGREES NOT TO ASSERT ANY AND ALL BENEFITS OR DEFENSES ARISING DIRECTLY OR INDIRECTLY UNDER ANY ONE OR MORE OF CALIFORNIA CIVIL CODE SECTIONS 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2825, 2839, 2845, 2848, 2849, AND 2850, CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580c, 580d, AND 726, CALIFORNIA UNIFORM COMMERCIAL CODE SECTIONS 3116, 3118, 3119, 3419, 3605, 9504, 9505, AND 9507, AND CHAPTER 2 OF TITLE 14 OF PART 4 OF DIVISION 3 OF THE CALIFORNIA CIVIL CODE.

9.6 *Settlements or Releases.* Each Borrower consents and agrees that, without notice to or by such Borrower, and without affecting or impairing the liability of such Borrower hereunder, Bank may, by action or inaction:

(a) compromise, settle, extend the duration or the time for the payment of, or discharge the performance of, or may refuse to or otherwise not enforce this Agreement and the Loan Documents, or any part thereof, with respect to the other Borrowers or any Guarantor;

(b) release the other Borrowers or any Guarantor or grant other indulgences to the other Borrowers or any Guarantor in respect thereof;

(c) amend or modify in any manner and at any time (or from time to time) this Agreement or any of the Loan Documents; or

(d) release or substitute any Guarantor, if any, of the Obligations, or enforce, exchange, release, or waive any security for the Obligations or any other guaranty of the Obligations, or any portion thereof.

9.7 *No Election.* Bank shall have the right to seek recourse against each Borrower to the fullest extent provided for herein, and no election by Bank to proceed in one form of action or proceeding, or against any party, or on any obligation, shall constitute a waiver of Bank's right to proceed in any other form of action or proceeding or against other parties unless Bank has expressly waived such right in writing. Specifically, but without limiting the generality of the foregoing, no action or proceeding by Bank under this Agreement and the Loan Documents shall serve to diminish the liability of any Borrower under this Agreement and the Loan Documents to which Borrowers are a party except to the extent that Bank finally and unconditionally shall have realized indefeasible payment by such action or proceeding.

9.8 *Indefeasible Payment.* The Obligations shall not be considered indefeasibly paid unless and until all payments to Bank are no longer subject to any right on the part of any Person, including any Borrower, any Borrower as a debtor in possession, or any trustee (whether appointed pursuant to Debtor Relief Laws, or otherwise) of any Borrower's Assets to invalidate or set aside such payments or to seek to recoup the amount of such payments or any portion thereof, or to declare same to be fraudulent or preferential. Upon such full and final performance and indefeasible payment of the Obligations, Bank shall have no obligation whatsoever to transfer or assign its interest in this Agreement and the Loan Documents to any Borrower. In the event that, for any reason, any portion of such payments to Bank is set aside or restored, whether voluntarily or involuntarily, after the making thereof, then the obligation intended to be satisfied thereby shall be revived and continued in full force and effect as if said payment or payments had not been made, and any Borrower shall be liable for the full amount Bank is required to repay plus any and all costs and expenses (including attorneys' fees and attorneys' fees incurred in proceedings brought under Debtor Relief Laws) paid by Bank in connection therewith.

9.9 *Single Loan Account.* At the request of Borrowers to facilitate and expedite the administration and accounting processes and procedures of the Loans and Borrowings, Bank has agreed, in lieu of maintaining separate loan accounts on Bank's books in the name of each of the Borrowers, that Bank may maintain a single loan account under the name of all Borrowers (the "*Loan Account*"). All Loans shall be made jointly and severally to Borrowers and shall be charged to the Loan Account, together with all interest and other charges as permitted under and pursuant to the Loan Documents. The Loan Account shall be credited with all repayments of Obligations received by Bank, on behalf of Borrowers, from any Borrower pursuant to the terms of the Loan Documents.

9.10 *Apportionment of Proceeds of Loans.* Each Borrower expressly agrees and acknowledges that Bank shall have no responsibility to inquire into the correctness of the apportionment or allocation of or any disposition by any of Borrowers of (a) the Loans or any Borrowings, or (b) any of the expenses and other items charged to the Loan Account pursuant to this Agreement. The Loans and all such Borrowings and such expenses and other items shall be made for the collective, joint, and several account of Borrowers and shall be charged to the Loan Account.

9.11 *Parent as Agent for Borrowers*. Each Borrower hereby irrevocably appoints Parent as the borrowing agent and attorney-in-fact for all Borrowers ("*Administrative Borrower*") which appointment shall remain in full force and effect unless and until Bank shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Bank with all notices with respect to Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under the Loan Documents, and (b) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of the Loan Documents. It is understood that the handling of the Loans and Collateral of Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Bank shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loans and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce Bank

to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify Bank, and hold Bank harmless against, any and all liability, expense, loss or claim of damage, or injury, made against Bank by any Borrower or by any third Person whosoever, arising from or incurred by reason of (a) the handling of the Loans and Collateral of Borrowers as herein provided, (b) Bank's relying on any instructions of the Administrative Borrower, or (c) any other action taken by Bank hereunder or under the other Loan Documents, except that Borrowers will have no liability to Bank under this Section 9.11 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Bank.

* * *

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* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWERS:

WINC, INC.,
a Delaware corporation

By: /s/ Brian Smith
Name: Brian Smith
Title: President

BWSC, LLC,
a California limited liability company

By: /s/ Brian Smith
Name: Brian Smith
Title: President

BANK:

PACIFIC MERCANTILE BANK,
a California state-chartered commercial bank

By: /s/ George Burnett
Name: George Burnett
Title: Vice President

Annex 1
To
Credit Agreement

Definitions and Construction

1.1 *Definitions*. Initially capitalized terms used in this Agreement shall have the following meanings:

"*Acceptable Letter of Credit*" means a standby letter of credit, issued by a bank or financial institution acceptable to Bank in its Permitted Discretion, in form and substance satisfactory to Bank in its Permitted Discretion, in an amount equal to 105% of the Letter of Credit Usage, naming Bank as beneficiary to reimburse payments of drafts drawn under outstanding Letters of Credit.

"*Account*" and "*Account Debtor*" have the meanings given to such terms in the UCC.

"*ACH Transactions*" means the Automated Clearing House processing of electronic fund transfers through the direct Federal Reserve Fedline system provided by a Bank Product Provider for the account of any Borrower.

"*Administrative Borrower*" has the meaning given to such term in Section 9.11.

"*Affiliate*" means, with respect to any Person, any other Person (i) that, directly or indirectly, controls, is controlled by or is under common control with such Person; (ii) that directly or indirectly beneficially owns or controls 5% or more of any class of Equity Interests of such Person; or (iii) 5% or more of the voting stock of which is directly or indirectly beneficially owned or held by such Person. For purposes of the foregoing, control (including controlled by and under common control with) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agreement*" means this Credit Agreement, as amended or restated from time to time in accordance with its terms.

"*Anti-Terrorism Laws*" means all Applicable Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, including, without limitation, all laws, regulations and executive orders expressly referenced in Section 4.26.

"*Applicable Laws*" means all applicable laws, rules, regulations and orders of any Governmental Authority, including without limitation, regulations issued by the Office of the Comptroller of the Currency, the Fair Labor Standards Act, and the Americans With Disabilities Act.

"*Appraisal Fee*" has the meaning given to such term in Section 5.2(c).

"*Asset*" means any interest of a Person in any kind of property or asset, whether real, personal, or mixed real and personal, and whether tangible or intangible.

"*Attributable Indebtedness*" means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"*Audit Fee*" has the meaning given to such term in Section 5.2(b).

"*Authorized Officer*" means, with respect to each Borrower, any officer of such Borrower authorized by specific resolution of such Borrower to execute this Agreement and the Loan Documents, and to request Loans as set forth in such Borrower's resolutions delivered to Bank on the Closing Date (and updated from time to time as necessary), and with respect to any Guarantor, any officer of such Guarantor authorized by specific resolution of such Guarantor to execute the Loan Documents as set forth in such Guarantor's resolutions delivered to Bank on the Closing Date (and updated from time to time as necessary).

"*Availability Reserve*" means, as of any date of determination, such amounts (expressed as either a specified amount or as a percentage of a specified category or item) as Bank may from time to time establish and adjust in reducing the Borrowing Base (a) to reflect events, conditions, contingencies or risks which, as reasonably determined by Bank in its Permitted Discretion, do or may affect (i) the Collateral or its value, (ii) the Assets, business or prospects of Borrowers, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof), or (b) to reflect Bank's judgment in its Permitted Discretion that any collateral report or financial information furnished by or on behalf of Borrowers to Bank is or may have been incomplete, inaccurate or misleading in any material respect, or (c) in respect of any state of facts that Bank determines in its Permitted Discretion constitutes an Event of Default or Default. On the Closing Date Availability Reserves shall include a reserve to cover accounts payable aged over 90 days (which shall be released once Bank has received Collateral Access Agreements duly executed by the applicable third party logistics provider and otherwise in form and substance satisfactory to Bank).

"*Bank*" is defined in the Preamble.

"*Bank Product*" means the following financial accommodation extended to any Loan Party by a Bank Product Provider (other than pursuant to the Agreement): (a) credit cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called "procurement cards" or "P-cards"), (f) Cash Management Services, and (g) Swaps.

"*Bank Product Agreements*" means those agreements entered into from time to time by any Borrower with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"*Bank Product Obligations*" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by a Borrower to a Bank Product Provider pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"*Bank Product Provider*" means Bank or any of its Affiliates.

"*Bank Product Reserve*" means a reserve against the Borrowing Base established by Bank from time to time in its Permitted Discretion in respect of Bank Product Obligations.

"*Bankruptcy Code*" means the Federal Bankruptcy Reform Act of 1978, as heretofore and hereafter amended and codified as 11 U.S.C. §§ 101 et seq. and any successor statute.

"*Borrower*" and "*Borrowers*" are defined in the Preamble.

"*Borrowers' Account*" means Borrowers' general deposit account number 41410698 maintained with Bank.

"*Borrowing*" means a borrowing of Revolving Loan from Bank pursuant to the terms and conditions hereof.

"*Borrowing Base*" means, as of the date of determination, the sum of (a) 85% of the Eligible Accounts, plus (b) the lesser of (i) 50% of the Eligible Inventory, or (ii) the Inventory Sublimit, minus (c) the Reserves; *provided*, *however*, Bank may reduce the advance rates, in its sole and absolute discretion, without declaring an Event of Default if it determines in its Permitted Discretion that there has occurred a Material Adverse Effect; *provided*, *further*, that Bank may also decrease or increase the advance rates, in its sole and absolute discretion, to address the results of any audit or appraisal performed by Bank from time to time after the Closing Date.

"*Borrowing Base Certificate*" means Bank's standard form of Borrowing Base Certificate.

"*Business Day*" means any day other than a Saturday, a Sunday, or a day on which commercial banks in the City of Irvine, California, are authorized or required by law or executive order or decree to close.

"*Capital Expenditures*" means expenditures made in cash, or financed with long term debt, by any Person for the acquisition of any fixed Assets or improvements, replacements, substitutions, or additions thereto that have a useful life of more than 1

year, including the direct or indirect acquisition of such Assets by way of increased product or service charges, offset items, or otherwise, and the principal portion of payments with respect to Capital Lease Obligations, calculated in accordance with GAAP.

"*Capital Lease*" means any lease of an Asset by a Person as lessee which would, in conformity with GAAP, be required to be accounted for as an Asset and corresponding liability on the balance sheet of that Person.

"*Capital Lease Obligations*" of a Person means the amount of the obligations of such Person under all Capital Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"*Cash Collateralize*" means the delivery of cash or an Acceptable Letter of Credit to Bank, as security for the payment of Obligations, in an amount equal to (a) with respect to the L/C Obligations, 105% of the L/C Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Bank Product Obligations), Bank's good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. "Cash Collateralization" has a correlative meaning.

"*Cash Dominion Event*" means the occurrence of any of the following:

(a) an Event of Default;

(b) an Overadvance that remains uncured for 1 Business Day;

(c) Net Availability is less than 40% of the Borrowing Base for a period of 30 days; or

(d) any Material Adverse Effect with respect to the Collateral.

"*Cash Management Services*" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including ACH Transactions) and other cash management arrangements.

"*Change in Law*" means the occurrence after the date of the Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in the Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"*Change of Control*" means the time at which:

(a) any Person (including a Person's Affiliates and associates) or group (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) (other than the direct or indirect Owners of Parent on the Closing Date) becomes the beneficial owner (as defined in Rule 13d 3 under the Securities Exchange Act of 1934) of a percentage of the Equity Interests of Parent equal to at least 20%; or

(b) Parent shall cease to own 100% of the Equity Interests of each other Borrower;

(c) there shall be consummated any consolidation or merger of any Loan Party pursuant to which such Loan Party's Equity Interests would be converted into cash, securities or other property, other than a merger or consolidation of such Loan Party in which the holders of such Equity Interests immediately prior to the merger have the same proportionate ownership, directly or indirectly, of Equity Interests of the surviving Person immediately after the merger as they had immediately prior to such merger; or

(d) all or substantially all of any Loan Party's Assets shall be sold, leased, conveyed or otherwise disposed of as an entirety or substantially as an entirety to any Person (including any Affiliate or associate of any Loan Party) in one or a series of transactions.

"*Closing Date*" means the date when all of the conditions set forth in Section 3.1 have been fulfilled to the satisfaction of Bank and its counsel.

"*Collateral*" has the meaning given to such term in any Loan Document.

"*Collateral Access Agreement*" means a landlord waiver, mortgagee waiver, bailee letter, or acknowledgement agreement of any warehouseman, processor, lessor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Collateral, in each case, in form and substance satisfactory to Bank.

"*Collections*" means all cash, checks, notes, instruments, and other items of payment (including insurance Proceeds, cash Proceeds of asset sales, rental Proceeds, and tax refunds).

"*Commitment*" means the Revolving Credit Commitment.

"*Commodity Exchange Act*" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"*Compliance Certificate*" means Bank's standard form of Compliance Certificate in the form of Exhibit 5.3(c), to be delivered in accordance with Section 5.3(c).

"*Connection Income Taxes*" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"*Consolidated*" means the consolidation in accordance with GAAP of the accounts or other items as to which such term applies. "*Consolidating*" has a correlative meaning.

"*Control Account*" means a blocked deposit account in each Borrower's name maintained with Bank over which Borrowers have no right to withdraw funds.

"*Corporate Loan Party*" means each Loan Party other than any Loan Party who is an individual (collectively, "*Corporate Loan Parties*").

"*Debt*" means, as of the date of determination, the sum, but without duplication, of any and all of a Person's: (i) indebtedness heretofore or hereafter created, issued, incurred or assumed by such Person (directly or indirectly) for or in respect of money borrowed; (ii) Attributable Indebtedness; (iii) obligations evidenced by bonds, debentures, notes, or other similar instruments; (iv) obligations for the deferred purchase price of property or services (other than trade payables which are not more than 90 days past due incurred in the ordinary course of business); (v) current liabilities in respect of unfunded vested benefits under any Pension Plan; (vi) contingent obligations under letters of credit; (vii) obligations under acceptance facilities; (viii) Guarantees of Debt; (ix) indebtedness (excluding prepaid interest thereon) in accordance with GAAP that is secured by any Lien on any Asset of such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness has been assumed or is limited in recourse; (x) the net obligations under Swaps; and (xi) obligations to purchase, redeem, retire, defease or otherwise make any payment in respect of Disqualified Equity Interests, or any warrant, right or option to acquire Disqualified Equity Interests, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends.

For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Debt of any Person for purposes of clause (ix) that is expressly made non-recourse or limited-recourse (limited solely to the Assets securing such Debt) to such Person shall be deemed to be equal to the lesser of (i) the aggregate principal amount of such Debt and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

"*Debtor Relief Laws*" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"*Default*" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"*Dilution*" means, as of any date of determination, a percentage that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, deductions, or other dilutive items as determined by Bank in its Permitted Discretion with respect to the Accounts, by (b) Borrowers' billings with respect to Accounts.

"*Dilution Reserve*" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point for each percentage point by which Dilution is in excess of 5%.

"*Disposition*" means the sale, transfer, license, lease or other disposition (whether in one transaction or in a series of transactions, and including any sale and leaseback transaction and any sale, transfer, license or other disposition) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"*Disqualified Equity Interest*" means any Equity Interest that, by its terms (or the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests that are not Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a Change of Control or asset sale so long as any rights of the holders thereof upon the occurrence of a Change of Control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for scheduled payments of Distributions in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Revolving Loans Maturity Date; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of employees of Borrower or any Subsidiary or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

"*Distributions*" means dividends or distributions of earnings made by a Person to its Owners.

"*Documentary Letter of Credit Fee*" has the meaning given to such term in Section 2.3(b).

"*Dollars*" or "*$*" means lawful currency of the United States of America.

"*Domestic Subsidiary*" means any direct or indirect Subsidiary of Parent organized under the laws of any state of the United States or the District of Columbia.

"*ECP*" means, with respect to any Swap Obligation, an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time this Agreement, or any Facility Guaranty of, or the grant of a security interest to secure, becomes effective with respect to such Swap Obligation.

"*Eligible Accounts*" means those Accounts created by a Borrower in the ordinary course of business, that arise out of such Borrower's sale of goods or rendition of services, that strictly comply with each and all of the representations and warranties respecting Eligible Accounts made by Borrowers to Bank in this Agreement and the Loan Documents; *provided*, *however*, that standards of eligibility may be fixed and revised from time to time by Bank in Bank's Permitted Discretion to address the results of any audit or appraisal performed by Bank from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash remitted to the applicable Borrower. Eligible Accounts shall not include the following:

(a) (i) Accounts that the Account Debtor has failed to pay within 90 days of invoice date or (ii) Accounts with selling terms of more than 60 days;

(b) Accounts owed by an Account Debtor or any of its Affiliates where 20% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a)(ii) above;

(c) Accounts with respect to which the Account Debtor or any of its Affiliates is an officer, director, shareholder, employee, Affiliate, or agent of Borrowers;

(d) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, or other terms by reason of which the payment by the Account Debtor may be conditional;

(e) Accounts that are not payable in Dollars or with respect to which the Account Debtor: (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or any State thereof, or the District of Columbia, or Canada or any Province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit satisfactory to Bank (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Bank and is directly drawable by Bank, or (z) the Account is covered by credit insurance in form and amount, and by an insurer, satisfactory to Bank;

(f) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which the applicable Borrower has complied, to the reasonable satisfaction of Bank, with the Assignment of Claims Act, 31 USC § 3727), or (ii) any state of the United States (exclusive, however, of (y) Accounts owed by any state that does not have a statutory counterpart to the Assignment of Claims Act, or (z) Accounts owed by any state that does have a statutory counterpart to the Assignment of Claims Act as to which the applicable Borrower has complied to Bank's satisfaction),

(g) Accounts with respect to which the Account Debtor or any of its Affiliates is a creditor of the applicable Borrower, has or has asserted a right of setoff, has disputed its liability, or has made any claim with respect to the Account, to the extent of such setoff, dispute or claim;

(h) Accounts with respect to an Account Debtor and its Affiliates whose total obligations owing to Borrowers exceed 25% of all Accounts, to the extent of the obligations owing by such Account Debtor and its Affiliates in excess of such percentage;

(i) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which the applicable Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor, or whose credit standing is unacceptable to Bank;

(j) Accounts the collection of which Bank, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition;

(k) Accounts not supported ay any electronic or written record;

(l) Accounts which are in default or collection;

(m) Accounts on C.O.D. terms;

(n) Accounts with respect to which the goods giving rise to such Account have not been shipped and billed to the Account Debtor, the services giving rise to such Account have not been performed and accepted by the Account Debtor, or the Account otherwise does not represent a final sale;

(o) Accounts that are not subject to a valid and perfected first priority Lien in favor of Bank;

(p) bonded Accounts;

(q) Accounts that represent progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services;

(r) Accounts evidenced by Chattel Paper or an Instrument (as such terms are defined in the Security Agreement) unless such Chattel Paper or Instrument has been duly assigned and delivered to Bank, in accordance with the terms of the Security Agreement; and

(s) any other Accounts that Bank in its Permitted Discretion deems ineligible.

"*Eligible Inventory*" means Inventory consisting of first quality finished goods held for sale in the ordinary course of a Borrower's business and raw materials used or consumed by a Borrower in the ordinary course of business in the manufacture or production of other Inventory that complies with each of the representations and warranties respecting Eligible Inventory made by Borrowers in the Loan Documents, and that is not excluded as ineligible by virtue of the one or more of the criteria set forth below; *provided*, *however*, that such criteria may be fixed and revised from time to time by Bank in Bank's sole and absolute discretion to address the results of any audit or appraisal performed by Bank from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) it is not located in the United States;

(b) the applicable Borrower does not have good, valid, and marketable title thereto;

(c) it is not located at one of Borrowers' locations set forth on **Schedule 1E** (or in-transit between any such locations);

(d) it is located on real property leased by the applicable Borrower or in a contract warehouse, in each case, unless (i) it is subject to a Collateral Access Agreement duly executed by the lessor, warehouseman, or other third party, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (ii) a Rent Reserve has been established;

(e) it is not subject to a valid and perfected first priority Lien in favor of Bank;

(f) it consists of goods returned or rejected by the applicable Borrower's customers;

(g) it consists of Slow Moving Inventory or goods that are obsolete, restrictive or custom items, work-in-process, or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in the applicable Borrower's business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment;

(h) it is subject to third party Intellectual Property, licensing or other proprietary rights, unless Bank has received a Licensor Consent covering such Inventory, duly executed by the Licensor thereof, providing, to Bank's satisfaction, that such Inventory can be freely sold by Bank on and after the occurrence of an Event of a Default despite such third party rights; or

(i) it is otherwise any Inventory that Bank in its Permitted Discretion deems ineligible.

"*Employee Benefit Plan*" means any employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, (a) that is or within the preceding six (6) years has been sponsored, maintained or contributed to by any Loan Party or ERISA Affiliate or (b) to which any Loan Party or ERISA Affiliate has, or has had at any time within the preceding six (6) years, any liability, contingent or otherwise.

"*Environmental Action*" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of Borrower, any Subsidiary of Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by Borrower, any Subsidiary of Borrower, or any of their predecessors in interest.

"*Environmental Law*" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Parent or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"*Environmental Liabilities*" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"*Environmental Lien*" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" has the meaning given to such term in the UCC.

"*Equity Interests*" means, as to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statutes, and all regulations and guidance promulgated thereunder. Any reference to a specific section of ERISA shall be deemed to be a reference to such section of ERISA and any successor statutes, and all regulations and guidance promulgated thereunder.

"*ERISA Affiliate*" means each entity, trade or business (whether or not incorporated) that together with a Loan Party or a Subsidiary would be (or has been) treated as a "single employer" within the meaning of section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of section 414 of the IRC. ERISA Affiliate shall include any Subsidiary of any Loan Party.

"*Event of Default*" has the meaning set forth in Section 7.1.

"*Excluded Swap Obligation*" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of this Agreement (or the Facility Guaranty of such Loan Party of), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Facility Guaranty thereof, including pursuant to this Agreement) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an ECP. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which this Agreement or such Facility Guaranty or security interest is or becomes illegal.

"*Excluded Taxes*" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of Bank, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of Bank, U.S. federal withholding Taxes imposed on amounts payable to or for the account of Bank with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) Bank acquires such interest in the Loan or Commitment, or (ii) Bank changes its lending office, and (c) any U.S. federal withholding Taxes imposed under FATCA.

"*Expenses*" means (i) all reasonable, documented out of pocket expenses incurred by Bank and its Affiliates (including the reasonable fees, charges and disbursements of counsel for Bank, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable, documented out of pocket expenses incurred by Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all documented out of pocket expenses incurred by Bank (including the fees, charges and disbursements of any counsel for Bank), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under Section 8.3, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

"*Extraordinary Receipt*" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments net of any taxes paid or payable in connection with such receipt and any cash expense relating to the collection of such Extraordinary Receipts.

"*Facility Guaranties*" and "*Facility Guaranty*" means, individually or collectively as the context requires, each certain Continuing Guaranty executed by a Guarantor in favor of Bank.

"*FATCA*" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the IRC.

"*Fees*" means the Revolving Credit Commitment Fee, the Late Payment Fee, the Standby Letter of Credit Fees, the Documentary Letter of Credit Fees, the Audit Fees, and the Appraisal Fees.

"*Financial Statement(s)*" means, with respect to any accounting period of any Person, statements of income and statements of cash flows of such Person for such period, and balance sheets of such Person as of the end of such period, setting forth in each case in comparative form figures for the corresponding period in the preceding Fiscal Year or, if such period is a full Fiscal Year, corresponding figures from the preceding annual audit, all prepared in reasonable detail and in accordance with GAAP, subject to year-end adjustments and the absence of footnotes in the case of monthly and quarterly Financial Statements. Financial Statement(s) shall include the schedules thereto and annual Financial Statements shall also include the footnotes thereto.

"*Fiscal Month*" means any of the monthly accounting periods of Borrowers.

"*Fiscal Year*" means the 12-Fiscal Month period of Borrowers ending December 31 of each year. Subsequent changes of the Fiscal Year of Borrowers shall not change the term "Fiscal Year" unless Bank shall consent in writing to such change.

"*Foreign Subsidiary*" means any direct or indirect Subsidiary of Parent that is not a Domestic Subsidiary.

"*GAAP*" means generally accepted accounting principles in the United States of America, consistently applied, which are in effect as of the date of this Agreement. If any changes in accounting principles from those in effect on the date hereof are hereafter occasioned by promulgation of rules, regulations, pronouncements or opinions by or are otherwise required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions), and any of such changes results in a change in the method of calculation of, or affects the results of such calculation of, any of the financial covenants, standards or terms found herein, then the parties hereto agree to enter into and diligently pursue negotiations in order to amend such financial covenants, standards or terms so as to equitably reflect such changes, with the desired result that the criteria for evaluating financial condition and results of operations of Borrowers and their Subsidiaries shall be the same after such changes as if such changes had not been made.

"*Governing Documents*" means the certificate or articles or certificate of incorporation, by-laws, articles or certificate of organization, operating agreement, or other organizational or governing documents of any Person.

"*Governmental Authority*" means any federal, state, local or other governmental department, commission, board, bureau, agency, central bank, court, tribunal or other instrumentality or authority or subdivision thereof, domestic or foreign, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"*Guarantee*" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"*Guarantor(s)*" means, individually or collectively as the context requires, all Domestic Subsidiaries and every other Person who now or hereafter executes a Facility Guaranty in favor of Bank with respect to the Obligations, including without limitation, the Swap Obligations under the Swap Documents, but excluding all Excluded Swap Obligations.

"*Hazardous Materials*" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity," (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"*Indemnitee*" has the meaning given to such term in Section 8.3(b).

"*Indemnified Taxes*" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"*Insolvency Proceeding*" means any proceeding commenced by or against any Person, under any provision of Debtor Relief Laws, or under any other bankruptcy or insolvency law, including, but not limited to, assignments for the benefit of creditors, formal or informal moratoriums, compositions, or extensions with some or all creditors.

"*Intellectual Property*" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"*Intellectual Property Security Agreement*" means each certain Intellectual Property Security Agreement now or hereafter entered into by Borrower, or an Owner of Borrower, as the case may be, on the one hand, and Bank, on the other hand.

"*Intercompany Subordination Agreement*" means that certain Intercompany Subordination Agreement, dated as of even date herewith, among Corporate Loan Parties and Bank.

"*Intercreditor Agreement*" means that certain Intercreditor Agreement, dated as of even date herewith, among Borrowers, Mezzanine Lender, and Bank.

"*Interest Payment Date*" means the 1st day of each and every month, and the Revolving Loans Maturity Date.

"*Inventory*" has the meaning given to such term in the UCC.

"*Inventory Reserves*" means a reserve in an amount equal to 50% of outstanding gift cards, and such other reserves as may be established from time to time by Bank in its Permitted Discretion, with respect to the determination of the salability, at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that Bank determines in its Permitted Discretion, will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in Bank's Permitted Discretion, include (but are not limited to) reserves based on:

(a) Obsolescence;

(b) Seasonality;

(c) Shrink;

(d) Imbalance;

(e) Change in Inventory character;

(f) Change in Inventory composition;

(g) Change in Inventory mix;

(h) Mark-downs (both permanent and point of sale);

(i) Retail mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and

(j) Out-of-date and/or expired Inventory.

"Inventory Sublimit" has the meaning given to such term in Section 1.1 of the Summary of Credit Terms.

"*Investment*" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, Guarantees, advances, capital contributions, and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP, and any purchase or acquisition of any Equity Interests, or any obligations or other securities of, any Person, including the establishment or creation of a Subsidiary.

"*IRC*" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute, and any and all regulations thereunder. Any reference to a specific section of the IRC shall be deemed to be a reference to such section of the IRC and any successor statutes, and all regulations and guidance promulgated thereunder.

"ISP" means the International Standby Practices (1998 version), and any subsequent versions or revisions approved by a Congress of the International Chamber of Commerce Publication 590 and adhered to by Bank.

"*Knowledge*" has the meaning given to such term in Section 8.9.

"*Late Payment Fee*" has the meaning given to such term in Section 1.14(c).

"*L/C Obligations*" means the sum (without duplication) of (a) all Reimbursement Obligations; and (b) the Letter of Credit Usage.

"*Letter(s) of Credit*" means any standby or documentary letter(s) of credit issued by Bank, pursuant to Section 2.1(a).

"*Letter of Credit Application*" means Bank's standard form of Letter of Credit Application.

"*Letter of Credit Sublimit*" has the meaning given to such term in Section 2.1(a) of the Summary of Credit Terms.

"*Letter of Credit Usage*" means, on any date of determination, the aggregate maximum amounts available to be drawn under all outstanding Letters of Credit, without regard to whether any conditions to drawing could then be met.

"*Licensor*" means an owner of certain Intellectual Property that licenses all or any portion of such Intellectual Property to a Borrower.

"*Licensor Consent*" means an agreement between a Licensor and Bank in form and substance reasonably satisfactory to Bank and pursuant to which, among other things, the Licensor grants to Bank a limited license to exercise all rights that the applicable Borrower could exercise under its license agreement with the Licensor assuming there exists no defaults under such license agreement.

"*Lien*" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement or other preferential arrangement, charge or encumbrance (including, any conditional sale or other title retention agreement, or finance lease) of any kind.

"*Liquidity*" means, as of the date of determination, the sum of Qualified Cash plus Net Availability.

"*Loan Document(s)*" means this Agreement and each of the following documents, instruments, and agreements individually or collectively, as the context requires:

(a) the Security Agreement;

(b) the Facility Guaranties;

(c) the Intellectual Property Security Agreements;

(d) the Intercreditor Agreement;

(e) the Licensor Consents;

(f) the Intercompany Subordination Agreement;

(g) the Subordination Agreements;

(h) the Collateral Access Agreements;

(i) the Letter of Credit Applications;

(j) all Bank Product Agreements (other than any Bank Product Agreement providing for a Swap); and

(k) such other documents, instruments, and agreements as Bank may reasonably request in connection with the transactions contemplated hereunder or to perfect or protect the liens and security interests granted to Bank in connection herewith.

"*Loan Parties*" means individually and collectively, Borrowers and Guarantors (each a "*Loan Party*").

"*Loans*" means the Revolving Loans (each, a "*Loan*").

"*Loan Year*" means each 365 day period (or 366 day period in the case of any period that includes February 29) commencing on the Closing Date and each anniversary thereof.

"*Lockbox*" means "Lockbox" as such term (or similar term) is defined in the lockbox or similar agreements between Borrower and Bank.

"*Material Adverse Effect*" means a material adverse effect on (i) the business, Assets, condition (financial or otherwise), results of operations, or prospects of any Loan Party; (ii) the ability of any Loan Party to perform its obligations under the Loan Documents to which it is a party, (iii) the validity or enforceability of the Loan Documents, or the rights or remedies of Bank hereunder and thereunder, (iv) the value of the Collateral, or (v) the priority of Bank's Liens with respect to the Collateral.

"*Material Contract*" means, with respect to any Person, any contract or agreement, the loss of which could reasonably be expected to result in a Material Adverse Effect.

"*Mezzanine Lender*" means Multiplier Capital II, LP, a Delaware limited partnership.

"*Mezzanine Loan Agreement*" means that certain Loan and Security Agreement, dated as of even date herewith, between Borrowers and Mezzanine Lender, as the same may be amended or restated from time to time.

"*Mezzanine Loan Documents*" has the meaning of "Loan Documents" in the Mezzanine Loan Agreement.

"*Mezzanine Obligations*" has the meaning of "Obligations" in the Mezzanine Loan Agreement.

"*Multiemployer Plan*" means any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA with respect to which any Loan Party or ERISA Affiliate has an obligation to contribute or has any liability, contingent or otherwise or could be assessed withdrawal liability assuming a complete withdrawal from any such multiemployer plan.

"*Net Availability*" means, as of the date of determination, the difference of (a) the lesser of (i) the Borrowing Base, or (ii) the Revolving Credit Commitment, minus (b) the sum of (i) the aggregate outstanding Revolving Loans, plus (ii) the Letter of Credit Usage.

"*Notification Event*" means (a) the occurrence of a "reportable event" described in Section 4043 of ERISA for which the 30-day notice requirement has not been waived by applicable regulations issued by the PBGC, (b) the withdrawal of any Loan Party or ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC or any Pension Plan or Multiemployer Plan administrator, (e) any other event or condition that would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (f) the imposition of a Lien pursuant to the IRC or ERISA in connection with any Employee Benefit Plan or the existence of any facts or circumstances that could reasonably be expected to result in the imposition of a Lien, (g) the partial or complete withdrawal of any Loan Party or ERISA Affiliate from a Multiemployer Plan (other than any withdrawal that would not constitute an Event of Default under Section 8.12), (h) any event or condition that results in the reorganization or insolvency of a Multiemployer Plan under Sections of ERISA, (i) any event or condition that results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan under ERISA, (j) any Pension Plan being in "at risk status" within the meaning of IRC Section 430(i), (k) any Multiemployer Plan being in "endangered status" or "critical status" within the meaning of IRC Section 432(b) or the determination that any Multiemployer Plan is or is expected to be insolvent or in reorganization within the meaning of Title IV of ERISA, (l) with respect to any Pension Plan, any Loan Party or ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e), (m) an "accumulated funding deficiency" within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) or the failure of any Pension Plan or Multiemployer Plan to meet the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA), in each case, whether or not

waived, (n) the filing of an application for a waiver of the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) with respect to any Pension Plan or Multiemployer Plan, (o) the failure to make by its due date a required payment or contribution with respect to any Pension Plan or Multiemployer Plan, (p) any event that results in or could reasonably be expected to result in a liability by a Loan Party pursuant to Title I of ERISA or the excise tax provisions of the IRC relating to Employee Benefit Plans or any event that results in or could reasonably be expected to result in a liability to any Loan Party or ERISA Affiliate pursuant to Title IV of ERISA or Section 401(a)(29) of the IRC, or (q) any of the foregoing is reasonably likely to occur in the following 30 days.

"*Obligations*" means (i) any and all obligations of Borrowers (or any of them) to Bank with respect to the Loans, including without limitation all principal, interest, and other amounts, costs and Fees and Expenses payable under this Agreement and the Loan Documents; *excluding*, *however*, all Excluded Swap Obligations; (ii) any and all obligations of Borrowers (or any of them) to any Bank Product Provider arising under or in connection with any transaction now existing or hereafter entered into between Borrowers (or any of them) and such Bank Product Provider which is a Swap; *excluding*, *however*, all Excluded Swap Obligations; and (iii) all other indebtedness, liabilities, and obligations of Borrowers (or any of them) owing to Bank, and/or the Bank Product Providers, and to their successors and assigns, previously, now, or hereafter incurred, and howsoever evidenced, whether direct or indirect, absolute or contingent, joint or several, liquidated or unliquidated, voluntary or involuntary, due or not due, legal or equitable, whether incurred before, during, or after any Insolvency Proceeding and whether recovery thereof is or becomes barred by a statute of limitations or is or becomes otherwise unenforceable or unallowable as claims in any Insolvency Proceeding, together with all interest thereupon (including interest under Section 1.4(b) and including any interest that, but for the provisions of Debtor Relief Laws, would have accrued during the pendency of an Insolvency Proceeding). The Obligations shall include, without limiting the generality of the foregoing, all principal and interest and other payment obligations owing under the Loans, all Reimbursement Obligations, all Bank Product Obligations, all Expenses, the Fees, any other fees and expenses due hereunder and under the Loan Documents (including any fees or expenses that, but for the provisions of Debtor Relief Laws, would have accrued during the pendency of an Insolvency Proceeding), and all other indebtedness evidenced by this Agreement, the Loan Documents, and/or the Bank Product Agreements; *excluding*, *however*, all Excluded Swap Obligations.

"*OFAC*" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"*Other Connection Taxes*" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"*Other Taxes*" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"*Overadvance*" has the meaning set forth in Section 1.1(c).

"*Owner*" means, with respect to any Person, any other Person owning Equity Interests of such Person.

"*Parent*" is defined in the Preamble.

"*Participant*" has the meaning set forth in Section 8.5(d).

"*Participant Register*" has the meaning set forth in Section 8.5(d).

"*Patriot Act*" means the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

"*PBGC*" means the Pension Benefit Guaranty Corporation or any successor agency.

"*Pension Plan*" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV or Section 302 of ERISA or Sections 412 or 430 of the IRC sponsored, maintained, or contributed to by any Loan Party or ERISA Affiliate or to which any Loan Party or ERISA Affiliate has any liability, contingent or otherwise.

"*Permitted Debt*" means:

(a) Debt owing to Bank in accordance with the terms of the Loan Documents;

(b) Capital Lease Obligations and other Debt secured by Purchase Money Liens so long as the aggregate outstanding principal amount of such Debt for all Corporate Loan Parties does not exceed $100,000 at any time;

(c) Mezzanine Obligations in an amount not to exceed the Maximum Subordinate Debt Amount (as defined in the Intercreditor Agreement);

(d) Subordinate Debt;

(e) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Debt (b) through (d) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or any Subsidiary, as the case may be;

(f) unsecured Debt to trade creditors incurred in the ordinary course of business;

(g) Debt by and among Loan Parties, subject to the Intercompany Subordination Agreement;

(h) unsecured credit card Debt in an aggregate amount outstanding not to exceed $300,000; and

(i) other unsecured Debt in an aggregate amount outstanding not to exceed $100,000.

"*Permitted Discretion*" means a determination made in the exercise of reasonable (from the perspective of a secured commercial lender) business judgment.

"*Permitted Dispositions*" means:

(a) Dispositions in the ordinary course of business of equipment that is substantially worn, damaged, obsolete, surplus, or no longer useful; and

(b) sales of inventory to buyers in the ordinary course of business.

"*Permitted Investments*" means Investments in cash and cash equivalents maintained in accordance with Section 5.11.

"*Permitted Liens*" means:

(a) Liens in favor of Bank in accordance with the Loan Documents;

(b) Purchase Money Liens securing Debt described in clause (b) of the definition of "Permitted Debt" above;

(c) Liens for current taxes, assessments or other governmental charges which are not delinquent or remain payable without any penalty, or are being contested in good faith by appropriate proceedings, *provided* that, if delinquent, adequate

reserves have been set aside with respect thereto as required by GAAP and, by reason of nonpayment, no property is subject to a material risk of loss or forfeiture;

(d) statutory Liens, such as inchoate mechanics', inchoate materialmen's, landlord's, warehousemen's, and carriers' liens, and other similar liens, other than those described in clause (a) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith by appropriate proceedings; provided that, if delinquent, adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of nonpayment, no property is subject to a material risk of loss or forfeiture; and

(e) Liens securing Mezzanine Obligations, subject to the terms of the Intercreditor Agreement.

"*Permitted Restricted Payments*" means (a) payments on the Mezzanine Obligations to the extent permitted by the Intercreditor Agreement. and (b) payments to Atticus Publishing, LLC, a California limited liability company, pursuant to that certain Collaboration Agreement, dated as of February 1, 2019, in connection with the transactions contemplated thereby.[1]

"*Person*" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

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[1] Is this a Restricted Payment?

"*Pledged Company*" means BWSC and any other Subsidiary the Equity Interests of which has been pledged to Bank to secure the Obligations pursuant to the terms and conditions hereof or any Loan Document.

"*Prime Lending Rate*" with respect to the Revolving Loans, has the meaning given to such term in Section 1.4(a)(i) of the Summary of Credit Terms.

"*Prime Rate*" means that variable interest rate which is subject to change from time to time based upon changes in the independent index which is the Prime Rate as published in the Money Rates Section of the Western Edition of the Wall Street Journal (the "*Index*"). The Index is not necessarily the lowest rate charged by Bank on its commercial loans. If the Index becomes unavailable during the term of this loan, Bank may designate a substitute index after notice to Borrowers. Bank will advise Borrowers of the current Index rate upon request. Interest changes shall not occur more often than daily. Adjustment shall become effective the next Business Day after publication or announcement of the Index change. Borrowers understand that Bank may make loans based upon other rates and indexes as well.

"*Prohibited Transaction*" means a transaction described in Section 4975(c) of the IRC that is not exempt from the tax imposed by Section 4975(a) of the IRC under Section 4975(d) of the IRC.

"*Protective Advances*" has the meaning given to such term in Section 1.12.

"Purchase Money Lien" means a Lien on any item of equipment of Borrowers securing a purchase-money obligation; *provided* that (i) such Lien attaches only to that item of equipment, and (ii) the purchase-money obligation secured by such item of equipment does not exceed 100% of the purchase price of such item of equipment.

"*Qualified Cash*" means, as of any date of determination, the amount of unrestricted cash of Borrowers that is held in a deposit account at Bank.

"*Recipient*" means (a) Bank and (b) any assignee of Bank, as applicable.

"*Register*" has the meaning set forth in Section 8.5(f).

"*Reimbursement Obligations*" means the obligations of Borrowers to reimburse Bank pursuant to Section 2.4 amounts drawn under Letters of Credit.

"*Related Parties*" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"*Remedial Action*" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"*Rent Reserve*" means a reserve for rent at leased locations subject to landlords liens, past due rent, and up to three months future rent that would be payable to a landlord that has not executed and delivered a Collateral Access Agreement,. established by Bank in its Permitted Discretion.

"*Reserves*" means the Availability Reserve, the Bank Product Reserve, the Dilution Reserve, the Inventory Reserves, and the Rent Reserve. Bank shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves.

"*Restricted Payment*" means (a) any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any Subordinate Debt or Mezzanine Obligations, (b) any Distribution on account of any Equity Interests of any Loan Party, now or hereafter outstanding, (c) any purchase, redemption, retirement, sinking fund, or other direct or indirect acquisition for value of any Equity Interests of any Loan Party now or hereafter outstanding, (d) any distribution of Assets to any Owners of any Loan Party, whether in cash, Assets, or in obligations of such Loan Party, (e) any allocation or other set apart of any sum for the payment of any Distribution on, or for the purchase, redemption or retirement of, any Equity Interests of any Loan Party, or (f) any other distribution by reduction of capital or otherwise in respect of any Equity Interests of any Loan Party.

"*Revolving Credit Commitment*" has the meaning given to such term in Section 1.1 of the Summary of Credit Terms.

"*Revolving Credit Commitment Fee*" has the meaning set forth in Section 1.14(a).

"*Revolving Loans*" has the meaning given to such term in Section 1.1.

"*Revolving Loans Daily Balances*" means the amount determined by taking the amount of the obligations owed under the Revolving Loans at the beginning of a given day, adding any new Revolving Loans advanced or incurred on such date, and subtracting any payments or collections on the Revolving Loans which are deemed to be paid on that date under the provisions of this Agreement.

"*Revolving Loans Maturity Date*" has the meaning given to such term in Section 1.1 of the Summary of Credit Terms.

"*Sanctioned Country*" has the meaning set forth in Section 4.26.

"*Sanctioned Person*" has the meaning set forth in Section 4.26.

"*Sanctions Program*" has the meaning set forth in Section 4.26.

"*Security Agreement*" means that certain Security Agreement, dated as of even date herewith, among Corporate Loan Parties and Bank.

"*Slow Moving Inventory*" means Inventory of a Borrower that is (a) held for sale in the ordinary course of such Borrower's business and (b) remains unsold in such Borrower's stock for greater than 12 months.

"*Solvent*" means, with respect to any Person on the date any determination thereof is to be made, that on such date: (a) the present fair valuation of the Assets of such Person is greater than such Person's probable liability in respect of existing debts; (b) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature; and (c) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, which would leave such Person with Assets remaining which would constitute unreasonably small capital after giving effect to the nature of the particular business or transaction. For purposes of this definition (i) the fair valuation of any property or assets means the amount realizable within a reasonable time, either through collection or sale of such Assets at their regular market value, which is the amount obtainable by a capable and diligent Person from an interested buyer willing to purchase such property or assets within a reasonable time under ordinary circumstances; and (ii) the term debts includes any payment obligation, whether or not reduced to judgment, equitable or legal, matured or unmatured, liquidated or unliquidated, disputed or undisputed, secured or unsecured, absolute, fixed or contingent.

"*Standby Letter of Credit Fee*" has the meaning given to such term in the Section 2.3(a).

"*Subordinate Debt*" means any other Debt that is subordinated to the Obligations pursuant to a Subordination Agreement in form and substance satisfactory to Bank.

"*Subordination Agreement*" means any subordination agreement accepted by Bank from time to time in its sole discretion.

"*Subsidiary*" means, with respect to any Person, any corporation, limited liability company, partnership, trust or other entity (whether now existing or hereafter organized or acquired) of which such Person or one or more Subsidiaries of such Person at the time owns or controls directly or indirectly more than 50% of the shares of stock or partnership or other ownership interest having general voting power under ordinary circumstances to elect a majority of the board of directors, managers or trustees or otherwise exercising control of such corporation, limited liability company, partnership, trust or other entity (irrespective of whether at the time stock or any other form of ownership of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

"*Summary of Credit Terms*" means the Summary of Credit Terms at the head of this Agreement.

"*Swap*" means and includes any transaction now existing or hereafter entered into between any Borrower and a Bank Product Provider which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures, including without limitation the interest rate swap transaction entered into pursuant to the Swap Documents.

"*Swap Documents*" means and includes the ISDA Master Agreement and Schedule thereto between any Borrower and Bank, and all Confirmations (as such term is defined in such ISDA Master Agreement) between any Borrower and Bank executed in connection with any Swaps.

"*Swap Obligation*" means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"*Swap Termination Value*" means, with respect to any Swap, at any time, after taking into account the effect of any legally enforceable netting or master agreement relating to such Swap and the effect of all Swaps outstanding under such netting or master agreement, (a) for any date on or after the date that such Swaps have been closed out pursuant to an early termination date, the net

close-out, settlement or termination value derived thereby, and (b) for any other date, the net close-out, settlement or termination value that would be determined as of such date under the relevant netting or master agreement, if any, as if such Swaps were subject to early termination due to default of any Borrower or its Affiliates.

"*Synthetic Lease Obligation*" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"*Taxes*" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"*Transferee*" has the meaning set forth in Section 8.5(e).

"*UCC*" means the California Uniform Commercial Code, as amended or supplemented from time to time.

"*Uniform Customs*" means the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, as the same may be amended from time to time.

"*U.S. Person*" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the IRC.

"*Withdrawal Liability*" means liability with respect to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"*Withholding Agent*" means any Loan Party and Bank.

1.2 *Accounting Terms and Determinations*. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP.

1.3 *UCC Terms*. Any and all terms used in this Agreement or in any Loan Document which are defined in the UCC shall be construed and defined in accordance with the meaning and definition ascribed to such terms under the UCC, unless otherwise defined herein or in such Loan Document.

1.4 *Computation of Time Periods*. In this Agreement, with respect to the computation of periods of time from a specified date to a later specified date, the word from means from and including and the words to and until each mean to but excluding. Periods of days referred to in this Agreement shall be counted in calendar days unless otherwise stated.

1.5 *Construction*. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term including is not limiting, and the term or has, except where otherwise indicated, the inclusive meaning represented by the phrase and/or. References in this Agreement to determination by Bank include good faith estimates by Bank (in the case of quantitative determinations), and good faith beliefs by Bank (in the case of qualitative determinations). The words hereof, herein, hereby, hereunder, and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in this Agreement or any of the Loan Documents to this Agreement or any of the Loan Documents includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

1.6 *Annexes, Exhibits and Schedules*. All of the annexes, exhibits and schedules attached hereto shall be deemed incorporated herein by reference.

1.7 *No Presumption Against Any Party*. Neither this Agreement, any of the Loan Documents, any other document, agreement, or instrument entered into in connection herewith, nor any uncertainty or ambiguity herein or therein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement, the Loan Documents, and the other documents, instruments, and agreements entered into in connection herewith have been reviewed by each of the parties and their counsel and shall be construed and interpreted according to the ordinary meanings of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

1.8 *Independence of Provisions*. All agreements and covenants hereunder, under the Loan Documents, and the other documents, instruments, and agreements entered into in connection herewith shall be given independent effect such that if a particular action or condition is prohibited by the terms of any such agreement or covenant, the fact that such action or condition would be permitted within the limitations of another agreement or covenant shall not be construed as allowing such action to be taken or condition to exist.

Credit Agreement

Exhibit 10.4

Loan and Security Agreement

Borrower: Winc, Inc, a Delaware corporation
BWSC, LLC, a California limited liability company

Address: 5340 Alla Road, Suite 105
Los Angeles, CA 90066

Date: December 29, 2017

This Loan and Security Agreement ("Agreement") is entered into on the above date between Multiplier Capital II, LP, a Delaware limited partnership ("Multiplier"), with an address at 2 Wisconsin Circle, Suite 700 Chevy Chase, MD 20815 and the borrowers named above (jointly and severally, "Borrower"), whose chief executive office is located at the above address ("Borrower's Address"). The Schedule to this Agreement being signed concurrently (the "Schedule") is an integral part of this Agreement. (Definitions of certain terms used in this Agreement are either set forth in Section 7 below or in the Schedule hereto.)

1. LOAN.

1.1 Loan. Subject to the terms and conditions in this Agreement, Multiplier shall make a loan (the "Loan") to Borrower, in the amount shown on the Schedule, which shall be disbursed and shall be payable as set forth on the Schedule. Once all or any portion of the Loan has been repaid by Borrower, such amount may not be reborrowed.

1.2 Conditions. The making of the Loan is subject to the satisfaction of the following conditions precedent, which Borrower agrees to satisfy within five days after the date hereof: (i) all filings have been completed that are necessary or advisable to perfect the security interest of Multiplier in the Collateral, including without limitation filings in the United States Copyright Office and United States Patent and Trademark Office (subject to the provisions of the Intellectual Property Security Agreement of even date between Borrower and Multiplier), (ii) all documents relating to this Agreement have been executed and delivered, (iii) Multiplier has confirmed to its satisfaction that there has been no Material Adverse Change since the date of the last financial statements provided to Multiplier, (iv) UCC and other searches deemed necessary by Multiplier have been completed and the results thereof are satisfactory to Multiplier, and (v) all other matters relating to the Loan have been completed to Multiplier's satisfaction.

1.3 Interest. The Loan and all other monetary Obligations shall bear interest at the rate shown on the Schedule, except where expressly set forth to the contrary in this Agreement or in another written agreement signed by Multiplier and Borrower. Accrued interest shall be payable monthly, commencing One Month After the Disbursement Date and continuing on the same day of each month thereafter (or, if there is no such date in a subsequent month, the last day of such month), and at the Maturity Date.

1.4 Fees. Borrower shall pay Multiplier the fees shown on the Schedule, which are in addition to all interest and other sums payable to Multiplier and are not refundable.

1.5 Late Fee. If any payment of principal, interest or any other payment (including without limitation payment of the balance of the Loan on the Maturity Date) is not made within five Business Days after the date due, Borrower shall pay Multiplier a late payment fee equal to 5% of the amount of such late payment. The provisions of this Section shall not be construed as Multiplier's consent to Borrower's failure to pay any amounts when due, and Multiplier's acceptance of any such late payments shall not restrict Multiplier's exercise of any remedies arising out of any such failure.

2. SECURITY INTEREST.

2.1 Security Interest. To secure the payment and performance of all of the Obligations when due, Borrower hereby grants to Multiplier a security interest in all of the following (collectively, the "Collateral"): all right, title and interest of Borrower in and to the following, whether now owned or hereafter arising or acquired and wherever located: all Accounts; all Inventory; all Equipment; all Deposit Accounts; all General Intangibles (including without limitation all Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights and interests in any of the above, and all guaranties and security for any of the above, and all substitutions and replacements for, additions, accessions, attachments, accessories, and improvements to, and proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties) of, any and all of the above, and all Borrower's books relating to any of the above.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.

In order to induce Multiplier to enter into this Agreement and to make the Loan, Borrower represents and warrants to Multiplier as follows, and Borrower covenants that the following representations will continue to be true (except to the extent that such representation or warranty expressly relates to a particular date), and that Borrower will at all times comply with all of the following covenants throughout the term of this Agreement and until all Obligations have been paid and performed in full:

3.1 Existence and Authority. Borrower is and will continue to be, duly organized, validly existing and in good standing under the laws of the state of its organization. Borrower is and will continue to be qualified and licensed to do business in all jurisdictions in which any failure to do so would result in a Material Adverse Change. The execution, delivery and performance by Borrower of this Agreement, and all Loan Documents (i) have been duly and validly authorized, and are not subject to any consents, which have not been obtained, (ii) are enforceable against Borrower in accordance with their terms (except as enforcement may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to creditors' rights generally), (iii) do not violate Borrower's certificate of formation or articles or certificate of incorporation, as applicable, or Borrower's operating agreement or by-laws, as applicable, or any law or any material agreement or instrument which is binding upon Borrower or its property, and (iv) do not constitute grounds for acceleration of any indebtedness or obligation under any agreement or instrument which is binding upon Borrower or its property.

3.2 Name; Trade Names and Styles. As of the date hereof, the name of Borrower and its state of incorporation are set forth in the heading to this Agreement. Listed on the Representations are all prior names of Borrower and all of Borrower's present and prior trade names. Borrower shall give Multiplier 30 days' prior written notice before changing its name or doing business under any other name. Borrower has complied, and will in the future comply, in all material respects, with all laws relating to the conduct of business under a fictitious business name.

3.3 Place of Business; Location of Collateral. As of the date hereof, the address set forth in the heading to this Agreement is Borrower's chief executive office. In addition, as of the date hereof, Borrower has places of business and Collateral is located only at the locations set forth in the Representations. Borrower will give Multiplier at least 15 days prior written notice before opening any additional place of business, changing its chief executive office, or moving any of the Collateral to a location other than Borrower's Address or one of the locations set forth on the Schedule.

3.4 Title to Collateral; Perfection; Permitted Liens.

(a) Borrower is now, and will at all times in the future be, the sole owner of all the Collateral, except for items of Equipment which are leased to Borrower, and except for non-exclusive licenses granted by Borrower to its customers and third party entities with whom Borrower has contractual relationships in order to distribute and/or sell its inventory, in each of the foregoing cases in the ordinary course of business of Borrower consistent with Borrower's past business practices. The Collateral now is and will remain free and clear of any and all Liens and adverse claims, except for Permitted Liens. Multiplier now has, and will continue to have, a first-priority perfected and enforceable security interest in all of the Collateral, subject only to Permitted Liens, including without limitation with respect to the Lien

priorities set forth in the Revolving Loan Intercreditor Agreement as to the Revolving Loan Lender only, and Borrower will at all times defend Multiplier and the Collateral against all claims of others.

(b) Borrower has set forth in the Representations all of Borrower's Deposit Accounts as of the date hereof, and Borrower will give Multiplier five Business Days advance written notice before establishing any new Deposit Accounts and will cause the institution where any such new Deposit Account is maintained to execute and deliver to Multiplier a control agreement in form sufficient to perfect Multiplier's security interest in the Deposit Account and otherwise satisfactory to Multiplier in its Good Faith Business Judgment.

(c) In the event that Borrower shall at any time after the date hereof have any commercial tort claims against others, which it is asserting or intends to assert, and in which the potential recovery exceeds $100,000, Borrower shall promptly notify Multiplier thereof in writing and provide Multiplier with such information regarding the same as Multiplier shall request. Such notification to Multiplier shall constitute a grant of a security interest in the commercial tort claim and all proceeds thereof to Multiplier, and Borrower shall execute and deliver all such documents and take all such actions as Multiplier shall request in connection therewith.

(d) None of the Collateral now is or will be affixed to any real property in such a manner, or with such intent, as to become a fixture. Whenever any Collateral is located upon premises in which any third party has an interest, Borrower shall, whenever requested by Multiplier, use commercially reasonable efforts to cause such third party to execute and deliver to Multiplier, in form acceptable to Multiplier, such waivers and subordinations as Multiplier shall specify in its Good Faith Business Judgment. Borrower will keep in full force and effect, and will comply with all material terms of, any lease of real property where any of the Collateral now or in the future may be located.

(e) Borrower is not a party to, nor is it bound by, any license or other agreement that is important to the conduct of Borrower's business and that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property important for the conduct of Borrower's business.

(f) Borrower is the sole owner of the Intellectual Property, except for non-exclusive licenses granted by Borrower to its customers and third party entities with whom Borrower has contractual relationships in order to distribute and/or sell its inventory, in each of the foregoing cases in the ordinary course of business of Borrower consistent with Borrower's past business practices. To the best of Borrower's knowledge, each of the Copyrights, Trademarks and Patents is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made to Borrower that any part of the Intellectual Property violates the rights of any third party (except to the extent such claim would not reasonably be expected to cause a Material Adverse Change).

3.5 Maintenance of Collateral. Borrower will maintain the Collateral in good working condition, ordinary wear and tear excepted, and Borrower will not use the Collateral for any unlawful purpose. Borrower will immediately advise Multiplier in writing of any material loss or damage to the Collateral.

3.6 Books and Records. Borrower has maintained and will maintain at Borrower's Address books and records which are complete and accurate and which, comprise an accounting system consistent with GAAP.

3.7 Financial Condition, Statements and Reports. All financial statements now or in the future delivered to Multiplier have been, and will be, prepared in conformity with GAAP, and now and in the future will fairly present, in all material respects, the results of operations and financial condition of Borrower, in accordance with GAAP, at the times and for the periods therein stated (except for non-compliance with FAS 123R in monthly financial statements, and, in the case of interim financial statements, for the lack of footnotes and subject to year-end adjustments). Between the last date covered by any such statement provided to Multiplier and the date hereof, there has been no Material Adverse Change.

3.8 Tax Returns and Payments; Pension Contributions. Borrower has timely filed, and will timely file, all required tax returns and reports, and Borrower has timely paid, and will timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions now or in the future owed by Borrower. Borrower may, however, defer payment of any contested taxes, provided that Borrower (i) in good faith contests Borrower's obligation to pay the taxes by appropriate proceedings promptly and diligently instituted

and conducted, (ii) notifies Multiplier in writing of the commencement of, and any material development in, the proceedings, and (iii) posts bonds or takes any other commercially reasonable steps as required to keep the contested taxes from becoming a Lien upon any of the Collateral as long as the liability relating thereto does not exceed $25,000 and if such liability does exceed $25,000 then Borrower shall take such steps as Multiplier shall determine in its Good Faith Business Judgment. Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid, and shall continue to pay all amounts necessary to fund all present and future pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not and will not withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

3.9 Compliance with Law; Licensing Requirements; etc. Borrower has, to the best of its knowledge, complied, and will in the future comply, in all material respects, with all provisions of all foreign, federal, state and local laws and regulations applicable to Borrower, including, but not limited to, those relating to Borrower's ownership of real or personal property, all environmental matters, and the conduct and licensing of Borrower's business, including without limitation, any and all federal, state and local laws, requirements (including licensing requirements), rules and regulations regarding the sale and/or distribution of alcohol and any and all other matters pertaining to the business of the Borrower. Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted, except where the failure to do so would not reasonably be expected to cause a Material Adverse Change. All proceeds of the Loan shall be used solely for legal purposes.

3.10 Litigation. Except as disclosed in the Representations, at the date hereof, there is no claim, suit, litigation, proceeding or investigation pending or (to Borrower's knowledge) threatened against or affecting Borrower involving more than $100,000. Borrower will promptly inform Multiplier in writing of any claim, proceeding, litigation or investigation in the future threatened or instituted by or against Borrower involving any claim of $100,000 or more.

3.11 Solvency, Payment of Debts. Borrower is able to pay its debts (including trade debts) as they mature; the fair saleable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; and Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement.

4. ADDITIONAL DUTIES OF THE BORROWER.

4.1 Insurance. Borrower shall, at all times, insure all of the tangible personal property Collateral and carry such other business insurance, with insurers reasonably acceptable to Multiplier, in such form and amounts as Multiplier may reasonably require, and Borrower shall provide evidence of such insurance to Multiplier, so that Multiplier is satisfied that such insurance is, at all times, in full force and effect. All such insurance policies shall name Multiplier as an additional loss payee, and shall contain a lenders loss payee endorsement in form reasonably acceptable to Multiplier and shall name Multiplier as additional insured with regard to liability coverage. Upon receipt of the proceeds of any such insurance, Multiplier shall apply such proceeds in reduction of the Obligations as Multiplier shall determine in its sole discretion, except that, provided no Default or Event of Default has occurred and is continuing, Multiplier shall release to Borrower insurance proceeds with respect to Equipment totaling less than $100,000, which shall be utilized by Borrower for the replacement of the Equipment with respect to which the insurance proceeds were paid. Multiplier may require reasonable assurance that the insurance proceeds so released will be so used. If Borrower fails to provide or pay for any insurance, Multiplier may, but is not obligated to, obtain the same at Borrower's expense. Borrower shall promptly deliver to Multiplier copies of all reports made to insurance companies.

4.2 Reports. Borrower, at its expense, shall provide Multiplier with the written reports set forth in the Schedule, and such other written reports with respect to Borrower (including budgets, sales projections, operating plans and other financial documentation), as Multiplier shall from time to time specify in its Good Faith Business Judgment.

4.3 Access to Collateral, Books and Records. At reasonable times, and on three Business Day's notice (except if a Default or Event of Default has occurred and is continuing or if Multiplier in its Good Faith Business Judgment believes that Borrower has engaged

in defalcation, intentional misrepresentation, or fraud, in which case then Multiplier may do the following at any time and without any notice), Multiplier, or its agents, shall have the right to inspect the Collateral, and the right to audit and copy Borrower's books and records. The foregoing inspections and audits shall be at Borrower's expense and the charge therefor shall be at Multiplier's then standard charge for the same, plus all other reasonable out-of-pockets costs and expenses (including without limitation any additional costs and expenses of outside auditors) incurred by Multiplier in connection therewith, provided that, so long as no Event of Default has occurred and is continuing, Borrower will be required to pay for only one (1) audit by Multiplier per every twelve (12) months during the term of this Agreement, and in the eventuality that an Event of Default has occurred and is continuing, then all of such audits shall be at Borrower's expense.

4.4 Remittance of Proceeds. All proceeds arising from the sale or other disposition of any Collateral (other than (i) the proceeds of the sale of Inventory in the ordinary course of business or the non-exclusive licensing of Intellectual Property in the ordinary course of business, or (ii) proceeds of dispositions of obsolete or unneeded Equipment in the ordinary course of business in an amount not in excess of $50,000 in any fiscal year) shall be delivered, in kind, by Borrower to Multiplier in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations in such order as Multiplier shall determine. Nothing in this Section limits the restrictions on dispositions of Collateral set forth elsewhere in this Agreement.

4.5 Negative Covenants. Borrower shall not, without Multiplier's prior written consent, do any of the following:

(a) merge or consolidate with another corporation or entity, except that a Borrower may merge into another Borrower with ten Business Days prior written notice to Multiplier;

(b) acquire any assets, except in the ordinary course of business;

(c) enter into any other transaction outside the ordinary course of business;

(d) sell or transfer any Collateral, except for (A) the sale of Inventory in the ordinary course of Borrower's business, (B) the sale of obsolete or unneeded Equipment in the ordinary course of business, and (C) non-exclusive licenses of Intellectual Property in the ordinary course of business;

(e) store any Inventory or other Collateral with any warehouseman or other third party, unless there is in place an agreement by such warehouseman or other third party in favor of Multiplier in such form as Multiplier shall specify in its Good Faith Business Judgment;

(f) make any loans of any money or other assets or any other Investments, other than Permitted Investments;

(g) create, incur, assume or permit to be outstanding any Indebtedness, other than Permitted Indebtedness;

(h) guarantee or otherwise become liable with respect to the obligations of another party or entity;

(i) pay or declare any dividends on Borrower's stock (except for dividends payable solely in stock of Borrower), or make any distributions of money or other assets with respect to membership interests in Borrower or with respect to any equity or ownership interests in Borrower;

(j) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of Borrower's stock or other equity securities, except for repurchases of stock or other equity securities from former employees or directors of Borrower under the terms of applicable repurchase agreements in an aggregate amount not to exceed $100,000 in any fiscal year, provided no Default or Event of Default has occurred and is continuing;

(k) engage, directly or indirectly, in any business other than the businesses currently engaged in by Borrower or reasonably related thereto, or become an "investment company" within the meaning of the Investment Company Act of 1940;

(l) directly or indirectly enter into, or permit to exist, any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, and are on fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person; or

(m) reincorporate or reorganize, as applicable, in another state;

(n) change its fiscal year;

(o) create a Subsidiary;

(p) dissolve or elect to dissolve, except that a Borrower which is a wholly-owned Subsidiary of another Borrower may dissolve, with ten Business Days prior written notice to Multiplier, if all of its assets are distributed to the Borrower which owns 100% of its stock; or

(q) agree to do any of the foregoing, unless such agreement provides that it is subject to the prior written consent of Multiplier.

4.6 Litigation Cooperation. Should any third-party suit or proceeding be instituted by or against Multiplier with respect to any Collateral or in any manner relating to Borrower, Borrower shall, without expense to Multiplier, make available Borrower and its officers, employees and agents, and Borrower's books and records, without charge, to the extent that Multiplier may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding.

4.7 Notification of Changes. Borrower will notify Multiplier in writing of any change in its President, Chief Executive Officer, or Chief Financial Officer, within seven days after such change occurs.

4.8 Financial Covenants. Borrower shall comply with all of the Financial Covenants set forth in the Schedule, and all other covenants and provisions set forth in the Schedule.

4.9 Registration of Intellectual Property Rights. Borrower shall provide Multiplier quarterly written notice (and notice more frequently as Multiplier may request from time to time) of any applications or registrations with respect to Intellectual Property it files or obtains with the United States Patent and Trademark Office or the United States Copyright Office, including the date of any such filing and the registration or application numbers, if any. Multiplier may add any of the same to the list of Intellectual Property included in any Intellectual Property Security Agreement between Borrower and Multiplier.

4.10 Board Observation Rights. Borrower shall notify Multiplier at least two weeks in advance of the time and place of any regularly scheduled meeting, or as soon as reasonably possible of any unscheduled meeting, of the Board of Directors of Borrower (including without limitation telephone, conference call and video meetings), and Multiplier shall have the right to have a representative attend all meetings of the Board of Directors of Borrower (including without limitation telephone, conference call and video meetings), in a nonvoting-observer capacity. Borrower shall give Multiplier copies of all notices, minutes, consents and other materials the Borrower provides to its directors in connection with said meetings. Any information provided to Multiplier shall be subject to the confidentiality agreement in Section 8.2 of this Agreement.

4.11 Further Assurances. Borrower agrees, at its expense, on request by Multiplier, to execute all documents and take all actions, as Multiplier may deem necessary or useful, in its Good Faith Business Judgment, in order to perfect and maintain Multiplier's perfected first-priority security interest in the Collateral (subject to Permitted Liens), and in order to fully consummate the transactions contemplated by this Agreement.

5. TERM.

5.1 Maturity Date. On the maturity date set forth on the Schedule (the "Maturity Date") or any earlier occurrence of any Event of Default that results in the acceleration of the Obligations, Borrower shall pay and perform in full the entire unpaid principal balance of

the Loan and all accrued and unpaid interest thereon and all other Obligations, and whether or not all or any part of the foregoing are otherwise then due and payable.

5.2 Prepayment. Borrower shall have the option of prepaying the principal amount of the Loan, prior to the Maturity Date, in whole or in part, provided that Borrower concurrently pays Multiplier (i) all accrued and unpaid interest on the principal so prepaid, and (ii) the prepayment fee set forth in the Schedule. Said prepayment fee shall be due from Borrower to Multiplier upon any prepayment of the principal of the Loan, including without limitation any prepayment as a result of an Event of Default or the exercise of any rights or remedies by Multiplier following the same; provided that if Multiplier accelerates the Obligations on the occurrence of an Event of Default, or if any bankruptcy or insolvency proceeding is commenced by or against any Borrower, the full amount of such prepayment fee (computed as if the full amount of the Loan was prepaid on the date of such acceleration or the date of commencement of such proceeding) shall be due and payable.

5.3 Termination Statements. Upon payment and performance in full of all the Obligations, Multiplier shall promptly deliver to Borrower UCC termination statements and such other documents as may be reasonably required to terminate Multiplier's security interests in the Collateral.

6. EVENTS OF DEFAULT AND REMEDIES.

6.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement, and Borrower shall give Multiplier immediate written notice thereof:

(a) Any warranty, representation, statement, report or certificate made or delivered to Multiplier by Borrower or any of Borrower's officers, employees or agents, now or in the future, shall be untrue or misleading in a material respect when made or deemed to be made; or

(b) Borrower shall fail to pay the principal of and accrued interest on the Loan which is due on the Maturity Date when due; or

(c) Borrower shall fail to pay any other principal or interest payment on any Loan or any other monetary Obligation, within three Business Days after the date due; or

(d) Borrower shall fail to comply with any of the Financial Covenants set forth in the Schedule or with any provision under Subsections 4.1, 4.2, 4.4, 4.5, or 4.10 hereof or with any of the terms or provisions of any documents or agreements between the Borrower and Multiplier relating to the status of Multiplier as a “small business investment company” as that term is defined under the Small Business Investment Act of 1958, as amended, and the rules and regulations promulgated thereunder; or

(e) Borrower shall fail to perform any non-monetary Obligation within five Business Days after the date due; or

(f) any Collateral becomes subject to any Lien (other than a Permitted Lien) which is not cured within 10 days after the occurrence of the same, or any default or event of default occurs under any obligation secured by a Permitted Lien which is not cured within the cure period applicable thereto; or

(g) any Collateral is attached, seized, subjected to a writ or distress warrant, or is levied upon, and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within 10 days, or if Borrower is enjoined, restrained, or prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a Lien on any of the Collateral which is not removed within 10 days thereafter, or if a notice of lien, levy, or assessment is filed of record with respect to any of the Collateral by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, provided that the foregoing shall not include impounds of wine by government regulators following the importing thereof as long as the amount of product subject to any such impound does not exceed $50,000 at any time; or

(h) a final, judgment or judgments for the payment of money in an amount, individually or in the aggregate, of $150,000 or more shall be rendered against Borrower, and the same remain unsatisfied and unstayed for a period of 10 days or more; or

(i) a default or event of default shall occur under any documents, instruments or agreements relating to Permitted Indebtedness (including without limitation Indebtedness to the Revolving Loan Lender) (after the expiration of any applicable cure period); or

(i) a default or event of default shall occur under any documents, instruments or agreements relating to Permitted Indebtedness (including without limitation Indebtedness to the Revolving Loan Lender) after the expiration of any applicable cure period, provided, however, defaults and events of defaults under the agreements between Borrower and the Revolving Loan Lender shall continue to be deemed defaults and events of defaults hereunder for purposes of this clause (i) as constituting Events of Default hereunder, notwithstanding any termination of any such agreements whether arising from repayment of such Indebtedness owing to Revolving Loan Lender or for any other reason;

(j) Borrower breaches any material contract or obligation, which has resulted or may reasonably be expected to result in a Material Adverse Change; or

(k) dissolution, termination of existence, temporary or permanent suspension of business, insolvency or business failure of Borrower; or appointment of a receiver, trustee or custodian, for all or any part of the property of, assignment for the benefit of creditors by, or the commencement of any Insolvency Proceeding by Borrower; or

(l) the commencement of any Insolvency Proceeding against Borrower, which is not cured by the dismissal thereof within 45 days after the date commenced (but no Loans or other extensions of credit need be made or provided by Lender until such dismissal had occurred); or

(m) revocation or termination of, or limitation or denial of liability upon, any guaranty of any of the Obligations or any attempt to do any of the foregoing, or any default or event of default occurs under any such guaranty; or

(n) revocation or termination of, or limitation or denial of liability upon, any pledge of any certificate of deposit, securities, money or other property or asset pledged by any third party to secure any or all of the Obligations, or any attempt to do any of the foregoing, or commencement of proceedings by or against any such third party under any bankruptcy or insolvency law; or

(o) Borrower makes any payment on account of any indebtedness or obligation which has been subordinated to the Obligations, other than as permitted in the applicable subordination agreement, including, without limitation, as contemplated under the Revolving Loan Intercreditor Agreement, or if any Person who has subordinated such indebtedness or obligations terminates or in any way limits its subordination agreement with the consent of Multiplier; or

(p) a Change in Control shall occur; or

(q) Borrower shall generally not pay its debts as they become due, or Borrower shall conceal, remove or transfer any part of its property, with intent to hinder, delay or defraud its creditors, or make or suffer any transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or

(r) a Material Adverse Change shall occur; or

(s) there shall be a change in the President, Chief Executive Officer, or Chief Financial Officer, of the Borrower, and such person is not replaced with another person acceptable to Multiplier in its Good Faith Business Judgment within 90 days thereafter; or

(t) an event of default shall occur and be continuing under any other Loan Document (after giving effect to, but without duplication of, grace periods under such other Loan Document applicable thereto).

6.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Multiplier, at its option, and without notice or demand of any kind (all of which are hereby expressly waived by Borrower), may do any one or more of the following: (a) Cease making any disbursements of the Loan or otherwise extending credit to Borrower under this Agreement or any other document or agreement; (b) Accelerate and declare all or any part of the Obligations to be immediately due, payable, and performable, notwithstanding any deferred or installment payments allowed by any instrument evidencing or relating to any Obligation (except that all Obligations shall be automatically accelerated and due and payable upon the commencement of any Insolvency Proceeding by Borrower or any Event of Default under Section 6.1(l)); (c) Accelerate or extend the time of payment of, compromise, issue credits on, or bring suit on the Accounts and other Collateral (in the name of Borrower or Multiplier), settle or adjust disputes or claims directly with Account Debtors for amounts and upon terms which it considers advisable, and notify Account Debtors on the Accounts and other Collateral that the Accounts and Collateral have been assigned to Multiplier, and that payments in respect thereof shall be made directly to Multiplier, and otherwise administer and collect the Accounts and other Collateral; (d) Collect, receive, dispose of and realize upon any Investment Property, including withdrawal of any and all funds from any securities accounts; (e) Take possession of any or all of the Collateral wherever it may be found, and for that purpose Borrower hereby authorizes Multiplier without judicial process to enter onto any of Borrower's premises without interference to search for, take possession of, keep, store, or remove any of the Collateral, and remain on the premises or cause a custodian to remain on the premises in exclusive control thereof, without charge for so long as Multiplier deems it reasonably necessary in order to complete the enforcement of its rights under this Agreement or any other agreement; provided, however, that should Multiplier seek to take possession of any of the Collateral by court process, Borrower hereby irrevocably waives: (i) any bond and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession; (ii) any demand for possession prior to the commencement of any suit or action to recover possession thereof; and (iii) any requirement that Multiplier retain possession of, and not dispose of, any such Collateral until after trial or final judgment; (f) Require Borrower to assemble any or all of the Collateral and make it available to Multiplier at places designated by Multiplier which are reasonably convenient to Multiplier and Borrower, and to remove the Collateral to such locations as Multiplier may deem advisable; (g) Complete the processing, manufacturing or repair of any Collateral prior to a disposition thereof and, for such purpose and for the purpose of removal, Multiplier shall have the right to use Borrower's premises, Equipment and all other property without charge; (h) Sell, lease or otherwise dispose of any of the Collateral, in its condition at the time Multiplier obtains possession of it or after further manufacturing, processing or repair, at one or more public and/or private sales, in lots or in bulk, for cash, exchange or other property, or on credit, and to adjourn any such sale from time to time without notice other than oral announcement at the time scheduled for sale; (i) demand payment of, and collect any Accounts and General Intangibles comprising Collateral and, in connection therewith, Borrower irrevocably authorizes Multiplier to endorse or sign Borrower's name on all collections, receipts, instruments and other documents, and, in Multiplier's Good Faith Business Judgment, to grant extensions of time to pay, compromise claims and settle Accounts and the like for less than face value; and (j) demand and receive possession of any of Borrower's federal and state income tax returns and the books and records utilized in the preparation thereof or referring thereto. Multiplier shall have the right to conduct such disposition on Borrower's premises without charge, for such time or times as Multiplier deems reasonable, or on Multiplier's premises, or elsewhere and the Collateral need not be located at the place of disposition. Multiplier may directly or through any affiliated company purchase or lease any Collateral at any such public disposition, and if permissible under applicable law, at any private disposition. Any sale or other disposition of Collateral shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition or otherwise at the time of sale. All reasonable attorneys' fees, expenses, costs, liabilities and obligations incurred by Multiplier with respect to the foregoing shall be added to and become part of the Obligations, shall be due on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations. Without limiting any of Multiplier's rights and remedies, from and after the occurrence of any Event of Default, the interest rate applicable to the Obligations shall be increased by an additional three percent per annum.

6.3 Standards for Determining Commercial Reasonableness. Borrower and Multiplier agree that a sale or other disposition (collectively, "sale") of any Collateral which complies with the following standards will conclusively be deemed to be commercially reasonable: (i) Notice of the sale is given to Borrower at least ten days prior to the sale, and, in the case of a public sale, notice of the sale is published at least ten days before the sale in a newspaper of general circulation in the county where the sale is to be conducted; (ii) Notice of the sale describes the collateral in general, non-specific terms; (iii) The sale is conducted at a place designated by Multiplier, with or without the Collateral being present; (iv) The sale commences at any time between 8:00 a.m. and 6:00 p.m.; (v) Payment of the purchase price in cash or by cashier's check or wire transfer is required; (vi) With respect to any sale of any of the Collateral, Multiplier may (but is not obligated to) direct any prospective purchaser to ascertain directly from Borrower any and all information concerning the same. Multiplier shall be free to employ other methods of noticing and selling the Collateral, in its discretion, if they are commercially reasonable.

6.4 Investment Property. If a Default or an Event of Default has occurred and is continuing, Borrower shall hold all payments on, and proceeds of, and distributions with respect to, Investment Property in trust for Multiplier, and Borrower shall deliver all such payments, proceeds and distributions to Multiplier, immediately upon receipt, in their original form, duly endorsed, to be applied to the Obligations in such order as Multiplier shall determine. Borrower recognizes that Multiplier may be unable to make a public sale of any or all of the Investment Property, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale thereof.

6.5 Power of Attorney. Borrower grants to Multiplier an irrevocable power of attorney coupled with an interest, authorizing and permitting Multiplier (acting through any of its employees, attorneys or agents) at any time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's expense, to do any or all of the following, in Borrower's name or otherwise, but Multiplier shall only exercise the following powers in a commercially reasonable manner:

(a) do any of the following: (i) Execute on behalf of Borrower any documents that Multiplier may, in its Good Faith Business Judgment, deem advisable in order to perfect and maintain Multiplier's security interest in the Collateral, or in order to exercise a right of Borrower or Multiplier, or in order to fully consummate all the transactions contemplated under this Agreement, (ii) to make any payment or take any action necessary or desirable to protect or preserve any Collateral or Multiplier's security interest therein or the priority thereof, (iii) modify any intellectual property security agreement entered into between Borrower and Multiplier by amending exhibits thereto, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Borrower after the execution of this Agreement or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Borrower no longer has or claims to have any right, title or interest;

(b) After the occurrence and during the continuance of any Event of Default, without limiting Multiplier's other rights and remedies, do any of the following: (i) Take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; endorse the name of Borrower upon any instruments, or documents, evidence of payment or Collateral that may come into Multiplier's possession; (ii) Grant extensions of time to pay, compromise claims and settle Accounts, General Intangibles and Other Property for less than face value and execute all releases and other documents in connection therewith; (iii) Pay any sums required on account of Borrower's taxes or to secure the release of any liens therefor; and (iv) Settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor.

6.6 Application of Proceeds. All proceeds realized as the result of any sale or other disposition of the Collateral shall be applied by Multiplier first to the reasonable costs, expenses, liabilities, obligations and attorneys' fees incurred by Multiplier in the exercise of its rights under this Agreement, second to the interest due upon any of the Obligations, and third to the principal of the Obligations, in such order as Multiplier shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Multiplier for any deficiency. If Multiplier, in its Good Faith Business Judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Multiplier shall have the option, exercisable at any time, in its sole discretion, of either reducing the Obligations by the principal amount of purchase price or deferring the reduction of the Obligations until the actual receipt by Multiplier of the cash therefor.

6.7 Remedies Cumulative. In addition to the rights and remedies set forth in this Agreement, Multiplier shall have all the other rights and remedies accorded a secured party under the Code and under all other applicable laws, and under any other instrument or agreement now or in the future entered into between Multiplier and Borrower, and all of such rights and remedies are cumulative and none is exclusive. Exercise or partial exercise by Multiplier of one or more of its rights or remedies shall not be deemed an election, nor bar Multiplier from subsequent exercise or partial exercise of any other rights or remedies. The failure or delay of Multiplier to exercise any rights or remedies shall not operate as a waiver thereof, but all rights and remedies shall continue in full force and effect until all of the Obligations have been fully paid and performed.

6.8 Verification. Multiplier may, from time to time, verify with the respective Account Debtors the validity, amount and other matters relating to the Accounts, by means of mail, telephone or otherwise, either in the name of Borrower or Multiplier or such other name as Multiplier may choose.

7. DEFINITIONS. As used in this Agreement, the following terms have the following meanings:

"Account Debtor" means the obligor on an Account.

"Accounts"" means all of the following, now owned and hereafter acquired by Borrower: all "accounts" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made (whether or not earned by performance), and all

guaranties and other security therefor, and all rights of stoppage in transit and all other rights or remedies of an unpaid vendor, lienor or secured party.

"Agreement" and "this Agreement" means this Loan and Security Agreement and all Exhibits and Schedules hereto and all modifications and amendments to, extensions of, and replacements for this Agreement.

"Bessemer Entities" means, on a collective basis, the following entities: 15 Angels II LLC, Bessemer Venture Partners VIII Institutional L.P., Wahoowa Ventures LLC and GoBlue Ventures LLC.

"Business Day" means any day other than a Saturday, Sunday or any other day on which commercial banks in Los Angeles, California or New York, New York are required or permitted by law to close.

"Change in Control" means: (i) a change in the record or beneficial ownership of an aggregate of more than 40% of the outstanding shares of stock of Parent, in one or more transactions, compared to the ownership of outstanding shares of stock of Parent in effect on the date hereof, or Parent shall cease to own 100% of the outstanding limited liability company interests or shares, as applicable, of any other Borrower, in each case without the prior written consent of Multiplier; (ii) if the Bessemer Entities and the Shining Capital Entities on a collective and aggregate basis own less than 20% of the outstanding shares of stock of Parent; or (iii) a transaction in which any "person" or "group" (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of a sufficient number of shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors, empowering such "person" or "group" to elect a majority of the Board of Directors of Borrower, who did not have such power before such transaction.

"Code" means the Uniform Commercial Code as adopted and in effect in the State of California on the date hereof.

"Collateral" has the meaning set forth in Section 2.1 above.

"continuing" when used with reference to a Default or an Event of Default means that the Default or Event of Default has occurred and has not been either waived in writing by Multiplier or cured within any applicable cure period.

"Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held.

"Default" means any event which with notice or passage of time or both, would constitute an Event of Default.

"Deposit Account" means all of the following, now owned and hereafter acquired by Borrower: all "deposit accounts" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all general and special bank accounts, demand accounts, checking accounts, savings accounts and certificates of deposit.

"Disbursement Date" means the date of the disbursement of the Loan, or, if there are more than one disbursements of the Loan, the date of the first disbursement of the Loan.

"Equipment" means all of the following, now owned and hereafter acquired by Borrower: all "equipment" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles, and any interest in any of the foregoing.

"Event of Default" means any of the events set forth in Section 6.1 of this Agreement.

"GAAP" means generally accepted accounting principles consistently applied, as in effect from time to time in the United States.

"General Intangibles" means all of the following, now owned and hereafter acquired by Borrower: all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all Intellectual Property, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, licenses, permits, domain names, claims, income tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Good Faith Business Judgment" means Multiplier's business judgment, exercised honestly and in good faith and not arbitrarily.

"Indebtedness" means (a) all indebtedness created, assumed or incurred in any manner by Borrower representing money borrowed (including by the issuance of debt securities, notes, bonds debentures or similar instruments), (b) all indebtedness for the deferred purchase price of property or services, (c) the Obligations, (d) obligations and liabilities of any Person secured by a Lien or claim on property owned by Borrower, even though Borrower has not assumed or become liable therefor, (e) obligations and liabilities created or arising under any capital lease or conditional sales contract or other title retention agreement with respect to property used or acquired by Borrower, even though the rights and remedies of the lessor, seller or lender are limited to repossession or otherwise limited; (f) all obligations of Borrower on or with respect to letters of credit, bankers' acceptances and other similar extensions of credit whether or not representing obligations for borrowed money.

"Intellectual Property" means all of Borrower's right, title, and interest in and to the following: Copyrights, Trademarks and Patents; any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held; any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held; any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above; all licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use; and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Insolvency Proceeding" means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other state, federal or other bankruptcy or insolvency law, now or hereafter in effect, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, readjustment of debt, dissolution or liquidation, or other relief.

"Inventory" means all of the following, now owned and hereafter acquired by Borrower: all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment" means any beneficial ownership interest in any Person (including stock, securities, partnership interest, limited liability company interest, or other interests), and any loan, advance or capital contribution to any Person, including the creation or capital contribution to a wholly-owned or partially-owned subsidiary.

"Investment Property" means all of the following, now owned and hereafter acquired by Borrower: all investment property, securities, stocks, bonds, debentures, debt securities, partnership interests, limited liability company interests, options, security entitlements, securities accounts, commodity contracts, commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, and all other securities of every kind, whether certificated or uncertificated.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, the Representations, and all other present and future documents, instruments and agreements between Multiplier and Borrower, including, but not limited to those relating to this Agreement, and all amendments and modifications thereto and replacements therefor.

"Material Adverse Change" means (i) a material adverse change in the business, operations, results of operations, assets, liabilities, prospects or condition of Borrower, (ii) a material adverse change in Borrower's ability to perform the Obligations, or of Multiplier to enforce the Obligations or realize upon the Collateral, or (iii) a material adverse change in the value of the Collateral or the amount which Multiplier would be likely to receive in the liquidation of the Collateral.

"[One, Two, etc.] Month(s) After the Disbursement Date" means the same day in the specified subsequent month after the Disbursement Date, or, if there is no such date in a subsequent month, the last day of such month. For example, if the Disbursement Date is December 30, 2013, One Month After the Disbursement Date would be January 30, 2014, and Two Months after the Disbursement Date would be February 28, 2014.

"Obligations" means all present and future Loans, advances, debts, liabilities, obligations, guaranties, covenants, duties and indebtedness at any time owing by Borrower or any of its subsidiaries or affiliates to Multiplier or its parent or any of its subsidiaries or affiliates, whether evidenced by this Agreement or any note or other instrument or document, whether arising from an extension of credit, loan, guaranty, indemnification or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by Multiplier in Borrower's indebtedness or obligations owing to others and any interest and other obligations that accrue after the commencement of an Insolvency Proceeding), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorney's fees, expert witness fees, audit fees, loan fees, prepayment fees, and any other sums chargeable to Borrower under this Agreement or under any other Loan Document.

"Other Property" means all of the following, now owned and hereafter acquired by Borrower: all of the following as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and all rights relating thereto: "documents", "instruments", "chattel paper", "letters of credit", "fixtures", "promissory notes", "commercial tort claims", and "money", and all other tangible and intangible personal property and rights of any other kind which are not included in the other items of Collateral, whether or not covered by the Code.

"Parent" means Winc, Inc., Delaware corporation.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Permitted Indebtedness" means:

(i) the Obligations;

(ii) Indebtedness existing on the date hereof in a total principal amount not in excess of $100,000, excluding Indebtedness owing to the Revolver Loan Lender as otherwise permitted pursuant to clause (vii) below;

(iii) trade payables incurred in the ordinary course of business;

(iv) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(v) capitalized leases and purchase money Indebtedness secured by Permitted Liens in an aggregate amount not exceeding $100,000.00 at any time outstanding, provided the amount of such capitalized leases and purchase money Indebtedness do not exceed, at the time they were incurred, the lesser of the cost or fair market value of the property so leased or financed with such Indebtedness;

(vi) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness in clauses (ii) through (v) above, provided that the principal amount thereof is not increased and the terms thereof are not modified to impose more burdensome terms upon Borrower; and

(vii) Indebtedness to the Revolving Loan Lender which is subject to the Revolving Loan Intercreditor Agreement.

"Permitted Investments" means:

(i) Marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, commercial paper maturing no more than one year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, certificates of deposit maturing no more than one year from the date of investment therein, and money market accounts; Investments in regular deposit or checking accounts subject to a control agreement in favor of Multiplier;

(ii) Investments of a Borrower in another Borrower;

(iii) Investments not to exceed $50,000 outstanding in the aggregate at any time consisting of (a) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (b) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plan agreements approved by Borrower's Board of Directors;

(iv) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business; and

(v) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business.

"Permitted Liens" means the following:

(i) purchase money security interests in specific items of Equipment;

(ii) leases of specific items of Equipment;

(iii) Liens for taxes not yet payable;

(iv) additional security interests which are consented to in writing by Multiplier, which consent may be withheld in its Good Faith Business Judgment, and which are subordinate to the security interest of Multiplier pursuant to a subordination agreement in such form and containing such provisions as Multiplier shall specify in its Good Faith Business Judgment;

(v) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default;

(vi) security interests being terminated substantially concurrently with this Agreement;

(vii) Liens on deposits made in the ordinary course of business in connection with workers compensation, unemployment insurance, social security and other like laws or to secure the performance of statutory obligations, in an aggregate amount not exceeding $50,000 at any time;

(viii) Liens of mechanics, materialmen, workers, repairmen, fillers and common carriers arising by operation of law for amounts that are not yet due and payable or which are being contested in good faith by Borrower by appropriate proceedings, in an aggregate amount not exceeding $25,000 at any time;

(ix) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money), leases, surety and appeal bonds and other obligations of a like nature arising in the ordinary course of business, in an aggregate amount not exceeding $50,000 at any time;

(x) Liens in favor of the Revolving Loan Lender which are subject to the Revolving Loan Intercreditor Agreement;

(xi) Lien in favor of Terravant Wine Company LLC ("Terravant") on the wine product, grapes and juices of BWSC, LLC located on the premises of Terravant to the extent of amounts not paid to Terravant under the Alternating Proprietor Agreement dated April 3, 2013 among BWSC, LLC, Winc, Inc., and Terravant;

(xii) Lien in favor of Weibel Incorporated ("Weibel") on the property of BWSC, LLC deposited on the premises of Weibel to the extent of amounts not paid to Weibel under the Alternating Proprietor Agreement dated August 22, 2016 among BWSC, LLC, Winc, Inc., and Weibel;

(xiii) Lien in favor of Copain, LLC dba Punchdown Cellars ("Punchdown") on the property of BWSC, LLC deposited on the premises of Punchdown to the extent of amounts not paid to Punchdown under the Alternating Proprietor Agreement dated June 25, 2015 among BWSC, LLC, Winc, Inc., and Punchdown;

(xiv) Lien in favor of LangeTwins Wine Company, Inc. ("LangeTwins") on the wine of BWSC, LLC deposited on the premises of LangeTwins to the extent of amounts not paid to LangeTwins under the Alternating Proprietor Agreement dated June 20, 2016 among BWSC, LLC, Winc, Inc., and LangeTwins;

(xv) (a) Lien in favor of the landlord of the premises of Borrower for the location of Borrower at 5340 Alla Road, Suites 105 and 108, Los Angeles, CA 90066 (the "LA Office"), which Lien is limited to personal property located on the premises with respect to the lease amounts owing to such landlord; (b) Lien on such office premises in favor of MetLife Commercial Mortgage Originator pursuant to the Subordination, Non-Disturbance and Attornment Agreement dated January 17, 2017;

(xvi) Lien in favor of the landlord under that certain Lease Agreement dated December 8, 2015 between Borrower and landlord regarding the premises located 1515 Garnet Mine Road, Bethel Township, Delaware County, PA, which Lien is limited to personal property located on the premises with respect to the obligations owing to such landlord, which do not exceed $50,000; and

(xvii) any other Statutory Producer Liens arising in the ordinary course of the business of Borrower consistent with its past practices, provided that the aggregate amount of Indebtedness relating to any such Statutory Producer Liens shall not exceed $500,000 at any time or the holder of such Lien shall have waived its rights with respect to such Lien.

Multiplier will have the right to require, as a condition to its consent under subparagraph (iv) above, that the holder of the additional security interest or voluntary Lien sign a subordination agreement on Multiplier's then standard form, acknowledge that the security interest is subordinate to the security interest in favor of Multiplier, and agree not to take any action to enforce its subordinate security interest so long as any Obligations remain outstanding, and that Borrower agree that any uncured default in any obligation secured by the subordinate security interest shall also constitute an Event of Default under this Agreement.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, limited liability company, unincorporated organization, association, corporation, government, or any agency or political division thereof, or any other entity.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by Citibank N.A., or, if not available, another major money center bank in New York City selected by Multiplier in its sole discretion, as its prime rate in effect (said prime rate not being intended to be the lowest rate of interest charged by the referenced bank in connection with extensions of credit), or if such rate is not available, by a reasonable alternative means of determining the rate of interest selected by Multiplier in its sole discretion.

"Representations" means the written Representations and Warranties previously delivered by Borrower to Multiplier dated November 27, 2017.

"Shining Capital Entities" means, on a collective basis, the following entities: Dreamer Pathway Limited (BVI), Shiningwine Limited (BVI) and Dream Catcher Investments Limited (BVI).

"Statutory Producer Liens" means liens arising under the federal Perishable Agricultural Commodities Act, California Food and Agricultural Code §55631 and related sections and any similar state law regarding producer liens with regard to grapes and any other perishable agricultural commodities.

"Subsidiary" means, with respect to any Person, a Person of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by such Person or one or more Affiliates of such Person.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"Warrant" means the warrant to purchase stock of the Borrower being issued to Multiplier, and all extensions and renewals thereof and replacements therefor.

Other Terms. All accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

8. GENERAL PROVISIONS.

8.1 Application of Payments. All payments with respect to the Obligations may be applied, and in Multiplier's sole discretion reversed and re-applied, to the Obligations, in such order and manner as Multiplier shall determine in its Good Faith Business Judgment.

8.2 Confidentiality. Multiplier agrees to use the same degree of care that it exercises with respect to its own proprietary information, to maintain the confidentiality of any and all proprietary, trade secret or confidential information provided to or received by Multiplier from the Borrower, which indicates that it is or which would reasonably be understood to be confidential, including business plans and forecasts, non-public financial information, confidential or secret processes, formulae, devices and contractual information, customer lists, and employee relation matters, provided that Multiplier may disclose such information to its officers, directors, employees, attorneys, accountants, affiliates, participants, prospective participants, assignees and prospective assignees, and such other Persons to whom Multiplier shall at any time be required to make such disclosure in accordance with applicable law, and provided, that the foregoing provisions shall not apply to disclosures made by Multiplier in its Good Faith Business Judgment in connection with the enforcement of its rights or remedies after an Event of Default. The confidentiality agreement in this Section supersedes any prior confidentiality agreement of Multiplier relating to Borrower.

8.3 Notices. All notices to be given under this Agreement shall be in writing and shall be given either personally or by reputable private delivery service or by regular first-class mail, or certified mail return receipt requested, addressed as follows: (a) if to Borrower, at its address shown in the heading to this Agreement; and (b) if to Multiplier, at Multiplier Capital II, LP, 2 Wisconsin Circle, Suite 700, Chevy Chase MD 20815 Attention: Kevin Sheehan, Managing General Partner, with a copy to Multiplier Capital II, LP, 16427 N. Scottsdale Road, Suite 410, Scottsdale, AZ 85254, Attention: Mr. Ray Boone. The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to all other parties. All notices shall be deemed to have been given upon delivery in the case of notices personally delivered, or at the expiration of one Business Day following delivery to the private delivery service, or two Business Days following the deposit thereof in the United States mail, with postage prepaid.

8.4 Severability. Should any provision of this Agreement be held by any court of competent jurisdiction to be void or unenforceable, such defect shall not affect the remainder of this Agreement, which shall continue in full force and effect.

8.5 Integration. This Agreement and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Borrower and Multiplier and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Agreement. There are no oral understandings, representations or agreements between the parties which are not set forth in this Agreement or in other written agreements signed by the parties in connection herewith.

8.6 Waivers; Indemnity. The failure of Multiplier at any time or times to require Borrower to strictly comply with any of the provisions of this Agreement or any other Loan Document shall not waive or diminish any right of Multiplier later to demand and receive strict compliance therewith. Any waiver of any default shall not waive or affect any other default, whether prior or subsequent, and

whether or not similar. None of the provisions of this Agreement or any other Loan Document shall be deemed to have been waived by any act or knowledge of Multiplier or its agents or employees, but only by a specific written waiver signed by an authorized officer of Multiplier and delivered to Borrower. Borrower waives the benefit of all statutes of limitations relating to any of the Obligations or this Agreement or any other Loan Document, and Borrower waives demand, protest, notice of protest and notice of default or dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, instrument, account, General Intangible, document or guaranty at any time held by Multiplier on which Borrower is or may in any way be liable, and notice of any action taken by Multiplier, unless expressly required by this Agreement. Borrower hereby agrees to indemnify Multiplier and its affiliates, subsidiaries, parent, directors, officers, employees, agents, and attorneys, and to hold them harmless from and against any and all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, costs and expenses (including reasonable attorneys' fees), of every kind, which they may sustain or incur based upon or arising out of any of the Obligations, or any relationship or agreement between Multiplier and Borrower, or any other matter, relating to Borrower or the Obligations; provided that this indemnity shall not extend to damages proximately caused by the indemnitee's own gross negligence or willful misconduct. Notwithstanding any provision in this Agreement to the contrary, the indemnity agreement set forth in this Section shall survive any termination of this Agreement and shall for all purposes continue in full force and effect.

8.7 Liability. NEITHER MULTIPLIER NOR ANY OF ITS AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS SHALL BE LIABLE FOR ANY CLAIMS, DEMANDS, LOSSES OR DAMAGES, OF ANY KIND WHATSOEVER, MADE, CLAIMED, INCURRED OR SUFFERED BY BORROWER OR ANY OTHER PARTY THROUGH THE ORDINARY NEGLIGENCE OF MULTIPLIER, OR ITS PARENT OR ANY OF ITS AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS, BUT NOTHING HEREIN SHALL RELIEVE MULTIPLIER FROM LIABILITY FOR ITS OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NEITHER MULTIPLIER NOR ANY OF ITS AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS SHALL BE RESPONSIBLE OR LIABLE TO BORROWER OR TO ANY OTHER PARTY FOR ANY INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF ANY FINANCIAL ACCOMMODATION HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR AS A RESULT OF ANY OTHER ACT, OMISSION OR TRANSACTION.

8.8 Amendment. The terms and provisions of this Agreement may not be waived or amended, except in a writing executed by Borrower and a duly authorized officer of Multiplier.

8.9 Time of Essence. Time is of the essence in the performance by Borrower of each and every obligation under this Agreement.

8.10 Attorneys Fees and Costs. Multiplier hereby acknowledges and agrees the receipt of a deposit of $30,000 from Borrower (the "Deposit"). Subject to the complete application of the Deposit by Multiplier to the following, Borrower shall reimburse Multiplier for all reasonable attorneys' and consultants' fees and all filing, recording, search, title insurance, appraisal, audit, and other reasonable costs incurred by Multiplier, pursuant to, or in connection with, or relating to this Agreement or the other Loan Documents (whether or not a lawsuit is filed), including, but not limited to, all reasonable attorneys' fees and costs Multiplier incurs in order to do the following: prepare and negotiate this Agreement and the other Loan Documents; obtain legal advice in connection with this Agreement or Borrower; enforce, or seek to enforce, any of its rights an remedies relating to Borrower or any Collateral or this Agreement or the other Loan Documents; prosecute actions against, or defend actions by, Account Debtors; commence, intervene in, or defend any action or proceeding; initiate any complaint to be relieved of the automatic stay in bankruptcy; file or prosecute any probate claim, bankruptcy claim, third-party claim, or other claim; protect, obtain possession of, lease, dispose of, or otherwise enforce Multiplier's security interest in, the Collateral; and otherwise represent Multiplier in any litigation relating to Borrower. If either Multiplier or Borrower files any lawsuit against the other predicated on a breach of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and attorneys' fees, including (but not limited to) reasonable attorneys' fees and costs incurred in the enforcement of, execution upon, or defense of any order, decree, award or judgment. All attorneys' fees and costs to which Multiplier may be entitled pursuant to this Section shall become part of Borrower's Obligations, shall be due on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations.

8.11 Benefit of Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrower and Multiplier; provided, however, that Borrower may not assign

or transfer any of its rights under this Agreement without the prior written consent of Multiplier, and any prohibited assignment shall be void. No consent by Multiplier to any assignment shall release Borrower from its liability for the Obligations.

8.12 Joint and Several Liability. If Borrower consists of more than one Person, their liability shall be joint and several, and the compromise of any claim with, or the release of, any Borrower shall not constitute a compromise with, or a release of, any other Borrower.

8.13 Limitation of Actions. Any claim or cause of action by Borrower against Multiplier, its directors, officers, employees, agents, accountants or attorneys, based upon, arising from, or relating to this Loan Agreement, or any other Loan Document, or any other transaction contemplated hereby or thereby or relating hereto or thereto, or any other matter, cause or thing whatsoever, occurred, done, omitted or suffered to be done by Multiplier, its directors, officers, employees, agents, accountants or attorneys, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one year after the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based, and the service of a summons and complaint on an officer of Multiplier, or on any other Person authorized to accept service on behalf of Multiplier, within thirty (30) days thereafter. Borrower agrees that such one-year period is a reasonable and sufficient time for Borrower to investigate and act upon any such claim or cause of action. The one-year period provided herein shall not be waived, tolled, or extended except by the written consent of Multiplier in its sole discretion. This provision shall survive any termination of this Loan Agreement or any other Loan Document.

8.14 Paragraph Headings; Construction. Paragraph headings are only used in this Agreement for convenience. Borrower and Multiplier acknowledge that the headings may not describe completely the subject matter of the applicable Section, and the headings shall not be used in any manner to construe, limit, define or interpret any term or provision of this Agreement. This Agreement has been fully reviewed and negotiated between the parties and no uncertainty or ambiguity in any term or provision of this Agreement shall be construed strictly against Multiplier or Borrower under any rule of construction or otherwise.

8.15 Public Announcement. Borrower hereby agrees that Multiplier may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use the Borrower's name, tradenames and logos.

8.16 Governing Law; Jurisdiction; Venue. This Agreement and all acts, transactions, disputes and controversies arising hereunder or relating hereto, and all rights and obligations of the parties shall be governed by, and construed in accordance with, the internal laws (and not the conflict of laws rules) of the State of California. All disputes, controversies, claims, actions and other proceedings involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Agreement or the relationship between Borrower and Multiplier, and any and all other claims of Borrower against Multiplier of any kind, shall be brought only in a court located in Los Angeles County, California, and each party consents to the jurisdiction of an such court and the referee referred to in Section 8.17 below, and waives any and all rights the party may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding, including, without limitation, any objection to venue or request for change in venue based on the doctrine of forum non conveniens; provided that, notwithstanding the foregoing, nothing herein shall limit the right of Multiplier to bring proceedings against Borrower in the courts of any other jurisdiction. Borrower consents to service of process in any action or proceeding brought against it by Multiplier, by personal delivery, or by mail addressed as set forth in this Agreement or by any other method permitted by law.

8.17 Dispute Resolution. Any controversy, dispute or claim between the parties based upon, arising out of, or in any way relating to: (i) this Agreement or any supplement or amendment thereto; or (ii) any other present or future instrument or agreement between the parties hereto; or (iii) any breach, conduct, acts or omissions of any of the parties hereto or any of their respective directors, officers, employees, agents, attorneys or any other Person affiliated with or representing any of the parties hereto; in each of the foregoing cases, whether sounding in contract or tort or otherwise (a "Dispute") shall be resolved exclusively by judicial reference in accordance with Sections 638 et seq. of the California Code of Civil Procedure ("CCP") and Rules 3.900 et seq. of the California Rules of Court ("CRC"), subject to the following terms and conditions. (All references in this section to provisions of the CCP and/or CRC shall be deemed to include any and all successor provisions.)

(a) The reference shall be a consensual general reference pursuant to CCP Sections 638 and 644(a). Unless the parties otherwise agree in writing, the reference shall be to a single referee. The referee shall be a retired Judge of the Los Angeles County Superior Court ("Superior Court") or a retired Justice of the California Court of Appeal or California Supreme Court. Nothing in this section shall be construed to limit the right of Multiplier, pending or after the appointment of the referee, to seek and obtain provisional relief from the Superior Court or such referee, or any other court in a jurisdiction in which any Collateral is located or having jurisdiction over any Collateral, including without limitation, writ of attachment, writ of possession, appointment of a receiver, temporary restraining order and/or preliminary injunction, or other "provisional remedy" (as such term is defined in CCP Section 1281.8).

(b) Within fifteen (15) days after a party gives written notice in accordance with this Agreement to all other parties to a Dispute that the Dispute exists, all parties to the Dispute shall attempt to agree on the individual to be appointed as referee. If the parties are unable to agree on the individual to be appointed as referee, the referee shall be appointed, upon noticed motion or ex parte application by any party, by the Superior Court in accordance with CCP Section 640, subject to all rights of the parties to challenge or object to the appointment, including without limitation the right to peremptory challenge under CCP Section 170.6. If the referee (or any successor referee) appointed by the Superior Court is unable, or at any time becomes unable, to serve as referee in the Dispute, the Superior Court shall appoint a new referee as agreed to by the parties or, if the parties cannot agree, in accordance with CCP Section 640, which new referee shall then have the same powers, and be subject to the same terms and conditions, as the predecessor referee.

(c) Venue for all proceedings before the referee, and for any Superior Court proceeding for the appointment of the referee, shall be exclusively within the County of Los Angeles, State of California. The referee shall have the exclusive power to determine whether a Dispute is subject to judicial reference pursuant to this section. Trial, and all proceedings and hearings on dispositive motions, conducted before the referee shall be conducted in the presence of, and shall be transcribed by, a court reporter, unless otherwise agreed in writing by all parties to the proceeding. The referee shall issue a written statement of decision, which shall be subject to objections of the parties pursuant to CRC Rule 3.1590 as if the statement of decision were issued by the Superior Court. The referee's powers include, in addition to those set forth in CCP Sections 638, et seq., and CRC Rules 3.900 et seq., (i) the power to grant provisional relief, including without limitation, writ of attachment, writ of possession, appointment of a receiver, temporary restraining order and/or preliminary injunction, or other "provisional remedy" (as such term is defined in CCP Section 1281.8), and (ii) the power to hear and resolve all post-trial matters in connection with the Dispute that would otherwise be determined by the Superior Court, including without limitation motions for new trial, reconsideration, to vacate judgment, to stay execution or enforcement, to tax costs, and/or for attorneys' fees. The parties shall, subject to the referee's power to award costs to the prevailing party, bear equally the costs of the reference proceeding, including without limitation the fees and costs of the referee and the court reporter.

(d) The parties acknowledge and agree that (i) the referee alone shall determine all issues of fact and/or law in the Dispute, without a jury (subject, however, to the right of a party, pending or after the appointment of the referee, to seek and obtain provisional relief from the Superior Court or such referee, including without limitation, writ of attachment, writ of possession, appointment of a receiver, temporary restraining order and/or preliminary injunction, or other "provisional remedy" (as such term is defined in CCP Section 1281.8)), (ii) the referee does not have the power to empanel a jury, (iii) the Superior Court shall enter judgment on the decision of the referee pursuant to CCP Section 644(a) as if the decision were issued by the Superior Court, (iv) the decision of the referee shall not be subject to review by the Superior Court, and (v) the decision of the referee, once entered as a judgment by the Superior Court, shall be binding, final and conclusive, shall have the full force and effect of a judgment of the Superior Court, and shall be subject to appeal to the same extent as a judgment of the Superior Court.

8.18 Multiple Borrowers; Suretyship Waivers.

(a) Borrowers' Agent. Each Borrower hereby irrevocably appoints each other Borrower, as the agent, attorney-in-fact and legal representative of all Borrowers for all purposes, including requesting disbursement of the Loan and receiving account statements and other notices and communications to Borrowers (or any of them) from Multiplier. Multiplier may rely, and shall be fully protected in relying, on any request for a Loan, disbursement instruction, report, information or any other notice or communication made or given by any Borrower, whether in its own name, as Borrowers' agent, or on behalf of one or more Borrowers, and Multiplier shall not have any obligation to make any inquiry or request any confirmation from or on behalf of any other Borrower as to the binding effect on it of

any such request, instruction, report, information, other notice or communication, nor shall the joint and several character of Borrowers' obligations hereunder be affected thereby.

(b) Waivers. Each Borrower hereby waives: (i) any right to require Multiplier to institute suit against, or to exhaust its rights and remedies against, any other Borrower or any other Person, or to proceed against any property of any kind which secures all or any part of the Obligations, or to exercise any right of offset or other right with respect to any reserves, credits or deposit accounts held by or maintained with Multiplier or any indebtedness of Multiplier to any other Borrower, or to exercise any other right or power, or pursue any other remedy Multiplier may have; (ii) any defense arising by reason of any disability or other defense of any other Borrower or any guarantor or any endorser, co-maker or other Person, or by reason of the cessation from any cause whatsoever of any liability of any other Borrower or any guarantor or any endorser, co-maker or other Person, with respect to all or any part of the Obligations, or by reason of any act or omission of Multiplier or others which directly or indirectly results in the discharge or release of any other Borrower or any guarantor or any other Person or any Obligations or any security therefor, whether by operation of law or otherwise; (iii) any defense arising by reason of any failure of Multiplier to obtain, perfect, maintain or keep in force any Lien on, any property of any Borrower or any other Person; (iv) any defense based upon or arising out of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any other Borrower or any guarantor or any endorser, co-maker or other Person, including without limitation any discharge of, or bar against collecting, any of the Obligations (including without limitation any interest thereon), in or as a result of any such proceeding. Until all of the Obligations have been paid, performed, and discharged in full, nothing shall discharge or satisfy the liability of Borrower hereunder except the full performance and payment of all of the Obligations. If any claim is ever made upon Multiplier for repayment or recovery of any amount or amounts received by Multiplier in payment of or on account of any of the Obligations, because of any claim that any such payment constituted a preferential transfer or fraudulent conveyance, or for any other reason whatsoever, and Multiplier repays all or part of said amount by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Multiplier or any of its property, or by reason of any settlement or compromise of any such claim effected by Multiplier with any such claimant (including without limitation any other Borrower), then and in any such event, Borrower agrees that any such judgment, decree, order, settlement and compromise shall be binding upon Borrower, notwithstanding any revocation or release of this Agreement or the cancellation of any note or other instrument evidencing any of the Obligations, or any release of any of the Obligations, and the Borrower shall be and remain liable to Multiplier under this Agreement for the amount so repaid or recovered, to the same extent as if such amount had never originally been received by Multiplier, and the provisions of this sentence shall survive, and continue in effect, notwithstanding any revocation or release of this Agreement. Each Borrower hereby expressly and unconditionally waives all rights of subrogation, reimbursement and indemnity of every kind against any other Borrower, and all rights of recourse to any assets or property of any other Borrower, and all rights to any collateral or security held for the payment and performance of any Obligations, including (but not limited to) any of the foregoing rights which Borrower may have under any present or future document or agreement with any other Borrower or other Person, and including (but not limited to) any of the foregoing rights which Borrower may have under any equitable doctrine of subrogation, implied contract, or unjust enrichment, or any other equitable or legal doctrine. Each Borrower further hereby waives any other rights and defenses that are or may become available to the Borrower by reason of California Civil Code Sections 2787 to 2855 (inclusive), 2899, and 3433, as now in effect or hereafter amended, and under all other similar statutes and rules now or hereafter in effect.

(c) Consents. Each Borrower hereby consents and agrees that, without notice to or by Borrower and without affecting or impairing in any way the obligations or liability of Borrower hereunder, Multiplier may, from time to time before or after revocation of this Agreement, do any one or more of the following in Multiplier's sole and absolute discretion: (i) accept partial payments of, compromise or settle, renew, extend the time for the payment, discharge, or performance of, refuse to enforce, and release all or any parties to, any or all of the Obligations; (ii) grant any other indulgence to any Borrower or any other Person in respect of any or all of the Obligations or any other matter; (iii) accept, release, waive, surrender, enforce, exchange, modify, impair, or extend the time for the performance, discharge, or payment of, any and all property of any kind securing any or all of the Obligations or any guaranty of any or all of the Obligations, or on which Multiplier at any time may have a Lien, or refuse to enforce its rights or make any compromise or settlement or agreement therefor in respect of any or all of such property; (iv) substitute or add, or take any action or omit to take any action which results in the release of, any one or more other Borrowers or any endorsers or guarantors of all or any part of the Obligations, including, without limitation one or more parties to this Agreement, regardless of any destruction or impairment of any right of contribution or other right of Borrower; (v) apply any sums received from any other Borrower, any guarantor, endorser, or co-signer, or from the disposition of any Collateral or security, to any indebtedness whatsoever owing from such Person or secured by such Collateral or security, in such manner and order as Multiplier determines in its sole discretion, and regardless of whether such indebtedness is part

of the Obligations, is secured, or is due and payable. Borrower consents and agrees that Multiplier shall be under no obligation to marshal any assets in favor of Borrower, or against or in payment of any or all of the Obligations. Borrower further consents and agrees that Multiplier shall have no duties or responsibilities whatsoever with respect to any property securing any or all of the Obligations. Without limiting the generality of the foregoing, Multiplier shall have no obligation to monitor, verify, audit, examine, or obtain or maintain any insurance with respect to, any property securing any or all of the Obligations.

(d) Foreclosure of Trust Deeds. Each Borrower waives all rights and defenses that the Borrower may have because any other Borrower's Obligations are secured by real property. This means, among other things: (1) Multiplier may collect from the Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrower; and (2) If Multiplier forecloses on any real property collateral pledged by another Borrower: (A) The amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Multiplier may collect from the Borrower even if Multiplier, by foreclosing on the real property collateral, has destroyed any right the Borrower may have to collect from the other Borrower. This is an unconditional and irrevocable waiver of any rights and defenses the Borrower may have because any other Borrower's Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure. Each Borrower waives all rights and defenses arising out of an election of remedies by Multiplier, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Borrower's rights of subrogation and reimbursement against another Borrower or any other Person by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

(e) Independent Liability. Each Borrower hereby agrees that one or more successive or concurrent actions may be brought hereon against Borrower, in the same action in which any other Borrower may be sued or in separate actions, as often as deemed advisable by Multiplier. Each Borrower is fully aware of the financial condition of each other Borrower and is executing and delivering this Agreement based solely upon its own independent investigation of all matters pertinent hereto, and Borrower is not relying in any manner upon any representation or statement of Multiplier with respect thereto. Each Borrower represents and warrants that it is in a position to obtain, and each Borrower hereby assumes full responsibility for obtaining, any additional information concerning any other Borrower's financial condition and any other matter pertinent hereto as Borrower may desire, and Borrower is not relying upon or expecting Multiplier to furnish to it any information now or hereafter in Multiplier's possession concerning the same or any other matter.

(f) Subordination. All indebtedness of a Borrower now or hereafter arising held by another Borrower is subordinated to the Obligations and the Borrower holding the indebtedness shall take all actions reasonably requested by Multiplier to effect, to enforce and to give notice of such subordination.

8.19 Mutual Waiver of Jury Trial. MULTIPLIER AND BORROWER EACH ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED. EACH OF THE PARTIES, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), ACTION OR INACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY MULTIPLIER OR BORROWER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. IF FOR ANY REASON THE PROVISIONS OF THIS SECTION ARE VOID, INVALID OR UNENFORCEABLE, THE SAME SHALL NOT AFFECT ANY OTHER TERM OR PROVISION OF THIS AGREEMENT, AND ALL OTHER TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE UNAFFECTED BY THE SAME AND CONTINUE IN FULL FORCE AND EFFECT.

[Signatures on Next Page]

Borrower:

WINC, INC.

By /s/ Matthew Thelen
TitleSecretary

Borrower:

BWSC, LLC

By /s/ Matthew Thelen
TitleSecretary

Multiplier:

MULTIPLIER CAPITAL II, LP

By:Multiplier Capital II GP, LLC,
Its General Partner

By /s/ Kevin Sheehan
TitleManaging Member

[Signature Page to Loan and Security Agreement]

Schedule to

Loan and Security Agreement

Borrower: **Winc, Inc, a Delaware corporation**
BWSC, LLC, a California limited liability company

Address: **5340 Alla Road, Suite 105**
Los Angeles, CA 90066

Date: **December 29, 2017**

This Schedule is an integral part of the Loan and Security Agreement between Multiplier Capital II, LP ("Multiplier") and the borrowers named above (jointly and severally, "Borrower") of even date.

1. LOAN AMOUNT (Section 1.1): $5,000,000 (the "Total Loan Amount").

The Loan shall be disbursed and repaid as follows:

(1) Disbursement of Loan. Subject to the terms and conditions in this Agreement, the Loan shall be disbursed to the Borrower, in two disbursements, as Borrower shall direct, as follows:

(a) the first disbursement of $4,000,000 shall occur within ten Business Days after the date hereof; and

(b) the second disbursement of $1,000,000 shall occur on or before January 31, 2018 (the "Second Disbursement").

(2) Principal Payments. The principal of the Loan shall be repaid in equal monthly principal payments of $138,888.88 each, commencing Nineteen (19) Months After the Disbursement Date and continuing on the same day of each month thereafter until the Maturity Date, and on which date the entire unpaid principal balance of the Loan and all accrued and unpaid interest thereon shall be due and payable.

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(3) Interest Payments. Accrued interest on the Loan shall be paid monthly as provided in Section 1.3 of this Loan Agreement.

2. INTEREST.

Interest Rate (Section 1.3): The interest rate in effect throughout each calendar month shall be the highest Prime Rate in effect during such month, plus 6.25% per annum, provided that the interest rate in effect in each month shall not be less than 11.50% per annum, nor more than 14.00% per annum. Interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. Prime Rate has the meaning set forth in Section 7 above.

3. FEES (Section 1.4):

Loan Fee: $175,000, fully-earned on the date hereof, payable as follows:

(i) $60,000 concurrently herewith;

(ii) $15,000 as of the date of the making of the Second Disbursement; and

(iii) $100,000 ("Loan Fee-Third Installment") on the earliest of (a) the Maturity Date or (b) the date the Loan is paid in full or (c) the date of any Event of Default upon the acceleration of the Obligations. In the event of any partial prepayment of the principal of the Loan, a pro-rata portion of the Loan Fee-Third Installment shall be paid concurrently with such prepayment.

Prepayment Fee: An amount equal to:

(i) 5.00% of the amount prepaid, if the prepayment occurs on or prior to the first anniversary of the Disbursement Date,

(ii) 3.00% of the amount prepaid, if the prepayment occurs after the first anniversary of the Disbursement Date and on or prior to the second anniversary of the Disbursement Date, and

(iii) 1.00% of the amount prepaid, if the prepayment occurs after the second anniversary of the Disbursement Date.

4. MATURITY DATE
(Section 5.1): **June 29, 2022.**

5. REPORTING
(Section 4.2): Borrower, at its expense, shall provide Multiplier with the following reports:

(a) Monthly financial statements within 30 days after the end of each month;

(b) Quarterly financial statements within 45 days after the end of each fiscal quarter;

(c) Annual, unqualified financial statements, audited by independent certified public accountants acceptable to Multiplier, within 150 days after the end of each fiscal year of Borrower; and

(d) Compliance certificates, showing compliance with the financial covenants set forth in this Agreement and confirming that no Defaults have occurred, at such intervals and times as Multiplier shall specify.

6. FINANCIAL COVENANTS.
(Section 4.8):

Parent shall comply with the following financial covenants (on a consolidated basis).

Minimum Cash — Borrower shall maintain at all times unrestricted cash in demand Deposit Accounts in Borrower's sole name in the United States in a total amount not less than $1,250,000.

Adjusted EBITDA: Parent shall maintain Adjusted EBITDA of not less than the following amounts during the following periods:

Period	Minimum Adjusted EBITDA *
Three months ending December 31, 2017	[$1,400,000]
Six months ending March 31, 2018	[$1,800,000]
Nine months ending June 30, 2018	[$1,700,000]
Twelve months ending September 30, 2018	[$1,500,000]
Twelve months ending December 31, 2018	[$350,000]
**	**

* Numbers in brackets ("[ ]") are negative numbers.

**For periods ending after December 31, 2018, the above covenant shall be determined as follows: On or before December 31, 2018, and on or before December 31 of each year thereafter, Borrower shall submit to Multiplier projections for the then following one-year period, on a quarterly basis, as approved by Borrower's Board of Directors, which shall include projections of Adjusted EBITDA for such periods, and Multiplier and Borrower shall attempt to agree in writing on the amount of the minimum Adjusted EBITDA which Borrower shall be required to maintain for such periods. If for any reason Borrower and Multiplier are not able to agree in writing on the same, prior to March 15 of such following year, then the minimum Adjusted EBITDA that the Borrower shall be required to maintain shall be determined by Multiplier in its Good Faith Business Judgment.

Definitions: "Adjusted EBITDA" shall mean for any applicable period the net income of Borrower for such period, before interest, taxes, depreciation and other non-cash amortization expenses, determined in accordance with GAAP, less capital software development expenses.

7. ADDITIONAL PROVISIONS.

(a) **Additional Conditions Precedent.** In addition to any other conditions to the first disbursement of the Loan set forth in this Agreement, the first disbursement of the Loan is subject to the following additional conditions precedent:

(1) **Closing of Equity Financing**. As of the date hereof, Parent shall have provided written evidence acceptable to Multiplier that Parent has received aggregate net cash proceeds of at least $9,000,000 from the closing of the Equity Financing Transaction (as defined below) through the date hereof.

"Equity Financing Transaction" means the stock purchase transaction under the Series B-1 Preferred Stock Purchase Agreement dated as of July 17, 2017 by and among Winc, Inc. and the purchasers party thereto.

(2) **Revolving Loan Intercreditor Agreement**. Multiplier will enter into an Intercreditor Agreement (the "Revolving Loan Intercreditor Agreement") with Western Alliance Bank (the "Revolving Loan Lender"), which Revolving Loan Lender will provide Borrower with a revolving line of credit in an amount up to $8,000,000, and which Revolving Loan Intercreditor Agreement will provide for security interest priorities in the assets of the Borrower between Revolving Loan Lender and Multiplier as are acceptable to Multiplier and otherwise containing such terms and conditions as are acceptable to Multiplier.

(3) **Payment of Existing Indebtedness.** All Indebtedness owing to Super G Capital, LLC (formerly known as Super G Funding, LLC) is paid in full.

(b) **Subordination of Inside Debt**. All present and future indebtedness of Borrower to its officers, directors and shareholders ("Inside Debt") shall, at all times, be subordinated to the Obligations pursuant to a subordination agreement on Multiplier's standard form. Borrower represents and warrants that there is no Inside Debt presently outstanding, except for the following: $12,196.04 owed by Xander Oxman to the Company in connection with the Company's payment of his personal AMEX credit card to enable

the Company to use his AMEX credit card for Company expenses. Prior to incurring any Inside Debt in the future, Borrower shall cause the person to whom such Inside Debt will be owed to execute and deliver to Multiplier a subordination agreement on Multiplier's standard form.

(c) **Warrants.** Parent shall concurrently issue to Multiplier ten-year warrants to purchase 859,644 shares of Series B-1 Preferred stock of Parent at a purchase price of $1.31 per share, on the terms set forth in Multiplier's standard form Warrant to Purchase Stock.

(d) **Subsidiaries; No Certificated LLC Units.** Borrower represents and warrants that it has no partially-owned or wholly-owned Subsidiaries that are not Borrowers hereunder. Further, Borrower represents and warrants that Parent owns 100% of the ownership interests in BWSC, LLC. Borrower represents and warrants that none of the ownership interests in the Borrowers that are limited liability companies are represented by certificated securities, and Borrower agrees that no such ownership interests shall be converted to certificated securities without prior written notice to Multiplier and without Borrower taking such steps to perfect and protect Multiplier's security interest therein as Multiplier shall request in its Good Faith Business Judgment.

(e) **No Foreign Assets.** Borrower represents and warrants that it does not have, and covenants that during the term of this Agreement, it will not have, any assets located outside the United States.

(f) **Deposit Accounts.** Borrower represents and warrants that it has no Deposit Accounts with any institution other than with Revolving Loan Lender. Within 30 days of the date hereof, Borrower, Revolving Loan Lender and Multiplier shall enter into a control agreement with Multiplier, in form and substance satisfactory to Multiplier in its Good Faith Business Judgment and sufficient to perfect Multiplier's security interest in said Deposit Accounts, subject to the Revolving Loan Intercreditor Agreement.

(g) **Website Rider.** The provisions of the Website Rider attached hereto as Exhibit A are incorporated herein by this reference.

(h) **Third Party Landlord/Warehouseman Agreements**. Within 30 days of the date hereof, Borrower shall cause its landlord and all other owners, bailees or landlords of locations where Collateral is stored to enter into an appropriate landlord agreements, warehouseman agreements or other third party agreements as Multiplier shall determine and in form acceptable to Multiplier in its Good Faith Business Judgment.

(i) **Intellectual Property Security Agreements**. Borrower has provided exhibits to the intellectual property security agreements being delivered to Multiplier. These exhibits are being confirmed as of the date hereof. Without limitation of any of the terms or provisions hereof, Borrower hereby covenants and agrees that Borrower will fully cooperate with Multiplier to verify and confirm that the information listed on such exhibits is accurate and complete within five Business Days of the date hereof.

(j) **Insurance**. Within ten Business Days of the date hereof, Borrower shall provide lender loss payee endorsements and additional insured endorsements with respect to its insurance policies as are acceptable to Multiplier in its Good Faith Business Judgment.

[Signatures on Next Page]

Borrower:

WINC, INC.

By /s/ Matthew Thelen
Title Secretary

Multiplier:

MULTIPLIER CAPITAL II, LP

By: Multiplier Capital II GP, LLC,
Its General Partner

By /s/ Kevin Sheehan
Title Managing Member

Borrower:

BWSC, LLC

By /s/ Matthew Thelen
Title Secretary

[Signature Page to the Schedule to Loan and Security Agreement]

Exhibit 10.4(a)

Consent and First Amendment to Loan and Security Agreement

Borrower: Winc, Inc., a Delaware corporation
BWSC, LLC, a California limited liability company

Address: 5340 Alla Road, Suite 105
Los Angeles, CA 90066

Date: December 23, 2020

This Consent and First Amendment to Loan and Security Agreement and Forbearance Agreement (this "Agreement") is entered into on the above date, by and between the borrower(s) named above (jointly and severally, individually and collectively, "Borrower"; each use of the term Borrower herein shall mean each Borrower individually and all of such Borrowers collectively), and Multiplier Capital II, LP, a Delaware limited partnership, in its capacity as a Lender ("Lender").

RECITALS:

WHEREAS, Borrower and Lender are parties to that certain Loan and Security Agreement dated as of December 29, 2017 (as from time to time amended, restated, supplemented or otherwise modified, the "Loan Agreement"), pursuant to which Lender has agreed to make loans and other extensions of credit to Borrower in accordance with the terms thereof;

WHEREAS, Borrower has also requested that Lender make certain amendments to the Loan Agreement, and Lender is willing to do so, subject to the terms and conditions set forth in this Agreement;

WHEREAS, Borrower has also requested that Lender consent to Borrower receiving a secured loan from Pacific Mercantile Bank, in the aggregate principal amount of approximately

$7,000,000 (the "Senior Loan"), and Lender is willing to do so, subject to the terms and conditions set forth in this Amendment;

WHEREAS, subject to the terms and conditions of this Agreement, and in reliance on Borrower's agreements, acknowledgments, representations, and warranties in this Agreement, Lender has agreed to (i) amend certain provisions of the Loan Agreement, and (ii) consent to Borrower receiving the Senior Loan, as set forth below, as set forth below, subject to the terms and conditions of this Agreement; and

---

WHEREAS, this Agreement shall constitute a Loan Document and capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and the agreements, promises and covenants set forth below, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1 Consent.

A. Notwithstanding any other provision of the Loan Agreement to the contrary, Lender hereby consents to the incurrence by Borrower of the Senior Loan for so long as each such loan is considered "Permitted Indebtedness" under the Loan Agreement. The consent set forth herein shall be effective only in the specific instance and for the specific purpose set forth herein and shall neither extend to any other violations under, or default of, the Loan Agreement or any of the other Loan Documents, nor shall this consent prejudice any rights or remedies of Lender under the Loan Agreement and the other Loan Documents with respect to matters not specifically addressed hereby.

Section 2 Amendments.

A. Section 7 of the Schedule (Additional Provisions) to the Loan Agreement is hereby amended by amending and restating clause (a) (2) in its entirety as follows:

(2) **Revolving Loan lntercreditor Agreement.** Multiplier will enter into an Intercreditor Agreement (the "Revolving Loan Intercreditor Agreement") with Pacific Mercantile Bank (the "Revolving Loan Lender"), which Revolving Loan Lender will provide Borrower with a revolving line of credit in an amount up to $7,000,000, and which Revolving Loan Intercreditor Agreement will provide for security interest priorities in the assets of the Borrower between Revolving Loan Lender and Multiplier as are acceptable to Multiplier and otherwise containing such terms and conditions as are acceptable to Multiplier.

Section 3 Representations and Warranties. To induce Lender to enter into this Agreement, Borrower represents and warrants that:

(a) No Default. After giving effect to this Agreement, no Default or Event of Default shall have occurred or be continuing as of the date hereof;

(b) Representations and Warranties. No event has occurred and is continuing or would result from the execution, delivery or performance of this Agreement which constitutes an Event of Default and, after giving effect to this Agreement and the transactions contemplated hereby, the representations and warranties of Borrower contained in the Loan Documents are true, accurate and complete in all material respects on and as of the date hereof to the same extent as though made on and as of such date except to the extent such representations and warranties specifically relate to an earlier date, in which case such representation or warranty shall be true, accurate and complete in all material respects as of such earlier date; and

---

(c) Corporate Authority. (i) The execution, delivery and performance by Borrower of this Agreement is within its corporate powers and has been duly authorized by all necessary corporate action on the part of Borrower, (ii) this Agreement is the legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms (except as enforcement may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to creditors' rights generally), and (iii) neither the execution, delivery or performance by Borrower of this Agreement (1) violates any law or regulation, or any other decree of any governmental authority, (2) conflicts with or result in the breach or termination of, constitute a default under any material indenture, mortgage, deed of trust, lease, agreement or other instrument to which Borrower is a party or by which Borrower or any of its property is bound, (3) result in the acceleration of any performance required by any indenture, mortgage, deed of trust, lease, agreement or other instrument to which Borrower is a party or by which Borrower or any of its property is bound, (4) results in the creation or imposition of any lien upon any of the Collateral, (5) violates or conflicts with the certificate of incorporation, bylaws or other similar organizational or formation documents of Borrower, or (6) requires the consent, approval or authorization of, or declaration or filing by Borrower with, any other Person, except for those already duly obtained.

Section 4 Conditions Precedent to Effectiveness of this Agreement. The effectiveness of this Agreement is subject to the following conditions precedent:

(a) No Default. After giving effect to this Agreement, no Default or Event of Default under the Loan Agreement shall have occurred or be continuing as of the date of this Agreement;

(b) Representations and Warranties. After giving effect to this Agreement and the transactions contemplated hereby, the representations and warranties of Borrower contained in the Loan Documents are true, accurate and complete in all material respects on and as of the date hereof, with the same effect as though made on and as of such date, except to the extent that such representations and

warranties specifically relate to an earlier date, and all such representations or warranties (except those relating to an earlier date and in which case such representation or warranty shall be true, accurate and complete in all material respects as of such earlier date) are hereby remade by Borrower as of the date hereof; and

(c) Executed Agreement. Lender shall have received from Borrower a copy of this Agreement (with an original to follow promptly thereafter), duly authorized, executed and delivered, and the Agreement shall constitute a Loan Document.

(d) Modification Fee. Lender shall have received from Borrower a fully-earned and non-refundable modification fee of Ten Thousand Dollars ($10,000.00).

Section 5 Miscellaneous.

(a) Binding Obligation. This Agreement has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

(b) Ratification. Notwithstanding anything contained herein, the terms of this Agreement are not intended to and do no effect a novation of the Loan Agreement or any other Loan Document. Borrower hereby ratifies and reaffirms each of the terms and conditions of the Loan Documents to which it is party and all of its obligations thereunder.

(c) Limitation; Reservation of Rights. The waiver and amendments set forth in this Agreement shall be limited precisely as written and shall not be deemed (a) to be a waiver or modification of any Event of Default, or any other term or condition of any Loan Document or of any other instrument or agreement referred to therein or to prejudice any right or remedy which Lender may now have or may have in the future under or in connection with the Loan Documents or any instrument or agreement referred to therein; or (b) to be a consent to any future amendment or modification or waiver to any instrument or agreement the execution and delivery of which is consented to hereby, or to any waiver of any of the provisions thereof. Except for the amendments set forth herein, Lender hereby expressly reserves all of its rights and remedies under the Loan Documents and at law and equity. Except as expressly amended hereby, the Loan Documents shall continue in full force and effect.

(d) Releases. In further consideration of Lender's execution of this Agreement, Borrower for itself and on behalf of its respective successors (including, without limitation, any trustees acting on behalf of Borrower and any debtor-in-possession with respect to Borrower), assigns, subsidiaries and affiliates, hereby forever releases Lender and its successors, assigns, parents, subsidiaries, affiliates, officers, employees directors, agents and attorneys (collectively, the "Releasees") from any and all debts, claims, demands, liabilities, responsibilities, disputes, causes, damages, actions and causes of action (whether at law or in equity) and obligations of every nature whatsoever, whether liquidated or unliquidated, known or unknown, matured or unmatured, fixed or contingent, that Borrower may have against the Releaseees which arise from or relate to any actions which the Releasees may have taken or omitted to take prior to the date this Agreement was executed with respect to the Obligations, any Collateral, the Loan Agreement, any other Loan Document and any third parties liable in whole or in part for the Obligations, other than arising out of the gross negligence or willful misconduct of such Releasee or its respective officers, employees directors, agents or attorneys as determined by a non-appealable decision of a court of competent jurisdiction. This provision shall survive and continue in full force and effect whether or not Borrower shall satisfy all other provisions of this Agreement, the Loan Documents or the Loan Agreement including payment in full of all Obligations.

(e) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of Borrower, Lender and their respective successors and assigns.

(f) ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS CONSTITUTE AND CONTAIN THE ENTIRE, FINAL AGREEMENT AND UNDERSTANDING CONCERNING THE SUBJECT MATTER HEREOF BETWEEN THE PARTIES HERETO, AND SUPERSEDES ALL OTHER PRIOR AGREEMENTS, UNDERSTANDINGS, NEGOTIATIONS AND DISCUSSIONS, REPRESENTATIONS, WARRANTIES, COMMITMENTS, PROPOSALS, OFFERS AND CONTRACTS CONCERNING THE SUBJECT MATTER HEREOF, WHETHER ORAL OR WRITTEN. THIS AGREEMENT, ANY SUPPLEMENTS HERETO, AND ANY INSTRUMENTS OR DOCUMENTS DELIVERED OR TO BE DELIVERED IN CONNECTION HEREWITH MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR

SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES HERETO.

(g) Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

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

(i) Counterparts. This Agreement may be executed in any number of separate original counterparts (or telecopied counterparts with original execution copy to follow) and by the different parties on separate counterparts, each of which shall be deemed to be an original, but all of such counterparts shall together constitute one agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

(j) Incorporation of Loan Agreement Provisions. This Agreement is executed pursuant to the Loan Agreement and shall be construed, administered and applied in accordance with the terms and provisions of the Loan Agreement. The provisions contained in Section 8.16 (Governing Law), Section 8.17 (Dispute Resolution) and Section 8.19 (Jury Trial) of the Loan Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed on the date first written above.

Borrower:

Winc, Inc.

By: /s/ Brian Smith
Name: Brian Smith
Title: President

BWSC, LLC

By: /s/ Brian Smith
Name: Brian Smith
Title: President

Lender :

MULTIPLIER CAPITAL II, LP.

By: Multiplier Capital II GP, LLC,
Its General Partner

By: /s/ Ray Boone
Name: Ray Boone
Title: Managing Member

Exhibit 10.5

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**") is made as of May 12, 2021 (the "**Agreement Date**"), by and among BWSC, LLC, a California limited liability company (the "**Buyer**"), Natural Merchants, Inc., an Oregon corporation (the "**Seller**"), and Edward Field, an individual and sole shareholder of the Seller (the "**Owner**"). Each of the Seller, the Buyer, and the Owner are sometimes referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**."

RECITALS

WHEREAS, the Seller desires to sell, assign, transfer, and deliver to the Buyer, and the Buyer desires to purchase, acquire, and accept from the Seller, the Purchased Assets (defined below) and assume the Assumed Liabilities (defined below), subject to the terms and conditions set forth herein;

WHEREAS, the Buyer is a wholly-owned subsidiary of Winc, Inc., a Delaware corporation ("**Winc**"), and Winc will have contributed to Buyer immediately prior to the Closing five hundred seventy-one thousand four hundred twenty-eight (571,428) shares of Winc Series F Preferred Stock, par value $0.0001 per share (the "**Winc Preferred Shares**");

WHEREAS, all of the issued and outstanding equity interests of the Seller are held beneficially and of record by the Owner and, as an inducement for the Buyer to enter into this Agreement, the Owner has agreed to guarantee the obligations of the Seller hereunder;

WHEREAS, the Owner has been intimately involved with the operations and development of the Seller, such that the Seller has become highly dependent upon the Owner's reputation in the industry, the Owner's expertise and skills, the Owner's knowledge of the industry and of the Seller, and the Owner's relationships with the Seller's customers and suppliers, all of which have resulted in the Owner personally acquiring and maintaining substantial goodwill relating to the Business (defined below) that is valuable to the Seller and the Business (defined below) (the "**Personal Goodwill**");

WHEREAS, the Owner's Personal Goodwill is owned by the Owner independently of, and separate and apart from, the Owner's direct and indirect ownership of equity in the Seller, there being no employment, noncompetition, or other agreements between the Owner and the Seller that would require the Owner to transfer the Personal Goodwill to the Seller; and

WHEREAS, it is a condition to the Buyer's obligation to purchase the Purchased Assets under this Agreement that the Owner contemporaneously sell to the Buyer the Personal Goodwill pursuant to the Personal Goodwill Sale Agreement (defined below).

NOW, THEREFORE, in consideration of the covenants and representations set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Certain Definitions. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

(a) "**Accounting Principles**" shall mean the accounting principles, methods and practices used in preparing the Annual Financial Statements.

(b) "**Action**" shall mean any civil, criminal, or administrative action, claim, suit, demand, charge, citation, reexamination, opposition, interference, decree, injunction, mediation, hearing, notice of violation, demand letter, litigation, proceeding,

labor dispute, arbitral action, governmental or other audit, inquiry, criminal prosecution, investigation, unfair labor practice charge, or complaint.

(c) "**Adjustment Escrow Account**" shall have the meaning set forth in Section 2.04.

(d) "**Adjustment Escrow Amount**" shall mean one hundred sixty thousand dollars ($160,000).

(e) "**Affiliate**" shall mean (i) with respect to any non-natural Person, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person and (ii), with respect to any individual, (A) family members of such individual, by blood, adoption, or marriage, (B) such individual's spouse or ex-spouse, and (C) any Person that is directly or indirectly under the control of any of the foregoing individuals. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by," and under "common control with") means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by Contract, or otherwise.

(f) "**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

(g) "**Agreement Date**" shall have the meaning set forth in the preamble to this Agreement.

(h) "**Allocation**" shall have the meaning set forth in Section 2.03.

(i) "**Annual Financial Statements**" has the meaning set forth in Section 3.11(a).

(j) "**Anti-Corruption Laws**" shall mean the U.S. Foreign Corrupt Practices Act of 1977 and any other anti-corruption or anti-bribery Laws applicable to the Seller.

(k) "**Arbitration Firm**" shall have the meaning set forth in Section 2.05(c).

(l) "**Assigned Contracts**" shall have the meaning set forth in Section 2.01(a).

(m) "**Assumed Liabilities**" shall have the meaning set forth in Section 2.02.

(n) "**Basket**" shall have the meaning set forth in Section 7.06.

(o) "**Bill of Sale and Assignment and Assumption Agreement**" shall have the meaning set forth in Section 6.02(c).

(p) "**Business**" shall mean the distribution, marketing, importation, and sale of wine and related products as conducted by the Seller as of the last twelve (12) months immediately prior to the Closing.

(q) "**Business Day**" shall mean any day other than a Saturday or Sunday or other day on which banks are required or authorized to close in Los Angeles, California.

(r) "**Buyer**" shall have the meaning set forth in the preamble to this Agreement.

(s) "**Buyer Indemnified Parties**" shall have the meaning set forth in Section 7.02.

(t) "**Closing**" shall have the meaning set forth in Section 6.01.

(u) "**Closing Cash Payment**" shall have the meaning set forth in Section 2.04.

(v) "**Closing Date**" shall have the meaning set forth in Section 6.01.

(w) "**Closing Date Net Working Capital**" shall mean the Net Working Capital as of 11:59 p.m. on the date immediately preceding the Closing Date.

(x) "**Closing Date Statement**" shall have the meaning set forth in Section 2.05(b).

(y) "**Code**" shall have the meaning set forth in Section 2.03.

(z) "**Confidential Information**" shall mean any and all technical, business and other information of, or relating to, the Business or the Purchased Assets that are not generally known to other Persons, whether or not constituting a trade secret, including technical or non-technical data, compositions, devices, methods, techniques, drawings, inventions, know-how, processes, financial data, financial plans, audit plans, lists of actual and potential customers or suppliers, information regarding acquisition and investment plans and strategies, business plans, or operations. Confidential Information includes any such information of Third Parties that Seller is obligated to or does keep or treat as confidential.

(aa) "**Consulting Agreement**" shall have the meaning set forth in Section 6.02(c).

(bb) "**Contract**" shall have the meaning set forth in Section 2.01(a).

(cc) "**COVID-19**" means the diseases caused by SARS-CoV-2 virus or COVID-19, and any evolutions or mutations thereof or related and/or associated epidemics, pandemic or disease outbreaks.

(dd) "**COVID-19 Effect**" means any event, condition, state of facts, change, occurrence, circumstance or development related to: (a) the presence, transmission, threat or fear of COVID-19; or (b) any mandatory or advisory restriction, quarantine, "shelter in place," "stay at home," workforce reduction, remote or telework policy, social distancing, shut down, closure, sequester or other Law issued by any Governmental Body in connection with, or in response to, COVID-19.

(ee) "**Current Assumed Liabilities**" shall mean the current Assumed Liabilities of the Seller (consisting solely of the line item current Liabilities specified in the NWC Example), calculated using the methodologies set forth in the NWC Example.

(ff) "**Current Purchased Assets**" shall mean the current Purchased Assets of the Seller (consisting solely of the line item current assets specified in the NWC Example), calculated using the methodologies set forth in the NWC Example.

(gg) "**Direct Claim**" shall have the meaning set forth in Section 7.04(c).

(hh) "**Disclosure Schedules**" shall mean those disclosure schedules being delivered by the Seller on the date hereof and attached hereto as **Exhibit A**.

(ii) "**Dispute Notice**" shall have the meaning set forth Section 2.05(c).

(jj) "**Earn-Out Objection Statement**" shall have the meaning set forth in Section 2.06(f).

(kk) "**Earn-Out Statements**" shall have the meaning set forth in Section 2.06(d).

(ll) "**Employee Benefit Plan**" shall mean, with respect to any Person, each plan, fund, program, agreement, arrangement or scheme, including each plan, fund, program, agreement, arrangement or scheme maintained or required to be maintained under applicable Laws, that is at any time sponsored or maintained, or required to be sponsored or maintained, by such Person or to which such Person makes or has made, or has or has had an obligation to make, contributions providing benefits to the current and former employees, directors, managers, officers, consultants, independent contractors, contingent workers or leased employees of such Person or the dependents of any of them (whether written or oral), or with respect to which such Person has any liability or obligation, including (i) each deferred compensation, bonus, incentive compensation, pension, retirement, employee stock ownership, stock purchase, stock option, profit sharing or deferred profit sharing, stock appreciation, phantom stock plan and other equity compensation plan, "welfare" plan (within the meaning of Section 3(1) of ERISA, determined without regard to whether such plan is subject to ERISA); (ii) each "pension" plan (within the meaning of Section 3(2) of ERISA, determined without regard to whether such plan is either subject to ERISA or is tax-qualified under the Code); (iii) each severance plan or agreement, and each other plan providing health, vacation, supplemental unemployment benefits, hospitalization insurance, medical, dental, disability, life insurance, death or survivor benefits, fringe benefits or legal benefits; and (iv) each other employee benefit plan, fund, program, agreement, or arrangement.

(mm) "**Environmental Laws**" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq., and all other applicable Laws, in each case in effect as of the Agreement Date, relating to (i) pollution or the protection of the environment; (ii) human exposure to any Hazardous Material; (iii) worker health and safety; or (iv) the use, generation, storage, treatment, manufacture, distribution, transportation, processing, handling, disposal, or release of any Hazardous Material, petroleum, petroleum products, petroleum by-products, or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls, or any chemical, material, or substance defined or regulated as toxic or hazardous or as a pollutant, contaminant, or waste.

(nn) "**Environmental Permits**" shall mean any local, state, or federal permit, approval, identification number, certification, license, or other authorization required under, or issued pursuant to, any applicable Environmental Law.

(oo) "**Equitable Exceptions**" shall have the meaning set forth in Section 3.02.

(pp) "**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended.

(qq) "**Escrow Agent**" shall have the meaning set forth in Section 2.04.

(rr) "**Escrow Agreement**" shall have the meaning set forth in Section 6.02(c).

(ss) "**Escrow Deficit**" shall have the meaning set forth in Section 2.05(c)(iv).

(tt) "**Estimated Closing Date Net Working Capital**" shall have the meaning set forth in Section 2.05(a).

(uu) "**Estimated Closing Statement**" shall have the meaning set forth in Section 2.05(a).

(vv) "**Estimated Purchase Price**" shall have the meaning set forth in Section 2.05(a).

(ww) "**Estimated Working Capital Decrease**" shall mean the amount, if any, by which the Estimated Closing Date Net Working Capital is less than the Target Net Working Capital.

(xx) "**Estimated Working Capital Increase**" shall mean the amount, if any, by which the Estimated Closing Date Net Working Capital exceeds the Target Net Working Capital.

(yy) "**Excluded Assets**" shall have the meaning set forth in Section 2.01.

(zz) "**Excluded Liabilities**" shall have the meaning set forth in Section 2.02.

(aaa) "**Excluded Taxes**" shall mean (i) all Taxes with respect to the Purchased Assets and the Business for a taxable period (or portion of a Straddle Period) ending on the Closing Date, and (ii) all Taxes of the Seller (excluding the Buyer's portion of any Transfer Taxes for which the Buyer is liable in accordance with Section 9.02).

(bbb) "**Expiration Date**" shall have the meaning set forth in Section 8.01(e).

(ccc) "**FDA**" shall mean the United States Food and Drug Administration.

(ddd) "**Final Purchase Price**" shall have the meaning set forth in Section 2.05(c).

(eee) "**Financial Statements**" has the meaning set forth in Section 3.11(a).

(fff) "**Fundamental Representations**" shall have the meaning set forth in Section 7.01.

(ggg) "**GAAP**" means United States generally accepted accounting principles, consistently applied.

(hhh) "**General Survival Date**" shall have the meaning set forth in Section 7.01.

(iii) "**Governmental Body**" shall mean any: (i) nation, province, state, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, provincial, state, local, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

(jjj) "**Hazardous Materials**" shall mean (i) any chemical, material or substance that is defined as, or included in the definition of, "waste," "recycled materials," "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under any applicable Environmental Law, (ii) any petroleum or petroleum products, diesel fuel, gasoline, radioactive materials, acids, caustics, asbestos, urea formaldehyde foam insulation, transformers, or other equipment that contain dielectric fluid containing polychlorinated biphenyls, noise, odors, mold and radon gas; or (iii) any chemicals, materials or substances that are regulated by, or controlled pursuant to, any Environmental Laws.

(kkk) "**Indebtedness**" shall mean, without duplication and with respect to the Seller, whether or not contingent, all: (i) indebtedness for borrowed money; (ii) obligations for the deferred purchase price of property or services (other than Current Assumed Liabilities taken into account in the calculation of Net Working Capital), (iii) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (iv) obligations under any interest rate, currency swap, or other hedging agreement or arrangement; (v) capital lease obligations; (vi) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (vii) guarantees made by the Seller on behalf of any third party (including the Owner) in respect of obligations of the kind referred to in the foregoing clauses (i) through (vi); and (viii) any unpaid interest, prepayment penalties, premiums, costs and fees related to the obligations referred to in the foregoing clauses (i) through (vii).

(lll) "**Indemnification Escrow Account**" shall have the meaning set forth in Section 2.04.

(mmm) "**Indemnification Escrow Amount**" shall mean one million dollars ($1,000,000.00).

(nnn) "**Indemnified Party**" shall mean a Buyer Indemnified Party or a Seller Indemnified Party, as the case may be, making a claim for indemnification under Article VII.

(ooo) "**Indemnifying Party**" shall mean a Party against whom a claim for indemnification is asserted under Article VII.

(ppp) "**Indemnity Cap**" shall have the meaning set forth in Section 7.05.

(qqq) "**Initial Indemnity Release Amount**" shall have the meaning set forth in Section 7.08.

(rrr) "**Insurance Policies**" shall have the meaning set forth in Section 3.26.

(sss) "**Intellectual Property**" shall mean any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of, and symbolized by, the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) websites and internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement and any other rights relating to any of the foregoing).

(ttt) "**Interim Balance Sheet**" has the meaning set forth in Section 3.11(a).

(uuu) "**Interim Balance Sheet Date**" has the meaning set forth in Section 3.11(a).

(vvv) "**Interim Financial Statements**" has the meaning set forth in Section 3.11(a).

(www) "**Interim Period**" shall have the meaning set forth in Section 5.01.

(xxx) "**IP Assignment Agreement**" shall have the meaning set forth in Section 6.02(c).

(yyy) "**Knowledge**" shall mean, with respect to the Seller, the actual or constructive knowledge of the Owner and Pilar Meroño Cerdán, after due inquiry.

(zzz) "**Law**" shall mean any law, statute, ordinance, regulation, rule, code, notice requirement, court decision, or agency guideline, of any foreign, federal, state, or local Governmental Body.

(aaaa) "**Liabilities**" shall mean any direct or indirect liability, Indebtedness, obligation, commitment, expense, claim, deficiency, guaranty, or endorsement of, or by, any Person of any type, known or unknown, and whether accrued, absolute, contingent, matured, unmatured, determined or undeterminable, on- or off-balance sheet, or otherwise.

(bbbb) "**Lien**" shall mean any mortgage, pledge, lien, charge, claim, security interest, adverse claims of ownership or use, restrictions on transfer, defect of title, or other encumbrance of any sort.

(cccc) "**Losses**" shall have the meaning set forth in Section 7.02.

(dddd) "**Material Customer**" shall have the meaning set forth in Section 3.19.

(eeee) "**Material Supplier**" shall have the meaning set forth in Section 3.19.

(ffff) "**Net Working Capital**" shall mean an amount (which may be a negative or positive number) in dollars equal to (a) the Current Purchased Assets *minus* (b) the Current Assumed Liabilities. For the avoidance of doubt, Net Working Capital shall be calculated prior to the application of purchase accounting and without taking into consideration the transactions contemplated by this Agreement.

(gggg) "**Notice of Claim**" shall have the meaning set forth in Section 7.04(c).

(hhhh) "**NWC Example**" shall mean the Net Working Capital illustration and the principles set forth on **Exhibit B**, determined according to the Accounting Principles.

(iiii) "**Organizational Documents**" shall mean, with respect to a Person, the charter, bylaws, limited liability company agreement, and other organizational documents of such Person, in each case, together with any amendments thereto.

(jjjj) "**Outstanding Claim**" shall have the meaning set forth in Section 7.08.

(kkkk) "**Owner**" shall have the meaning set forth in the preamble to this Agreement.

(llll) "**Party**" or "**Parties**" shall have the meaning set forth in the preamble to this Agreement.

(mmmm) "**Performance Earn-Out Amounts**" shall have the meaning set forth in Section 2.06(b).

(nnnn) "**Permit**" shall have the meaning set forth in Section 2.01(d).

(oooo) "**Permitted Liens**" shall mean (i) Liens for Taxes not yet delinquent or being contested in good faith by appropriate proceedings and for which sufficient reserves have been established, (ii) statutory Liens (including materialmen's,

warehousemen's, mechanic's, repairmen's, landlord's, and other similar Liens) arising in the ordinary course of business securing payments not yet delinquent or being contested in good faith by appropriate proceedings and for which sufficient reserves have been established, and (iii) restrictive covenants, easements, and defects, imperfections or irregularities of title, if any, of a nature that do not materially and adversely affect the assets or properties subject thereto.

(pppp) "**Person**" shall mean any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, Governmental Body, or other entity.

(qqqq) "**Personal Goodwill**" shall have the meaning set forth in the recitals to this Agreement.

(rrrr) "**Personal Goodwill Sale Agreement**" shall have the meaning set forth in Section 6.02(c).

(ssss) "**Preferred Financing Documents**" shall mean, collectively, that certain Winc Seventh Amended and Restated Right of First Refusal and Co-Sale Agreement, effective April 6, 2021, that certain Winc Seventh Amended and Restated Voting Agreement, effective April 6, 2021, and that certain Winc Seventh Amended and Restated Investors' Rights Agreement, effective April 6, 2021.

(tttt) "**Product**" shall mean product imported, sold, or delivered by the Seller in connection with the Business.

(uuuu) "**Product Event**" shall have the meaning set forth in Section 3.22.

(vvvv) "**Property Taxes**" shall have the meaning set forth in Section 9.01.

(wwww) "**Purchase Price**" shall have the meaning set forth in Section 2.04.

(xxxx) "**Purchase Price Decrease**" shall have the meaning set forth in Section 2.05(c)(iv).

(yyyy) "**Purchase Price Increase**" shall have the meaning set forth in Section 2.05(c)(iii).

(zzzz) "**Purchased Assets**" shall have the meaning set forth in Section 2.01.

(aaaaa) "**Purchased IP**" shall have the meaning set forth in Section 2.01(c).

(bbbbb) "**Regulatory Laws**" shall mean the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.; the Federal Alcohol Administration Act, 27 U.S.C. §201 et seq.; the Federal Trade Commission Act, 15 U.S.C. §41 et seq.; the Organic Foods Production Act, 7 U.S.C. §6501-6524, the implementing regulations under the aforementioned statutes, and all other applicable Laws, in each case in effect as of the Agreement Date, relating to the development, testing, manufacturing, importation, distribution, labeling, advertising, or promotion of any Product.

(ccccc) "**Release**" shall mean any release, deposit, disposal, or leakage of any Hazardous Material at, into, upon, or under any land, water, or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement, and the like.

(ddddd) "**Restricted Business**" shall mean the Business as conducted immediately prior to the Closing.

(eeeee) "**Restricted Transfer**" shall have the meaning set forth in Section 5.03.

(fffff) "**Restriction Period**" shall have the meaning set forth in Section 5.06(a).

(ggggg) "**Review Period**" shall have the meaning set forth in Section 2.05(c).

(hhhhh) "**Sanctioned Person**" shall mean any Person that is: (i) listed on any Sanctions-related list of designated or blocked persons; (ii) resident in, or organized under the Laws of, a country or territory that is the subject of comprehensive restrictive

Sanctions (including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine); or (iii) majority-owned or controlled by any of the foregoing.

(iiiii) "**Sanctions**" shall mean economic or financial sanctions or trade embargoes imposed, administered, or enforced by: (i) the United States government, including those administered by the U.S. Department of the Treasury, Office of Foreign Assets Control; (ii) the European Union and implemented by its member States; (iii) the United Nations Security Council; or (iv) Her Majesty's Treasury of the United Kingdom.

(jjjjj) "**Satisfied Amount**" shall have the meaning set forth in Section 2.05(c)(iv).

(kkkkk) "**Securities Act**" shall mean the Securities Act of 1933, as amended.

(llllll) "**Seller**" shall have the meaning set forth in the preamble to this Agreement.

(mmmmm) "**Seller Benefit Plan**" shall mean each Employee Benefit Plan sponsored or maintained, or required to be sponsored or maintained, at any time, by the Seller or any of its Affiliates or to which the Seller or any of its Affiliates makes or has made, or has or has had an obligation to make, contributions at any time, or with respect to which, the Seller or any of its Affiliates has any Liability or obligation.

(nnnnn) "**Seller Indemnified Parties**" shall have the meaning set forth in Section 7.03.

(ooooo) "**Seller Indemnifying Parties**" shall have the meaning set forth in Section 7.02.

(ppppp) "**Seller Lease**" shall have the meaning set forth in Section 3.25.

(qqqqq) "**Straddle Period**" shall mean any Tax period beginning on or prior to the Closing Date and ending after the Closing Date.

(rrrrr) "**Tangible Personal Property**" shall have the meaning set forth in Section 2.01(b).

(sssss) "**Target Net Working Capital**" shall mean one million five hundred ninety thousand three hundred eighty-nine dollars ($1,590,389).

(ttttt) "**Tax**" or "**Taxes**" shall mean any U.S. federal, state, local or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, escheat, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

(uuuuu) "**Tax Returns**" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(vvvvv) "**Termination Fee Agreements**" has the meaning set forth in Section 5.07.

(wwwww) "**Third Party**" or "**Third Parties**" shall mean any Person other than the Parties or their respective Affiliates.

(xxxxx) "**Third-party Claim**" shall have the meaning set forth in Section 7.04(a).

(yyyyy) "**Total Merchandise Sales**" shall mean, for a given period, the gross revenue, net of discounts, allowances, rebates, and returns, in respect of any and all SKUs sold by the Business during such period, whether such SKUs are (i) currently existing on the date hereof, (ii) disclosed on the Product roadmap that is set forth on Section 1.01(1) of the Disclosure Schedules, (iii) sourced/produced in the future from the Business's suppliers as existing on the date hereof and disclosed on Section 1.01(2) of the Disclosure Schedules or (iv) are sourced/produced in the future from the Business's future suppliers, so long as, at the time of purchase from any such supplier, (x) neither Buyer nor any of its Affiliates has previously purchased product from such supplier, currently purchases product

from such supplier or is not in discussions with such supplier about a supplier arrangement and (y) the product purchased is in the natural, organic and/or biodynamic wine product category.

(zzzzz) "**Total Proceeds**" shall have the meaning set forth in Section 2.04.

(aaaaaa) **"Trade Laws"** shall mean any applicable Sanctions, export controls, and import Laws applicable to the Seller, including: (i) the United States Export Administration Act and implementing Export Administration Regulations; (ii) the Arms Export Control Act and implementing International Traffic in Arms Regulations; and (iii) the regulations of the United States Customs and Border Protection.

(bbbbbb) "**Transaction Agreements**" shall mean the Escrow Agreement, the Bill of Sale and Assignment and Assumption Agreement, the IP Assignment Agreement, the Consulting Agreement, the Personal Goodwill Sale Agreement, and each other agreement, instrument, and/or certificate contemplated by this Agreement or such other agreements to be executed in connection with the transactions contemplated hereby or thereby.

(cccccc) "**Transfer Taxes**" shall have the meaning set forth in Section 9.02.

(dddddd) "**Transferred Permits**" shall have the meaning set forth in Section 2.01(d).

(eeeeee) "**TTB**" shall mean the United States Alcohol and Tobacco Tax and Trade Bureau and any predecessor or successor agency.

(ffffff) "**Winc**" shall have the meaning set forth in the recitals to this Agreement.

(gggggg) "**Winc Preferred Shares**" shall have the meaning set forth in the recitals to this Agreement.

(hhhhhh) "**Wire Instructions**" shall have the meaning set forth in Section 2.03.

(iiiiii) "**Working Capital Decrease**" shall mean the amount, if any, by which the Closing Date Net Working Capital is less than the Target Net Working Capital.

(jjjjjj) "**Working Capital Increase**" shall mean the amount, if any, by which the Closing Date Net Working Capital exceeds the Target Net Working Capital.

(kkkkkk) "**2021 Base Amount**" shall have the meaning set forth in Section 2.06(a).

(llllll) "**2021 Earn-Out Period**" shall mean the period commencing on May 1, 2021 and ending on April 30, 2022.

(mmmmmm) "**2021 Earn-Out Statement**" shall have the meaning set forth in Section 2.06(c).

(nnnnnn) "**2021 Natural Merchants Revenue**" shall mean the Total Merchandise Sales, calculated in accordance with GAAP, for the 2021 Earn-Out Period.

(oooooo) "**2021 Performance Earn-Out Amount**" shall have the meaning set forth in Section 2.06(a).

(pppppp) "**2022 Base Amount**" shall have the meaning set forth in Section 2.06(b).

(qqqqqq) "**2022 Earn-Out Period**" shall mean the period commencing on May 1, 2022 and ending on April 30, 2023.

(rrrrrr) "**2022 Earn-Out Statement**" shall have the meaning set forth in Section 2.06(d).

(ssssss) "**2022 Natural Merchants Revenue**" shall mean the Total Merchandise Sales, calculated in accordance with GAAP, for the 2022 Earn-Out Period.

(tttttt) "**2022 Performance Earn-Out Amount**" shall have the meaning set forth in Section 2.06(b).

ARTICLE II
ASSIGNMENT AND TRANSFER AND CONSIDERATION

Section 2.01. Assignment of the Purchased Assets to the Buyer. Upon the terms and subject to the conditions set forth herein, the Seller shall sell, assign, transfer, and deliver, and the Buyer shall purchase, acquire, and accept from the Seller, all of the Seller's right, title, and interest in and to the assets, properties, and rights of every kind and nature, whether tangible or intangible (including goodwill) which relate to, or are used or held for use in connection with, the Business, free and clear of any Liens, but excluding the Excluded Assets. All of the foregoing (other than the Excluded Assets) are collectively referred to in this Agreement as the "**Purchased Assets**." Other than the Purchased Assets, the Buyer shall not purchase or acquire any other assets of the Seller (collectively, the "**Excluded Assets**"). A list of Excluded Assets shall be set forth on Section 2.01 of the Disclosure Schedules. Without limiting the foregoing, the Purchased Assets also include, without limitation, all right, title, and interest of the Seller in and to all of the following:

(a) all contracts, agreements, binding arrangements, bonds, notes, indentures, mortgages, debt instruments, licenses, franchises, leases, and other instruments or obligations of any kind, whether oral or written, and including any amendments and other modifications thereto (each, a "**Contract**") of the Seller and/or the Business set forth on Section 2.01(a) of the Disclosure Schedules (each, an "**Assigned Contract**" and, collectively, the "**Assigned Contracts**");

(b) all furniture, fixtures, office equipment, supplies, computers, telephones, and other tangible personal property, if any, set forth on Section 2.01(b) of the Disclosure Schedules (the "**Tangible Personal Property**"), together with all express or implied warranties by the manufacturers of each item of Tangible Personal Property, and all maintenance records and other documents, if any, relating thereto;

(c) all Intellectual Property set forth on Section 2.01(c) of the Disclosure Schedules (the "**Purchased IP**"), including any Intellectual Property in development by Seller, used or intended for use in connection with any of the Business and/or the Purchased Assets and all variations thereof or uses of the same, and all trademark registrations and applications therefor, and the related goodwill;

(d) all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances, and similar rights obtained from Governmental Bodies regulating or otherwise having jurisdiction over beverage alcohol products used in the Business (each, a "**Permit**") listed on Section 2.01(d) of the Disclosure Schedules (collectively, the "**Transferred Permits**"); and

(e) all inventory set forth on Section 2.01(e) of the Disclosure Schedules.

Section 2.02. Assumption of Liabilities. Subject to the terms and conditions set forth herein, the Buyer shall assume and agree to pay, perform, and discharge only (a) the Liabilities of the Seller arising from the Assigned Contracts, except to the extent that such obligations (i) are required to be performed on or prior to the Closing Date; (ii) are not disclosed on the face of such Assigned Contract; or (iii) accrue and relate to the operation of the Business prior to the Closing Date and (b) all trade accounts payable of the Seller (consisting solely of the line item accounts payable specified in the NWC Example) that remain unpaid, are not delinquent as of the Closing Date, and are reflected on the Interim Balance Sheet (collectively, the "**Assumed Liabilities**"). Other than the Assumed Liabilities, the Buyer shall not assume any Liabilities of the Seller of any kind, whether known or unknown, contingent, matured, or otherwise, whether currently existing or hereinafter created (collectively, the "**Excluded Liabilities**").

Section 2.03. Allocation of the Purchase Price. The Purchase Price, the Winc Preferred Shares, and Assumed Liabilities (and other relevant items for U.S. federal income Tax purposes) shall be allocated following the Closing according to the principles set forth on Section 2.03 of the Disclosure Schedules and shall contain sufficient detail to permit the Parties to make the computations and adjustments required under Section 1060 of the Code and the Treasury Regulations thereunder, and any adjustments to the Purchase Price shall be allocated in a manner consistent thereto (the "**Allocation**"). The Buyer shall deliver a proposed Allocation to the Seller within ninety (90) days of the Closing Date, and the Seller shall notify the Buyer of any objections within thirty (30) days of receiving such proposed Allocation. If no such objections are received, the Buyer's proposed Allocation shall be considered final. If the Buyer and the Seller are unable to resolve any dispute with respect to the Allocation within fifteen (15) days of the Seller's objection, such dispute shall be resolved by the Arbitration Firm in accordance with the principles of Section 2.05(c). The Buyer and the Seller each agree to file (and

cause their Affiliates to file) their respective Tax Returns, reports, and forms (including IRS Form 8594) in a manner consistent with the Allocation as finalized hereunder.

Section 2.04. Payment of Purchase Price. The aggregate consideration for the Purchased Assets shall be four million four hundred fifty seven thousand dollars ($4,457,000.00), subject to adjustment in accordance with Section 2.05 (as adjusted, the "**Purchase Price**"), plus the Winc Preferred Shares, plus the assumption of the Assumed Liabilities, plus the Performance Earn-Out Amounts, if any. The sum of the Purchase Price and the Performance Earn-Out Amounts (if any) is referred to herein as the "**Total Proceeds**." The Buyer shall pay, or cause to be paid, the following amounts at the Closing, in each case by wire transfer of immediately available funds: (a) the Estimated Purchase Price less the Escrow Amount (the "**Closing Cash Payment**"), to the Seller in accordance with the wire transfer instructions set forth in Section 2.04 of the Disclosure Schedules (the "**Wire Instructions**") and (b) an amount equal to the sum of the Adjustment Escrow Amount and the Indemnification Escrow Amount (collectively, the "**Escrow Amount**") to City National Bank (the "**Escrow Agent**"), to the accounts (the "**Adjustment Escrow Account**" and the "**Indemnification Escrow Account**") designated by the Escrow Agent in writing to the Buyer at least three (3) Business Days prior to the Closing, which Adjustment Escrow Amount and Indemnification Escrow Amount shall be held in separate accounts by the Escrow Agent in accordance with the terms and conditions of this Agreement and the Escrow Agreement.

Section 2.05. Purchase Price Adjustment.

(a) Estimated Closing Statement. Not less than two (2) Business Days prior to the Closing Date, the Seller shall prepare and deliver to the Buyer a statement (the "**Estimated Closing Statement**"), certified in writing by an executive officer of the Seller, setting forth, in reasonable detail, (i) the Seller's good faith calculation, together with reasonably detailed supporting documentation, of the estimated Closing Date Net Working Capital (the "**Estimated Closing Date Net Working Capital**") and the components thereof; (ii) the Estimated Working Capital Increase or Estimated Working Capital Decrease, as the case may be; and (iii) the resulting calculation of the Purchase Price (the resulting amount, the "**Estimated Purchase Price**"), in each case calculated pursuant to the Accounting Principles. The Seller and the Owner, during the period from the delivery of the Estimated Closing Statement through the Closing Date, shall, and shall cause their respective managers, officers, employees, accountants, and other relevant advisors to, provide the Buyer (and its auditors, advisors, counsel, and other representatives) reasonable access to the books and records, outside accounting firm, working papers (subject to the execution of customary access letters), personnel, and facilities of the Seller in order to complete their review of the Estimated Closing Statement and the calculations set forth therein, and the Seller shall consider in good faith any comments made by the Buyer to the Estimated Closing Statement. The Buyer's failure to make any comment regarding, or to dispute any amount included in, the Estimated Closing Statement shall not limit, or have any effect on, the Buyer's rights pursuant to Section 2.05(b) to conduct a review of the Estimated Closing Date Net Working Capital, the Estimated Working Capital Increase or Estimated Working Capital Decrease, as the case may be, and the resulting calculation of the Purchase Price. The Seller and the Owner shall cooperate with the Buyer's review of the Estimated Closing Statement and the Buyer and the Seller shall negotiate in good faith prior to the Closing to resolve any reasonable objection the Buyer may have to the estimates or calculations contained therein.

(b) Closing Date Statement; Access. Within sixty (60) days after the Closing Date, the Buyer shall prepare and deliver, or cause to be prepared and delivered, to the Seller a statement (the "**Closing Date Statement**") setting forth, in reasonable detail, the Buyer's good faith calculation, together with reasonably supporting documentation, of (i) the Closing Date Net Working Capital; (ii) the Working Capital Increase or the Working Capital Decrease, as the case may be; and (iii) the resulting calculation of the Purchase Price, in each case calculated pursuant to the Accounting Principles. During the thirty (30) days immediately following the Seller's receipt of the Closing Date Statement, the Buyer shall, and shall cause its directors, officers, employees, accountants, and other relevant advisors to, provide the Seller (and its auditors, advisors, counsel, and other representatives) reasonable access to the books and records, outside accounting firm, working papers (subject to the execution of customary access letters), and personnel of the Buyer relevant to Seller's review of the Closing Date Statement and the calculations set forth therein.

(c) Dispute.

(i) If the Seller objects to the Buyer's calculation of the Closing Date Net Working Capital, the Working Capital Increase or the Working Capital Decrease, as the case may be, or the resulting calculation of the Purchase Price, as set forth in the

Closing Date Statement, then, within thirty (30) days after the delivery to the Seller of the Closing Date Statement (the "**Review Period**"), the Seller shall deliver to the Buyer a written notice (a "**Dispute Notice**") describing, in reasonable detail, the Seller's objections to the Buyer's calculation of the amounts set forth in the Closing Date Statement and containing a statement setting forth the calculation of the Closing Date Net Working Capital, the Working Capital Increase or Working Capital Decrease, as the case may be, and the resulting calculation of the Purchase Price, in each case, determined by the Seller to be correct and calculated pursuant to the Accounting Principles. If the Seller does not deliver a Dispute Notice to the Buyer during the Review Period, then the Buyer's calculation of the amounts set forth in the Closing Date Statement shall be binding and conclusive on the Parties.

(ii) If the Seller delivers a Dispute Notice, and if the Buyer and the Seller are unable to agree upon the calculation of the amounts set forth in the Closing Date Statement within fifteen (15) days after such Dispute Notice is delivered to the Buyer, then the Seller and the Buyer shall jointly engage the firm of Grant Thornton LLP (the "**Arbitration Firm**") to resolve such dispute. Within five (5) days after the Arbitration Firm is appointed, the Buyer shall forward a copy of the Closing Date Statement to the Arbitration Firm, and the Seller shall forward a copy of the Dispute Notice to the Arbitration Firm, together with, in each case, all relevant supporting documentation. The Arbitration Firm's role shall be limited to resolving such objections and determining the correct calculations to be used on only the disputed portions of the Closing Date Statement and the Arbitration Firm shall not make any other determination, including any determination as to whether any other items on the Closing Date Statement are correct or whether the Target Net Working Capital is correct. The Arbitration Firm shall not assign a value to any item greater than the greatest value for such item claimed by the Seller or the Buyer or less than the smallest value for such item claimed by the Seller or the Buyer and shall be limited to the selection of either the Seller's or the Buyer's position on a disputed item (or a position in between the positions of the Seller and the Buyer) based solely on presentations and supporting material provided by the Parties and not pursuant to any independent review. In resolving such objections, the Arbitration Firm shall apply the Accounting Principles and the provisions of this Agreement concerning the determination of the amounts set forth in the Closing Date Statement. The Arbitration Firm shall deliver to the Seller and the Buyer a written determination (such determination to include a work sheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Arbitration Firm by the Seller and the Buyer) of the disputed items submitted to the Arbitration Firm within thirty (30) days of receipt of such disputed items. The determination by the Arbitration Firm of the disputed amounts and the Purchase Price shall be conclusive and binding on the Parties, absent manifest error. The Arbitration Firm shall act as an expert and not an arbitrator. The fees and expenses of the Arbitration Firm for such determination shall be borne by the Seller, on the one hand, and the Buyer, on the other hand, in inverse proportion to the manner in which such Person prevails on the items resolved by the Arbitration Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be computed by the Arbitration Firm at the time its determination of the items in dispute is rendered. For example, should the items in dispute total in amount to one thousand dollars ($1,000.00) and the Arbitration Firm awards six hundred dollars ($600.00) in favor of the Seller's position, sixty percent (60%) of the costs and expenses of the Arbitration Firm would be borne by the Buyer and forty percent (40%) would be borne by the Seller. The Purchase Price, as finally determined pursuant to this Section 2.05(c), shall be referred to herein as the "**Final Purchase Price**."

(iii) If the Final Purchase Price exceeds the Estimated Purchase Price (the amount of any such excess, the "**Purchase Price Increase**"), then the Buyer shall, within five (5) Business Days following the final determination of the Final Purchase Price, pay the Seller the Purchase Price Increase, by wire transfer of immediately available funds in accordance with the Wire Instructions and the Buyer and the Seller shall jointly instruct the Escrow Agent to release to the Seller all amounts then held in the Adjustment Escrow Account in accordance with the Escrow Agreement, in each case by wire transfer of immediately available funds in accordance with the Wire Instructions.

(iv) If the Estimated Purchase Price exceeds the Final Purchase Price (the amount of such excess, the "**Purchase Price Decrease**"), then the Buyer and the Seller shall jointly instruct the Escrow Agent to release to the Buyer from the Adjustment Escrow Account an amount equal to the Purchase Price Decrease, and (x) if the Adjustment Escrow Amount exceeds the Purchase Price Decrease, the Buyer and the Seller shall also jointly instruct the Escrow Agent to release to the Seller the remaining balance in the Adjustment Escrow Account (after giving effect to the payment to the Buyer of the Purchase Price Decrease), or (y) if the Purchase Price Decrease exceeds the Adjustment Escrow Amount (the amount of such excess, an "**Escrow Deficit**"), then the Seller shall pay to the Buyer, within five (5) Business Days following the final determination of the Final Purchase Price, an amount equal to such Escrow Deficit, provided, that, the Buyer, at its sole discretion, may elect to have all or a portion of the Escrow Deficit satisfied from the Indemnification Escrow Amount, and if the Buyer so elects, the Buyer and the Seller shall jointly instruct the Escrow Agent to release from the Indemnification Escrow Account all or a portion of such Escrow Deficit to the Buyer (the amount of Escrow Deficit satisfied from the Indemnification Escrow Amount, the "**Satisfied Amount**"), all such payments contemplated by this Section 2.05(c)(iv) to be made to the Buyer shall be made by wire transfer of immediately available funds to the account designated by the Buyer; provided, that, in the event that the Buyer elects to have all or a portion of the Escrow Deficit satisfied from the Indemnification Escrow Amount, the

Seller shall, within five (5) Business Days of the payment to Buyer from the Indemnification Escrow Account, pay to the Escrow Agent for deposit into the Indemnification Escrow Account an amount equal to the Satisfied Amount, by wire transfer of immediately available funds.

(v) If the Estimated Purchase Price equals the Final Purchase Price, then within five (5) Business Days following the final determination of the Final Purchase Price, the Buyer and the Seller shall jointly instruct the Escrow Agent to release to the Seller from the Adjustment Escrow Account an amount equal to the Adjustment Escrow Amount in accordance with the Escrow Agreement, by wire transfer of immediately available funds in accordance with the Wire Instructions.

Section 2.06. Performance Earn-Outs.

(a) 2021 Performance Earn-Out. Subject to the terms and conditions set forth in this Section 2.06, as additional consideration for the transactions contemplated by this Agreement, the Seller shall be entitled to receive an amount (the "**2021 Performance Earn-Out Amount**") calculated as follows: if the 2021 Natural Merchants Revenue is equal to, or greater than, six million seven hundred thousand dollars ($6,700,000.00) (the "**2021 Base Amount**"), then the 2021 Performance Earn-Out Amount shall be equal to the sum of (i) one million dollars ($1,000,000.00) and (ii) the product of (A) one million dollars ($1,000,000.00) and (B) the quotient of (x) the difference between the 2021 Natural Merchants Revenue and the 2021 Base Amount and (y) three million three hundred thousand dollars ($3,300,000.00); provided, that, in no event shall the 2021 Performance Earn-Out Amount exceed two million dollars ($2,000,000.00).

(b) 2022 Performance Earn-Out. Subject to the terms and conditions set forth in this Section 2.06, as additional consideration for the transactions contemplated by this Agreement, the Seller shall be entitled to receive an amount (the "**2022 Performance Earn-Out Amount**" and, together with the 2021 Performance Earn-Out Amount, the "**Performance Earn-Out Amounts**" and each, a "**Performance Earn-Out Amount**") calculated as follows: if the 2022 Natural Merchants Revenue is equal to, or greater than, the 2021 Base Amount, then the 2022 Performance Earn-Out Amount shall be equal to the sum of (i) one million dollars ($1,000,000.00) and (ii) only if 2022 Natural Merchants Revenue equals or exceeds ten million dollars ($10,000,000.00) (the "**2022 Base Amount**"), the product of (A) one million dollars ($1,000,000.00) and (B) the quotient of (x) the difference between the 2022 Natural Merchants Revenue and the 2022 Base Amount and (y) four million dollars ($4,000,000.00); provided, that, (x) if 2022 Natural Merchants Revenue does not equal or exceed the 2022 Base Amount, the amount calculated pursuant to Section 2.06(b)(ii) shall be deemed to be zero (0) and (y) in no event shall the 2022 Performance Earn-Out Amount exceed two million dollars ($2,000,000.00).

(c) Within thirty (30) days following the end of the 2021 Earn-Out Period, the Buyer shall (i) prepare a statement (the "**2021 Earn-Out Statement**"), signed by an officer of the Buyer, setting forth the Buyer's calculations of 2021 Natural Merchants Revenue and the 2021 Performance Earn-Out Amount, together with reasonably detailed supporting documentation. The 2021 Earn-Out Statement and all amounts, determinations and calculations contained therein shall be prepared in accordance with the Accounting Principles and the definitions contained in this Agreement.

(d) Within thirty (30) days after the end of the 2022 Earn-Out Period, the Buyer shall (i) prepare a statement (the "**2022 Earn-Out Statement**" and, together with the 2021 Earn-Out Statement, the "**Earn-Out Statements**" and each, an "**Earn-out Statement**"), signed by an officer of the Buyer, setting forth the Buyer's calculations of 2022 Natural Merchants Revenue and the 2022 Performance Earn-Out Amount, together with reasonably detailed supporting documentation. The 2022 Earn-Out Statement and all amounts, determinations, and calculations contained therein shall be prepared in accordance with the Accounting Principles and the definitions contained in this Agreement.

(e) Following delivery of an Earn-Out Statement until the final resolution of the calculations set forth on such Earn-Out Statement, the Buyer shall provide the Seller, during normal business hours and upon reasonably advanced notice, reasonable access on a confidential basis to the books, work papers, and other supporting data of the Buyer solely for purposes of the Seller's review of the calculations set forth in such Earn-Out Statement; provided, that, such access shall not unreasonably interfere with the operation of the business of Buyer, and such access shall be subject to any confidentiality obligations of Buyer and applicable Law.

(f) Following delivery of an Earn-Out Statement, the Seller shall have thirty (30) days to review such Earn-Out Statement. If the Seller has any objections to such Earn-Out Statement or any calculations set forth therein, the Seller shall deliver to the Buyer on or prior to the end of such thirty (30)-day period a written statement setting forth its objections thereto (with reasonable details regarding the nature and amount of each of its objections along with any calculations and supporting documents related to such objections) (each, an "**Earn-Out Objection Statement**"). In the event the Seller delivers an Earn-Out Objections Statement, for a thirty (30)-day period following such delivery, the Buyer and the Seller shall seek to resolve in good faith any differences that they may have with respect to any matter specified in such Earn-Out Objections Statement. If, following such thirty (30)-day period, the Seller and Buyer do not agree in writing to a resolution of any differences related to the Earn-Out Objections Statement, then determination of the remaining items in dispute shall be submitted to the Arbitration Firm. The Arbitration Firm will be directed to review such items in accordance with the dispute resolution procedures set forth in Section 2.05(c)(ii) as if they applied to the resolution of such objections *mutatis mutandis*. The resolution of the dispute by the Arbitration Firm will be final and binding on the Parties, absent manifest error. The fees and expenses of the Arbitration Firm shall be borne as specified in the procedures set forth in Section 2.05(c)(ii) of the Agreement as if they applied to the resolution of the objections pursuant to this Section 2.06 *mutatis mutandis*. If an Earn-Out Objections Statement is not delivered by the Seller within thirty (30) days after delivery by the Buyer of such Earn-Out Statement to the Seller, such Earn-Out Statement shall be final, binding, and non-appealable.

(g) In the event that a Performance Earn-Out Amount becomes payable to the Seller pursuant to this Section 2.06, then the Buyer shall make (or cause to be made) such payment by wire transfer of immediately available funds within five (5) Business Days after such amount has been finally determined in accordance with this Section 2.06 to the Seller. Notwithstanding the foregoing, to the extent required to comply with Section 409A of the Code, in all events the 2021 Performance Earn-Out Amount, if any, will be paid during the 2022 calendar year and the 2022 Performance Earn-out Amount, if any, will be paid during the 2023 calendar year.

(h) The Buyer shall have the right to operate the Business in the manner it deems appropriate after the Closing; provided, that, during the period from the Closing through and including the last day of the 2022 Earn-Out Period, the Buyer (i) will operate the Buyer in good faith in the ordinary course of business, (ii) will not take any action for the purpose of eliminating or reducing the payment of all or any portion of the Performance Earn-Out Amounts, it being understood that Buyer or Buyer's Affiliates decisions made in good faith regarding future potential suppliers of the Business or the business of Buyer or Buyer's Affiliates' shall be deemed not to contravene this Section 2.06(h)(ii) and (iii) will maintain independent financial records for the Business separately from the consolidated records of the Buyer and its Affiliates for purposes of making the calculations used to determine the Performance Earn-Out Amounts; provided, further, that no actions taken by, or with the prior consent of, the Seller and/or the Owner following the Closing Date, shall be considered a breach of any of Buyer's performance obligations set forth in this Section 2.06(h).

(i) The Parties understand and agree that (i) the contingent rights to receive all or any portion of the Performance Earn-Out Amounts shall not be represented by any form of certificate or other instrument, are not assignable or otherwise transferable, except by operation of applicable Law relating to descent and distribution, divorce and community property, and do not constitute an equity or ownership interest in the Buyer, (ii) the Seller shall not have any rights as a securityholder of the Buyer as a result of the Seller's contingent right to receive the Performance Earn-Out Amounts, and (iii) no interest is payable with respect to all or any portion of the Performance Earn-Out Amounts.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE OWNER

Except as set forth in the Disclosure Schedules, each of the Seller and the Owner, jointly and severally, represents and warrants to the Buyer, as of the Agreement Date and as of the Closing Date, or, if expressly made as of a specified date, as of such specified date, as follows:

Section 3.01. Organization; Good Standing. The Seller is a corporation, duly organized, validly existing, and in good standing under the Laws of the State of Oregon and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of the Business requires such qualification.

Section 3.02. Power and Authority. The Seller has all requisite right, power, and authority to execute, deliver, and perform this Agreement and the Transaction Agreements to which it is a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Agreements by the Seller, and the consummation by the Seller of the transactions contemplated hereby and thereby, have been duly approved by the Seller, and no further action is required on the part of the Seller to authorize this Agreement, any Transaction Agreement to which it is

a party, or the transactions contemplated hereby and thereby. This Agreement has been, and each of the Transaction Agreements will be, duly and validly executed and delivered by the Seller and, assuming the due and valid authorization, execution, and delivery of this Agreement by the other Parties, and of each such Transaction Agreement by the other parties thereto, constitutes, or will constitute, a valid and binding obligation of the Seller, enforceable against it in accordance with its terms and conditions, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other Laws affecting enforcement of creditors' rights generally and except insofar as the availability of equitable remedies may be limited by applicable Law (the "**Equitable Exceptions**").

Section 3.03. Title to, and Sufficiency of, the Purchased Assets.

(a) The Seller has, and shall convey to the Buyer at the Closing, good, valid, transferable, and marketable title to, or valid leasehold interests in, all of the Purchased Assets, free and clear of all Liens, other than Permitted Liens.

(b) The Purchased Assets constitute all of the properties and assets (whether real, personal, or mixed and whether tangible or intangible) necessary and sufficient to permit the Buyer to conduct the Business, after the Closing, in accordance with the Seller's past practices and as presently conducted, and planned to be conducted, by the Seller.

Section 3.04. Consents. Except as set forth in Section 3.04 of the Disclosure Schedules, the Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of, any Governmental Body or Third Party, including a party to any Contract with the Seller, in connection with the execution, delivery, and performance by the Seller of this Agreement or any of the Transaction Agreements to which it is a party or the consummation of the transactions contemplated hereby and thereby.

Section 3.05. No Conflicts. Except as set forth in Section 3.05 of the Disclosure Schedules, the execution and delivery by the Seller of this Agreement and each of the Transaction Agreements, and the consummation of the transactions contemplated hereby and thereby, will not conflict with, result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a payment obligation, a right of termination, cancellation, modification, or acceleration of any obligation, or loss of any benefit, under: (a) any provision of the Organizational Documents of the Seller; (b) any Contract to which the Seller is party, including, without limitation, any Assigned Contract; (c) any Law or order applicable to the Seller or any of the Purchased Assets; or (d) result in the creation of any Lien (other than Permitted Liens) on any Purchased Asset.

Section 3.06. Condition of Assets; Inventory.

(a) The items of Tangible Personal Property are in good condition, have been operated and maintained in accordance with industry standards, and are reasonably adequate for the uses to which they are currently being put and no such item of Tangible Personal Property is in need of maintenance or repairs, except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(b) Seller's inventory: (i) was acquired and is sufficient for the operation of the Business in the ordinary course consistent with past practice and (ii) is of a quality and quantity usable or saleable in the ordinary course of business.

Section 3.07. Intellectual Property and Privacy.

(a) Section 3.07(a) of the Disclosure Schedules lists all Purchased IP, including whether or not the Purchased IP is owned by Seller and, if not, the nature of the Seller's license to such Purchased IP (*e.g.*, exclusive or non-exclusive, fee structure, duration, and territory). For all registered Intellectual Property, including applications thereto, Section 3.07(a) of the Disclosure Schedules shall specify as to each, as applicable: the title, mark, or design; the record owner and inventor(s), if any; the jurisdiction by or in which it has been issued, registered, or filed; the registration and application serial number; the issue, registration, or filing date; and the current status.

(b) The Seller owns or has adequate, valid, and enforceable rights to use all of the Purchased IP, free and clear of all Liens, other than Permitted Liens, and is not bound by any Law or other obligation materially restricting the Seller's use of the Purchased IP.

(c) All required filings and fees related to the Seller's registrations of Intellectual Property have been timely filed with and paid to the relevant Governmental Bodies and authorized registrars, and all such registrations are otherwise in good standing.

(d) The Seller is not bound by any outstanding judgment, injunction, order, or decree restricting the use of the Purchased IP or restricting the licensing thereof to any Person.

(e) The conduct of the Business has not and does not infringe, violate, dilute, or misappropriate the Intellectual Property rights of any Person and there are no claims pending or, to the Knowledge of the Seller, threatened by any Person with respect to the ownership, validity, enforceability, effectiveness, or use of the Purchased IP.

(f) To the Knowledge of the Seller, no Person is infringing, misappropriating, diluting, or otherwise violating any of the Purchased IP, and neither the Seller nor any Affiliate thereof has made or asserted any claim, demand, or notice against any Person alleging any such infringement, misappropriation, dilution, or other violation.

(g) All personnel, including employees, agents, consultants, and contractors, who have contributed to, or participated in, the conception or development, or both, of the Purchased IP have executed valid and enforceable written instruments of assignment in favor of the Seller as assignee that have conveyed to the Seller effective ownership of the rights, title, and interest in and to such Intellectual Property.

(h) No royalties, commissions, fees or other payments are or will become payable by the Buyer to any Person by reason of the exploitation of any Purchased Asset by the Buyer or the execution and delivery of this Agreement or any Transaction Agreement.

(i) The Purchased IP constitutes all the Intellectual Property owned by the Seller that is used by the Seller to conduct the Business as currently conducted and proposed to be conducted.

(j) The Purchased IP is sufficient to conduct the Business as currently conducted and proposed to be conducted.

(k) The Seller's information technology systems are sufficient for, and operate and perform as required in connection with, the operation of the Business, and the Seller has implemented commercially reasonable measures with respect to data and information technology security, backup, and intrusion detection and prevention.

(l) The Seller has not sold, licensed, rented or otherwise made available to Third Parties any personal information submitted by individuals in connection with the Business or otherwise and is in compliance with all applicable privacy Laws.

(m) The Seller's past and present collection, use, retention, and dissemination of personal information is, and has been in the past, in compliance in all material respects with the terms of all Contracts to which the Seller is a party.

(n) The Seller has implemented commercially reasonable policies, programs, and procedures (including administrative, technical, and physical safeguards): (i) to protect against unauthorized access, use, modification, and disclosure of and to protect the confidentiality, integrity, and security of, personal information and proprietary information in the Seller's possession, custody, or control; and (ii) as required in all material respects to comply with applicable Law.

(o) The Seller has not been subject to any material unauthorized access to (or access in excess of authorization) the Seller's information technology systems, or unauthorized use, disclosure, or other processing of personal information, and has not received any and is not aware of any basis for claims, notices, or complaints regarding the Seller's information security practices or the disclosure, retention, or misuse of any personal information, and, to Seller's Knowledge, there has been no data security breaches that would constitute a breach for which notification to individuals and/or regulatory authorities is required under any applicable Law.

(p) At the Closing, the Buyer will continue to have the right to use personal information collected or obtained by or on behalf of Seller, on terms and conditions identical to those on which the Seller had the right to use such personal information immediately prior to the Closing.

Section 3.08. Contracts.

(a) Section 3.08 of the Disclosure Schedules lists a true, correct, and complete list, organized by subsection for each of the following categories, of all Contracts (i) that relate to the Business, (ii) to which the Seller is a party, or (iii) by which the Seller is bound:

(i) any Contract for the performance of services or supply of products by the Seller or, to the extent related to the Business, any of its Affiliates or which involved, or is reasonably expected to involve, consideration to the Seller in excess of ten thousand dollars ($10,000.00) during each of the year ended December 31, 2020 and the year ending December 31, 2021;

(ii) any Contract for the purchase of materials, supplies, products, Intellectual Property, equipment, or services, or the use thereof, which involved, or is reasonably expected to involve, payments by the Seller or, to the extent related to the Business, any of its Affiliates, in excess of ten thousand dollars ($10,000.00) during each of the year ended December 31, 2020 and the year ending December 31, 2021;

(iii) any Contract pursuant to which the Seller sells, distributes, or markets its Products or pursuant to which the Seller authorizes any Third Party to sell, distribute or market its Products;

(iv) any Contract with any Material Customer;

(v) any Contract with any Material Supplier;

(vi) any sales representative, sales and marketing, franchise, distributorship, advertising, or similar Contract;

(vii) any non-disclosure or non-solicitation Contract containing confidentiality provisions binding the Seller or non-solicitation provisions binding the Seller;

(viii) any Contract relating to the acquisition or divestiture of the capital stock or other equity securities, assets, or business of any Person involving the Seller or, to the extent related to the Business, any of its Affiliates or pursuant to which the Seller has any Liability, contingent or otherwise;

(ix) any joint venture or partnership Contract;

(x) any Contract for the employment or engagement of any officer, individual employee, or other Person on a regular full-time, regular part-time, or consulting basis or relating to severance, retention, or change-in-control payments for any such Person;

(xi) any Contract relating to staffing companies, temporary employment agencies, or similar companies that provide services to the Seller;

(xii) any Contract pursuant to which any non-equity holder employee or any other Person will receive a portion of the Total Proceeds or any similar payment in connection with the consummation of the transactions contemplated hereby;

(xiii) any Contract relating to Indebtedness or placing a Lien on any of the Purchased Assets;

(xiv) any Contract of guarantee, credit support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the Liabilities, obligations, or Indebtedness of any other Person, excluding indemnification provisions entered into by the Seller in the ordinary course of business with its suppliers, distributors, customers, employees and contractors;

(xv) any lease Contract under which the Seller is lessor or lessee of any personal property;

(xvi) any Contract containing a non-competition, exclusivity, most-favored nation pricing, or similar provision restricting the business activities of the Seller or which prohibit the Seller from soliciting customers or vendors, or any other business, anywhere in the world;

(xvii) any Contract (A) under which (x) a Third Party grants the Seller any license or other right under any Intellectual Property (excluding any license for commercially available off-the-shelf software licensed for a one-time fee and that have annual fees of two thousand five hundred dollars ($2,500.00) or less) or (y) the Seller grants a Third Party any license or other right under any material Intellectual Property (excluding non-exclusive licenses granted to customers in the ordinary course of business consistent with past practice) or (B) otherwise relating to the development, ownership, registration, use, or enforcement of any Intellectual Property.

(xviii) any Contract or commitment for capital expenditures or the acquisition or construction of fixed assets in excess of ten thousand dollars ($10,000.00);

(xix) any power of attorney granted by the Seller to any Person; and

(xx) each Assigned Contract.

(b) The Seller has made available to the Buyer true, complete and correct copies of each Contract. Each Assigned Contract is valid and binding on the Seller in accordance with its terms and is in full force and effect, enforceable in accordance with its terms, subject to the Equitable Exceptions. None of the Seller, to the extent related to the Business, any of Seller's Affiliates, or, to the Knowledge of the Seller, any other party thereto is in material breach of, or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract. To the Knowledge of Seller, no event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Assigned Contract have been made available to Buyer. There are no disputes pending or, to the Knowledge of the Seller, threatened under any Assigned Contract.

Section 3.09. Permits. The Transferred Permits are valid and in full force and effect. All fees and charges with respect to such Transferred Permits, as of the Agreement Date and as of the Closing Date, have been paid in full. To the Knowledge of Seller, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse, or limitation of any Transferred Permit.

Section 3.10. Environmental.

(a) Section 3.10(a) of the Disclosure Schedules sets forth all material Environmental Permits and operating certifications held in connection with the Business and the Seller's ownership of the Purchased Assets.

(b) The Seller has been and continues to be: (i) in compliance with all applicable Environmental Laws relating to the ownership of the Purchased Assets and the operation of the Business and (ii) has obtained, and is in compliance with, all material Environmental Permits and operating certifications required to be held in connection with the operation of the Business and/or the Seller's ownership of the Purchased Assets.

(c) There is no Action pending or, to the Knowledge of the Seller, threatened against the Seller, in respect of any violation of applicable Environmental Laws or with respect to any operating certifications held by the Seller involving or relating, in any manner, to the Purchased Assets or the operation of the Business.

(d) The Seller has not treated, stored, disposed of, arranged for, or permitted the disposal of, transported, handled, or otherwise Released or contracted with any Person to treat, store, dispose of, arrange for, or permit the disposal of, transport, handle, or otherwise Release any Hazardous Material, during the operation of the Business in any manner that could give rise to any Liability under Environmental Laws or any obligation to take remedial action.

(e) The Seller has not assumed, undertaken, provided indemnity with respect to, or otherwise become subject to any Liability, including any obligation for remedial action, of any other Person relating to any Environmental Law with respect to the Purchased Assets or the operation of the Business.

(f) The Seller has provided to the Buyer true, correct, and complete copies of all material reports, assessments, agreements, notices, audits, investigations, and studies in the possession, custody, or control of the Seller concerning: (i) the Seller's actual, alleged, or potential non-compliance with any Environmental Laws with respect to the Purchased Assets or the operation of the Business or (ii) any material Liability of the Seller under Environmental Laws with respect to the Purchased Assets or the operation of the Business.

Section 3.11. Financial Statements.

(a) Section 3.11(a) of the Disclosure Schedules sets forth true, correct, and complete copies of the following financial statements: (i) the unaudited balance sheet of the Seller, as of December 31, 2020, and the related statements of income and cash flows for the period then ended (the "**Annual Financial Statements**") and (ii) the unaudited balance sheet of the Seller (the "**Interim Balance Sheet**"), as of March 31, 2021 (the "**Interim Balance Sheet Date**") and the related statements of income and cash flows of the Seller for the three (3)-month period then ended (the "**Interim Financial Statements**" and, together with the Annual Financial Statements, the "**Financial Statements**").

(b) The Financial Statements: (i) have been prepared in accordance with the books and records of the Seller and consistent with the Seller's past practices and (ii) present fairly the financial condition and results of operations of the Seller, as of the dates thereof and for the periods covered thereby (with respect to the Interim Financial Statements, subject to normal year-end adjustments and any other adjustments expressly described therein that are not, individually or in the aggregate, material).

(c) Section 3.11(c) sets forth each item of Indebtedness of the Seller, including, with respect to each such item, the holder thereof and the outstanding amount thereof as of the Agreement Date.

Section 3.12. Undisclosed Liabilities. Except as set forth on Section 3.12 of the Disclosure Schedules, there are no Liabilities of the Business of any kind whatsoever and there is no existing condition, situation, or set of circumstances that could reasonably be expected to result in such a Liability, except such Liabilities: (i) that are fully reflected or provided for in the Financial Statements or (ii) that have arisen in the ordinary course of business, consistent with past practice, since the Interim Balance Sheet Date (none of which is a Liability resulting from noncompliance with any applicable Law, breach of Contract, breach of warranty, tort, infringement, misappropriation, or dilution).

Section 3.13. Receivables. Section 3.13 of the Disclosure Schedules sets forth a true, correct, and complete aging report of all gross accounts receivable of the Business as of the Interim Balance Sheet Date. All accounts receivable reflected on the Interim Balance Sheet and all accounts receivable arising after the date thereof: (a) are valid, existing, and collectible, without resort to legal proceedings or collection agencies; (b) represent monies due for goods sold and delivered or services rendered, in each case, in the ordinary course of business; and (c) are current and will be collected in full when due, except for nominal credits or allowances arising from promotions, samples, and trade discounts provided in the ordinary course of business and are not subject to any material refund or adjustment or any defense, right of setoff, assignment, restriction, security interest, or other Lien. There are no disputes regarding the collectability of any such accounts receivable.

Section 3.14. Employee Matters. Except as set forth on Section 3.14 of the Disclosure Schedule, the Seller does not have, and has never had, any individuals classified as employees, leased employees, or temporary employees, either employed directly or through a joint employment relationship, and the Seller does not have any Liabilities with respect to any employee or any other individual (including any independent contractor, contractor worker, leased employee, or temporary employee) that has performed work at, or in connection with, the Seller. The Seller is and at all times has been in compliance, in all material respects, with all applicable Laws, orders, or Contracts respecting independent contractor classification, terms and conditions of consultancy, immigration control, and occupational safety and health. There are no Actions against the Seller pending or, to the Knowledge of the Seller, threatened to be brought or filed, by or with any Governmental Body or arbitrator in connection with the service of any current or former consultant or independent contractor of the Seller. Each individual that is providing, or has provided, services to the Seller has been properly classified by the Seller as an employee or independent contractor for all purposes under all applicable Laws. Section 3.14 of the Disclosure Schedules contains a list of all current consultants and independent contractors providing services to the Seller as of the Agreement Date and correctly reflects: (a) their start dates; (b) description of services; (c) contract rate or consulting fees; (d) any other compensation payable to them; and (e) notice and termination entitlements.

Section 3.15. Employee Benefit Plans. Section 3.15 of the Disclosure Schedules contains a true, correct, and complete list of each Seller Benefit Plan. The Seller has made available to the Buyer a true, correct, and complete copy of each such Seller Benefit

Plan. Each Seller Benefit Plan has been established, maintained, administered and operated in compliance with the Code, ERISA, and all other applicable Laws. No such Seller Benefit Plan is a pension plan subject to Title IV of ERISA, a qualified retirement plan under Section 401(a) of the Code, a "multiemployer plan" (within the meaning of Section 3(37) of ERISA), a "multiple employer plan" (within the meaning of Section 413 of the Code), a "multiple employer welfare arrangement" (within the meaning of Section 3(40) of ERISA), an arrangement providing post-employment welfare benefits, except as required under Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code or a similar state Law or a self-insured welfare benefit plan, and the Seller has no Liability, directly or indirectly, with respect to any such plans. The consummation of the transactions contemplated by this Agreement and the Transaction Agreements will not constitute a triggering event under any Seller Benefit Plan that (either alone or upon the occurrence of any additional or subsequent event) will or may result in any payment, "parachute payment" (as defined in Section 280G of the Code), acceleration, vesting, or increase in benefits to any individual.

Section 3.16. Compliance with Laws. Except as would not be material to the Business or the Purchased Assets, taken as a whole, the Seller has complied, and is now complying, with all Laws applicable to the ownership and use of the Purchased Assets.

Section 3.17. Legal Proceedings. There is no Action of any nature pending or, to the Knowledge of the Seller, threatened against or by the Seller or, to the extent related to the Business, any of its Affiliates: (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities or (b) that challenges or seeks to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement and the Transaction Agreements. To the Seller's Knowledge, no event has occurred or circumstance exists that may give rise to, or serve as a basis for, any such Action.

Section 3.18. Brokers' Fees. Neither the Owner nor the Seller has any Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement and the Transaction Agreements.

Section 3.19. Customers and Suppliers. Section 3.19 of the Disclosure Schedules lists the twenty (20) largest customers (each, a "**Material Customer**") and twenty (20) largest suppliers of the Seller (each, a "**Material Supplier**") for each of the twelve (12)-month period ended December 31, 2019, the twelve (12)-month period ended December 31, 2020, and the three (3)-month period ended March 31, 2021, and sets forth opposite the name of each such Material Customer and Material Supplier the approximate percentage and dollar amount of net sales and/or amounts paid by the Seller attributable to such Material Customer or Material Supplier for each such period. Since December 31, 2016, no Material Customer or Material Supplier has (a) terminated its relationship with the Seller or (b) given notice to the Seller terminating, or threatening to terminate, its relationship with the Seller (including an indication of nonrenewal by such Material Customer or Material Supplier upon the scheduled expiration of a Contract within the one-year period following the date hereof, in accordance with its terms) or to materially decrease the rate of purchasing from, or to, the Seller, whether as a result of the consummation of the transactions contemplated hereby or otherwise. To the Seller's Knowledge, there are no facts or circumstances that exist that indicate that any Material Customer or Material Supplier of the Seller will materially decrease the rate of purchasing from, or to, the Seller, whether as a result of the consummation of the transactions contemplated hereby or otherwise, for the two-year period following the Closing. Since December 31, 2016, (i) no Material Customer or Material Supplier has materially and adversely modified or indicated that it intends to materially and adversely modify the terms of its relationship with the Seller or indicated that it will no longer do business on terms and conditions at least as favorable and (ii) the Seller is not involved in any material claim, dispute, or controversy with any such customer or supplier.

Section 3.20. Affiliate Transactions.

(a) Except as set forth on Section 3.20(a) of the Disclosure Schedules, no Owner, equityholder, director, manager, officer, employee or agent of the Seller, Affiliate of any of the foregoing, or any other Person in which any of such Persons owns any beneficial interest (other than any publicly-held corporation whose stock is traded on a national securities exchange and less than 3% of the stock of which is beneficially owned by any of such Persons) has any Contract or arrangement with the Seller or any interest in the Business or any Purchased Assets (other than this Agreement).

(b) Except as set forth on Section 3.20(b) of the Disclosure Schedules, no Affiliate of any Seller or the Owner is a competitor of the Seller with respect to any of its businesses or serves as an officer or director, or in another similar capacity, of any Person whose business competes with the Seller.

Section 3.21. International Trade.

(a) Except as set forth on Section 3.21 of the Disclosure Schedules, the Seller operates, and has operated, in compliance in all material respects with all Trade Laws and Anti-Corruption Laws. The Seller has not received any written notice from a Governmental Body asserting any material violation of Trade Laws or Anti-Corruption Laws that has not been resolved.

(b) No proceeding by any Governmental Body concerning the Seller is pending or, to the Knowledge of the Seller, threatened with respect to a violation by the Seller or its agents of any applicable Trade Laws or Anti-Corruption Laws.

(c) None of the Seller's directors, managers, or officers or, to the Seller's Knowledge, any of its employees or agents (in each case acting on behalf of the Seller): (i) has provided, promised, or authorized the provision of any contribution, gift, entertainment, or other expenses relating to political activity, or any other money, property, or thing of value, directly or indirectly, to any official of a Governmental Body or any other Person acting in an official capacity, in order to (A) influence official action, (B) secure an improper advantage, or (C) encourage the recipient to breach a duty of good faith or loyalty or the policies of his/her employer; (ii) has otherwise violated any Anti-Corruption laws; (iii) is a Sanctioned Person or has transacted any business, directly or indirectly, with any Sanctioned Person in violation of Sanctions; (iv) has otherwise violated any Sanctions; or (v) has violated any other Trade Laws.

Section 3.22. Regulatory Compliance.

(a) Except as set forth on Section 3.22(a) of the Disclosure Schedules, all Products currently being manufactured, tested, developed, processed, labeled, stored or distributed by, or on behalf of, the Seller, which are subject to the jurisdiction of the FDA, TTB, or any comparable Governmental Body, are being manufactured, tested, developed, processed, labeled, stored, distributed, and marketed and promoted (including promotions on the website of the Seller) in compliance in all material respects with all applicable Regulatory Laws:

(i) none of Products are, or have been, "adulterated" or "misbranded" within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act at the time such Products were sold by the Seller and none of the Products constituted an article prohibited from introduction into interstate commerce by the FDA at the time of its manufacture, distribution, delivery, or sale by the Seller;

(ii) all of the operations of the Seller are and have been in compliance in all material respects with all applicable Regulatory Laws, including those related to recordkeeping, food safety, food additives, food contact substances, supplier verification, current good manufacturing practices, and food or alcohol labeling and advertising; and

(iii) each Product has conformed in all respects to any promises or affirmations of fact made on the Product container or label or in any Product-related marketing, advertising, promotional, or similar materials and the Seller possesses appropriate certifications or scientifically reliable materials to substantiate all such claims.

(b) The Seller has not received, nor is the Seller subject to, any administrative or regulatory action, warning or untitled letter, notice of violation letter, Form FDA-483, or other similar written notice or complaint or compliance or enforcement action from or by the FDA, TTB, or any comparable Governmental Body asserting that the testing, importation, manufacture, distribution, marketing, or sale of any Product is not in compliance with any applicable Regulatory Laws and, to Seller's Knowledge, none of the foregoing is threatened. Furthermore, the Seller has made all material notifications, submissions, and reports required by the FDA, TTB, or any comparable Governmental Body.

(c) Neither the Seller nor, to the Seller's Knowledge, any of its suppliers has received notice of, or been subject to, any seizure, injunction, detention, refusal of admittance, civil penalty, criminal investigation or penalty, disqualification or debarment, in each case of the foregoing, relating to any of (A) the Products, (B) the components or ingredients in such Products or (C) the facilities of the Seller at which such Products are manufactured or stored.

(d) No Product has been subject to any recall (as defined under 21 C.F.R. Part 7 or its equivalent in any other applicable jurisdictions) or any related seizure or detainment of such Product (each a "**Product Event**"). To the Seller's Knowledge, there are no facts or circumstances reasonably likely to cause (i) a Product Event, (ii) a safety communication, or (iii) a termination,

seizure, or suspension of marketing of any Product. No Action seeking the withdrawal, recall, suspension, import detention, or seizure of any Product is pending or, to Seller's Knowledge, threatened.

Section 3.23. Product Warranties. There are no express warranties outstanding with respect to any Products or any services rendered by the Seller in connection with the Business. Since January 1, 2017, there have been no (i) recalls of any Products or (ii) legal proceedings (whether completed or pending) seeking the recall, suspension, or seizure of any Products. Each Product that has been manufactured, sold, distributed, shipped, or licensed by the Seller since January 1, 2017 contains all warnings required by applicable Law and such warnings are in accordance with reasonable industry practice.

Section 3.24. Taxes. Except as set forth on Section 3.24 of the Disclosure Schedules, all income and other material Tax Returns required to have been filed by Seller in respect of, or in relation to, the Purchased Assets and the Business have been timely filed, and each such Tax Return is true, correct, and accurate in all material respects. All income and other material Taxes due and payable by the Seller in relation to the Purchased Assets and the Business, whether or not shown on any Tax Return, have been paid. The Seller has timely withheld and paid to the appropriate taxing authority all Taxes required to have been withheld and paid in connection with amounts paid or owing to any member, employee, creditor, independent contractor, or other Third Person. The Seller has not been informed of the commencement or anticipated commencement of any Action with respect to Taxes or Tax Returns attributable to the Purchased Assets or the Business by any taxing authority. The Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency relating to the Purchased Assets or the Business, which period (after giving effect to such extension or waiver) has not expired.

Section 3.25. Real Property; Leases. The Seller does not own, and has never owned, any real property. Section 3.25 of the Disclosure Schedules sets forth all leases and subleases in effect on the date of this Agreement under which Seller leases real property (as either a tenant, subtenant, or lessor) (each, a "**Seller Lease**"). The Seller has made available to the Buyer copies of each Seller Lease, including copies of all revisions and amendments thereto. No default, by either the applicable lessee or the lessor, exists under any Seller Lease, and all payments of rent, operating expenses, and other sums due and payable under each Seller Lease is current. Each Seller Lease is in full force and effect in accordance with its respective terms. No Seller Lease is terminable because of the execution of this Agreement or the assignment of such Seller Lease in connection with the consummation of the transactions contemplated hereunder. The Seller has not received notice that the counterparty to any Seller Lease intends to cancel, terminate, or refuse to renew any Seller Lease or to exercise any option or other right under such Seller Lease.

Section 3.26. Insurance. Section 3.26 of the Disclosure Schedules sets forth (a) a true, correct, and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Seller and relating to the Business, the Purchased Assets, or the Assumed Liabilities (collectively, the "**Insurance Policies**"), and (b) with respect to the Business, the Purchased Assets, or the Assumed Liabilities, a list of all pending insurance claims and the claims history for Seller during the five year period prior to the Agreement Date. There are no claims related to the Business, the Purchased Assets, or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied, or disputed or in respect of which there is an outstanding reservation of rights. The Seller has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (i) are in full force and effect and enforceable in accordance with their terms, and (ii) have not been subject to any lapse in coverage. The Seller has not received any notice that it is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance with all applicable laws and Contracts to which the Seller is a party or by which it is bound. True, correct, and complete copies of the Insurance Policies have been made available to Buyer.

Section 3.27. COVID-19.

(a) Except as set forth on Section 3.27 of the Disclosure Schedules, since January 1, 2020, there has been no material impact (directly or indirectly) as a result of COVID-19 on: (i) the Business or (ii) on any of the Seller's relationships with its customers, suppliers, vendors, landlords, or any Governmental Body having jurisdiction over the Seller.

(b) The Seller has at all times during the COVID-19 pandemic operated in material compliance with the requirements of all applicable Laws, including any Laws enacted in response to COVID-19, including, without limitation, the CARES Act, the Families First Coronavirus Response Act, Section 1981 of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, Age Discrimination in Employment Act, Equal Pay Act, Fair Labor Standards Act, Family Medical Leave Act, National Labor Relations Act, the Occupational Safety and Health Act, and any foreign employment-related Laws applicable to the Seller. None of the Material Customers or Material Suppliers has changed, amended, or altered (or requested to alter) its relationship, contractual or otherwise, with the Seller as a result (directly or indirectly) of any COVID-19 Effect.

Section 3.28. Absence of Certain Changes, Events, and Conditions. Except as expressly contemplated by this Agreement, since December 31, 2020, (a) there has not been any fact, change, event, circumstance, or occurrence which has had, or would reasonably be expected to have, a material adverse effect on the Business, results of operations, financial condition, or assets of the Seller and (b) the Seller has conducted the Business in the ordinary course of business consistent with past practice. Since December 31, 2020, and except as set forth on Section 3.28 of the Disclosure Schedules, the Seller has not taken any action that, if taken after the date of this Agreement and prior to the Closing, would constitute a violation of the covenants and restrictions set forth in Section 5.01.

Section 3.29. Stock Consideration.

(a) The Seller is receiving and will hold the Winc Preferred Shares solely for its own account and investment purposes and not with a view to resale or distribution thereof, in whole or in part, in violation of applicable federal or state securities Laws. The Seller does not have any agreement or arrangement, formal or informal, with any Person to sell or transfer all or any part of any of the Winc Preferred Shares and the Seller does not have any plans to enter into any such agreement or arrangement. The Seller is an "accredited investor" as defined in Regulation D under the Securities Act, and is able to bear the economic risk of holding the Winc Preferred Shares for an indefinite period, and, individually or with the Seller's advisors, has knowledge and experience in financial and business matters such that the Seller is capable of evaluating the risks of the investment in the Winc Preferred Shares.

(b) The Seller understands and acknowledges that the Winc Preferred Shares have not been registered under the Securities Act or any applicable state securities Laws and the Seller understands that the issuance and sale of the Winc Preferred Shares is intended to be exempt from the registration requirements of the Securities Act, by virtue of Section 4(a)(2) thereof and/or Regulation D promulgated thereunder, based, in part, upon the representations, warranties, and agreements of the Seller contained in this Agreement.

(c) The Seller understands that no public market now exists for any of the Winc Preferred Shares and that no assurance have been made that a public market will ever exist for such securities.

(d) The Seller confirms that it has had the opportunity to ask questions of the officers and management employees of Winc and to acquire such additional material information about the business and financial condition of Winc as the Seller has requested, and all such material information has been received.

(e) The Seller understands and acknowledges that the certificates representing the Winc Preferred Shares, and any securities issued in respect of, or exchange for, the Winc Preferred Shares, may bear one or all of the following legends:

(i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE NOT BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933;

(ii) any legend set forth in, or required by, the Preferred Financing Documents; and

(iii) any legend required by the securities Laws of any state, to the extent that such Laws are applicable to the shares represented by the certificate so legended.

Section 3.30. Full Disclosure. The representations and warranties of the Seller contained in this Article III, as modified by the Disclosure Schedules, do not: (a) contain any representation, warranty, or information that is false or misleading with respect to any material fact or (b) omit to state any material fact necessary in order to make the representations, warranties, and information contained herein, in the light of the circumstances under which such representations, warranties and information were or will be made or provided, not false or misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller, as of the Agreement Date and as of the Closing Date, or, if expressly made as of a specified date, as of such specified date, as follows:

Section 4.01. Organization; Good Standing. The Buyer is a limited liability company, duly organized, validly existing, and in good standing under the Laws of the State of California and is a wholly-owned subsidiary of Winc.

Section 4.02. Power and Authority. The Buyer has all requisite right, power, and authority to execute, deliver, and perform this Agreement and the Transaction Agreements to which it is a party, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Agreements by the Buyer, and the consummation by the Buyer of the transactions contemplated hereby and thereby, have been duly approved by the Buyer, and no further action is required on the part of the Buyer to authorize this Agreement, any Transaction Agreement to which it is a party, or the transactions contemplated hereby and thereby. This Agreement has been, and each of the Transaction Agreements will be, duly and validly executed and delivered by the Buyer and, assuming the due and valid authorization, execution, and delivery of this Agreement by the other Parties, and of each such Transaction Agreements by the other parties thereto, constitutes, or will constitute, a valid and binding obligation of the Buyer, enforceable against it in accordance with its terms and conditions, subject to Equitable Exceptions.

Section 4.03. No Conflicts. The execution and delivery by the Buyer of this Agreement and each of the Transaction Agreements, and the consummation of the transactions contemplated hereby and thereby, will not conflict with, result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to an additional payment obligation, a right of termination, cancellation, modification, or acceleration of, any obligation, or loss of any benefit under: (a) any provision of the Buyer's Organizational Documents; (b) any Contract to which the Buyer is party; or (c) any Law applicable to the Buyer.

Section 4.04. Brokers' Fees. The Buyer does not have any Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement and the Transaction Agreements.

Section 4.05. Sufficient Funds. The Buyer has, and will have at the Closing, sufficient funds available to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement and the Transaction Agreements.

Section 4.06. Legal Proceedings. There is no Action of any nature pending or, to the Knowledge of the Buyer, threatened against the Buyer that challenges or seeks to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement and the Transaction Agreements. To the Buyer's knowledge, no event has occurred or circumstance exists that may give rise to, or serve as a basis for, any such Action.

Section 4.07. Capitalization. Section 4.07 of the Disclosure Schedules sets forth the capitalization of Winc as of immediately prior to the Closing (excluding the identity of the holders of Winc's securities).

Section 4.08. Valid Issuance of Securities. The Winc Preferred Shares, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Preferred Financing Agreements, applicable state and federal securities laws and liens or encumbrances created by or imposed by the Seller. Based in part upon the representations of the Seller in Section 3 of this Agreement, the Winc Preferred Shares will be issued in compliance with the Securities Act and all applicable securities laws. The Common Stock issuable upon conversion of the Winc Preferred Shares has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Ninth Amended and Restated Certificate of Incorporation of Winc, will be duly and

validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Preferred Financing Agreements, applicable federal and state securities laws and liens or encumbrances created by or imposed by the Seller. The sale of the Winc Preferred Shares is not, and the subsequent conversion of the Winc Preferred Shares will not be, subject to any preemptive rights, rights of first refusal or similar rights which have not been properly waived or complied with.

ARTICLE V
COVENANTS

Section 5.01. Conduct of the Business. During the period from the Agreement Date to the earlier of the Closing and the date this Agreement is terminated in accordance with Section 8.01 (the "**Interim Period**"), the Seller shall, and the Owner shall cause the Seller to (a) carry on the Business in the ordinary course, consistent with past practice, (b) consult with Buyer on an ongoing basis regarding any activities of the Seller related to the Business that would impair, or are likely to impair, the value or use of the Purchased Assets, (c) maintain the Purchased Assets consistent with the Seller's past practices, and (d) to the extent consistent with the Business, use all commercially reasonable efforts consistent with past practices and policies to preserve intact the Business and preserve the Seller's relationships with customers, suppliers, distributors, and others having dealings with it that are related to the Business. Without limiting the generality of the foregoing, the Seller will not, except as approved in writing by Buyer:

(a) enter into, terminate, or amend or otherwise change the terms of any Contracts, arrangements, plans, agreements, leases, licenses, permits, authorizations, or commitments, except for the entrance into customer Contracts in the ordinary course of the business, consistent with past practice;

(b) lease, mortgage, pledge, or encumber any Purchased Assets or transfer, sell, or dispose of any Purchased Assets, other than sales of inventory in the ordinary course of business;

(c) cancel, release, or assign any claim related to the Business;

(d) bring or settle any Action related to the Business that would affect the value of the Purchased Assets;

(e) grant or issue any equity securities of, or equity rights, in the Seller;

(f) incur, assume, or guarantee any Indebtedness;

(g) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization, or other reorganization;

(h) enter into any acquisition agreement or agreement to acquire by equity purchase, merger, consolidation, or otherwise, or agreement to acquire a substantial portion of the assets of, (in each case, in a single transaction or series of related transactions) any business or material properties or assets of any other Person;

(i) make any material change in the operations or policies with respect to selling Products or services, accounting for such sales, cash management practices, or any method of accounting or accounting policies;

(j) enter into commitments for capital expenditures; or

(k) knowingly take any action that would, or is reasonably likely to, (i) make any representation or warranty of the Seller contained in this Agreement inaccurate, (ii) result in any of the conditions in Article VI not being satisfied, or (iii) impair the ability of the Seller to consummate the transactions in accordance with the terms of this Agreement.

Section 5.02. Access to Properties and Records. The Seller will, subject to applicable Law, afford the Buyer and its representatives, reasonable on-site access during normal business hours or remote access, as applicable, during the Interim Period

to (i) the Seller's properties, books, Contracts, commitments, communications, and records related to the Business, and (ii) all other information concerning the Business, properties, and personnel of Seller, as the Buyer may reasonably request.

Section 5.03. Restricted Transfers. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the consent of a third party (including any Governmental Body), would constitute a breach or other contravention thereof or a violation of any Law or order (each, a "**Restricted Transfer**"). If, on the Closing Date, any such attempted transfer or assignment would be a Restricted Transfer or otherwise would be ineffective, the Seller and the Buyer will cooperate in a mutually agreeable arrangement under which, for up to three (3) months following Closing, (a) the Buyer would obtain the benefits and assume the obligations and bear the economic burdens associated with such Purchased Asset, claim, right or benefit in accordance with this Agreement, including, for example (and without limitation of other similar arrangements being employed instead and in place thereof), by the Seller subcontracting, sublicensing or subleasing such Purchased Asset to the Buyer or (b) the Seller would enforce for the benefit (and at the expense) of the Buyer any and all of the Seller's rights, claims or benefits against a third party associated with such Purchased Asset, and the Seller would promptly pay to the Buyer when received all monies received by it under any such Purchased Asset, claim, right or benefit (net of the Seller's expenses incurred in connection with any assignment or other performance contemplated by this Section 5.03).

Section 5.04. Appropriate Actions.

(a) General. Each of the Parties shall use commercially reasonable efforts to take all actions necessary to consummate the transactions contemplated by this Agreement as soon as reasonably practicable after the execution of this Agreement, including taking all actions necessary to comply promptly with all applicable Laws that may be imposed on it or any of its Affiliates with respect to the Closing.

(b) Third-party Consents. Each of the Parties shall use commercially reasonable efforts to obtain, as soon as reasonably practicable after the execution of this Agreement, any and all consents, approvals, and authorizations of any Third Party, including, without limitation, any Governmental Body, required in order to consummate the transactions contemplated by this Agreement, and each Party shall cooperate with the other Parties in obtaining all such consents, approvals, and authorizations.

(c) Notice of Adverse Developments. During the Interim Period, each Party shall give prompt written notice to the other Parties of the discovery by such Party of any fact, event, or action, the occurrence of which would make satisfaction of any of the conditions set forth in Article VI impossible or unlikely. No notice given pursuant to this Section 5.04(c) shall have any curative effect on the representations, warranties, covenants, or agreements contained in this Agreement, including for purposes of indemnification, termination rights, or for determining satisfaction of any condition contained herein.

Section 5.05. No Solicitation of Transactions. During the Interim Period, the Seller shall not, directly or indirectly, through any Person acting on its behalf or otherwise, initiate, solicit, or encourage (including by way of furnishing information or assistance) or enter into discussions or negotiations of any type, directly or indirectly, or enter into a confidentiality agreement, letter of intent, or other similar agreement with any Person other than the Buyer with respect to a sale of all or any substantial portion of the Business or the assets of the Seller, or a merger, consolidation, business combination, sale of any of the equity interests of the Seller, or the liquidation or similar extraordinary transaction with respect to the Seller, or, except in the ordinary course of business, incur any Indebtedness or any Liens. The Seller hereby acknowledges that, as of the Agreement Date, it is not engaged in ongoing discussions or negotiations with any party other than the Buyer with respect to any of the foregoing. The Seller will promptly notify the Buyer, in writing, if any discussions or negotiations are sought to be initiated, any inquiry or proposal is made, or any information is requested with respect to any of the foregoing, with such notification including the identity of the Third Party with whom such discussions or negotiations are sought and the terms of any such inquiry or proposal received in respect of the foregoing.

Section 5.06. Non-Competition and Non-Solicitation.

(a) From the Closing Date until three (3) years thereafter (the "**Restriction Period**"), each of the Seller and the Owner shall not, and shall not permit their respective Affiliates to, directly or indirectly, (i) engage in, or assist others in engaging in, the Restricted Business; (ii) have an interest in any Person that engages, directly or indirectly, in the Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee, lender, or consultant, except that the "beneficial ownership" by any such Person, either individually or as a member of a "group," as such terms are used in Regulation 13D of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended, of not more than one percent (1%) of the voting stock

of any publicly-held corporation shall not constitute a violation of this Agreement; or (iii) cause, induce, or encourage any customer or supplier of the Buyer to terminate or adversely modify its relationship with the Buyer.

(b) During the Restriction Period, each of the Seller and the Owner shall not, and shall not permit any of their respective Affiliates to, directly or indirectly, hire or solicit any Person who is employed by the Buyer or the Business, except pursuant to a general solicitation which is not directed specifically to any such employees.

(c) Each of the Seller and the Owner shall, and shall cause their respective Affiliates to, from and after the Closing Date, keep the Confidential Information strictly confidential and shall not, and shall cause their respective Affiliates' respective employees, officers, directors, managers, and agents not to, disclose (except as expressly permitted by this Agreement) any portion of the Confidential Information to any Person; provided, that, in the event that any Person subject to confidentiality under this Agreement is compelled by applicable Law (including by request for information or documents in any Action) to disclose any Confidential Information, the Person compelled to make disclosure shall promptly notify (unless prohibited by Law) the Buyer in writing of such requirement, so that the Buyer may seek an appropriate protective order or waive compliance with the provisions of this Agreement applicable to such portion of the Confidential Information. If, in the absence of a protective order or the receipt of a waiver hereunder, such Person is legally required to disclose any Confidential Information, such Person may disclose only that portion of such Confidential Information that such Person is required to disclose; provided, however, that such Person shall use its reasonable best efforts to obtain a protective order or other assurance that confidential treatment will be accorded to such Confidential Information.

(d) Each of the Seller and the Owner shall not, and shall cause their respective Affiliates not to, directly or indirectly, disparage the Business, the Buyer, or any of its Affiliates in any way that adversely and substantially impacts the goodwill, reputation, or business relationships of the Business, the Buyer, or any of its Affiliates with the public generally, or with any of their customers, suppliers, independent contractors, or employees.

(e) Each of the Seller and the Owner acknowledges that a breach or threatened breach of this Section 5.06 would give rise to irreparable harm to the Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that, in the event of a breach or a threatened breach by the Seller or the Owner of any of the Seller's or the Owner's obligations under this Section 5.06, the Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(f) Each of the Seller and the Owner acknowledges that the restrictions contained in this Section 5.06 (i) are directly related to the amount that the Buyer is willing to pay for the Purchased Assets, (ii) are reasonable and necessary to protect the legitimate interests of the Buyer, and (iii) constitute a material inducement to the Buyer to enter into this Agreement and consummate transactions contemplated hereby.

(g) Each of the Seller and the Owner, as applicable, shall without undue delay fulfill all requirements, including payment of Tax amounts due pursuant to any voluntary disclosure agreement or otherwise, to finally resolve with the applicable taxing authorities all New Jersey corporation business Tax and California personal income Tax amounts that have not been timely paid, including with respect to any withholding obligations related to such Tax amounts. Each of the Seller and the Owner shall timely fulfill all Tax obligations imposed on Seller and on Owner, as the case may be, by California and New Jersey Laws with respect to the transactions contemplated by this Agreement.

Section 5.07. Enforcement of Termination Fees. Without the prior written consent of the Seller or Owner, the Buyer shall not, and shall cause its Affiliates not to, enforce any breakup or termination fee, payment, or penalty under any of the Contracts set forth on Section 5.07 of the Disclosure Schedules (collectively, the "**Termination Fee Agreements**"), unless, with respect to any such Termination Fee Agreement, the counterparty thereto agrees to any such provision in connection with any renewal or modification of such Termination Fee Agreement.

ARTICLE VI
CLOSING

Section 6.01. Closing. Subject to the satisfaction or waiver of the conditions precedent specified in this Article VI, the closing of the transactions contemplated by this Agreement (the "**Closing**") will take place at the offices of K&L Gates LLP, 1 Park Plaza, 12th Floor, Irvine, California 92614, at 10:00 a.m., Pacific time, as soon as practicable on or after the execution and delivery of this Agreement, but, in any event, no later than two (2) Business Days following the satisfaction or waiver of the conditions precedent specified in this Article VI or at such other time, date, and place as the Parties may agree in writing. The date on which the Closing occurs is hereinafter referred to as the "**Closing Date**." The Parties agree that the Closing may take place by the electronic exchange of executed counterpart documents and the electronic transfer of funds.

Section 6.02. Conditions Precedent to the Obligations of the Buyer. The obligations of the Buyer to consummate the transactions contemplated by this Agreement and the Transaction Agreements are subject to the satisfaction (or written waiver by the Buyer), at or prior to the Closing, of each of the following conditions:

(a) Accuracy of the Representations. Other than the representations and warranties in Section 3.01, Section 3.02, Section 3.03, Section 3.07, and Section 3.18, each of the representations and warranties made by the Seller and the Owner in this Agreement shall have been accurate in all material respects as of the Agreement Date and shall be accurate in all material respects as of the Closing Date (except as to such representations and warranties made as of a specific date, which shall have been accurate in all material respects as of such date), in each case, without giving effect to any materiality qualifications contained in such representations and warranties. The representations and warranties made by the Seller and the Owner in Section 3.01, Section 3.02, Section 3.03, Section 3.07, and Section 3.18 shall have been true and correct in all respects as of the Agreement Date and shall be true and correct in all respects as of the Closing Date (except as to such representations and warranties made as of a specific date, which shall have been true and correct in all respects as of such date).

(b) Performance of Covenants. Each of the covenants and obligations set forth herein of which the Seller and/or the Owner are required to comply or perform at or prior to the Closing shall have been complied with or performed in all material respects.

(c) Closing Deliverables. At or prior to the Closing, the Buyer shall have received the following: (i) a bill of sale and assignment and assumption agreement substantially in the form attached hereto as **Exhibit C** (the "**Bill of Sale and Assignment and Assumption Agreement**"), duly executed by the Seller; (ii) an Intellectual Property assignment agreement substantially in the form attached hereto as **Exhibit D** (the "**IP Assignment Agreement**"), duly executed by the Seller; (iii) an Intellectual Property assignment agreement in a form reasonably acceptable to the Buyer, duly executed by the Seller and Comex Consulting, S.L.; (iv) an Intellectual Property assignment agreement in a form reasonably acceptable to the Buyer, duly executed by the Seller and the Owner; (v) an escrow agreement substantially in the form attached hereto as **Exhibit E** (the "**Escrow Agreement**"), duly executed by the Seller and the Escrow Agent; (vi) copies of all consents, approvals, waivers, and authorizations set forth in Section 3.04 of the Disclosure Schedules; (vii) to the extent applicable, duly executed payoff letters, UCC-3 termination statements, or other documents necessary to evidence the termination of all Liens in respect of the Purchased Assets; (viii) a certificate of non-foreign status, from the Seller, that complies with Treasury Regulation Section 1.1445-2(b)(2); (ix) the consulting agreement substantially in the form attached hereto as **Exhibit F** (the "**Consulting Agreement**"), duly executed by Comex Consulting, S.L.; (x) a personal goodwill sale agreement substantially in the form attached hereto as **Exhibit G**, duly executed by the Owner; (xi) a certificate, duly executed by an executive officer of the Seller, certifying that the Seller has complied with each of the conditions set forth in Section 6.02(a) and Section 6.02(b); (xii) duly executed sole source letters from the Persons set forth on Section 6.02(c)(xii) of the Disclosure Schedules; (xiii) a joinder agreement to the Preferred Financing Documents substantially in the form attached hereto as **Exhibit H**, duly executed by the Seller; (xiv) fully executed and valid state resale certificates for the State of New Jersey and the State of California; and (xv) such other customary instruments of transfer, assumption, filings, or documents, in form and substance reasonably satisfactory to the Buyer, as may be required to give effect to this Agreement.

(d) No Material Adverse Effect. There shall not have occurred a material adverse effect on the Business, results of operations, financial condition, or assets of the Seller, and no event shall have occurred or circumstance exist that, in combination with any other events or circumstances, could reasonably be expected to have such a material adverse effect.

(e) No Restraints. No temporary restraining order, preliminary or permanent injunction, or other order preventing the consummation of the transactions contemplated hereby shall have been issued by any Governmental Body, and there shall not be any Law enacted or deemed applicable to the transactions contemplated hereby that makes the Closing illegal.

Section 6.03. Conditions Precedent to the Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated by this Agreement and the Transaction Agreements are subject to the satisfaction (or written waiver by the Seller), at or prior to the Closing, of each of the following conditions:

(a) Accuracy of the Representations. Other than the representations and warranties in Section 4.01, Section 4.02, and Section 4.04, each of the representations and warranties made by the Buyer in this Agreement shall have been accurate in all material respects as of the Agreement Date and shall be accurate in all material respects as of the Closing Date (except as to such representations and warranties made as of a specific date, which shall have been accurate in all material respects as of such date), in each case, without giving effect to any materiality qualifications contained in such representations and warranties. The representations and warranties made by the Buyer in Section 4.01, Section 4.02, and Section 4.04 shall have been true and correct in all respects as of the Agreement Date and shall be true and correct in all respects as of the Closing Date (except as to such representations and warranties made as of a specific date, which shall have been true and correct in all respects as of such date).

(b) Performance of Covenants. Each of the covenants and obligations set forth herein of which the Buyer is required to comply or perform at or prior to the Closing shall have been complied with or performed in all material respects.

(c) Closing Deliverables. At or prior to the Closing, the Seller and/or the Owner shall have received the following: (i) the Closing Cash Payment; (ii) the Bill of Sale and Assignment and Assumption Agreement, duly executed by the Buyer; (iii) the IP Assignment Agreement, duly executed by the Buyer; (iv) the Escrow Agreement, duly executed by the Buyer; (v) the Consulting Agreement, duly executed by the Buyer; (vi) the Personal Goodwill Sale Agreement, duly executed by the Buyer; (vii) a certificate, duly executed by an executive officer of the Buyer, certifying that the Buyer has complied with each of the conditions set forth in Section 6.03(a) and Section 6.03(b); and (v) a stock certificate representing all of the Winc Preferred Shares, duly executed by Winc.

(d) No Material Adverse Effect. There shall not have occurred a material adverse effect on the business, results of operations, financial condition, or assets of the Buyer, and no event shall have occurred or circumstance exist that, in combination with any other events or circumstances, could reasonably be expected to have such a material adverse effect.

(e) No Restraints. No temporary restraining order, preliminary or permanent injunction, or other order preventing the consummation of the transactions contemplated hereby shall have been issued by any Governmental Body, and there shall not be any Law enacted or deemed applicable to the transactions contemplated hereby that makes the Closing illegal.

ARTICLE VII
SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

Section 7.01. Survival of Representations and Warranties. All of the representations and warranties made in this Agreement, shall survive the Closing for a period of twenty-four (24) months following the Closing Date (the "**General Survival Date**"), at which point such representations and warranties shall terminate and be of no further force and effect thereafter; provided, that, the representations and warranties contained in Section 3.01 (Organization; Good Standing), Section 3.02 (Power and Authority), Section 3.03 (Title to, and Sufficiency of, the Purchased Assets), Section 3.07 (Intellectual Property and Privacy), Section 3.18 (Brokers' Fees), Section 4.01 (Organization; Good Standing), Section 4.02 (Power and Authority), and Section 4.04 (Brokers' Fees) (collectively, the "**Fundamental Representations**") shall survive until the date that is sixty (60) days following the expiration of the applicable statute of limitations. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims based upon, arising out of, or in connection with, fraud shall survive indefinitely. In addition, notwithstanding the foregoing, any representation or warranty in respect of which indemnity may be sought under this Agreement will survive the time at which it would otherwise terminate pursuant to the immediately preceding sentences if written notice of the inaccuracy or breach thereof, giving rise to such right of indemnification, has been given to the Party, against whom such indemnification may be sought, prior to such time and such representations and warranties shall survive until such claim for indemnification is finally adjudicated and resolved.

Section 7.02. Indemnification by the Seller. Subject to the limitations set forth in this Article VII, each of the Seller and the Owner, jointly and severally (the "**Seller Indemnifying Parties**"), agrees to indemnify and hold harmless the Buyer, including

its shareholders, members, directors, managers, officers, employees, Affiliates, and agents (each, a "**Buyer Indemnified Party**" and, collectively, the "**Buyer Indemnified Parties**"), against all claims, losses, Liabilities, damages, deficiencies, diminutions in value, costs, interest, awards, judgments, penalties, and expenses, including reasonable out-of-pocket attorneys' and consultants' fees and expenses and including any such reasonable expenses incurred in connection with investigating, defending against, or settling any of the foregoing (each, a "**Loss**" and, collectively, the "**Losses**") paid, suffered, incurred, sustained, or accrued by any Buyer Indemnified Party, directly or indirectly, as a result of, arising out of, or in connection with: (a) any inaccuracy in, or breach of, any of the representations or warranties of the Seller and the Owner contained in this Agreement, (b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by the Seller and/or the Owner pursuant to this Agreement, (c) any Excluded Asset or any Excluded Liability, (d) fraud by the Seller and/or Owner, (e) misclassification of any Seller employees and/or independent contractors, (f) any Excluded Taxes of the Seller, and/or (g) any violation, investigation, or enforcement proceeding under the Laws and regulations administered by U.S. Customs and Border Protection, including Laws requiring accurate entry declarations and payment of duties for imported merchandise, pertaining to merchandise imported by or for the Seller, during the period ending on or before the Closing Date.

Section 7.03. Indemnification by the Buyer. Subject to the limitations set forth in this Article VII, the Buyer agrees to indemnify and hold harmless the Seller, including its shareholders, members, directors, managers, officers, employees, Affiliates, and agents (each, a "**Seller Indemnified Party**" and, collectively, the "**Seller Indemnified Parties**"), against all Losses paid, suffered, incurred, sustained, or accrued by any Seller Indemnified Party, directly or indirectly, as a result of, arising out of, or in connection with: (a) any inaccuracy in, or breach of, any of the representations or warranties of the Buyer contained in this Agreement, (b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by the Buyer pursuant to this Agreement, (c) the failure to provide proper notice under any Contract scheduled on Section 3.04 of the Disclosure Schedules of the assignment of such Contract, and/or (d) fraud by the Buyer.

Section 7.04. Indemnification Procedures.

(a) Promptly following receipt by an Indemnified Party of notice by a Third Party (including any Governmental Body) of any complaint, dispute, or claim or the commencement of any audit, investigation, Action, or proceeding with respect to which such Indemnified Party may be entitled to indemnification pursuant hereto (a "**Third-party Claim**"), such Indemnified Party shall provide written notice thereof to the Indemnifying Party, provided, however, that the failure to so notify the Indemnifying Party shall relieve the Indemnifying Party from Liability hereunder with respect to such Third-party Claim only if, and only to the extent that, such failure to so notify the Indemnifying Party results in the forfeiture by the Indemnifying Party of material rights and defenses otherwise available to the Indemnifying Party with respect to such Third-party Claim. The Indemnifying Party shall have the right, upon written notice delivered to the Indemnified Party within twenty (20) days thereafter, assuming full responsibility for any Losses resulting from such Third-party Claim, to assume the defense of such Third-party Claim, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel; provided, however, that the Indemnifying Party shall not be entitled to assume control of such defense and shall pay the fees and expenses of counsel retained by the Indemnified Party if (i) such Third-party Claim relates to, or arises in connection with, any criminal, civil, or administrative action, investigation, or other proceeding instituted by a Governmental Body, (ii) a conflict of interest exists between the Indemnifying Party and the Indemnified Party, (iii) such Third-party Claim seeks an injunction or other equitable relief against the Indemnified Party, or (iv) the amount in controversy under such Third-party Claim is greater than seventy-five percent (75%) of the remaining balance in the Indemnification Escrow Account or is otherwise greater than seventy-five percent (75%) of the amount that the Indemnifying Party would be required to pay to the Indemnified Party pursuant to the indemnification provisions set forth in this Article VII. In the event, however, that the Indemnifying Party declines or fails to assume the defense of such Third-party Claim on the terms provided above or to employ counsel reasonably satisfactory to the Indemnified Party, in either case within such twenty (20)-day period, then any Losses shall include the reasonable fees and disbursements of counsel for the Indemnified Party as incurred. In any Third-party Claim for which indemnification is being sought hereunder, the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such Third-party Claim, shall have the right to participate in such matter and to retain its own counsel at such Party's own expense. The Indemnifying Party or the Indemnified Party (as the case may be) shall at all times use reasonable efforts to keep the Indemnifying Party or Indemnified Party (as the case may be) reasonably apprised of the status of the defense of any matter and to cooperate in good faith with each other with respect to the defense of any such matter.

(b) No Indemnified Party may settle or compromise any Third-party Claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder without the prior written consent of the Indemnifying Party (which may not be unreasonably withheld or delayed), unless (i) the Indemnifying Party fails to assume and maintain the defense of such Third-party Claim or (ii) such settlement, compromise, or consent includes an unconditional release of the Indemnifying Party and its officers, directors, employees and Affiliates from all Liability arising out of, or related to, such Third-party Claim. An Indemnifying

Party may not, without the prior written consent of the Indemnified Party (which may not be unreasonably withheld or delayed), settle or compromise any Third-party Claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise, or consent (A) includes an unconditional release of the Indemnified Party and its officers, directors, employees, and Affiliates from all Liability arising out of, or related to, such Third-party Claim, (B) does not contain any admission or statement suggesting any wrongdoing or Liability on behalf of the Indemnified Party, and (C) does not contain any equitable order, judgment, or term that in any manner affects, restrains, or interferes with the business of the Indemnified Party or any of the Indemnified Party's Affiliates.

(c) In the event an Indemnified Party claims a right to payment pursuant hereto with respect to any matter not involving a Third-party Claim (a "**Direct Claim**"), such Indemnified Party shall send written notice of such claim to the appropriate Indemnifying Party (each, a "**Notice of Claim**"). Such Notice of Claim shall specify the basis for such Direct Claim. The failure by any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any Liability that it may have to such Indemnified Party with respect to any Direct Claim made pursuant to this Section 7.04(c), it being understood that any Notice of Claim in respect of a breach of a representation or warranty must be delivered prior to the expiration of the survival period for such representation or warranty under Section 7.01. The Indemnifying Party shall reply to the Indemnified Party within thirty (30) days of receipt of the Notice of Claim, and such Indemnified Party and the appropriate Indemnifying Party shall establish the merits and amount of such Direct Claim (by mutual agreement, litigation, arbitration or otherwise) and, within five (5) Business Days following the final determination of the merits and amount of such Direct Claim, the Indemnifying Party shall pay to the Indemnified Party an amount equal to such Direct Claim as determined hereunder. Notwithstanding anything to the contrary contained herein, if the Parties are unable to settle such dispute within such thirty (30)-day period or if the Indemnifying Party fails to timely respond, then the Indemnified Party may commence suit to enforce its right to indemnification with respect to such claim(s), subject to Sections 10.13-10.15.

Section 7.05. Indemnity Cap. The aggregate Losses of the Seller Indemnifying Parties, pursuant to Section 7.02(a), shall not exceed one million dollars ($1,000,000) (the "**Indemnity Cap**"), other than with respect to Losses arising out of (a) fraud or willful misconduct or (b) breaches of any Fundamental Representations. Notwithstanding anything to the contrary contained herein, in no event shall the aggregate Losses of the Seller Indemnifying Parties exceed the sum of (i) the Total Proceeds and (ii) the amount payable under the Personal Goodwill Sale Agreement.

Section 7.06. Indemnity Basket. Notwithstanding anything contained herein to the contrary, the Buyer shall not be entitled to indemnification under the provisions of Section 7.02(a), unless and until the aggregate amount of all Losses subject to indemnification by the Seller Indemnifying Parties exceeds forty thousand dollars ($40,000.00) (the "**Basket**"), in which event the Seller Indemnifying Parties shall be required to pay or be liable for all such Losses from the first dollar.

Section 7.07. Manner of Payment. With respect to Losses incurred for which indemnification is available pursuant to Section 7.02, the Buyer (on behalf of the applicable Buyer Indemnified Party) shall have the right, at its sole option, to (x) recover any Losses incurred for which indemnification is available pursuant to Section 7.02 from the Indemnification Escrow Amount, (y) set off an amount equal to the amount of such Losses against any Performance Earn-Out Amounts owed or payable, or that may become owed or payable, to the Seller pursuant to Section 2.06; provided, however, that, such Losses must have been finally determined pursuant to this Article VII for the Buyer to offset against any Performance Earn-Out Amounts owed or payable, and (z) recover such Losses directly from the Seller and/or Owner.

Section 7.08. Release of Indemnification Escrow Funds. Within five (5) Business Days following the General Survival Date, the Buyer and the Seller shall jointly direct the Escrow Agent to pay to the Seller the Initial Indemnity Release Amount. For purposes hereof, the "**Initial Indemnity Release Amount**" means an amount equal to (A) the then-remaining Indemnification Escrow Amount, less (B) any portion of the Indemnification Escrow Amount subject to a claim for indemnification pursuant to a claim notice given by a Buyer Indemnified Party that has been submitted on or prior to the General Survival Date (each, an "**Outstanding Claim**"), which portion shall continue to be retained until final settlement between the Buyer Indemnified Party and the Seller or final non-appealable resolution of all such Outstanding Claims (and thereafter released in accordance with the terms of such settlement or resolution).

Section 7.09. Materiality Qualifiers. For purposes of determining (a) the amount of any Losses arising from a breach of any representation or warranty for which an Indemnified Party is entitled to indemnification under this Article VII or (b) whether a breach of

any representation or warranty of any Indemnified Party exists for purposes of this Article VII, the terms "material," "material adverse effect," "in all material respects," and words of similar import shall be disregarded and given no effect.

Section 7.10. Exclusive Remedy. The rights and remedies provided in this Article VII will provide the exclusive legal remedy for the matters covered by this Article VII, except for claims based upon fraud, willful misconduct or intentional misrepresentation. Notwithstanding the foregoing, this Article IX will not affect any remedy any Party may have under any other Transaction Agreement or any equitable remedy available to any Party.

Section 7.11. Recovery Limitation. Notwithstanding anything in this Agreement to the contrary, in no event shall the Indemnifying Party be liable to the Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, except to the extent owed to a third party with respect to a Third-party Claim or arising from a breach of any of the negative covenants set forth in Section 5.06.

Section 7.12. Tax Treatment. Any payment made pursuant to this Article VII shall be treated by the Parties for U.S. federal Income Tax and other applicable Tax purposes, unless otherwise required by applicable Law, as an adjustment to the cash proceeds received by Seller pursuant to this Agreement (and, as applicable, by the Owner pursuant to the Personal Goodwill Sale Agreement).

ARTICLE VIII
TERMINATION

Section 8.01. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the written consent of the Parties;

(b) by any Party upon written notice to the other Parties in the event that there shall be any Law that makes the consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited, or any Governmental Body shall have issued an order restraining or enjoining the transactions contemplated by this Agreement and such order shall have become final and non-appealable;

(c) by written notice from the Buyer to the Seller (provided that the Buyer is not then in material breach of any representation, warranty, covenant, or agreement contained in this Agreement), if there has been a breach of any representation, warranty, covenant, or agreement by the Seller, or any such representation or warranty shall become untrue after the date hereof, such that the conditions in Section 6.02(a) and Section 6.02(b) would not be satisfied and such breach is not curable or, if curable, is not cured within the earlier of (i) fifteen (15) days after written notice thereof is given by the Buyer to the Seller and (ii) the Expiration Date;

(d) by written notice from the Seller to the Buyer (provided that the Seller is not then in material breach of any representation, warranty, covenant, or agreement contained in this Agreement), if there has been a breach of any representation, warranty, covenant, or agreement by the Buyer, or any such representation or warranty shall become untrue after the date hereof, such that the conditions in Section 6.03(a) and Section 6.03(b) would not be satisfied and such breach is not curable or, if curable, is not cured within the earlier of (i) fifteen (15) days after written notice thereof is given by the Seller to the Buyer and (ii) the Expiration Date; or

(e) by any Party upon written notice to the other Parties if the Closing fails to occur by August 31, 2021 (the "**Expiration Date**"), for any reason whatsoever, unless such failure shall be due to the failure of such Party to perform or comply with any of it covenants or agreements hereunder.

Section 8.02. Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.01, this Agreement shall forthwith become void and there shall be no Liability on the part of any Party, except that (a) the provisions of this Section 8.02 and Article X shall survive the termination of this Agreement, and (b) nothing herein shall relieve a Party from Liability for any intentional breach of any provision of this Agreement occurring prior to the time of such termination.

ARTICLE IX
Taxes

Section 9.01. In the case of the amount of property Taxes and other similar Taxes imposed on a periodic basis ("**Property Taxes**"), the amount that is attributable to the portion of the Straddle Period ending on the Closing Date shall be deemed to equal the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period.

Section 9.02. Transfer Taxes. The Buyer and the Seller shall be equally responsible for the aggregate amount of any and all transfer, sales, value-added, use, gross receipts, registration, stamp duty, excise, or similar Taxes that may be payable in connection with the sale or purchase of the Purchased Assets (the "**Transfer Taxes**"). Each such Transfer Tax shall be paid when due by the Party on whom such Transfer Tax is imposed, and such Party shall be promptly reimbursed for the other Party's share thereof after providing the other Party with evidence of such payment. Following the Closing, the Parties shall cooperate to secure full exemption for Transfer Taxes with respect to any inventory purchased hereunder.

ARTICLE X
MISCELLANEOUS

Section 10.01. Entire Agreement. This Agreement and the Transaction Agreements (including the exhibits hereto and thereto and the documents referred to therein) constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

Section 10.02. No Third-party Beneficiaries. Except as provided in Article VII, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to, or shall confer upon, any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under, or by reason of, this Agreement.

Section 10.03. Amendment. This Agreement may be amended with the written consent of each of the Parties or any successor thereto by execution of an instrument in writing.

Section 10.04. Waivers. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. To the maximum extent permitted by applicable Law: (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Parties; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to, or demand on, one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the Transaction Agreements.

Section 10.05. Notices. All notices and other communications required or permitted hereunder shall be (a) in writing, (b) effective when given, and (c), in any event, deemed to be given upon receipt or, if earlier: (i) upon delivery, if delivered by hand; (ii) two (2) Business Days after deposit with FedEx Express or similar recognized international overnight courier service, freight prepaid; or (iii) one (1) Business Day after facsimile or electronic mail transmission.

If to the Buyer, addressed to:

BWSC, LLC
12405 Venice Blvd., #1
Los Angeles, CA 90066
Email: matt.thelen@winc.com
Attention: Matt Thelen, Chief Strategy Officer and General Counsel

With a copy (which shall not constitute notice), addressed to:

K&L Gates LLP
1 Park Plaza, 12th Floor
Irvine, California 92614
Email: Goody.Agahi@klgates.com
Attention: Goodarz T. Agahi, Esq.

If to the Seller and/or the Owner, addressed to:

Natural Merchants, Inc.
560-A NE F ST #330
Grants Pass, OR 97526
Email: ed@naturalmerchants.com
Attention: Edward Field

With a copy (which shall not constitute notice), addressed to:

Robert Weinberger Law PC
1340 E. 6th Street, Suite 603
Los Angeles, CA 90021
Email: bobby@rkweinbergerlaw.com
Attention: Robert K. Weinberger, Esq.

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties advance written notice pursuant to the provisions above.

Section 10.06. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties named herein and their respective successors and permitted assigns. Neither this Agreement nor any rights or obligations of the Seller or the Owner hereunder shall be assigned by such Party without the prior written consent of the Buyer. The Buyer may assign this Agreement or its rights or obligations hereunder (a) to any of its direct or indirect subsidiaries, or (b) after the Closing, to any Third Party; provided, however, that in the case of each of the foregoing clauses (a) and (b), no such assignment shall relieve the Buyer of its obligations to the other Parties hereunder. This Agreement will be binding upon any permitted assignee of any Party. No assignment shall have the effect of relieving any Party to this Agreement of any of its obligations hereunder.

Section 10.07. Public Disclosure. Except as may be required by Law, neither the Owner nor the Seller shall issue any statement or communication to any Third Party (other than its respective agents) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the prior written consent of the Buyer. The Buyer may issue any statement or communication to any Third Party regarding the subject matter of this Agreement or the transactions contemplated hereby without the prior written consent of the Seller; provided, that, the Buyer shall consult with the Seller prior to the issuance of any such statement or communication and shall consider in good faith any comments made by the Seller to such statement or communication.

Section 10.08. Expenses and Fees. Whether or not the Closing occurs, all fees and expenses incurred in connection with the transactions contemplated by this Agreement, including all legal, accounting, financial advisory, consulting and all other fees and expenses of Third Parties incurred by a Party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective Party incurring such fees and expenses.

Section 10.09. Name Change. Within three (3) Business Days following the Closing Date, the Seller shall change its corporate name and remove any reference to the name "Natural Merchants, Inc." or any other trade name used by the Seller in the conduct or operation of the Business, in each case to a name or reference that, in the sole and absolute opinion of the Buyer, is not likely to result in confusion with the Seller. As promptly as practicable following the Closing, the Seller shall file in all jurisdictions in which it is qualified to do business all documents necessary to reflect such change of name or to terminate its qualification therein. In connection with enabling the Buyer, at or as soon as practicable following the Closing, to use the current corporate name of the Seller, should it so choose, the Seller shall, at or prior to the Closing, execute and deliver to the Buyer all consents related to such change of name as may be reasonably requested by the Buyer, and shall otherwise cooperate with the Buyer.

Section 10.10. Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled hereunder, at Law or in equity.

Section 10.11. Disclosure Schedules. The Disclosure Schedules shall be subject to the following terms and conditions: (a) the sections in the Disclosure Schedules shall correspond to the numbering set forth in this Agreement; (b) each item disclosed in the Disclosure Schedules on a particular section shall be deemed to be disclosed on other sections only to the extent that the relevance of such disclosure to another section is reasonably apparent on the face of such disclosure notwithstanding the omission of a reference or cross reference thereto (it being understood that no such deemed incorporation will be attributed to Section 3.12 of the Disclosure Schedules); (c) no disclosure of any matter contained in the Disclosure Schedules shall create an implication that such matter meets any standard of materiality; (d) any disclosures contained in the Disclosure Schedules which refer to a document are qualified in their entirety by reference to the text of such document; (e) no disclosure in the Disclosure Schedules relating to any possible breach or violation of any agreement, Law or any possible infringement on the right of a Third Party shall be construed as an admission or indication that any such breach, violation or infringement exists or has actually occurred; and (f) headings and introductory language have been inserted in the Disclosure Schedules for convenience of reference only and shall to no extent have the effect of amending or changing the express description of the sections as set forth in this Agreement.

Section 10.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, electronic mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.13. Governing Law. This Agreement shall in all respects be construed in accordance with, and governed by, the Laws of the State of Delaware without regard to conflict of Laws principles.

Section 10.14. Submission to Jurisdiction. Any Action arising out of, or based upon, this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the District of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such Action.

Section 10.15. Waiver of Jury Trial. NO PARTY TO THIS AGREEMENT OR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE OF A PARTY SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER AGREEMENTS OR THE DEALINGS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY HERETO THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

Section 10.16. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Section 10.17. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

Section 10.18. Descriptive Headings; Interpretation. The headings and captions used in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized terms used in any Schedule or Exhibit attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement. Unless otherwise indicated to the contrary herein by the context or use thereof, (a) the words “herein,” “hereto,” “hereof” and words of similar import refer

to this Agreement as a whole and not to any particular Article, Section, or paragraph hereof, (b) the word "including" means "including, without limitation," (c) words importing the singular will also include the plural, and vice versa, (d) words denoting any gender shall include all genders, (e) references to a Person are also to its permitted successors and permitted assigns, (f) references to Schedules shall mean one of the disclosure schedules constituting the Disclosure Schedules, (g) any reference to any specific Governmental Body shall be deemed to include any successor thereto, (h) any accounting terms used in this Agreement shall, unless otherwise defined in this Agreement, have the meaning ascribed thereto by GAAP, (i) the phrase "to the extent" means the degree to which a thing extends (rather than "if"), and (j) the word "or" shall be disjunctive but not exclusive. References to "$" or "dollars" will be references to United States Dollars, and with respect to any contract, obligation, liability, claim, or document that is contemplated by this Agreement but denominated in currency other than United States Dollars, the amounts described in such contract, obligation, liability, claim, or document will be deemed to be converted into United States Dollars for purposes of this Agreement as of the applicable date of determination. References to "made available to the Buyer" shall mean information contained in the Natural Merchants DD data room hosted by Google Drive no later than two (2) Business Days prior to the Agreement Date. Unless the context of this Agreement otherwise requires, references to Contracts shall be deemed to include all subsequent amendments or other modifications thereto (subject to any restrictions on amendments or modifications set forth in this Agreement). Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to Laws shall be construed as including all Laws consolidating, amending or replacing the Law. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. If any action is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action may be deferred until the next Business Day.

Section 10.19. Further Assurances. From time to time following the Closing, the Parties shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all reasonable further conveyances, notices, assumptions, releases, and instruments, and shall take such reasonable actions as may be necessary or appropriate to make effective the transactions contemplated hereby as may be reasonably requested by the other Parties (including (a) transferring back to the Seller or its designees each Excluded Asset and any asset or Liability not contemplated by this Agreement to be a Purchased Asset or an Assumed Liability, respectively, which asset or Liability was transferred to the Buyer at the Closing and (b) transferring to the Buyer (and having the Buyer assume) any asset or Liability contemplated by this Agreement to be a Purchased Asset or an Assumed Liability, respectively, which was not transferred to the Buyer at the Closing).

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Agreement Date.

"BUYER"

BWSC, LLC,
a California limited liability company

By: Winc, Inc., a Delaware corporation, its Sole Member

By: /s/ Geoffrey McFarlane
Name: Geoffrey McFarlane
Title: Chief Executive Officer

Signature Page to Asset Purchase Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Agreement Date.

"SELLER"

NATURAL MERCHANTS, INC.,
an Oregon corporation

By: /s/ Edward Field
Name: Edward Field
Title: President

"OWNER"

/s/ Edward Field
Edward Field

Signature Page to Asset Purchase Agreement

EXHIBIT A

DISCLOSURE SCHEDULES

EXHIBIT B

NWC EXAMPLE

EXHIBIT C

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT D

FORM OF IP ASSIGNMENT AGREEMENT

EXHIBIT E

ESCROW AGREEMENT

EXHIBIT F

FORM OF CONSULTING AGREEMENT

EXHIBIT G

EXHIBIT H

JOINDER AGREEMENT

Exhibit 21.1

Legal Name	Jurisdiction of Incorporation
BWSC, LLC	California

Exhibit 99.1

INFORMATION STATEMENT

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Trademarks and Tradenames

"Winc, Inc.," "Winc," "BWSC, LLC," our logo and other registered or common law trade names, trademarks or service markets of Winc appearing in this information statement are the property of Winc. This information statement contains additional trade names, trademarks and service marks of other companies that are the property of their respective owners. We do not intend our use or display of other companies' trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies. Solely for convenience, our trade names, trademarks and service marks referred to in this information statement appear without the ®, ™ or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trade names, trademarks and service marks.

Glossary

As used in this information statement, unless the context otherwise requires, references to:

- "Alcoholic Beverages" means wine, spirits and beer and the "Alcoholic Beverages market" or "Alcoholic Beverages industry" means the wine, spirits and beer market in the United States;
- "AOV" means average order value, which, for any period, represents the sum of DTC net revenues divided by the total orders placed in that period;
- "CAC" means consumer acquisition cost, which, for any period, represents performance and marketing expense attributable to consumer acquisition less the gross profit from gift card sales, divided by the number of new members that have signed up to participate in the Winc.com membership program for that same period;
- "case" means a standard 12 bottle case of wine, in which each bottle has a volume of 750 milliliters or nine liters in total;
- "CPG" means consumer product goods;
- "core brands" refers to the following brands: (i) "Summer Water" or "SW;" (ii) "Wonderful Wine Company" or "WWC;" (iii) "Lost Poet" or "LP;" (iv) "Folly of the Beast" or "Folly;" and (v) "Chop Shop, or "Chop;"
- "DTC" means direct-to-consumer;
- "LTR" means consumer lifetime revenue, which represents for any member or group of members as of any date the total revenue generated from each member or group of members as of such date on the Winc digital platform;
- "LTV" means consumer lifetime value, which represents the total gross profit generated from each member on the Winc digital platform on a 5-year historical basis, adjusted for any unused credit breakages; total gross profit generated from each member is determined by reducing revenue for any unused credit breakages, multiplying each month of revenue by the associated average gross margin percentage generated in 2020, and then summing the dollar values on a cumulative basis; to properly account for gross margin differences between the discounted initial purchase and subsequent months, we multiply the average 2020 gross margin percentage from initial discounted purchases to the first month of revenues and the average 2020 gross margin percentages from such segment purchases to the revenues from all subsequent months;
- "price bands" means the price-point segments in the wine market consisting of:
  - "Value" wines with a $9.99 or lower retail price per bottle;
  - "Premium" wines with a $10.00-$29.99 retail price per bottle; and
  - "Luxury" wines with a $30.00 or higher retail price per bottle; and
- "three-tier system" means the system for distributing Alcoholic Beverages set up in the United States after the repeal of the prohibition. The three tiers are importers or producers, distributors and retailers. Under the traditional three-tier system, producers can sell their products only to wholesale distributors who then sell to retailers, and only retailers may sell to consumers. Today, sales of Alcoholic Beverages are permitted online outside of the three-tier system, through direct-to-consumer licenses.

RISK FACTORS

Investing in our securities involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in information statement, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the accompanying notes thereto included elsewhere in information statement, before deciding whether to invest in our securities. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of or that we deem immaterial may also become important factors that adversely affect our business. The realization of any of these risks and uncertainties could have a material adverse effect on our reputation, business, financial condition, results of operations, growth and future prospects, as well as our ability to accomplish our strategic objectives.

Summary of Risks Associated with Our Business

Our business is subject to a number of risks and uncertainties, including those highlighted in the section titled "Risk Factors". These risks include, but are not limited to, the following:

- We have a history of net losses and we may not be able to achieve or maintain profitability in the future.
- Our historical growth may not be indicative of our future growth and, if we continue to grow rapidly, we may not be able to effectively manage our growth or evaluate our future prospects. If we fail to effectively manage our future growth or evaluate our future prospects, our business could be adversely affected.
- Our quarterly operating results may fluctuate, which could cause our stock price to decline.
- We must expend resources to maintain consumer awareness of our brand, build brand loyalty and generate interest in our brands. As our marketing strategies and channels evolve, our efforts may not be successful.
- The success of our business depends heavily on the strength of brands, and our brands and reputation may be diminished due to real or perceived quality, safety, efficacy or environmental impact issues with our brands, which could have an adverse effect on our business, financial condition, results of operations and prospects.
- If we fail to cost-effectively acquire new consumers or retain our existing consumers, our business could be adversely affected. Our sales and profit are dependent upon our ability to expand our existing consumer relationships and acquire new consumers.
- Our ability to maintain our competitive position is largely dependent on the services of our senior management and other key personnel.
- We rely on third-party suppliers, producers, retailers and other vendors, and they may not continue to produce products or provide services that are consistent with our standards or applicable regulatory requirements, which could harm our brand, cause consumer dissatisfaction, and require us to find alternative suppliers of our products or services.
- Our business may be adversely affected if we are unable to provide our consumers with a technology platform that is able to respond and adapt to rapid changes in technology, if our platform encounters disruptions in usability or if our consumers find our platform less usable or attractive than our competitors'.
- Consumer demand for wine could decline for a variety of reasons. Reduced demand could harm our results of operations, financial condition and prospects.
- The occurrence of an environmental catastrophe could disrupt our business. Climate change, wildfires, disease, pests, weather conditions and problems with water supply could also have adverse effects on our business.
- Due to the legacy alcohol beverage distribution system in the United States, we are heavily reliant on wholesale distributors and government agencies that resell Alcoholic Beverages in all

states. A significant reduction in wholesale distributor demand for our wines would materially and adversely affect our sales and profitability.

- The consumer reception of the launch and expansion of our brands is inherently uncertain and may present new and unknown risks and challenges in production and marketing that we may fail to manage optimally and which could have a materially adverse effect on our business, results of operations and financial results.
- If we are unable to obtain adequate supplies of premium grapes and bulk wine from third-party grape growers and bulk wine suppliers, the quantity or quality of our annual production of wine could be adversely affected, causing a negative impact on our business, results of operations and financial condition.
- As a producer of Alcoholic Beverages, we are regularly the subject of regulatory reviews, proceedings and audits by governmental entities, any of which could result in an adverse ruling or conclusion, and which could have a material adverse effect on our business, financial condition, results of operations and future prospects.

Risks Related to Our Business

We have a history of net losses and we may not be able to achieve or maintain profitability in the future.

We have incurred net losses each year since our inception and we may not be able to achieve or maintain profitability in the future. We incurred net losses of approximately $7.0 million and $8.0 million in the years ended December 31, 2020 and 2019, respectively, and of approximately $3.3 million and $3.8 million in the six months ended June 30, 2021 and 2020, respectively. In addition to increases in expenses as a result of becoming a public company, we expect our expenses will increase in the future as we develop and launch new product offerings and platform features, expand in existing and new markets, increase our sales and marketing efforts and continue to invest in our platform. These efforts may be more costly than we expect and may not result in increased revenue or growth in our business. These offerings may require significant capital investments and recurring costs, maintenance, depreciation, asset life and asset replacement costs, and if we are not able to maintain sufficient levels of utilization of such assets or such offerings are otherwise not successful, our investments may not generate sufficient returns and our financial condition may be adversely affected. Any failure to increase our revenue sufficiently to keep pace with our investments and other expenses could prevent us from achieving or maintaining profitability or positive cash flow on a consistent basis. If we are unable to successfully address these risks and challenges as we encounter them, our business, financial condition, results of operations and prospects could be adversely affected. If we are unable to generate adequate revenue growth and manage our expenses, we may continue to incur significant losses in the future and may not be able to achieve or maintain profitability.

Additionally, as a result of our relatively short operating history at our current scale, we have limited financial data that can be used to evaluate our business and future prospects. Any evaluation of our business and prospects must be considered in light of our limited operating history, which may not be indicative of future performance. Because of our limited operating history, we face increased risks, uncertainties, expenses, and difficulties, including the risks and uncertainties discussed in this section.

Our historical growth may not be indicative of our future growth and, if we continue to grow rapidly, we may not be able to effectively manage our growth or evaluate our future prospects. If we fail to effectively manage our future growth or evaluate our future prospects, our business could be adversely affected.

We have experienced significant growth since our founding in 2011. For example, our net revenues increased from approximately $36.4 million in 2019 to $64.7 million in 2020, and from $29.2 million in the six months ended June 30, 2020 to $35.1 million in the six months ended June 30, 2021. This growth has placed significant demands on our management, financial, operational, technological and other resources. The anticipated growth and expansion of our business depends on a number of factors, including our ability to:

- increase awareness of our portfolio of brands in order to successfully compete with other companies;
- efficiently drive online consumer acquisition;

- expand our relationships with wholesale distributors;
- introduce products in beverage categories beyond wine;
- maintain and improve our technology platform supporting the Winc digital platform;
- expand our supplier and fulfillment capacities; and
- maintain quality control over our brand offerings.

These investments may not result in the growth of our business. Even if these investments do result in the growth of our business, if we do not effectively manage our growth, we may not be able to execute on our business plan, respond to competitive pressures, take advantage of market opportunities, satisfy consumer requirements or maintain high-quality brand offerings, any of which could adversely affect our business, financial condition, results of operations and prospects. You should not rely on our historical rate of revenue growth as an indication of our future performance or the rate of growth we may experience in the future.

In addition, to support continued growth, we must effectively integrate, develop and motivate a large number of new employees while maintaining our corporate culture. We face significant competition for personnel. To attract top talent, we have had to offer, and expect to continue to offer, competitive compensation and benefits packages before we can validate the productivity of new employees. We may also need to increase our employee compensation levels to remain competitive in attracting and retaining talented employees. The risks associated with a rapidly growing workforce will be particularly acute as we choose to expand into new beverage categories and markets. Additionally, we may not be able to hire new employees quickly enough to meet our needs. If we fail to effectively manage our hiring needs or successfully integrate new hires, our efficiency, ability to meet forecasts and employee morale, productivity and retention could suffer, which could have an adverse effect on our business, financial condition, results of operations and prospects.

We are also required to manage numerous relationships with various vendors and other third parties. Further growth of our operations, vendor base, fulfillment centers, information technology systems or internal controls and procedures may not be adequate to support our operations. If we are unable to manage the growth of our organization effectively, our business, financial condition, results of operations and prospects may be adversely affected.

Failure to introduce and effectively market new brands may adversely affect our ability to continue to grow.

A key element of our growth strategy depends on our ability to develop and market new brands that meet our standards for quality and appeal to our consumers. The success of our innovation and product development efforts is affected by our ability to successfully leverage consumer data, the technical capability of our innovation staff, developing and testing product formulas and prototypes, our ability to comply with applicable governmental regulations, and the success of our management and sales and marketing teams in introducing and marketing new brands. Our brand offerings have changed since our launch, which makes it difficult to forecast our future results of operations. There can be no assurance that we will successfully develop and market new brands that appeal to consumers. For example, product blends or formulas we develop may not contain the attributes desired by our consumers. Any such failure may lead to a decrease in our growth, sales and ability to achieve profitability, which could adversely affect our business, financial condition, results of operations and prospects.

Additionally, the development and introduction of new brands requires substantial marketing expenditures, which we may be unable to recoup if new brands do not gain widespread market acceptance. If we are unsuccessful in meeting our objectives with respect to new or improved brands, our business, financial condition, results of operations and prospects could be adversely affected.

We must expend resources to maintain consumer awareness of our brand, build brand loyalty and generate interest in our brands. As our marketing strategies and channels evolve, our efforts may not be successful.

In order to remain competitive and expand and keep market share for our brands across our various channels, we may need to increase our marketing and advertising spending to maintain and increase

consumer awareness, protect and grow our existing market share or promote new brands, which could impact our operating results. Substantial advertising and promotional expenditures may be required to maintain or improve our brands' market position or to introduce new brands to the market, and we are increasingly engaging with non-traditional media, including consumer outreach through social media and web-based channels, which may not prove successful. An increase in our marketing and advertising efforts may not maintain our current reputation or lead to increased brand awareness. Further, social media platforms frequently change the algorithms that determine the ranking and display of results of a user's search and may make other changes to the way results are displayed, or may increase the costs of such advertising, which can negatively affect the placement of our links and, therefore, reduce the number of visits to our website and social media channels or make such marketing cost-prohibitive. In addition, social media platforms typically require compliance with their policies and procedures, which may be subject to change or new interpretation with limited ability to negotiate, which could negatively impact our marketing capabilities. If we are unable to maintain and promote a favorable perception of our brands on a cost-effective basis, our business, financial condition, results of operations and prospects could be adversely affected.

If we fail to cost-effectively acquire new consumers or retain our existing consumers, our business could be adversely affected. Our sales and profit are dependent upon our ability to expand our existing consumer relationships and acquire new consumers.

Our success, and our ability to increase revenue and achieve profitability, depend in part on our ability to cost-effectively acquire new consumers, retain existing consumers and keep existing consumers engaged so that they continue to purchase our brands. While we intend to continue to invest significantly in sales and marketing to educate consumers about our brands, there is no assurance that these efforts will generate further demand for our brands or expand our consumer base. Our ability to attract new consumers and retain our existing consumers will depend on, among other items, the perceived value and quality of our brands, the success of our omni-channel approach, demand for Alcoholic Beverages, our ability to offer high-quality and culturally relevant brands and the effectiveness of our marketing efforts. We may also lose loyal consumers to our competitors if we are unable to meet consumer demand in a timely manner. If we are unable to cost-effectively acquire new consumers, retain existing consumers and keep existing consumers engaged, our business, financial condition, results of operations and prospects could be adversely affected.

Any strategies we employ to pursue this growth are subject to numerous factors outside of our control. Our retailers continue to aggressively market their private label or competitive products, which could reduce demand for our brands. The expansion of our business also depends on our ability to increase sales through our ecommerce channel and increase breadth and depth of distribution at retailers. Any growth within our existing distribution channels may also affect our existing consumer relationships and present additional challenges, including those related to pricing strategies. Our direct connections to our consumers may become more limited as we expand our non-DTC channels. Additionally, we may need to increase or reallocate spending on marketing and promotional activities, such as temporary price reductions, off-invoice discounts and other trade activities, and these expenditures are subject to risks, including risks related to consumer acceptance of our efforts. Our failure to obtain new consumers, or expand our business with existing consumers, could have an adverse effect on our business, financial condition, results of operations and prospects.

We also use paid and non-paid advertising. Our paid advertising may include search engine marketing, display, paid social media and product placement and traditional advertising, such as direct mail, television, radio, podcasts and magazine advertising. Our non-paid advertising efforts include search engine optimization, non-paid social media and e-mail marketing. We drive a significant amount of traffic to our website via search engines and, therefore, rely heavily on search engines. Search engines frequently update and change the logic that determines the placement and display of results of a user's search, such that the purchased or algorithmic placement of links to our website can be negatively affected. Moreover, a search engine could, for competitive or other purposes, alter its search algorithms or results, causing our website to place lower in search query results.

We also drive a significant amount of traffic to our website via social networking or other ecommerce channels used by our current and prospective consumers. As social networking and ecommerce channels continue to rapidly evolve, we may be unable to develop or maintain a presence within these channels. If we

are unable to cost-effectively drive traffic to our website, or if the popularity of our social media, online or offline presence declines, our ability to acquire new consumers could be adversely affected. Additionally, if we fail to increase our revenue per active consumer, generate repeat purchases or maintain high levels of consumer engagement, our business, financial condition, results of operations and prospects could be adversely affected.

We may not be able to compete successfully in our highly competitive market.

The markets in which we operate are highly competitive and rapidly evolving, with many new brands and product offerings emerging in the marketplace. We face significant competition from both established, well-known players in the wine industry and emerging brands. Numerous brands and products compete for limited shelf space in the retail channel, and for members in the ecommerce channel. We compete based on various product attributes including taste, quality, brand aesthetic and cultural relevance, as well as our ability to establish direct relationships with our consumers through our ecommerce channel.

Our wines compete with popularly priced generic wines and with other alcoholic and, to a lesser degree, non-Alcoholic Beverages, for drinker acceptance and loyalty, shelf space and prominence in retail stores, presence and prominence on restaurant wine lists and for marketing focus by independent wholesale distributors, many of which carry extensive portfolios of wines and other Alcoholic Beverages. This competition is driven by established companies as well as new entrants in our markets and categories. In the United States, wine sales are relatively concentrated among a limited number of large suppliers. Many of these competitors have substantially greater financial and other resources than us and products that are well-accepted in the marketplace today. Many also have longer operating histories, larger fulfilment infrastructures, greater technical capabilities, faster shipping times, lower freight costs, lower operating costs, greater financial, marketing, institutional and other resources and larger consumer bases than we do. These factors may also allow our competitors to derive greater revenue and profits from their existing consumer bases, acquire consumers at lower costs or respond more quickly than we can to new or emerging technologies and changes in product trends and consumer shopping behavior. These competitors may engage in more extensive research and development efforts, enter or expand their presence in any or all of the ecommerce or retail channels where we compete, undertake more far-reaching marketing campaigns, and adopt more aggressive pricing policies, which may allow them to build larger consumer bases or generate revenue from their existing consumer bases more effectively than we do. As a result, these competitors may be able to offer comparable or substitute products to consumers at similar or lower costs. This could put pressure on us to lower our prices, resulting in lower revenue and margins or cause us to lose market share even if we lower prices.

We cannot be certain that we will successfully compete with larger competitors that have greater financial, sales, technical and other resources. Companies with greater resources may acquire our competitors or launch new products, and they may be able to use their resources and scale to respond to competitive pressures and changes in consumer preferences by reducing prices or increasing promotional activities, among other things. Retailers also market competitive products under their own private labels, which are generally sold at lower prices, and may change the merchandising of our brands so that they have less favorable placement. Competitive pressures or other factors could cause us to lose market share, which may require us to lower prices, increase marketing expenditures, or increase the use of discounting or promotional campaigns, each of which would adversely affect our margins and could result in a decrease in our operating results and ability to achieve or maintain profitability.

We expect competition in the wine industry to continue to increase. We believe that our ability to compete successfully in this market depends upon many factors both within and beyond our control, including:

- the size and composition of our consumer base;
- the number of brands that we offer and feature across our sales channels;
- our information technology infrastructure;
- the quality and responsiveness of our customer service;
- our selling and marketing efforts;

- the quality and price of the brands that we offer;
- the convenience of the shopping experience that we provide on our website;
- our ability to distribute our brands and manage our operations; and
- our reputation and brand strength.

If we fail to compete successfully in this market, our business, financial condition, results of operations and prospects could be adversely affected.

Consolidation of the wholesale distributors of our wines, as well as the consolidation of retailers, may increase competition in an already crowded space and may have a material adverse effect on our business, results of operations and financial results.

Sales not made directly to consumers through our DTC channel are made through independent wholesale distributors for resale to retail outlets, restaurants, hotels and private clubs across the United States and in some overseas markets. Sales to wholesale distributors are expected to continue to represent a substantial portion of our future net sales. Consolidation among wine producers, wholesale distributors, suppliers and retailers could create a more challenging competitive landscape for our wines, including through our DTC channel, to the extent consolidation impairs general consumer awareness of our brands. In addition, the increased growth and popularity of the retail ecommerce environment across the consumer product goods market, which has accelerated during the COVID-19 pandemic and the resulting quarantines, "stay at home" orders, travel restrictions, retail store closures, social distancing requirements and other government action, is highly likely to change the competitive landscape for our wines. Consolidation at any level could hinder the distribution and sale of our wines as a result of reduced attention and resources allocated to our winery brands both during and after transition periods, because our winery brands might represent a smaller portion of the new business portfolio. Furthermore, consolidation of wholesale distributors may lead to the erosion of margins as newly consolidated wholesale distributors take down prices or demand more margin from existing suppliers. Changes in wholesale distributors' strategies, including a reduction in the number of brands they carry or the allocation of resources for our competitors' brands or private label brands, may adversely affect our growth, business, financial results and market share. Wholesale distributors of our wines offer products that compete directly with our wines for inventory and retail shelf space, promotional and marketing support and consumer purchases. Expansion into new product categories by other suppliers or innovation by new entrants into the market could increase competition in our product categories.

An increasingly large percentage of our net sales is concentrated within a small number of wholesale distributors. There can be no assurance that the wholesale distributors and retailers we use will continue to purchase our wines or provide our wines with adequate levels of promotional and merchandising support. The loss of one or more major retail accounts or the need to make significant concessions to retain one or more such retail accounts could have a material and adverse effect on our business, results of operations and financial position.

A retailer may take actions that affect us for reasons that we cannot always anticipate or control, such as their financial condition, changes in their business strategy or operations, the introduction of competing products or the perceived quality of our brands. Despite operating in different channel segments, our ecommerce platform and retailers sometimes compete for the same consumers. Because of actual or perceived conflicts resulting from this competition, third-party retailers may take actions that negatively affect us. Consequently, our financial results may fluctuate significantly from period to period based on the actions of one or more significant third-party retailers.

Our marketing strategy involves continued expansion into the DTC channel, which may present risks and challenges that we have not yet experienced or contemplated, or for which we are not adequately prepared. These risks and challenges could negatively affect our sales in these channels and our profitability.

The marketplace in which we operate is highly competitive and in recent years has seen the entrance of new competitors and products targeting similar consumer groups as our business. To stay competitive and forge new connections with consumers, we are continuing investment in the expansion of

our DTC channel. Expanding our DTC channel may require significant investment in ecommerce platforms, marketing, fulfillment, information technology infrastructure and other known and unknown costs. The success of our DTC channel depends on our ability to maintain the efficient and uninterrupted operation of online order-processing and fulfillment and delivery operations. As such, we are heavily dependent on the performance of third-parties for shipping and technology. Any system interruptions or delays could prevent potential consumers from purchasing our wines directly.

Our consumer acquisition strategy, in our DTC channel or otherwise, may also prove to be inefficient or unsuccessful. We devote substantial time, money and effort acquiring new consumers and our consumer acquisition strategies may prove to be less effective or more costly than our competitors. Any failure in our consumer acquisition strategy may be damaging to our business or results of operations.

Additionally, we may be unable to adequately adapt to shifts in consumer preferences for points of purchase, such as an increase in at-home delivery during the COVID-19 pandemic, and our competitors may react more rapidly or with improved consumer experiences. A failure to react quickly to these and other changes in consumer preferences, or to create infrastructure to support new or expanding sales channels may materially and adversely affect our business, results of operations and financial results.

We rely significantly on revenue from members and may not be successful in maintaining or expanding our subscription-based offerings, our level of engagement with members or their spending with us, which could harm our business, financial condition, or operating results.

Historically, the majority of our revenue has been derived from members who purchase subscription-based offerings. These subscriptions can be canceled at any time. We significantly rely, and expect to continue to significantly rely in the short-term, on these members for a majority of our revenue. The introduction of competitors' offerings with lower prices for consumers, fluctuations in prices, a lack of member satisfaction with our monthly themes or brands, changes in consumer purchasing habits, including an increase in the use of competitors' products or offerings and other factors could result in declines in our subscriptions and in our revenue, which would have an adverse effect on our business, financial condition and results of operations. Because we derive a majority of our revenue from members who purchase these subscription-based brands, any material decline in demand for these offerings could have an adverse impact on our future revenue and results of operations. In addition, if we are unable to successfully introduce new subscription-based offerings, our revenue growth may decline, which could have a material adverse effect on our business, financial condition, and results of operations.

If existing members no longer find our brands appealing or appropriately priced, they may make fewer purchases and may cancel their subscriptions or stop purchasing our brands. Even if our existing members continue to find our offerings appealing, they may decide to reduce their subscription and purchase less merchandise over time as their demand for new brands declines. A decrease in the number of members, a decrease in member spending on the brands we offer, or our inability to attract high-quality members could negatively affect our operating results.

Failure to leverage our brand value propositions to compete against private label products, especially during an economic downturn, may adversely affect our ability to achieve or maintain profitability.

We compete not only with other widely advertised branded products, but also with private label products that generally are sold at lower prices. Consumers are more likely to purchase our brands if they believe that our brands provide greater value than less expensive alternatives. If the difference in perceived value between our brand and private label products narrows, or if there is a perception of such a narrowing, consumers may choose not to buy our brands at prices that are profitable for us. We believe that in periods of economic uncertainty, such as the current economic uncertainty surrounding the COVID-19 pandemic, consumers may purchase more lower-priced private label or other economy brands. To the extent this occurs, we could experience a reduction in the sales volume of our brands or an unfavorable shift in our brand mix, which could have an adverse effect on our business, financial condition, results of operations and prospects.

The success of our business depends heavily on the strength of brands, and our brands and reputation may be diminished due to real or perceived quality, safety, efficacy or environmental impact issues with our brands, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Maintaining and expanding our reputation as a premier producer of premium wine among our consumers and the premium wine market generally is critical to the success of our business and our growth strategy. Maintaining, promoting and positioning our brand and reputation will depend on, among other factors, the success of our brands, product safety, quality assurance, marketing and merchandising efforts, our continued focus on delivering high-quality and culturally relevant brands to our consumers and our ability to provide a consistent, enjoyable consumer experience.

However, if we are unable to maintain the actual or perceived quality of our wines, including as a result of contamination or tampering, environmental or other factors impacting the quality of our grapes or other raw materials, or if our wines otherwise do not meet the subjective expectations or tastes of one or more of a relatively small number of wine critics, the actual or perceived quality and value of one or more of our wines could be harmed, which could negatively impact not only the value of that wine, but also the value of the vintage, the particular brand or our broader portfolio. As a result, we are dependent on our winemakers and tasting panels to ensure that every wine we release meets our exacting quality standards. Any negative publicity, regardless of its accuracy, could have an adverse effect on our business. Brand value is based on perceptions of subjective qualities, and any incident that erodes the loyalty of our consumers, suppliers, wholesale distributors or retailers, including changes to our brands or packaging, adverse publicity or a governmental investigation, litigation or regulatory enforcement action, could significantly reduce the value of our brand and adversely affect our business, financial condition, results of operations and prospects.

With the advent of social media, word spreads quickly within the premium wine market, which can accentuate both the positive and the negative reviews of our wines and of wine vintages generally. Public perception of our brands could be negatively affected by adverse publicity or negative commentary on social media outlets, particularly negative commentary on social media outlets that goes “viral,” or our responses relating to, among other things:

- an actual or perceived failure to maintain high-quality, safety, ethical, social and environmental standards for all of our operations and activities;
- an actual or perceived failure to address concerns relating to the quality, safety or integrity of our wines;
- our environmental impact, including our use of agricultural materials, packaging, water and energy use, and waste management; or
- an actual or perceived failure by us to promote the responsible consumption of alcohol.

If we do not produce wines that are well-regarded by the relatively small wine critic community, the premium wine market could quickly become aware of this determination and our reputation, brands, business and financial results of operation could be materially and adversely affected. In addition, if certain vintages receive negative publicity or consumer reaction, whether as a result of our wines or wines of other producers, our wines in the same vintage could be adversely affected. Unfavorable publicity, whether accurate or not, related to our industry, us, our winery brands, marketing, personnel, operations, business performance or prospects could also unfavorably affect our corporate reputation, stock price, ability to attract high-quality talent or the performance of our business.

Any contamination or other quality control issue could have an adverse effect on sales of the impacted wine or our broader portfolio of brands. If any of our wines become unsafe or unfit for consumption, cause injury or are otherwise improperly packaged or labeled, we may have to engage in a brand recall and/or be subject to liability and incur additional costs. A widespread recall, multiple recalls, or a significant product liability judgment against us could cause our wines to be unavailable for a period of time, depressing demand and our brand equity. Even if a product liability claim is unsuccessful or is not fully pursued, any resulting negative publicity could adversely affect our reputation with existing and potential consumers and retail accounts, as well as our corporate and individual winery brands image in such a way that

current and future sales could be diminished. In addition, should a competitor experience a recall or contamination event, we could face decreased consumer confidence by association as a producer of similar products.

We also have no control over our brands once purchased by consumers. For example, consumers may store or use our brands under conditions and for periods of time inconsistent with approved storage guidelines, which may adversely affect the quality and safety of our products.

Additionally, third parties may sell wines or inferior brands that imitate our brands or that are counterfeit versions of our labels, and consumers could be duped into thinking that these imitation labels are our authentic wines. A negative consumer experience with such a wine could cause them to refrain from purchasing our brands in the future and damage our brand integrity. Any failure to maintain the actual or perceived quality of our wines could materially and adversely affect our business, results of operations and financial results.

Damage to our reputation or loss of consumer confidence in our wines for any of these or other reasons could result in decreased demand for our wines and could have a material adverse effect on our business, operational results and financial results, as well as require additional resources to rebuild our reputation, competitive position and winery brand strength.

If our brands are found to be, or perceived to be, defective or unsafe, or if they otherwise fail to meet our consumers' expectations, our relationships with consumers could suffer, the appeal of our brand could be diminished, we may need to recall some of our brands and/or become subject to regulatory action, and we could lose sales or market share or become subject to boycotts or liability claims. In addition, safety or other defects in our competitors' products or products using similar names to those of our brands could reduce consumer demand for our own brands if consumers view them to be similar. Any such adverse effect could be exacerbated by our market positioning as a purveyor of high-quality and culturally relevant brands and may significantly reduce our brand value. Issues regarding the safety, efficacy, quality or environmental impact of any of our brands, regardless of the cause, may have an adverse effect on our brand, reputation and operating results. Further, the growing use of social and digital media by us, our consumers and third parties increases the speed and extent that information or misinformation and opinions can be shared. Negative publicity about us, our brands on social or digital media could seriously damage our brand and reputation. Any loss of confidence on the part of consumers in the quality, safety, efficacy or environmental suitability of our brands would be difficult and costly to overcome, even if such concerns were based on inaccurate or misleading information. If we do not maintain the favorable perception of our brand, our business, financial condition, results of operations and prospects could be adversely affected.

Economic downturns or a change in consumer preferences, perception and spending habits in the wine category, in particular, could limit consumer demand for our brands and negatively affect our business.

We have positioned our brand to capitalize on growing consumer interest in high-quality and culturally relevant brands. The wine beverage industry is sensitive to national and regional economic conditions and the demand for the brands that we distribute may be adversely affected from time to time by economic downturns that impact consumer spending, including discretionary spending. Future economic conditions such as employment levels, business conditions, housing starts, interest rates, inflation rates, energy and fuel costs and tax rates could reduce consumer spending or change consumer purchasing habits. Among these changes could be a reduction in the number of wine brands that consumers purchase where there are alternatives, given that many products in this category often have higher retail prices than other alcoholic or non-alcoholic alternatives.

Further, the markets in which we operate are subject to changes in consumer preference, perception and spending habits. Our performance depends significantly on factors that may affect the level and pattern of consumer spending in the markets in which we operate. Such factors include consumer preference, consumer confidence, consumer income, consumer perception of the safety and quality of our brands and shifts in the perceived value for our brands relative to alternatives. In addition, media coverage regarding the safety or quality of our brands or the raw materials, ingredients or processes involved in their production may damage consumer confidence in our brands. A general decline in the consumption of our brands could occur at any time as a result of change in consumer preference, perception, confidence and spending

habits, including an unwillingness to pay a premium or an inability to purchase our brands due to financial hardship or increased price sensitivity, which may be exacerbated by the effects of the COVID-19 pandemic. If consumer preferences shift away from our brands, our business, financial condition and results of operations could be adversely affected.

The success of our brands depends on a number of factors including our ability to accurately anticipate changes in market demand and consumer preferences, our ability to differentiate the quality of our brands from those of our competitors, and the effectiveness of our marketing and advertising campaigns for our brands. We may not be successful in identifying trends in consumer preferences and developing brands that respond to such trends in a timely manner. We also may not be able to effectively promote our brands by our marketing and advertising campaigns and gain market acceptance. If our brands fail to gain market acceptance, are restricted by regulatory requirements or have quality problems, we may not be able to fully recover costs and expenses incurred in our operation, and our business, financial condition, results of operations and prospects could be adversely affected.

Our ability to maintain our competitive position is largely dependent on the services of our senior management and other key personnel.

Our ability to maintain our competitive position is largely dependent on the services of our senior management and other key personnel. The loss of the services of any of these individuals could have an adverse effect on our business, financial condition, results of operations and prospects.

In addition, our future success depends on our continued ability to attract, develop, motivate and retain highly qualified and skilled employees. The market for such positions is competitive. Qualified individuals are in high demand and we may incur significant costs to attract them. In addition, the loss of any of our senior management or other key employees or our inability to recruit and develop mid-level managers could adversely affect our ability to execute our business plan and we may be unable to find adequate replacements. All of our employees are at-will employees, meaning that they may terminate their employment relationship with us at any time, and their knowledge of our business and industry would be extremely difficult to replace. If we fail to retain talented senior management and other key personnel, or if we do not succeed in attracting well-qualified employees or retaining and motivating existing employees, our business, financial condition, results of operations and prospects could be adversely affected.

Use or ineffective use of social media and influencers may adversely affect our reputation or subject us to fines or other penalties.

We use third-party social media platforms as, among other things, marketing tools. For example, we maintain Instagram, Facebook, Pinterest and Twitter accounts. We also maintain relationships with thousands of social media influencers and engage in sponsorship initiatives. As existing ecommerce and social media platforms continue to rapidly evolve and new platforms develop, we must continue to maintain a presence on these platforms and establish presences on new or emerging social media platforms. If we are unable to cost-effectively use social media platforms as marketing tools or if the social media platforms we use change their policies or algorithms, we may not be able to fully optimize such platforms, and our ability to maintain and acquire consumers and our financial condition may suffer. Furthermore, as laws and regulations and public opinion rapidly evolve to govern the use of these platforms and devices, the failure by us, our employees, our network of social media influencers, our sponsors or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices or otherwise could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and have an adverse effect on our business, financial condition, results of operations and prospects.

In addition, an increase in the use of social media influencers for product promotion and marketing may cause an increase in the burden on us to monitor compliance of the content they post, and increase the risk that such content could contain problematic product or marketing claims in violation of applicable laws and regulations. For example, in some cases, the Federal Trade Commission, or the FTC, has sought enforcement action where an endorsement has failed to clearly and conspicuously disclose a financial relationship or material connection between an influencer and an advertiser. We do not control the content that our influencers post, and if we were held responsible for any false, misleading or otherwise unlawful

content of their posts or their actions, we could be fined or subjected to other monetary liabilities or forced to alter our practices, which could have an adverse impact on our business.

Negative commentary regarding us, our brands or influencers and other third parties who are affiliated with us may also be posted on social media platforms and may be adverse to our reputation or business. Influencers with whom we maintain relationships could engage in behavior or use their platforms to communicate directly with our consumers in a manner that reflects poorly on our brand and may be attributed to us or otherwise adversely affect us. It is not possible to prevent such behavior, and the precautions we take to detect this activity may not be effective in all cases. The harm may be immediate, without affording us an opportunity for redress or correction.

We may be unable to accurately forecast revenue and appropriately plan our expenses in the future, and any failure to meet forecasted revenue or other financial figures may have an adverse impact on our financial position and stock price.

Revenue and results of operations are difficult to forecast because they generally depend on the volume, timing and type of orders we receive across our various channels, all of which are uncertain. Forecasts may be particularly challenging as we expand into new markets and geographies and develop and market new brands. We base our expense levels and investment plans on our estimates of revenue and gross profit. We cannot be sure the same growth rates and trends are meaningful predictors of future growth. If our assumptions prove to be wrong, we may spend more than we anticipate acquiring and retaining consumers or may generate lower revenue per consumer than anticipated, either of which could have an adverse effect on our business, financial condition, results of operations and prospects.

We rely heavily on consumer data and certain of the data that we track is subject to inherent challenges in measurement, and any inaccuracies in such data may negatively affect our business.

We rely heavily on certain data that we track using internal data analytics tools and we rely on data received from third parties, including third-party platforms, which have certain limitations. Data from these sources may include information relating to fraudulent accounts and interactions with our sites or the social media accounts of our business or of our influencers (including as a result of the use of bots, or other automated or manual mechanisms to generate false impressions that are delivered through our sites or their accounts). We have only a limited ability to verify data from our sites or third parties, and perpetrators of fraudulent impressions may change their tactics and may become more sophisticated, which would make it still more difficult to detect such activity.

Our methodologies for tracking data may also change over time. If we undercount or overcount performance due to the internal data analytics tools we use or experience issues with the data received from third parties, or if our internal data analytics tools contain algorithmic or other technical errors, the data we track may not be accurate. In addition, limitations, changes or errors with respect to how we measure data may affect our understanding of certain details of our business, which could affect our longer-term strategies. If we are not able to obtain and track accurate data, our business, financial condition, results of operations and prospects could be adversely affected.

The consumer reception of the launch and expansion of our brands is inherently uncertain and may present new and unknown risks and challenges in production and marketing that we may fail to manage optimally and which could have a materially adverse effect on our business, results of operations and financial results.

New brand development and innovation is core to our marketing strategy and a significant portion of our net revenues are derived from new brands. For example, our core brands collectively accounted for 23.1% of our net revenues for 2020 and for 29.1% of our net revenues for the six months ended June 30, 2021. To continue our growth and compete with new and existing competitors, we may need to innovate and develop a robust pipeline of new brands. The launch and continued success of new brands is inherently uncertain, particularly with respect to consumer appeal and market share capture. An unsuccessful launch may impact consumer perception of our existing brands and reputation, which are critical to our ongoing success and growth. Unsuccessful implementation or short-lived success of new brands may result in write-offs or other associated costs which may materially and adversely affect our business,

results of operations and financial results. In addition, the launch of new brand offerings may result in cannibalization of sales of existing brands in our portfolio.

Our results of operations may be impacted by price concessions, promotional activities, credits and other factors.

We have incurred, and expect to continue to incur, significant advertising and promotional expenditures to enhance our brands and raise consumer awareness in both existing and emerging categories. These expenditures may adversely affect our results of operations in a particular quarter or even a full fiscal year and may not result in increased sales. Variations in the levels of advertising and promotional expenditures have in the past caused, and are expected in the future to continue to cause, variability in our quarterly results of operations. While we strive to invest only in effective advertising and promotional activities in both the digital and traditional segments, it is difficult to correlate such investments with sales results, and there is no guarantee that our expenditures will be effective in building brand strength or growing long term sales.

Additionally, retailers may at times require price concessions that would negatively impact our margins and our ability to achieve or maintain profitability. If we are not able to lower our cost structure adequately in response to consumer pricing demands, and if we are not able to attract and retain a profitable consumer mix and a profitable product mix, our ability to achieve or maintain profitability could be adversely affected.

In addition, we periodically offer credits through various programs to wholesale distributors, including temporary price reductions, off-invoice discounts, and other trade activities. We anticipate that these price concessions and promotional activities could adversely impact our revenue and that changes in such activities could adversely impact period-over-period results. If we are not correct in predicting the performance of such promotions, or if we are not correct in estimating credits, our business, financial condition, results of operations and prospects could be adversely affected.

Our inability to develop and maintain strong relationships with retailers in order to maximize our presence in retail stores could adversely impact our revenue, and in turn our business, financial condition, results of operations and prospects could be adversely affected.

Our operations include sales through wholesale distributors to retail stores and their related websites, which accounted for approximately 13% of our net revenues in 2020. The successful growth of our wholesale business is dependent in part on our continuing development of strong relationships with major retail chains. The loss of our shelf space with Whole Foods or any other large retailer could have a significant impact on our revenue. In addition, we may be unable to secure adequate shelf space in new markets, or any shelf space at all, until we develop relationships with the retailers that operate in such markets. Consequently, growth opportunities through our retail channel may be limited and our revenue, business, financial condition, results of operations and prospects could be adversely affected if we are unable to successfully establish relationships with other retailers in new or current markets.

We also face severe competition to display our brands on store shelves and obtain optimal presence on those shelves. Due to the intense competition for limited shelf space, retailers are in a position to negotiate favorable terms of sale, including price discounts, allowances and brand return policies. To the extent we elect to increase discounts or allowances in an effort to secure shelf space, our operating results could be adversely affected. We may not be able to increase or sustain our volume of retail shelf space or offer retailers price discounts sufficient to overcome competition and, as a result, our sales and results of operations could be adversely affected. In addition, many of our competitors have significantly greater financial, production, marketing, management and other resources than we do and may have greater name recognition, a more established distribution network and a larger base of wholesale distributors. If our competitors' sales surpass ours, retailers may give higher priority to our competitors' products, causing such retailers to reduce their efforts to sell our brands and resulting in the loss of advantageous shelf space, which in turn could adversely impact our revenue, and in turn our business, financial condition, results of operations and prospects could be adversely affected.

Significant product returns or refunds could harm our business.

We allow our DTC consumers to return products and we offer refunds, subject to our return and refunds policy. If product returns or refunds are significant or higher than anticipated and forecasted, our business, financial condition, results of operations and prospects could be adversely affected. Further, we and our retailers modify policies relating to returns or refunds from time to time, and may do so in the future, which may result in consumer dissatisfaction and harm to our reputation or brand, or an increase in the number of product returns or the amount of refunds we make. From time to time our products are damaged in transit, which can increase return rates and harm our brand, which in turn could adversely impact our revenue, and in turn our business, financial condition, results of operations and prospects could be adversely affected.

Our business may be adversely affected if we are unable to provide our consumers with a technology platform that is able to respond and adapt to rapid changes in technology, if our platform encounters disruptions in usability or if our consumers find our platform less usable or attractive than those of our competitors.

The number of people who access the Internet through devices other than personal computers, including mobile phones, tablets, television set-top devices and similar hand-held devices, has increased dramatically in recent years. Adapting our services and/or infrastructure to these devices as well as other new Internet, networking or telecommunications technologies could be time-consuming and could require us to incur substantial expenditures, which could have an adverse effect on our business, financial condition, results of operations and prospects. Ultimately, the versions of our website and mobile applications developed for these devices may not be compelling to consumers.

Additionally, as new mobile devices and platforms are released, it is difficult to predict the problems we may encounter in developing applications for alternative devices and platforms and we may need to devote significant resources to the creation, support and maintenance of such applications. If we or our retailers are unable to attract consumers to our or their websites or mobile applications through these devices or are slow to develop a version of such websites or mobile applications that are more compatible with alternative devices, we may fail to capture a significant share of new consumers and could also lose existing consumers, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Further, we continually upgrade existing technologies and business applications and we may be required to implement new technologies or business applications in the future. The implementation of upgrades and changes requires significant investments. Our results of operations may be affected by the timing, effectiveness and costs associated with the successful implementation of any upgrades or changes to our systems and infrastructure. In the event that it is more difficult for our consumers to buy brands from us on their mobile devices, or if our consumers choose not to buy brands from us on their mobile devices or to use mobile products or platforms that do not offer access to our website, we could lose existing consumers and fail to attract new consumers. Even if we build and maintain a platform that is effective and attractive to our consumers, there is no guarantee our platforms will not encounter disruptions or outages and diminish our consumers' satisfaction. As a result, our consumer growth could be harmed and our business, financial condition, results of operations and prospects could be adversely affected.

We are subject to risks related to online payment methods, including third-party payment processing-related risks.

We currently accept payments using a variety of methods, including credit card, debit card, Apple Pay, PayPal and gift cards. As we offer new payment options to consumers, we may be subject to additional regulations, compliance requirements, fraud and other risks. We also rely on third parties to provide payment processing services, and for certain payment methods, we pay interchange and other fees, which may increase over time and raise our operating costs and affect our ability to achieve or maintain profitability. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard, or PCI-DSS, and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. If we (or a third-party processing payment card transactions on our behalf) suffer a security breach affecting payment card information, we may have to pay onerous and significant fines, penalties and assessments

arising out of the major card brands' rules and regulations, contractual indemnifications or liability contained in merchant agreements and similar contracts, and we may lose our ability to accept payment cards for payment for our goods and services, which could materially impact our operations and financial performance.

Furthermore, as our business changes, we may be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently incur for compliance. As we offer new payment options to consumers, including by way of integrating emerging mobile and other payment methods, we may be subject to additional regulations, compliance requirements and fraud. If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines or higher transaction fees and may lose, or face restrictions placed upon, our ability to accept credit card payments from consumers or facilitate other types of online payments.

We may in the future incur losses from various types of fraud, including stolen credit card numbers, claims that a consumer did not authorize a purchase, merchant fraud and consumers who have closed bank accounts or have insufficient funds in open bank accounts to satisfy payments. We occasionally receive orders placed with fraudulent data and we may ultimately be held liable for the unauthorized use of a cardholder's card number in an illegal transaction and be required by card issuers to pay charge-back fees. Charge-backs result not only in our loss of fees earned with respect to the payment, but also leave us liable for the underlying money transfer amount. If our charge-back rate becomes excessive, card associations also may require us to pay fines or refuse to process our transactions. In addition, under current credit card practices, we are liable for fraudulent credit card transactions because we do not obtain a cardholder's signature. Further, we may be subject to additional fraud risk if third-party service providers or our employees fraudulently use consumer information for their own gain or facilitate the fraudulent use of such information. Although we have measures in place to detect and reduce the occurrence of fraudulent activity in our marketplace, those measures may not always be effective. Our failure to adequately prevent fraudulent transactions could damage our reputation, result in litigation or regulatory action and additional expenses and our business, financial condition, results of operations and prospects could be adversely affected. If any of these events were to occur, our business, financial condition, results of operations and prospects could be adversely affected.

We intend to grow our business through acquisitions of, or investments in, new or complementary businesses, assets, facilities, technologies or products, or through strategic alliances, and the failure to manage these acquisitions, investments or alliances, or to integrate them with our existing business, could have an adverse effect on us.

From time to time, we may consider opportunities to acquire or make investments in new or complementary businesses, assets, facilities, technologies, offerings, or products, or enter into strategic alliances, that may enhance our capabilities, expand our outsourcing and supplier network, complement our current brands or expand the breadth of our markets. For example, in 2021 we purchased certain assets of Natural Merchants, Inc., an international wine importer.

Acquisitions, investments and other strategic alliances involve numerous risks, including:

- problems integrating the acquired business, assets, facilities, technologies or products, including issues maintaining uniform standards, procedures, controls and policies;
- risks associated with quality control and brand reputation;
- unanticipated costs associated with acquisitions, investments or strategic alliances;
- diversion of management's attention from our existing business;
- adverse effects on existing business relationships with suppliers, wholesale distributors and retailers;
- risks associated with any dispute that may arise with respect to such strategic alliance;
- risks associated with entering new markets in which we may have limited or no experience;

- potential loss of key employees of acquired businesses; and
- increased legal and accounting compliance costs.

Our ability to successfully grow through strategic transactions depends upon our ability to identify, negotiate, complete and integrate suitable target businesses, assets, facilities, technologies and products and to obtain any necessary financing. These efforts could be expensive and time-consuming and may disrupt our ongoing business and prevent management from focusing on our operations. If we are unable to identify suitable acquisitions or strategic relationships, or if we are unable to integrate any acquired businesses, assets, facilities, technologies and products effectively, our business, financial condition, results of operations and prospects could be adversely affected. Further, while we employ several different methodologies to assess potential business opportunities, the new businesses may not meet or exceed our expectations, which could result in write-downs of assets or goodwill or impairment charges.

The COVID-19 pandemic could have an adverse effect on our business, financial condition, results of operations and prospects.

In connection with the COVID-19 pandemic, governments implemented significant measures, including closures, quarantines, travel restrictions and other social distancing directives, intended to control the spread of the virus. Companies have also taken precautions, such as requiring employees to work remotely, imposing travel restrictions and temporarily closing businesses. Although as of June 2021, the global economy has begun to recover and the widespread availability of vaccines has encouraged greater economic activity, we are continuing to monitor the situation, and we cannot predict for how long, or the ultimate extent to which, the pandemic may disrupt our operations. The COVID-19 pandemic has had and continues to have an adverse impact on global economic conditions and consumer confidence and spending, which could adversely affect our supply chain as well as the demand for our brands. The fluid nature of the COVID-19 pandemic and uncertainties regarding the related economic impact are likely to result in sustained market turmoil, which could also have an adverse effect on our business, financial condition, results of operations and prospects.

The impact of the COVID-19 pandemic on any of our suppliers, wholesale distributors, retailers or ecommerce vendors or transportation or logistics providers may negatively affect the price and availability of our materials and impact our supply chain. If the disruptions caused by the COVID-19 pandemic continue for an extended period of time, our ability to meet the demands of our consumers may be materially impacted. For example, government restrictions may limit the personnel available to receive or ship brands at our distribution centers. In addition, the continuing effects caused by the COVID-19 pandemic may negatively impact collections of accounts receivable and cause some of our retailers to go out of business, all of which could adversely affect our business, financial condition, results of operations and prospects.

Further, the COVID-19 pandemic may impact consumer demand and demand from wholesale distributors and retailers. Retail stores may be impacted if governments continue to implement regional business closures, quarantines, travel restrictions and other social distancing directives to slow the spread of the virus. Further, to the extent our retailers' operations are negatively impacted, our consumers may reduce demand for or spending on our products, or consumers or retailers may delay payments to us or request payment or other concessions. There may also be significant reductions or volatility in consumer demand for our products due to travel restrictions or social distancing directives, as well as the temporary inability of consumers to purchase our products due to illness, quarantine or financial hardship, shifts in demand away from one or more of our products, decreased consumer confidence and, any of which may negatively impact our results, including as a result of an increased difficulty in planning for operations. Additionally, we may be unable to effectively modify our trade promotion and advertising activities to reflect changing consumer viewing and shopping habits due to event cancellations, reduced in-store visits and travel restrictions, among other things.

Beginning in March 2020, we saw an increase in DTC demand, primarily, we believe, as a result of purchases arising from more consumers working remotely during the COVID-19 pandemic and thus, spending more time at home and the unavailability of public venues. If remote work conditions end, more public venues reopen and consumers spend less time at home, our members may elect to purchase fewer

products or may elect to purchase products from traditional brick and mortar stores rather than from our website, which could materially and adversely affect our business and results of operations.

The extent of the COVID-19 pandemic's effect on our operational and financial performance will also depend on future developments, including the duration and intensity of the pandemic, and the emergence of variants of COVID-19 and related developments, all of which are uncertain and difficult to predict considering the rapidly evolving landscape. As a result, it is not currently possible to ascertain the overall impact of the COVID-19 pandemic on our business. However, if the pandemic continues to persist as a severe worldwide health crisis, the disease could have an adverse effect on our business, financial condition, results of operations and prospects, and may also have the effect of heightening many of the other risks described in this "Risk Factors" section.

Our business performance by segment may be subject to significant variability.

Consumer demand and net sales among our wholesale and DTC channels are subject to seasonal fluctuations. While we have not in the past experienced significant variability among our results of operations in the aggregate, our business performance by segment has displayed seasonal trends. A failure by us to adequately prepare for periods of changed demand within any particular segment, or any event that disrupts our distribution channels during those periods, could have a material adverse effect on our business and results of operations.

In addition to the seasonality of our wholesale and DTC channels, our financial performance is influenced by a number of factors which are difficult to predict and variable in nature. These include cost volatility for raw materials, production yields and inventory availability and the evolution of our sales channel mix, as well as external trends in weather patterns and discretionary consumer spending. A number of other factors which are inherently difficult to predict could affect the seasonality or variability of our financial performance in any impacted segment. Therefore, the performance of our wholesale or DTC segments may vary on a quarterly basis, and the results of a section during one period may not be indicative of that segment's results during any other future period.

The agreements governing our indebtedness will require us to meet certain operating and financial covenants and place restrictions on our operating and financial flexibility. If we raise capital through additional debt financing, the terms of any new debt could further restrict our ability to operate our business.

We are party to a credit agreement, or the PMB Credit Agreement, with Pacific Mercantile Bank providing for a $7.0 million revolving line of credit, or the PMB Line of Credit. The PMB Line of Credit bears interest at a variable annual rate equal to 1.25% plus the prime rate and matures on March 31, 2022. Under the PMB Credit Agreement, we are required to pay an annual fee equal to 0.25% of the revolving credit commitment in effect on the date that the fee is due. The PMB Credit Agreement also contains various affirmative and negative covenants and restrictions that limit our ability to engage in certain activities, including, among other things, incurring certain types of additional indebtedness (including certain guarantees or other contingent obligations) or consolidating, merging, selling or otherwise disposing of all or substantially all of our assets or acquiring all or substantially all of the assets or business of another person. We are also party to a loan and security agreement, the Multiplier LSA, with Multiplier Capital II, LP, or Multiplier, providing for a term loan of $5.0 million, or the Multiplier Term Loan. The Multiplier Term Loan matures on June 29, 2022 and bears interest at a variable annual rate equal to the prime rate plus 6.25%, with a minimum interest rate of 11.5% per annum and a maximum interest rate of 14.0% per annum. The Multiplier Term Loan also carries certain fees, including (i) a $100,000 loan fee due on the earliest of the maturity date, the date the loan is paid in full and the date of any event of default that results in the acceleration of our obligations under the Multiplier LSA, and (ii) a prepayment fee equal to 5.0% of the amount prepaid, if the prepayment occurs on or prior to the first anniversary of the when funds were first disbursed under the Multiplier LSA, or the Disbursement Date, 3.0% of the amount prepaid if the prepayment occurs between the first and second anniversaries of the Disbursement Date and 1.0% of the amount prepaid if the prepayment occurs after the second anniversary of the Disbursement Date. The Multiplier Term Loan is secured by substantially all of our assets. We refer to the PMB Credit Agreement and the Multiplier LSA collectively as our Credit Agreements. As of June 30, 2021, we had $1 million outstanding under our Credit Agreements.

Our Credit Agreements contain affirmative and negative covenants, indemnification provisions and events of default. The affirmative covenants include, among others, administrative, reporting and legal covenants, in each case subject to certain exceptions. The negative covenants include, among others, limitations on our and our subsidiaries' abilities to, in each case subject to certain exceptions:

- make restricted payments including dividends and distributions;
- use proceeds from the PMB Line of Credit for purposes other than for working capital;
- incur additional indebtedness;
- incur liens;
- enter into fundamental changes including mergers and consolidations;
- engage in certain sale leaseback transactions;
- sell assets, including capital stock of subsidiaries;
- make certain investments;
- create negative pledges or restrictions on the payment of dividends or payment of other amounts owed from subsidiaries
- make prepayments or modify documents governing material debt that is subordinated with respect to right of payment;
- enter into certain transactions with affiliates;
- change our fiscal year; and
- change our lines of business.

The Multiplier LSA also contains a financial covenant that requires us to maintain a minimum cash balance of $1.25 million and mutually agreed upon minimum amounts of earnings, defined as net income or loss before interest, taxes, depreciation and other non-cash amortization expenses, less capital software development expenses. As a result of the restrictions described above, we will be limited as to how we conduct our business and we may be unable to raise additional debt or equity financing to take advantage of new business opportunities. The terms of any future indebtedness we may incur could include more restrictive covenants. We have previously breached similar covenants in prior credit facilities. We cannot assure you that we will be able to maintain compliance with these covenants in the future and, if we fail to do so, that we will be able to obtain waivers from the lenders or amend the covenants.

Our ability to comply with the covenants and restrictions contained in the Credit Agreements may be affected by economic, financial and industry conditions beyond our control. The restrictions in the Credit Agreements may also prevent us from taking actions that we believe would be in the best interests of our business and may make it difficult for us to execute our business strategy successfully or effectively compete with companies that are not similarly restricted. Even if the Credit Agreements are terminated, any additional debt that we incur in the future could subject us to similar or additional covenants.

The Credit Agreements include customary events of default, including failure to pay principal, interest or certain other amounts when due; material inaccuracy of representations and warranties; violation of covenants; specified cross-default and cross-acceleration to other material indebtedness; certain bankruptcy and insolvency events; certain events relating to the Employee Retirement Income Security Act of 1974; certain undischarged judgments; material invalidity of guarantees or grant of security interest; and change of control, in certain cases subject to certain thresholds and grace periods.

Our failure to comply with the restrictive covenants described above as well as other terms of our indebtedness could result in an event of default, which, if not cured or waived, could result in the lenders declaring all obligations, together with accrued and unpaid interest, immediately due and payable and take control of the collateral, potentially requiring us to renegotiate the Credit Agreements on terms less favorable to us. If we are forced to refinance these borrowings on less favorable terms or are unable to refinance these borrowings, our business, results of operations, financial condition and future prospects could be adversely affected. In addition, such a default or acceleration may result in the acceleration of any future

indebtedness to which a cross-acceleration or cross-default provision applies. If we are unable to repay our indebtedness, lenders having secured obligations, such as the lenders under the Credit Agreements, could proceed against the collateral securing the indebtedness. In any such case, we may be unable to borrow under our credit facilities and may not be able to repay the amounts due under our credit facilities. This could have an adverse effect on our business, financial condition, results of operations and prospects and could cause us to become bankrupt or insolvent.

We could be required to collect additional sales taxes or be subject to other tax liabilities that may increase the costs our consumers would have to pay for our offering and adversely affect our operating results.

On June 21, 2018, the U.S. Supreme Court held in South Dakota v. Wayfair, Inc. that states could impose sales tax collection obligations on out-of-state retailers even if those retailers lack any physical presence within the states imposing sales taxes. Under Wayfair, a person requires only a "substantial nexus" with the taxing state before the state may subject the person to sales tax collection obligations therein. An increasing number of states, both before and after the Supreme Court's ruling, have considered or adopted laws that attempt to impose sales tax collection obligations on out-of-state retailers. The Supreme Court's Wayfair decision has removed a significant impediment to the enactment of these laws, and it is possible that states may seek to tax out-of-state retailers, including for prior tax years. Although we believe that we currently collect sales taxes in all states that have adopted laws imposing sales tax collection obligations on out-of-state retailers since Wayfair was decided, a successful assertion by one or more jurisdictions requiring us to collect sales taxes where we presently do not do so, or to collect more taxes in a jurisdiction in which we currently do collect some sales taxes, could result in substantial tax liabilities, including taxes on past sales, as well as penalties and interest. The imposition by state governments of sales tax collection obligations on out-of-state retailers in jurisdictions where we do not currently collect sales taxes, whether for prior years or prospectively, could also create additional administrative burdens for us, put us at a competitive disadvantage if they do not impose similar obligations on our competitors and decrease our future sales, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Our ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited.

We have incurred substantial losses since inception. As of December 31, 2020, we had federal and state net operating loss carryforwards of approximately $47.5 million and $47.1 million, respectively. The federal loss carryforwards, except the federal loss carryforwards arising in tax years beginning after December 31, 2017, begin to expire in 2032 unless previously utilized. Federal net operating losses, or NOLs, arising in tax years beginning after December 31, 2017 have an indefinite carryforward period and do not expire, but the deduction for these carryforwards is limited to 80% of current-year taxable income for taxable years beginning after 2020. In general, under Sections 382 and 383 of the U.S. Internal Revenue Code of 1986, as amended, a corporation that undergoes an "ownership change" (generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a rolling three-year period) is subject to limitations on its ability to utilize its pre-change NOLs to offset future taxable income. We may experience ownership changes in the future, and are currently evaluating with our independent tax advisors whether and to what extent our NOLs may be currently limited. In addition, for state income tax purposes, there may be periods during which the use of NOLs or tax credits is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed. For example, California recently imposed limits on the usability of California NOLs and certain tax credits to offset California taxable income or California tax liabilities in tax years beginning after 2019 and before 2023. Additionally, state net operating loss carryforwards begin to expire in 2028. As a result, to the extent that we earn net taxable income, our ability to use our pre-change NOLs to offset such taxable income and our ability to use our tax credits to reduce our tax liabilities may be subject to limitations.

If we cannot maintain our company culture or focus on our purpose as we grow, our success and our business and competitive position may be harmed.

We believe our culture and our mission have been key contributors to our success to date and that the critical nature of the platform that we provide promotes a sense of greater purpose and fulfillment in our employees. Any failure to preserve our culture or focus on our mission could negatively affect our ability to retain and recruit personnel, which is critical to our growth, and to effectively focus on and pursue our

corporate objectives. As we grow and develop the infrastructure of a public company, we may find it difficult to maintain these important values. If we fail to maintain our company culture or focus on our mission our competitive position and business, financial condition, results of operations and prospects could be adversely affected.

Risks Related to Production, Supply and Service Providers

We rely on our proprietary technology and data to forecast consumer demand and to manage our supply chain, and any failure of this technology or other failure to accurately forecast demand for our brands could materially adversely affect our business, financial condition and operating results.

To ensure adequate inventory supply, we must forecast inventory needs and place orders with our third-party suppliers before firm orders are placed by our consumers or our retailers. We rely on our proprietary technology and data to forecast demand and predict our consumers' orders, determine the amounts of grapes, wine and other supplies to purchase, and to optimize our in-bound and out-bound logistics for delivery and transport of our supply to our fulfillment centers and of our brand offerings to consumers. If this technology fails or produces inaccurate information or results at any step in this process—such as if the data we collect from consumers is insufficient or incorrect, if we over or underestimate future demand or if we fail to optimize delivery routes to our consumers—our inventory could become unsalable, we could experience shortages in key ingredients, the operational efficiency of our supply chain may suffer (including as a result of excess or shortage of fulfillment center capacity) or our consumers could experience delays or failures in the delivery of our brand offerings. Moreover, forecasts based on historical data, regardless of any historical patterns or the quality of the underlying data, are inherently uncertain, and unforeseen changes in consumer tastes or external events could result in material inaccuracy of our forecasts, which could result in disruptions in our business and our incurrence of significant costs and waste. Factors that could affect our ability to accurately forecast demand for our brands include: an unanticipated increase or decrease in demand for our brands; our failure to accurately forecast acceptance for our new brands; brand introductions by competitors; unanticipated changes in general market conditions or other factors, which may result in cancellations of advance orders or a reduction or increase in the rate of reorders or at-once orders placed by retailers; the impact on demand due to unseasonable weather conditions; weakening of economic conditions or consumer confidence in future economic conditions, which could reduce demand for discretionary items, such as our brands; and terrorism or acts of war, or the threat thereof, or political or labor instability or unrest, which could adversely affect consumer confidence and spending or interrupt production and distribution of product and raw materials.

Inventory levels in excess of consumer demand may result in inventory write-downs or write-offs and the sale of excess inventory at discounted prices or in less preferred distribution channels, which could impair our brand image and harm our business. In addition, if we underestimate the demand for our brands, our third-party manufacturers may not be able to produce brands to meet our consumer requirements, and this could result in delays in the shipment of our brands and our ability to recognize revenue, lost sales, as well as damage to our reputation and retailer and wholesale distributor relationships.

The difficulty in forecasting demand also makes it difficult to estimate our future results of operations and financial condition from period to period. A failure to accurately predict the level of demand for our brands could adversely affect our business, financial condition, results of operations and prospects.

Our business, including our costs and supply chain, is subject to risks associated with sourcing, production, warehousing, distribution and logistics, and the loss of any of our key suppliers or logistical service providers could negatively impact our business.

We do not grow our own grapes and instead rely on third parties to supply grapes and bulk wine. All of the brands we offer are made up of ingredients that are produced by a relatively limited number of third-party producers, and as a result we may be subject to price fluctuations or demand disruptions. Our operating results would be negatively impacted by increases in the costs of our brands, and we have no guarantees that costs will not rise. In addition, as we expand into new categories and brand types, we expect that we may not have strong purchasing power in these new areas, which could lead to higher costs

than we have historically seen in our current categories. We may not be able to pass increased costs on, which could adversely affect our operating results. Moreover, in the event of a significant disruption in the supply of the materials used in the production of the brands we offer, we and the vendors that we work with might not be able to locate alternative suppliers of materials of comparable quality at prices consistent with our historical experience.

In addition, products and merchandise we receive from wineries and suppliers may not be of sufficient quality or free from damage, or such products may be damaged during shipping, while stored in our warehouse fulfillment centers or with third-party retail consumers or when returned by consumers. We may incur additional expenses and our reputation could be harmed if consumers and potential consumers believe that our brands do not meet their expectations, are not properly labeled or are damaged.

We purchase significant amounts of product supply from a limited number of suppliers with limited supply capabilities. There can be no assurance that our current suppliers will be able to accommodate our anticipated growth or continue to supply current quantities at preferential prices. An inability of our existing suppliers to provide materials in a timely or cost-effective manner could impair our growth and have an adverse effect on our business, financial condition, results of operations and prospects. We generally do not maintain long-term supply contracts with any of our suppliers and any of our suppliers could discontinue selling to us at any time. If an agreement with one of our primary suppliers is terminated or is not renewed, if one of our primary suppliers becomes insolvent, ceases or significantly reduces its operations or experiences financial distress, as a result of the COVID-19 pandemic or otherwise, or if any environmental, economic or other outside factors impact their operations, our ability to procure grapes, juice, wine, or other product materials may be temporarily impaired, or we may face increased costs related to such products. The loss of any of our primary suppliers, or the discontinuance of any preferential pricing or exclusive incentives they currently offer to us could have an adverse effect on our business, financial condition, results of operations and prospects.

We continually seek to expand our base of suppliers, especially as we identify new brands that necessitate new or additional materials. We also require our new and existing suppliers to meet our ethical and business partner standards. Suppliers may also have to meet governmental and industry standards and any relevant standards required by our consumers, which may require additional investment and time on behalf of suppliers and us. If we are unable to identify or enter into distribution relationships with new suppliers or to replace the loss of any of our existing suppliers, we may experience a competitive disadvantage, our business may be disrupted and our business, financial condition, results of operations and prospects could be adversely affected.

Our principal suppliers currently provide us with certain incentives, such as volume purchasing, trade discounts, cooperative advertising and market development funds. A reduction or discontinuance of these incentives would increase our costs and could reduce our ability to achieve or maintain profitability. Similarly, if one or more of our suppliers were to offer these incentives, including preferential pricing, to our competitors, our competitive advantage would be reduced, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Unanticipated changes in consumer demands and preferences could have adverse effects on our ability to manage supply and capture growth opportunities.

Our ability to effectively manage production and inventory is inherently linked to actual and expected consumer demand for our brands, particularly given the long product lead time and agricultural nature of the wine business. Unanticipated changes in consumer demand or preferences in the future could have adverse effects on our ability to manage supply and capture growth opportunities.

A disruption in our operations, or the operations of third-parties upon which we rely, could have an adverse effect on our business.

Our operations, including those of our third-party manufacturers, suppliers and delivery service providers, are subject to the risks inherent in such activities, including industrial accidents, environmental events, strikes and other labor disputes, disruptions in information systems, product quality control, safety, licensing requirements and other regulatory issues, as well as natural disasters, pandemics or other public

health emergencies, border disputes, acts of terrorism and other external factors over which we and our third-party manufacturers, suppliers and delivery service providers have no control. The loss of, or damage to, the manufacturing facilities or fulfillment centers of our third-party manufacturers, suppliers and delivery service providers could have an adverse effect on our business, financial condition, results of operations and prospects.

We depend heavily on ocean container delivery to receive shipments of our products from our third-party suppliers located overseas and contracted third-party delivery service providers to deliver our products to our fulfillment centers located in California and Pennsylvania, and from there to our consumers and retailers. Further, we rely on postal and parcel carriers for the delivery of products sold directly to consumers through the Winc digital platform. Interruptions to or failures in these delivery services could prevent the timely or successful delivery of our brands. These interruptions or failures may be due to unforeseen events that are beyond our control or the control of our third-party delivery service providers, such as labor unrest or natural disasters. For example, a labor strike at a port could negatively impact the delivery of our imported grapes, juice, wine or other product materials, and trade disputes between the United States and countries from which we import grapes, juice, wine and other product materials may in the future restrict the flow of the goods from such countries to the United States. Any failure to provide high-quality delivery services to our consumers may negatively affect the shopping experience of our consumers, damage our reputation and cause us to lose consumers.

Our ability to meet the needs of our consumers and retailers depends on our proper operation of our fulfillment centers in California and Pennsylvania, where most of our inventory that is not in transit is housed. Although we currently insure our inventory, our insurance coverage may not be sufficient to cover the full extent of any loss or damage to our inventory or fulfillment centers, and any loss, damage or disruption of our facilities, or loss or damage of the inventory stored there, could have an adverse effect on our business, financial condition, results of operations and prospects.

We may be unable to manage the complexities created by our omni-channel operations, which may have a material adverse effect on our business, financial condition, operating results and prospects.

Our omni-channel operations, such as offering our brands through our website, on third party websites, through wholesale distributors and in traditional brick and mortar stores, create additional complexities in our ability to manage inventory levels, as well as certain operational issues, including timely shipping and refunds. Accordingly, our success depends to a large degree on continually evolving the processes and technology that enable us to plan and manage inventory levels and fulfill orders, address any related operational issues and further align channels to optimize our omni-channel operations. If we are unable to successfully manage these complexities, it may have a material adverse effect on our business, financial condition, operating results and prospects.

The occurrence of an environmental catastrophe could disrupt our business. Climate change, wildfires, disease, pests, weather conditions and problems with water supply could also have adverse effects on our business.

Our ability to conduct business in the ordinary course, fulfilling consumer demand for wine, is restricted by the availability of grapes. Climate change, agricultural and other factors, such as wildfires, disease, pests, extreme weather conditions, water scarcity, biodiversity loss and competing land use, could negatively impact the quality and quantity of grapes available to us and our producers for wine production.

We source grapes and juice from a variety of producers, but in significant volumes from certain suppliers. Although there is more than one supplier for most of the grapes bought by us, and the right variety and quality of grapes is usually readily available when needed, there is no assurance that this will always be the case, particularly in the adverse circumstances mentioned above and below. A shortage of grapes of the required variety and quality could impair our business and results of operations both in the year of harvest and thereafter.

We may not be fully insured against risk of catastrophic loss to wineries, production facilities, fulfillment centers, customer service centers, data centers, corporate officers or distribution systems as a result of earthquakes, fires or other events. Some of the vineyards we source from, and their and our facilities, are located in California, which is prone to seismic activity and has recently experienced landslides and

wildfires, which have been increasing in frequency and intensity. If any of our facilities or the vineyards or facilities of our significant suppliers were to experience catastrophic loss, that event could disrupt operations, delay production, shipments and revenue and could result in potentially significant expenses to repair or replace the vineyard or facility. If such a disruption were to occur, then we could breach agreements, our reputation could be harmed, and our results or operations, financial condition and business could be adversely affected. Further, we may not be able to efficiently relocate our fulfillment and delivery operations due to disruptions in service if one of these events occurs, and our insurance coverage may be insufficient to compensate us for such losses. While we take steps to minimize the damage that would be caused by a catastrophic event, including relying on diversity of suppliers and wholesale distributors, there is no certainty that such efforts would prove successful.

Wine is also subject to diseases, pests and weather conditions that can affect the quality and quantity of grapes. Various diseases, pests, fungi, viruses, drought, floods, frosts and other weather conditions can affect the quality and quantity of grapes, decreasing the supply of our brands and negatively impacting us. We cannot guarantee that independent grape suppliers will succeed in preventing disease in their vineyards. For example, Pierce's disease is a vine bacterial disease spread by insects that kills grapevines and for which there is no known cure. If vineyards used by our suppliers become contaminated with this or other diseases, then our results of operations would likely decline. Additionally, future government restrictions regarding the use of materials used in grape growing could increase vineyard costs and reduce production.

We are also subject to the adverse effects of climate change. Restrictions on access to or an increase in the cost of water and energy, and the inability of independent suppliers to adapt to and mitigate against climate change, could negatively impact our ability to effectively source grapes and wine for production. While we are diversified in our grape production, climate change is an unfolding phenomenon with uncertain outcomes. Furthermore, governmental actions to reduce the impacts of climate change such as packaging waste and emission reduction targets could adversely impact our profit margins.

Additionally, the amount of water available for us is important to the supply of grapes and winemaking, other agricultural raw materials and our ability to operate our business. If climate patterns change and droughts become more severe, there may be a scarcity of water, poor water quality or water right restrictions, which could affect production costs, consistency of yields or impose capacity constraints. The suppliers of the grapes and other agricultural raw materials purchased by us depend upon sufficient supplies of quality water for their vineyards and fields. The availability of adequate quantities of water for application at the correct time can be vital for grapes to thrive. Whether particular vineyards are experiencing water shortages depends, in large part, on their location. An extended period of drought across much of California would restrict the use and availability of water for agricultural uses, and in some cases governmental authorities might divert water to other uses. Lack of available water could reduce grape harvest and access to grapes and adversely impact us. Scarcity of adequate water in grape growing areas could also result in legal disputes among landowners and water users. If water available to the operations of our suppliers becomes scarcer, restrictions are placed on usage of water or the quality of that water deteriorates, then we may incur increased production costs or face manufacturing constraints that could negatively affect production. Even if quality water is widely available, water purification and waste treatment infrastructure limitations could increase our costs or constrain operation of production facilities and vineyards of our suppliers. Any of these factors could adversely affect our business, results of operations and financial results.

Grape supply and price volatility affects our results of operations.

Volatility and increases in the costs of grapes, labor and other necessary supplies or services have in the past negatively impacted, and in the future may negatively impact, our results of operations and financial condition. If such increases occur or exceed our estimates and if we are unable to increase the prices of our brands or achieve cost savings to offset the increases, then our results of operations will be harmed. Even if we increase brand prices in response to cost increases, such price increases may not be sustainable and could lead to declines in market share as competitors may not increase their prices or consumers may decide not to pay the higher prices. In the alternative, an extreme oversupply of grapes can lead to a glut of grape supply and declines in the value of the harvest. Future swings in grape supply and price volatility may affect our results of operations.

If we are unable to identify and obtain adequate supplies of quality agricultural, raw and processed materials, including corks, glass bottles, barrels, winemaking additives and agents, water and other supplies, or if there is an increase in the cost of the commodities or products, then our profitability could be negatively impacted, which would adversely affect our business, results of operations and financial condition.

We use a large volume of raw materials, in addition to grapes, to produce and package wine, including corks, barrels, winemaking additives and water, as well as large amounts of packaging materials such as metal, cork, glass and cardboard. We purchase raw materials and packaging materials under contracts of varying maturities from domestic and international suppliers.

Glass bottle costs are one of our largest packaging components of cost of revenues. In North America, glass bottles have only a small number of producers. Currently, the majority of our glass containers are sourced from China, the United States and Mexico, while a minority are sourced from Taiwan and Chile. An inability of any of our glass bottle suppliers to satisfy our requirements could materially and adversely affect our business. In addition, costs and programs related to mandatory recycling and recyclable materials deposits could be adopted in states of manufacture, imposing additional and unknown costs to manufacture products utilizing glass bottles. Increases in the costs of, or any difficulty in acquiring adequate supply of, raw materials may significantly impact our supply chain and our business. For example, our industry has recently experienced a glass shortage that has made it more difficult and more expensive to acquire the bottles we require for our brands.

Our production facilities also use a significant amount of energy in their operations, including electricity, propane and natural gas. We have experienced increases in energy costs in the past, and energy costs could rise in the future, which would result in higher transportation, freight and other operating costs, such as ageing and bottling expenses. Our freight cost and the timely delivery of wines could be adversely affected by a number of factors that could reduce the profitability of operations, including driver shortages, higher fuel costs, weather conditions, traffic congestion, increased government regulation, and other matters. In addition, increased labor costs or insufficient labor supply could increase our production costs.

The supply and the price of raw materials, packaging materials and energy and the cost of energy, freight and labor used in our productions and distribution activities could be affected by a number of factors beyond our control, including market demand, global geopolitical events (especially their impact on energy prices), economic factors affecting growth decisions, exchange rate fluctuations and inflation. To the extent that any of these factors, including supply of goods and energy, affect the prices of ingredients or packaging, or we do not effectively or completely hedge changes in commodity price risks, or are unable to recoup costs through increases in the price of finished wines, our business, results of operations and financial condition could be adversely affected.

If we are unable to obtain adequate supplies of premium grapes and bulk wine from third-party grape growers and bulk wine suppliers, the quantity or quality of our annual production of wine could be adversely affected, causing a negative impact on our business, results of operations and financial condition.

The production of our wines and the ability to fulfill the demand for our wines is restricted by the availability of premium grapes and bulk wines from third-party growers. The entirety of our grape inputs per year come from third parties in the form of contracted grapes, contracted bulk wine, spot grapes and spot bulk wine. Additionally, in 2020 approximately 64% of our wine came from grapes purchased from California-based growers. Any delay or other disruption in the supply of California grapes from these growers could have a significant adverse effect on our business. Many of these risks remain outside our control, or the control of the growers upon whom we rely, including, for example, the risks of fires or other natural disasters.

As we continue to grow, we anticipate that our production will continue to rely on third-party suppliers. If we are unable to source grapes and bulk wine of the requisite quality, varietal and geography, among other factors, our ability to produce wines to the standards, quantity and quality demanded by our consumers could be impaired.

Factors including climate change, agricultural risks, competition for quality, water availability, land use, wildfires, floods, disease and pests could impact the quality and quantity of grapes and bulk wine available to our company. Furthermore, these potential disruptions in production may drive up demand for

grapes and bulk wine creating higher input costs or the inability to purchase these materials. In recent years, we have observed significant volatility in the grape and juice market. For example, in 2020, we contracted for approximately 580,000 tons of bulk wine at a cost of approximately $6.1 million, compared to approximately 350,000 tons of bulk wine for a total cost of approximately $3.8 million in 2019. We may experience upward price pressure in future harvest seasons due to factors including the general volatility in the grape and bulk wine markets, widespread insured and/or uninsured losses and overall stress on the agricultural portion of the supply chain. Furthermore, following the 2020 wildfires in Northern California, the price of bulk wine increased substantially in a very short period of time, leading to some wine producers reducing lot sizes of certain wines. While we were able to purchase much of our bulk wine prior to meaningful price increases, we cannot be sure that we will be able to avoid similar price increases in the future. As a result, our financial results could be materially and adversely affected both in the year of the harvest and future periods.

A reduction in our access to or an increase in the cost of the third-party facilities we use to produce our wine could harm our business.

We use third-party alternating proprietorship bottling and winemaking facilities in the production of many of our wines, which means we rely on production capacity at several third-party facilities to bring certain of our brands to market. Our ability to utilize these facilities may be limited by several factors outside our control, including, among others, increased processing costs, damage to the facility or temporary or permanent shutdown for hygienic, mechanical, regulatory or other reasons. The inability to use these or alternative facilities, or to quickly find alternative facilities, at reasonable prices or at all, could increase our costs or reduce the amounts we produce, which could reduce our sales and earnings.

Moreover, we do not have long-term agreements with any of these facilities, and they may provide facility space and services to competitors at a price above what we are willing to pay, which could force us to locate new facilities. The activities conducted at outside facilities include crushing, fermentation, storage, blending, and bottling. The reliance on these third parties varies according to the type of production activity. As production increases, we must increasingly rely upon these third-party production facilities. Reliance on third parties will also vary with annual harvest volumes.

Moving production to a new third-party service provider could negatively impact our financial results.

Shipping is a critical part of our business and any changes in our shipping arrangements or any interruptions in shipping could adversely affect our operating results.

We primarily rely on one major vendor for our DTC shipping requirements. If we are not able to negotiate acceptable pricing and other terms with our vendors or they experience performance problems or other difficulties, it could negatively impact our operating results and our consumer experience. For example, the costs and difficulty in procuring adequate trucking and other shipping services have increased recently as a result of, among other things, the COVID-19 pandemic. Ongoing or recurring challenges relating to our shipping processes or that of any third parties that we rely on could have a material impact on our business and results of operations.

Shipping vendors may also impose shipping surcharges from time to time. In addition, our ability to receive inbound inventory efficiently and ship brands to consumers and retailers may be negatively affected by inclement weather, fire, flood, power loss, earthquakes, labor disputes, acts of war or terrorism, trade embargoes, customs and tax requirements and similar factors. We are also subject to risks of damage or loss during delivery by our shipping vendors. If our brands are not delivered in a timely fashion or are damaged or lost during the delivery process, our consumers could become dissatisfied and cease shopping on our site or retailer or third-party ecommerce sites, which could have an adverse effect on our business, financial condition, operating results and prospects.

If we do not successfully optimize, operate and manage the expansion of the capacity of our warehouse fulfillment centers, our business, financial condition, results of operations and prospects could be adversely affected.

We have warehouse fulfillment centers located in California and Pennsylvania. If we do not optimize and operate our warehouse fulfillment centers successfully and efficiently, it could result in excess

or insufficient fulfillment capacity, an increase in costs or impairment charges or harm our business in other ways. In addition, if we do not have sufficient fulfillment capacity or experience a problem fulfilling orders in a timely manner, our consumers may experience delays in receiving their purchases, which could harm our reputation and our relationship with our consumers. As a result of the continuing effects of the COVID-19 pandemic, we may experience disruptions to the operations of our fulfillment centers, which may negatively impact our ability to fulfill orders in a timely manner, which could harm our reputation, relationships with consumers and business, financial condition, results of operations and prospects.

We have designed and established our own fulfillment center infrastructure, including customizing inventory and package handling software systems, which is tailored to meet the specific needs of our business. If we continue to add fulfillment and warehouse capabilities, add new businesses or categories with different fulfillment requirements or change the mix in brands that we sell, our fulfillment network will become increasingly complex and operating it will become more challenging. Failure to successfully address such challenges in a cost-effective and timely manner could impair our ability to timely deliver purchases to our DTC consumers and merchandise inventory to our retailers and could have an adverse effect on our reputation and ultimately, our business, financial condition, results of operations and prospects.

We may also need to add an additional warehouse fulfillment center and/or other distribution capacity as our business continues to grow. We cannot assure you that we will be able to locate suitable facilities on commercially acceptable terms in accordance with our expansion plans, nor can we assure you that we will be able to recruit qualified managerial and operational personnel to support our expansion plans. If we are unable to secure new facilities for the expansion of our fulfillment operations, recruit qualified personnel to support any such facilities, or effectively control expansion-related expenses, our business, financial condition, results of operations and prospects could be adversely affected. If we grow faster than we anticipate, we may exceed our fulfillment center capacity sooner than we anticipate, we may experience problems fulfilling orders in a timely manner or our consumers may experience delays in receiving their purchases, which could harm our reputation and our relationships with our consumers, and we would need to increase our capital expenditures more than anticipated and in a shorter time frame than we currently anticipate. Our ability to expand our fulfillment center capacity, including our ability to secure suitable facilities and recruit qualified employees, may be substantially affected by the spread of COVID-19 and related governmental orders and there may be delays or increased costs associated with such expansion as a result of the spread and impact of the COVID-19 pandemic. Many of the expenses and investments with respect to our fulfillment centers are fixed, and any expansion of such fulfillment centers will require additional investment of capital. We expect to incur higher capital expenditures in the future for our fulfillment center operations as our business continues to grow. We would incur such expenses and make such investments in advance of expected sales, and such expected sales may not occur. Any of these factors could have an adverse effect on our business, financial condition, results of operations and prospects.

We rely on third-party suppliers, producers, retailers and other vendors, and they may not continue to produce products or provide services that are consistent with our standards or applicable regulatory requirements, which could harm our brand, cause consumer dissatisfaction, and require us to find alternative suppliers of our products or services.

We do not own or operate any vineyards. We use multiple third-party suppliers and producers based primarily in the United States**,** and other countries to a lesser extent, to source all of our grapes and juice, under our owned brand. We engage many of our third-party suppliers and manufacturers on a purchase order basis and in some cases are not party to long-term contracts with them. The ability and willingness of these third parties to supply and manufacture our products may be affected by competing orders placed by other companies and the demands of those companies. If we experience significant increases in demand, or need to replace a significant number of existing suppliers or manufacturers, there can be no assurance that additional supply and manufacturing capacity will be available when required on terms that are acceptable to us, or at all, or that any supplier or manufacturer will allocate sufficient capacity to us in order to meet our requirements. Furthermore, our reliance on suppliers and manufacturers outside of the United States, the number of third parties with whom we transact and the number of jurisdictions to which we sell complicates our efforts to comply with customs duties and excise taxes; any failure to comply could adversely affect our business.

In addition, quality control problems, such as the use of materials and delivery of products that do not meet our quality control standards and specifications or comply with applicable laws or regulations, could harm our business. Quality control problems could result in regulatory action, such as restrictions on importation, products of inferior quality or product stock outages or shortages, harming our sales and creating inventory write-downs for unusable products.

We have also outsourced portions of our fulfillment process, as well as certain technology-related functions, to third-party service providers. Specifically, we rely on third parties in a number of foreign countries and territories, we are dependent on third-party vendors for credit card processing, and we use third-party hosting and networking providers to host our sites. The failure of one or more of these entities to provide the expected services on a timely basis, or at all, or at the prices we expect, or the costs and disruption incurred in changing these outsourced functions to being performed under our management and direct control or that of a third party, could have an adverse effect on our business, financial condition, results of operations and prospects. We are not party to long-term contracts with some of our retailers, and upon expiration of these existing agreements, we may not be able to renegotiate the terms on a commercially reasonable basis, or at all.

Further, our third-party manufacturers, suppliers and retail and ecommerce vendors may:

- have economic or business interests or goals that are inconsistent with ours;
- take actions contrary to our instructions, requests, policies or objectives;
- be unable or unwilling to fulfill their obligations under relevant purchase orders, including obligations to meet our production deadlines, quality standards, pricing guidelines and product specifications, and to comply with applicable regulations, including those regarding the safety and quality of products;
- have financial difficulties;
- encounter raw material or labor shortages;
- encounter increases in raw material or labor costs which may affect our procurement costs;
- encounter difficulties with proper payment of custom duties or excise taxes;
- disclose our confidential information or intellectual property to competitors or third parties;
- engage in activities or employ practices that may harm our reputation; and
- work with, be acquired by, or come under control of, our competitors.

If our third-party suppliers and manufacturers do not comply with ethical business practices or with applicable laws and regulations, our reputation, business, financial condition, results of operations and prospects could be harmed.

Our reputation and our consumers' willingness to purchase our brands depend in part on our suppliers', manufacturers', and retailers' compliance with ethical employment practices, such as with respect to child labor, wages and benefits, forced labor, discrimination, safe and healthy working conditions, and with all legal and regulatory requirements relating to the conduct of their businesses. We do not exercise control over our suppliers, manufacturers, and retailers and cannot guarantee their compliance with ethical and lawful business practices. If our suppliers, manufacturers, or retailers fail to comply with applicable laws, regulations, safety codes, employment practices, human rights standards, quality standards, environmental standards, production practices, or other obligations, norms, or ethical standards, our reputation and brand image could be harmed, and we could be exposed to litigation, investigations, enforcement actions, monetary liability, and additional costs that would harm our reputation, business, financial condition, results of operations and prospects.

Our wholesale operations and wholesale revenues depend largely on independent wholesale distributors whose performance and continuity is not assured.

Our wholesale operations generate revenue from brands sold to wholesale distributors, who then sell our products to off-premise retail locations such as grocery stores and specialty and multi-national retail

chains, as well as on-premise locations such as restaurants and bars. Sales to wholesale distributors are expected to continue to represent a substantial portion of our revenues in the future. A change in our relationship with one or more significant wholesale distributors could harm our business and reduce sales. The laws and regulations of several states prohibit changes of wholesale distributors except under certain limited circumstances, which makes it difficult to terminate a wholesale distributor for poor performance without reasonable cause as defined by applicable statutes. Difficulty or inability with respect to replacing wholesale distributors, poor performance of major wholesale distributors or inability to collect accounts receivable from major wholesale distributors could harm our business. Also, there can be no assurance that existing wholesale distributors and retailers will continue to purchase our brands or provide our brands with adequate levels of promotional support. Consolidation at the retail tier, among club and chain grocery stores in particular, can be expected to heighten competitive pressure to increase marketing and sales spending or constrain or reduce prices. These pressures, if present, with our wholesale distributors would harm our reputation, business, financial condition, results of operations and prospects.

We may face difficulties as we expand our business and operations into jurisdictions in which we have no prior operating experience.

We plan in the future to expand our operations and business into jurisdictions outside of the jurisdictions where we currently carry on business, including internationally. There can be no assurance that any market for our products will develop in any such foreign jurisdiction. We may face new or unexpected risks or significantly increase our exposure to one or more existing risk factors, including economic instability, new competition, changes in laws and regulations, including the possibility that we could be in violation of these laws and regulations as a result of such changes, and the effects of competition.

In addition, it may be difficult for us to understand and accurately predict taste preferences and purchasing habits of consumers in new markets. It is costly to establish, develop and maintain operations and develop and promote our brands in new jurisdictions. As we expand our business into other jurisdictions, we may encounter regulatory, legal, personnel, technological and other difficulties that increase our expenses and/or delay our ability to become profitable in such countries, which may have a material adverse effect on our business and brand. These factors may limit our capability to successfully expand our operations in, or export our products to, those other jurisdictions.

Risks Related to Intellectual Property and Data Privacy

If we are unable to secure, maintain, protect or enforce our intellectual property in domestic and foreign markets, including trademarks for our winery brands, vineyards and wines, the value of our winery brands and intellectual property could decline, which could have a material and adverse effect on our business, results of operations and financial results.

Our future success depends significantly on our ability to protect our current and future brands and to obtain, maintain, protect, enforce and defend our trademarks and other intellectual property rights. We rely on a combination of trademark, copyright and trade secret laws, as well as confidentiality procedures and contractual restrictions, to secure and protect our intellectual property rights. We have been granted numerous trademark registrations in the United States and abroad covering many of our wine brands, and we have filed, and expect to continue to file, trademark applications seeking to protect newly developed wine brands. We cannot be sure that trademark registrations will be issued to us under any of our trademark applications. Our trademark applications could be opposed by third parties, and our trademark rights, including registered trademarks, could also be challenged. We cannot assure you that we will be successful in defending our trademarks in actions brought by third parties. There is also a risk that we could fail to timely maintain or renew our trademark registrations or otherwise protect our trademark rights, which could result in the loss of those trademark rights (including in connection with failure to maintain consistent use of these trademarks). Any of our intellectual property rights, including our trademark registrations, may lapse, be abandoned, be challenged, circumvented, declared generic or otherwise invalidated through administrative process or litigation. If we fail to maintain our trademarks or our trademarks are successfully challenged, we could be forced to rebrand our wines and other products, which could result in a loss of brand recognition and could require us to devote additional resources to the development and marketing of new brands.

Notwithstanding any trademark registrations or other intellectual property held by us, third parties have brought claims in the past, and may bring claims in the future alleging that we have infringed, misappropriated, or otherwise violated that third party's trademark or other intellectual property rights. Any such claims, with or without merit, could require significant resources to defend, could damage the reputation of our winery brands, could result in the payment of compensation (whether as a damages award or settlement) to such third parties, and could require us to stop using our winery brands or other intellectual property rights, enter into costly royalty or licensing agreements or otherwise agree to an undertaking to limit our use of such trademarks or other intellectual property rights. In addition, we may be unable to obtain or utilize on terms that are favorable to us, or at all, licenses or other rights with respect to trademarks and other intellectual property rights we do not own. These risks have been amplified by the increase in third parties whose sole or primary business is to assert such claims. Any payments we are required to make and any injunctions we are required to comply with as a result of these claims would result in additional cost and could result in additional liability to us. In addition, our actions to monitor and enforce trademark rights against third parties may not prevent counterfeit products or products bearing confusingly similar trademarks from entering the marketplace, which could divert sales from us, tarnish our reputation or reduce the demand for our brands or the prices at which those brands are sold. Any enforcement litigation brought by us, whether or not successful, could require significant costs and resources, and divert the attention of management, which could negatively affect our business, results of operations and financial results. Third parties may also acquire and register domain names that are confusingly similar to or otherwise damaging to the reputation of our trademarks, and we may not be able to prevent or cancel any such domain name registrations. Any of the foregoing could have a material adverse effect on our business, results of operations and financial results.

We may be unable to adequately obtain, maintain, protect and enforce our intellectual property rights.

We regard our brands, consumer lists, trademarks, trade dress, domain names, trade secrets, proprietary technology, including the source code for our platform, and similar intellectual property as critical to our success. We rely on trademark, copyright trade secret protection, and confidentiality agreements with our employees and others to protect our proprietary rights.

Effective intellectual property protection may not be available in every country in which our brands are, or may be made, available. In addition, unilateral actions in the United States or other countries, including changes to or the repeal of laws recognizing trademark or other intellectual property rights, could have an impact on our ability to obtain, maintain and enforce our trademark and other intellectual property rights. Furthermore, the laws of some foreign countries may not protect trademark and other intellectual property rights to the same extent as the laws of the United States, and it may be more difficult for us to successfully obtain, maintain, protect and enforce our trademark and other intellectual property rights in these countries. The protection of our intellectual property rights may require the expenditure of significant financial, managerial and operational resources. Moreover, the steps we take to protect our intellectual property may not adequately protect our rights or prevent third parties from infringing, misappropriating or otherwise violating our proprietary rights, and we may be unable to broadly enforce all of our intellectual property rights. Any of our intellectual property rights may be challenged by others or invalidated through administrative process or litigation.

Our pending and future trademark applications may never be granted. Additionally, the process of obtaining trademark protection is expensive and time-consuming, and we may be unable to prosecute all necessary or desirable trademark or other intellectual property applications at a reasonable cost or in a timely manner. We may also allow certain of our registered intellectual property rights, or our pending applications for intellectual property rights, to lapse or become abandoned if we determine that obtaining or maintaining the applicable registered intellectual property rights is no longer worthwhile. There can be no assurance that our registered trademarks or pending applications, if issued or registered, will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of trademark and other intellectual property rights are constantly evolving and vary by jurisdiction. We also cannot be certain that others will not independently develop or otherwise acquire equivalent or superior technology or intellectual property rights. If any third party copies our brands or products in a manner that projects lesser quality or carries a negative connotation or otherwise uses trademarks that are identical or similar to our trademarks, it could lead to market confusion and have a material

adverse effect on our brand image and reputation. In some cases there may be third-party trademark owners who have prior rights to our trademarks or third parties who have prior rights to similar trademarks, and we may not be able to prevent such third parties from using and marketing any such trademarks.

We also rely on unpatented proprietary technology, such as the source code of our platform. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our technology or obtain and use information that we regard as proprietary. It is also possible that others will independently develop the same or similar technology or otherwise obtain access to our unpatented technology. To protect our trade secrets and other proprietary information, we require our employees and certain of our consultants, contract employees, suppliers and independent contractors, including some of our manufacturers who use our formulations to manufacture our brands to enter into confidentiality agreements, which generally require that all information made known to them be kept strictly confidential. The effectiveness of these agreements are important as some of our formulations have been developed by or with our suppliers and manufacturers. However, we may fail to enter into confidentiality agreements with all parties who have access to our trade secrets or other confidential information. In addition, parties may breach such agreements and disclose our proprietary information, and we may not be able to obtain adequate remedies for such breaches. Further, such agreements may not be enforceable in full or in part in all jurisdictions and any breach could have a negative effect on our business and our remedy for such breach may be limited. The contractual provisions that we enter into may not prevent unauthorized use or disclosure of our proprietary technology or intellectual property rights and may not provide an adequate remedy in the event of unauthorized use or disclosure of our proprietary technology or intellectual property rights. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret can be difficult, expensive and time-consuming, and the outcome is unpredictable. Even if we are successful in prosecuting such claims, any remedy awarded may be insufficient to fully compensate us for the improper disclosure or misappropriation. In addition, if any of our trade secrets were to be lawfully obtained or independently developed by a competitor or other third party, we would have no right to prevent them from using that technology or information to compete with us and our competitive position would be harmed.

In the United States, the Defend Trade Secrets Act of 2016, or the DTSA, provides a federal cause of action for misappropriation of trade secrets. Under the DTSA, an employer may not collect enhanced damages or attorneys' fees from an employee or contractor in a trade secret dispute brought under the DTSA, unless certain advanced provisions are observed. The full benefit of the remedies available under the DTSA requires specific language and notice requirements present in the relevant agreements with such employees and contractors, which may not be present in all of our agreements. We cannot provide assurance that our existing agreements with our employees, consultants, contract employees and independent contractors contain notice provisions that would enable us to seek enhanced damages or attorneys' fees in the event of any dispute for misappropriation of trade secrets brought under the DTSA.

We might be required to spend significant resources to monitor and protect our intellectual property rights. For example, we may initiate claims or litigation against others for infringement, misappropriation or violation of our intellectual property rights or other proprietary rights or to establish the validity of such rights. However, we may be unable to discover or determine the extent of any infringement, misappropriation or other violation of our intellectual property rights and other proprietary rights. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims and countersuits challenging our intellectual property rights and if such defenses, counterclaims or countersuits are successful, we may lose valuable intellectual property rights. Despite our efforts, we may be unable to prevent third parties from infringing upon, misappropriating or otherwise violating our intellectual property rights and other proprietary rights. Any litigation, whether or not it is resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel, which could have an adverse effect on our business, financial condition, results of operations and prospects.

The loss of any registered trademark or other intellectual property could enable other companies to compete more effectively with us.

We consider our trademarks to be valuable assets that reinforce our brands and consumers' perception of our brands. We have invested a significant amount of time and money in establishing and

promoting our trademarked brands. Our continued success depends, to a significant degree, upon our ability to protect and preserve our registered trademarks and to successfully obtain additional trademark registrations in the future.

We may not be able to obtain trademark protection in all territories that we consider to be important to our business. While we have obtained or applied for registrations of our trademarks, we have not registered our trademarks in all categories, or in all foreign countries in which we currently, or may in the future, source or offer our products. In addition, we cannot assure you that the steps we have taken to establish and protect our trademarks are adequate, that our trademarks can be successfully defended and asserted in the future or that third parties will not infringe upon any such rights. Our trademark rights and related registrations may be challenged, opposed, infringed, cancelled, circumvented or declared generic, or determined to be infringing on other marks by third parties and if such third parties are successful, we may lose our trademark rights. Failure to protect our trademark rights could prevent us in the future from challenging third parties who use names and logos similar to our trademarks, which may in turn cause consumer confusion or negatively affect consumers' perception of our brands. Moreover, any trademark disputes may result in a significant distraction for management 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 could have a material adverse effect on our business, financial condition, results of operations and prospects.

If we fail to comply with our obligations under our existing license agreements or cannot license rights to use technologies on reasonable terms or at all, we may be unable to license rights that are critical to our business.

We license certain intellectual property and technology which are critical to our business. If we fail to comply with any of the obligations under our license agreements, we may be required to pay damages and the licensor may have the right to terminate the license. Licensing intellectual property or technology from third parties also exposes us to increased risk of being the subject of intellectual property infringement due to, among other things, our lower level of visibility into the development process with respect to such technology and the care taken to safeguard against infringement risks. We cannot be certain that our licensors do not or will not infringe on the intellectual property rights of third parties or that our licensors have or will have sufficient rights to the licensed intellectual property in all jurisdictions. Some of our agreements with our licensors may be terminated by them for convenience, or otherwise provide for a limited term. Termination by the licensor would cause us to lose valuable rights, and could inhibit our ability to commercialize our brands. If any contract interpretation disagreement were to arise, the resolution could narrow what we believe to be the scope of our rights to the relevant intellectual property or increase what we believe to be our financial or other obligations under the relevant agreement. Any of the foregoing could adversely impact our business, financial condition and results of operations.

In addition, in the future we may identify additional third-party intellectual property we may need to license in order to engage in our business, including to develop or commercialize new brands. However, such licenses may not be available on acceptable terms or at all. The licensing or acquisition of third-party intellectual property rights is a competitive area, and companies with greater size and capital resources than us may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. Even if such licenses are available, we may be required to pay the licensor substantial royalties or other fees. If we are unable to enter into the necessary licenses on acceptable terms or at all, it could have an adverse effect on our business, financial condition, results of operations and prospects.

Our reliance on software-as-a-service, or SaaS, technologies from third parties may adversely affect our business and results of operations.

We rely on SaaS technologies from third parties in order to operate critical functions of our business, including financial management services, consumer relationship management services, supply chain services and data storage services. If these services become unavailable due to extended outages or interruptions or because they are no longer available on commercially reasonable terms or prices, or for any other reason, our expenses could increase, our ability to manage our finances could be interrupted, our

processes for managing sales of our offerings and supporting our consumers could be impaired, our ability to communicate with our suppliers could be weakened and our ability to access or save data stored to the cloud may be impaired until equivalent services, if available, are identified, obtained and implemented, all of which could have an adverse effect on our business, financial condition, results of operations and prospects.

We must successfully maintain, scale and upgrade our information technology systems, and our failure to do so could have an adverse effect on our business, financial condition, results of operations and prospects.

We have identified the need to significantly expand, scale and improve our information technology systems and personnel to support recent and expected future growth. As such, we are in the process of implementing, and will continue to invest in and implement, significant modifications and upgrades to our information technology systems and procedures, including replacing legacy systems with successor systems, making changes to legacy systems or acquiring new systems with new functionality, hiring employees with information technology expertise and building new policies, procedures, training programs and monitoring tools. These types of activities subject us to inherent costs and risks associated with replacing and changing these systems, including impairment of our ability to leverage our Retail channel or fulfill consumer orders, potential disruption of our internal control structure, substantial capital expenditures, additional administration and operating expenses, the need to acquire and retain sufficiently skilled personnel to implement and operate the new systems, demands on management time, the introduction of errors or vulnerabilities and other risks and costs of delays or difficulties in transitioning to or integrating new systems into our current systems. These implementations, modifications and upgrades may not result in productivity improvements at a level that outweighs the costs of implementation, or at all. Additionally, difficulties with implementing new technology systems, delays in our timeline for planned improvements, significant system failures, failures or delays in developing and deploying patches and other remedial measures to adequately address vulnerabilities or our inability to successfully modify our information systems to respond to changes in our business needs may cause disruptions in our business operations and could have an adverse effect on our business, financial condition, results of operations and prospects.

We are increasingly dependent on information technology and our ability to process data in order to operate and sell our goods and services, and if we (or our vendors) are unable to protect against software and hardware vulnerabilities, service interruptions, data corruption, cyber-based attacks, ransomware or security breaches, or if we fail to comply with our commitments and assurances regarding the privacy and security of such data, our operations could be disrupted, our ability to provide our goods and services could be interrupted, our reputation may be harmed and we may be exposed to liability and loss of consumers and business.

We rely on information technology networks and systems and data processing (some of which are managed by third-party service providers) to market, sell and deliver our brands and services, to fulfill orders, to collect, receive, store, generate, use, transfer, disclose, make accessible, protect, secure, dispose of share, and otherwise process (which we collectively refer to as Process) large amounts of information, including confidential information, intellectual property, proprietary business information, financial information, and personal information of our consumers, employees and contractors, to manage a variety of business processes and activities, for financial reporting purposes, to operate our business, process orders and to comply with regulatory, legal and tax requirements (which we collectively refer to as Business Functions). These information technology networks and systems, and the Processing they perform, may be susceptible to damage, interruptions, disruptions or shutdowns, software or hardware vulnerabilities, security incidents, cyberattacks, phishing attacks, ransomware attacks, social engineering attacks, supply-side attacks, malicious code, employee theft or misuse, fraud, denial or degradation of service attacks, unauthorized access or use by persons inside our organization, or persons with access to systems inside our organization, failures during the process of upgrading or replacing software, databases or components, power outages, fires, natural disasters, hardware failures, computer viruses, terrorism, war, attacks by computer hackers, telecommunication and electrical failures, user errors or catastrophic events. The risk of a security breach or disruption, particularly through cyberattacks or cyber intrusion, including by computer hackers, foreign governments or state-sponsored actors and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased and evolved. Due to the COVID-19 pandemic, our personnel and our third party service providers are temporarily working remotely and relying on their own computers, routers and other equipment, which may pose additional data security risks to networks, systems and data, and may create additional opportunities for cybercriminals to

exploit vulnerabilities. Any material disruption of our networks, systems or Processing activities, or those of our third-party service providers, could disrupt our ability to undertake, and cause a material adverse impact to, our Business Functions and our business, reputation and financial condition. If our information technology networks and systems or Processing (or of our third-party service providers) suffers damage, security breaches, vulnerabilities, disruption or shutdown, and we do not effectively resolve the issues in a timely manner, they could cause a material adverse impact to, our Business Functions and our business, reputation and financial condition. Our DTC and ecommerce operations are critical to our business and our financial performance. Our website serves as an effective extension of our marketing strategies by exposing potential new consumers to our brand, brand offerings and enhanced content. Due to the importance of our website and DTC operations, any material disruption of our networks, systems or Processing activities related to our websites and DTC operations could reduce DTC sales and financial performance, damage our brand's reputation and materially adversely impact our business.

Despite our efforts to ensure the security, privacy, integrity, confidentiality, availability, and authenticity of information technology networks and systems, Processing and information, we may not be able to anticipate or to implement effective preventive and remedial measures against all data security and privacy threats. The recovery systems, security protocols, network protection mechanisms and other security measures that we have integrated into our systems, networks and physical facilities, which are designed to protect against, detect and minimize security breaches, may not be adequate to prevent or detect service interruption, system failure data loss or theft, or other material adverse consequences. No security solution, strategy, or measures can address all security threats or block all methods of penetrating a network or otherwise perpetrating a security incident. The risk of unauthorized circumvention of our security measures or those of our third-party providers, clients and any strategic partners has been heightened by advances in computer and software capabilities and the increasing sophistication of hackers who employ complex techniques, including without limitation, the theft or misuse of personal and financial information, counterfeiting, "phishing" or social engineering incidents, ransomware, extortion, publicly announcing security breaches, account takeover attacks, denial or degradation of service attacks, malware, fraudulent payment and identity theft. Because the techniques used by hackers change frequently, we may be unable to anticipate these techniques or implement adequate preventive measures. We also may experience security breaches that remain undetected for an extended period of time. Our applications, systems, networks, software and physical facilities could have material vulnerabilities, be breached or personal or confidential information could be otherwise compromised due to employee error or malfeasance, if, for example, third parties attempt to fraudulently induce our personnel or our consumers to disclose information or usernames and/or passwords, or otherwise compromise the security of our networks, systems and/or physical facilities. Third parties may also exploit vulnerabilities in, or obtain unauthorized access to, platforms, software, applications, systems, networks, sensitive information, and/or physical facilities utilized by our vendors. Improper access to our systems or databases could result in the theft, publication, deletion or modification of personal information, confidential or proprietary information, financial information and other information. An actual or perceived breach of our security systems or those of our third-party service providers may require notification under applicable data privacy regulations or contractual obligations, or for consumer relations or publicity purposes, which could result in reputational harm, costly litigation (including class action litigation), material contract breaches, liability, settlement costs, loss of sales, regulatory scrutiny, actions or investigations, a loss of confidence in our business, systems and Processing, a diversion of management's time and attention, and significant fines, penalties, assessments, fees and expenses.

The costs to respond to a security breach and/or to mitigate any security vulnerabilities that may be identified could be significant, our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, cessation of service, negative publicity, and other harm to our business and our competitive position, including transaction errors, supply chain or manufacturing interruptions, processing inefficiencies, data loss or the loss of or damage to intellectual property or other proprietary information. We could be required to fundamentally change our business activities and practices in response to a security breach or related regulatory actions or litigation, which could have an adverse effect on our business.

We may have contractual and other legal obligations to notify relevant stakeholders of any security breaches. Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory and government authorities, supervisory bodies, the media and others of security breaches involving certain types

of data. In addition, our agreements with certain consumers and third parties may require us to notify them in the event of a security breach. Such mandatory disclosures are costly, could lead to negative publicity, may cause our consumers to lose confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to and/or alleviate problems caused by the actual or perceived security breach, and may cause us to breach consumer or ecommerce or retail consumer contracts. Our agreements with certain consumers or ecommerce or retail consumers, our representations, or industry standards, may require us to use industry-standard or reasonable measures to safeguard sensitive personal information or confidential information. A security breach or compromise affecting us, our service providers, vendors, any strategic partners, other contractors, consultants, or our industry, whether real or perceived, could lead to claims by our consumers or ecommerce or retail consumers, or other relevant stakeholders that we have failed to comply with such legal or contractual obligations and could harm our reputation, erode confidence in the effectiveness of our security measures and lead to regulatory scrutiny. As a result, we could be subject to legal action or we also could be subject to actions or investigations by regulatory authorities which could potentially result in regulatory penalties, fines and significant legal liability, or our consumers or ecommerce or retail consumers could end their relationships with us. There can be no assurance that any limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages.

We may not have adequate insurance coverage for security incidents or breaches, including fines, judgments, settlements, penalties, costs, attorney fees and other impacts that arise out of incidents or breaches. If the impacts of a security incident or breach, or the successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), it could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage, cyber coverage and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to all or part of any future claim or loss. Our risks are likely to increase as we continue to expand, grow our consumer base, and Process increasingly large amounts of proprietary and sensitive data. Any of the following could have a material adverse effect on our business, financial condition, results of operations and prospects.

The use of "open source" software in our products and services may expose us to additional risks and harm our intellectual property.

Certain of our platforms and technologies utilize and incorporate "open source" software. Open source software is generally freely accessible, usable and modifiable, however certain open source software licenses require a user who intends to distribute the open source software as a component of the user's software to disclose publicly part or all of the source code to the user's software. The use and distribution of open source software may entail greater risks than the use of third-party commercial software, as open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. Additionally, certain open source software licenses require the user of such software to make any derivative works of the open-source code available to others on terms that are unfavorable to such user or at no cost. This can effectively render what was previously proprietary software to be open source software. Open source license terms are often ambiguous, and there is little or no legal precedent governing the interpretation of many of the terms of certain of these licenses.

While we try to ensure that no open source software is used in such a way as to require us to disclose the source code to our related proprietary software, such use could inadvertently occur. Additionally, a third-party software provider may incorporate, inadvertently or not, certain types of open source software into software that we license from such third party for our proprietary software. If any of the foregoing occurs, we could, under certain circumstances, be required to disclose the source code to our proprietary software, which could enable third parties to compete with us using such software. This could harm our intellectual property position and have a material adverse effect on our business, results of operations and financial condition.

We are subject to stringent and changing laws, rules, regulations, industry standards, information security policies, self-regulatory schemes and contractual obligations related to data privacy, protection and security, marketing, advertising and consumer protection. Any actual or perceived failure by us, our consumers, partners or vendors to comply with such laws, rules, regulations, industry standards, information security policies, self-regulatory schemes and contractual obligations could have an adverse effect on our business, financial condition, results of operations and prospects.

We Process, and our vendors Process on our behalf, personal information, confidential information and other information necessary to provide and deliver our brands through our DTC channel to operate our business, for legal and marketing purposes, and for other business-related purposes.

Data privacy and information security has become a significant issue in the United States, countries in Europe, and in many other countries in which we operate and where we offer our brands and services. The legal and regulatory framework for privacy and security issues is rapidly evolving and is expected to increase our compliance costs and exposure to liability. There are numerous federal, state, local, and international laws, orders, codes, regulations and regulatory guidance regarding privacy, information security and Processing (which we collectively refer to as Data Protection Laws), the number and scope of which is changing, subject to differing applications and interpretations, and which may be inconsistent among jurisdictions, or in conflict with other rules and laws. Data Protection Laws and data protection worldwide are, and are likely to remain, uncertain for the foreseeable future, and our actual or perceived failure to address or comply with these laws could have an adverse effect on our business, financial condition, results of operations and prospects. We are or may also be subject to the terms of our external and internal privacy and security policies, codes, representations, certifications, industry standards, publications and frameworks (which we collectively refer to as Privacy Policies), and contractual obligations to third parties related to privacy, information security and Processing, including contractual obligations to indemnify and hold harmless third parties from the costs or consequences of non-compliance with Data Protection Laws or other obligations (which we collectively refer to as Data Protection Obligations). We expect that there will continue to be new Data Protection Laws and Data Protection Obligations, and we cannot yet determine the impact such future Data Protection Laws may have on our business. Any significant change to Data Protection Laws and Data Protection Obligations, including without limitation, regarding the manner in which the express or implied consent of consumers for Processing is obtained, could increase our costs and require us to modify our operations, possibly in a material manner, which we may be unable to complete and may limit our ability to store and otherwise Process consumer data and operate our business. We strive to comply with applicable Data Protection Laws, Privacy Policies and Data Protection Obligations to the extent possible, but we may at times fail to do so, or may be perceived to have failed to do so. Moreover, despite our efforts, we may not be successful in achieving compliance if our employees, partners, if any, or vendors do not comply with applicable Data Protection Laws, Privacy Policies and Data Protection Obligations. If we or our vendors fail or are perceived to have failed to comply with applicable Data Protection Laws, Privacy Policies and Data Protection Obligations, or if our Privacy Policies are, in whole or part, found to be inaccurate, incomplete, deceptive, unfair, or misrepresentative of our actual practices, our business, financial condition, results of operations and prospects could be adversely affected.

In the United States, relevant Data Protection Laws include rules and regulations promulgated under the authority of the FTC, the Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, the California Consumer Privacy Act, or CCPA, and other state and federal laws relating to privacy and data security. The CCPA requires companies that Process information of California residents to make new disclosures to consumers about their data collection, use and sharing practices, allows California residents to opt out of certain sharing of personal information with third parties gives California residents the right to access and request deletion of their information, and provides a private right of action and statutory damages for certain data breaches that result in the loss of personal information. The CCPA may increase our compliance costs and potential liability and risks associated with data breach litigation. In addition, California voters recently approved the California Privacy Rights Act of 2020, or CPRA, which goes into effect in most material respects on January 1, 2023. The CPRA significantly expands the CCPA, including by introducing additional obligations such as data minimization and storage limitations additional rights to California residents to limit the use of their sensitive information, providing for penalties for CPRA violations concerning California residents under the age of 16, and establishing a new California Privacy Protection Agency to implement and enforce the law. The enactment of the CCPA is prompting a

wave of similar legislative developments in other states in the United States, which creates the potential for a patchwork of overlapping but different state laws and could mark the beginning of a trend toward more stringent privacy legislation in the United States, which could increase our potential liability and adversely affect our business, results of operations, and financial condition. For example, in March 2021, Virginia enacted the Virginia Consumer Data Protection Act, or CDPA, a comprehensive privacy statute that becomes effective on January 1, 2023 and shares similarities with the CCPA, the CPRA, and legislation proposed in other states. Laws in all 50 states already require businesses to provide notice under certain circumstances to consumers whose personal information has been disclosed as a result of a data breach. Each of these Data Protection Laws and any other such changes or new Data Protection Laws could impose significant limitations, require changes to our business, or restrict our collection, use, storage or Processing of personal information, which may increase our compliance expenses and make our business more costly or less efficient to conduct. In addition, any such changes could compromise our ability to develop an adequate marketing strategy and pursue our growth strategy effectively or even prevent us from providing certain offerings in jurisdictions in which we currently operate and in which we may operate in the future or incur potential liability in an effort to comply with such legislation, which, in turn, could adversely affect our business, brands, financial condition, and results of operations.

We rely on a variety of marketing techniques and practices, including email and social media marketing, online targeted advertising, cookie-based Processing, and postal mail to sell our brands and services and to attract new consumers, and we, and our vendors, are subject to various current and future Data Protection Laws and Data Protection Obligations that govern marketing and advertising practices. Governmental authorities continue to evaluate the privacy implications inherent in the use of proprietary or third-party "cookies" and other methods of online tracking for behavioral advertising and other purposes, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices, web browsers and application stores have implemented, or announced plans to implement, means to make it easier for Internet users to prevent the placement of cookies or to block other tracking technologies, require additional consents from users for certain activities, or limit the ability to track user activity, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. We may have to develop alternative systems to determine our consumers' behavior, customize their online experience, or efficiently market to them if consumers block cookies or regulations introduce additional barriers to collecting cookie data and there is no guarantee that such development efforts will be successful or worth the expense. Laws and regulations regarding the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new consumers on cost-effective terms, which, in turn, could have a material adverse effect on our business, financial condition, results of operations and prospects.

In Europe, the European Union General Data Protection Regulation, or GDPR, went into effect in May 2018 and imposes strict requirements for Processing the personal data of individuals within the European Economic Area, or EEA. While we do not believe we are currently subject to the GDPR, we have plans of expanding internationally and have trademark registrations in jurisdictions in the EEA. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United States, and the efficacy and longevity of current transfer mechanisms between the European Union, or the EU, and the United States remains uncertain. For example, in 2016, the EU and United States agreed to a transfer framework for data transferred from the EU to the United States, called the Privacy Shield, but the Privacy Shield was invalidated in July 2020 by the Court of Justice of the European Union. Further, from January 1, 2021, companies have to comply with the GDPR and also the United Kingdom GDPR, or the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, i.e., fines up to the greater of €20 million (£17.5 million) or 4% of global turnover. The relationship between the United Kingdom and the EU in relation to certain aspects of data protection law remains unclear, and it is unclear how United Kingdom data protection laws and regulations will develop in the medium to longer term, and how data transfers to and

from the United Kingdom will be regulated in the long term. These changes will lead to additional costs and increase our overall risk exposure.

In addition to government regulation and laws, we are subject to self-regulatory standards and industry certifications that may legally or contractually apply to us, including the Payment Card Industry Data Security Standards, or PCI-DSS. In the event we fail to comply with the PCI-DSS, we could be in breach of our obligations under consumer and other contracts, fines and other penalties could result, and we may suffer reputational harm and damage to our business. Further, our clients may expect us to comply with more stringent privacy and data security requirements than those imposed by laws, regulations or self-regulatory requirements, and we may be obligated contractually to comply with additional Data Protection Obligations or different standards relating to our handling or protection of data.

Although we work to comply with applicable Data Protection Laws, our Privacy Policies, and any Data Protection Obligations, data protection requirements are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another or other legal obligations with which we must comply. Any failure or perceived failure by us or our employees, representatives, contractors, consultants, partners, vendors or other third parties to comply with such requirements or adequately address privacy and security concerns, even if unfounded, could result in additional cost and liability to us, damage our reputation, and adversely affect our business, financial condition, results of operations and prospects.

Risks Related to the Alcohol and the Wine Industry

Adverse public opinion about alcohol may harm our business.

Certain research studies have concluded or suggest that alcohol consumption has no health benefits and may increase the risk of stroke, cancer and other illnesses. An unfavorable report on the health effects of alcohol consumption could significantly reduce the demand for wine, which could harm our business by reducing sales and increasing expenses. Additionally, in recent years, activist groups have used advertising and other methods to inform the public about the societal harms associated with the consumption of Alcoholic Beverages. These groups have also sought, and continue to seek, legislation to reduce the availability of Alcoholic Beverages, to increase the penalties associated with the misuse of Alcoholic Beverages, or to increase the costs associated with the production of Alcoholic Beverages. Over time, these efforts could cause a reduction in the consumption of Alcoholic Beverages generally, which could harm our business by reducing sales and increasing expenses.

Consumer demand for wine could decline for a variety of reasons. Reduced demand could harm our results of operations, financial condition and prospects.

There have been periods in the past in which there were substantial declines in the overall per capita consumption of wine. A limited or general decline in consumption in one or more of our brand categories could occur in the future for a variety of reasons, including a general decline in economic conditions, changes in the spending habits of consumers generally (or of groups of consumers, such as millennials), prohibition, increased concern about the health consequences of consuming Alcoholic Beverages and about drinking and driving, a trend toward a healthier diet, including lighter, lower-calorie beverages such as diet soft drinks, juices and water, the increased activity of anti-alcohol consumer group; and increased federal, state or foreign excise and other taxes on Alcoholic Beverages. Reduced demand for wine could harm our results of operations, financial condition and prospects.

Due to the three-tier alcohol beverage distribution system in the United States, we are heavily reliant on wholesale distributors and government agencies that resell Alcoholic Beverages in all states. A significant reduction in wholesale distributor demand for our wines would materially and adversely affect our sales and profitability.

Due to regulatory requirements in the United States, we sell a significant portion of our wines to wholesale distributors for resale to retail accounts, and in some states, directly to government agencies for resale. Additionally, a small percentage of our wines are sold by wholesale distributors to retail accounts outside of the United States. Decreased demand for our wines in any of our sales channels would negatively

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

A decrease in wine score ratings by important rating organizations could have a negative impact on our ability to create demand for and sell our wines. Sustained negative scores could reduce the prominence of our winery brands and carry negative association across our portfolio which could materially and adversely affect our sales and profitability.

Our brands' individual labels are issued ratings or scores by wine rating organizations, and higher scores often drive greater demand and, in some cases, higher pricing. Many of our brands have consistently ranked among the top U.S. premium wine brands and have generally received positive reviews across multiple appellations, varietals, varieties, styles and price points from many of the industry's top critics and publications. These positive third-party reviews have been important to maintaining and expanding our reputation as a premium wine producer. However, we have no control over ratings issued by third parties or the methodology they use to evaluate our wines, which may not continue to be favorable to us in the future. If our new or existing brands are assigned significantly lower ratings, if our brands consistently receive lower ratings over an extended period of time or if any of our competitors' new or existing brands are assigned comparatively higher ratings, our consumers' perception of our brands and demand for our wines could be negatively impacted, which could materially and adversely affect our sales and profitability.

We rely on independent certification for a number of our brands.

We rely on independent third-party certification, such as certifications of some of our brands or ingredients as "organic" to differentiate them from others. We must comply with the requirements of independent organizations or certification authorities in order to label our brands as certified organic, such as the California Certified Organic Farmers and Quality Assurance International. We may lose our certifications if we use unapproved raw materials or incorrectly use a certification on brand labels or in marketing materials. The loss of any independent certification could adversely affect our market position and brand reputation as a maker of clean brands, and our business, financial condition, results of operations and prospects could be adversely affected.

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

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

From time to time, we may also be party to other litigation in the ordinary course of our operations, including in connection with commercial disputes, enforcement or other regulatory actions by tax, customs,

competition, environmental, anti-corruption and other relevant regulatory authorities, or, following this offering, securities-related class action lawsuits, particularly following any significant decline in the price of our securities. Any such litigation or other actions may be expensive to defend and result in damages, penalties or fines as well as reputational damage to our company and our winery brands and may impact the ability of management to focus on other business matters. Furthermore, any adverse judgments may result in an increase in future insurance premiums, and any judgements for which we are not fully insured may result in a significant financial loss and may materially and adversely affect our business, results of operations and financial results.

Risks Related to Government Regulation

Health and safety incidents or advertising inaccuracies or product mislabeling may have an adverse effect on our business by exposing us to lawsuits, product recalls or regulatory enforcement actions, increasing our operating costs and reducing demand for our brand offerings.

Selling wine and other Alcoholic Beverages involves inherent legal and other risks, and there is increasing governmental scrutiny of and public awareness regarding product safety. Illness, injury or death related to allergens, illnesses, foreign material contamination or other product safety incidents caused by our brands, or involving our suppliers, could result in the disruption or discontinuance of sales of these brands or our relationships with such suppliers, or otherwise result in increased operating costs, regulatory enforcement actions or harm to our reputation.

Shipment of adulterated or misbranded products, even if inadvertent, can result in criminal or civil liability. Such incidents could also expose us to product liability, negligence or other lawsuits, including consumer class action lawsuits. Any claims brought against us may exceed or be outside the scope of our existing or future insurance policy coverage or limits. Any judgment against us that is more than our policy limits or not covered by our policies or not subject to insurance would have to be paid from our cash reserves, which would reduce our capital resources.

The occurrence of adverse reactions or other safety incidents could also adversely affect the price and availability of affected brands, resulting in higher costs, disruptions in supply and a reduction in our sales. Furthermore, any instances of contamination, defects, or regulatory noncompliance, whether or not caused by our actions, could compel us, our suppliers or our retail or wholesale distributors, depending on the circumstances, to conduct a recall in accordance with the Alcohol and Tobacco Tax and Trade Bureau, or TTB, FDA, California Department of Alcohol Beverage Control, or ABC, the Consumer Product Safety Commission, or CPSC, the USDA, the U.S. Environmental Protection Agency, or EPA, or other federal regulations and policies, and comparable state laws, regulations and policies. Product recalls could result in significant losses due to their costs, the destruction of product inventory, lost sales due to the unavailability of the product for a period of time and potential loss of existing retailers or consumers and a potential negative impact on our ability to attract new consumers due to negative consumer experiences or because of an adverse impact on our brand and reputation. The costs of a recall could be outside the scope of our existing or future insurance policy coverage or limits.

In addition, companies that sell wine and other Alcoholic Beverages products have been subject to targeted, large-scale tampering as well as to opportunistic, individual product tampering, and we, like any such company, could be a target for product tampering. Forms of tampering could include the introduction of foreign material, chemical contaminants and pathological organisms into products, as well as product substitution. Governmental regulations require companies like us to analyze, prepare and implement mitigation strategies specifically to address tampering designed to inflict widespread public health harm. If we or our suppliers do not adequately address the possibility, or any actual instance, of product tampering, we could face possible seizure or recall of our products and the imposition of civil or criminal sanctions, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Further, many brands that we sell are advertised with claims as to their origin, ingredients or environmental benefits, including, by way of example, the use of the term “natural”, “organic”, or “sustainable”, or similar synonyms or implied statements relating to such benefits. Although the TTB, FDA and the USDA each has issued statements regarding the appropriate use of the word “natural,” there is no single, U.S. government regulated definition of the term “natural” for use in the Alcoholic Beverages industry,

which is true for many other adjectives common in the beverage industry. The resulting uncertainty has led to consumer confusion, distrust and legal challenges. Plaintiffs have commenced legal actions against several companies that market "natural" products or ingredients, asserting false, misleading and deceptive advertising and labeling claims, including claims related to genetically modified ingredients and the use of synthetic ingredients, including synthetic forms of otherwise natural ingredients.

Should we become subject to similar claims, the resulting adverse publicity about these matters may discourage consumers from buying our brands, even if the basis for the claim is unfounded. The cost of defending against any such claims could be significant. Any loss of confidence on the part of consumers in the truthfulness of our labeling, advertising or ingredient claims would be difficult and costly to overcome and may significantly reduce our brand value. Any of these events could adversely affect our reputation and brand and decrease our sales, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Furthermore, the USDA enforces federal standards for organic production and use of the term "organic" on product labeling. These laws prohibit a company from selling or labeling products as organic unless they are produced and handled in accordance with the applicable federal law. Failure to comply with these requirements may subject us or our suppliers to liability or regulatory enforcement. Consumers may also pursue state law claims against us or our suppliers challenging use of the organic label as being intentionally mislabeled or misleading or deceptive to consumers.

In addition, certain of the brands we sell require approval from and registration with the EPA prior to sale. Products that expressly or impliedly claim to control microorganisms that pose a threat to human health may be subject by additional regulatory scrutiny and need to be supported by additional efficacy data. Should we advertise or market these EPA regulated products with claims that are not permitted by the terms of their registration or are otherwise false or misleading, the EPA may be authorized to take enforcement action to prevent the sale or distribution of disinfectant products. False or misleading marketing claims concerning a product's EPA registration or its efficacy may also create the risk for challenges under state law at the consumer level.

If any of the above actions or factors were to impact our products, this could adversely affect our reputation, business, financial condition, results of operations and prospects.

We are subject to extensive governmental regulation and we may incur material liabilities under, or costs in order to comply with, existing or future laws and regulation, and our failure to comply may result in enforcements, recalls, and other adverse actions.

We and the suppliers and manufacturers we work with are subject to a broad range of federal, state, local, and foreign laws and regulations intended to protect public and worker health and safety, natural resources, the environment and consumers. Our operations are subject to regulation by the TTB, ABC, Occupational Safety and Health Administration, or OSHA, the FDA, the CPSC, the USDA, the FTC, EPA, and by various other federal, state, local and foreign authorities regarding the manufacture, processing, packaging, storage, sale, order fulfillment, advertising, labeling, import and export of our brands. Certain of the brands we sell may require EPA registration and approval prior to sale.

In addition, we, our co-manufacturers and our third-party contractors are subject to additional regulatory requirements, including environmental, health and safety laws and regulations administered by the EPA, state, local and foreign environmental, health and safety legislative and regulatory authorities and the National Labor Relations Board, covering such areas as discharges and emissions to air and water, the use, management, disposal and remediation of, and human exposure to, hazardous materials and wastes, and public and worker health and safety. Violations of or liability under any of these laws and regulations may result in administrative, civil or criminal fines, penalties or sanctions against us, revocation or modification of applicable permits, licenses or authorizations, environmental, health and safety investigations or remedial activities, voluntary or involuntary product recalls, warning or untitled letters or cease and desist orders against operations that are not in compliance, among other things. Such laws and regulations generally have become more stringent over time and may become more so in the future, and we may incur (directly, or indirectly through our co-manufacturers and third-party contractors) material costs to comply with current or future laws and regulations or in any required product recalls. Liabilities under, and/or costs of

compliance, and the impacts on us of any non-compliance, with any such laws and regulations could have an adverse effect on our business, financial condition, results of operations and prospects. In addition, changes in the laws and regulations to which we are subject, or in the prevailing interpretations of such laws and regulations by courts and enforcement authorities, could impose significant limitations and require changes to our business, which may increase our compliance expenses, make our business more costly and less efficient to conduct, and compromise our growth strategy, which could have an adverse effect on our business, financial condition, results of operations and prospects.

Our brands are also subject to state laws and regulations, such as California's Proposition 65, or Prop 65, which requires a specific warning on any product that contains a substance listed by the State of California as having been found to cause cancer or birth defects, unless the level of such substance in the product is below a safe harbor level. We have in the past been subject to lawsuits brought under Prop 65, and if we fail to comply with Prop 65 in the future, it may result in lawsuits and regulatory enforcement that could have a material adverse effect on our reputation, business, financial condition, results of operations and prospects. Further, the inclusion of warnings on our brands to comply with Prop 65 could also reduce overall consumption of our brands or leave consumers with the perception (whether or not valid) that our brands do not meet their health and wellness needs, all of which could adversely affect our reputation, business, financial condition, results of operations and prospects.

These developments, depending on the outcome, could have an adverse effect on our reputation, business, financial condition, results of operations and prospects.

Changes in existing marketing and advertising laws or regulations or related official guidance, or the adoption of new laws or regulations or guidance for these areas, may increase our costs and otherwise adversely affect our business, financial condition, results of operations and prospects.

The manufacture and marketing of Alcoholic Beverages is highly regulated. In connection with the marketing and advertisement of our brands, we could be the target of claims relating to false or deceptive advertising, including under the auspices of the FTC and the consumer protection statutes of some states.

The advertising regulatory environment in which we operate has changed in the past could change significantly and adversely in the future. For example, in December 2009, the FTC substantially revised its Guides Concerning the Use of Endorsements and Testimonials in Advertising, or "Endorsement Guides," to eliminate a safe harbor principle that formerly recognized that advertisers could publish consumer testimonials that conveyed truthful but extraordinary results from using the advertiser's product as long as the advertiser clearly and conspicuously disclosed that the endorser's results were not typical. Although we strive to adapt our marketing efforts to evolving regulatory requirements and related guidance, we may not always anticipate or timely identify changes in regulation or official guidance that could impact our business, with the result that we could be subjected to litigation and enforcement actions that could adversely affect our business, financial condition, results of operations and prospects. Future changes in regulations and related official guidance, including the Endorsement Guides and Green Guides, could also introduce new restrictions that impair our ability to market our brands effectively and place us at a competitive disadvantage with competitors who depend less than we do on environmental marketing claims and social media influencer relationships.

Moreover, any change in marketing for our brands may lead to an increase in costs or interruptions in sales, either of which could adversely affect our business, financial condition, results of operations and prospects. New or revised government laws, regulations or guidelines could result in additional compliance costs and, in the event of non-compliance, civil remedies, including fines, injunctions, withdrawals, recalls or seizures and confiscations, as well as potential criminal sanctions, any of which could have an adverse effect on our business, financial condition, results of operations and prospects.

Failure by our network of retailers, suppliers or manufacturers to comply with product safety, environmental or other laws and regulations, or with the specifications and requirements of our brands, may disrupt our supply of products and adversely affect our business.

If our network of retailers, suppliers or manufacturers fail to comply with environmental, health and safety or other laws and regulations, or face allegations of non-compliance, their operations may be

disrupted and our reputation could be harmed. Additionally, our retailers, suppliers and manufacturers are required to maintain the quality of our products and to comply with our standards and specifications. In the event of actual or alleged non-compliance, we might be forced to find alternative retailers, suppliers or manufacturers and we may be subject to lawsuits and/or regulatory enforcement actions related to such non-compliance by the suppliers and manufacturers. As a result, our supply of Alcoholic Beverages could be disrupted or our costs could increase, which could adversely affect our business, financial condition, results of operations and prospects. The failure of any partner or manufacturer to produce products that conform to our standards could adversely affect our reputation in the marketplace and result in product recalls, product liability claims, government or third-party actions and economic loss. Additionally, actions we may take to mitigate the impact of any disruption or potential disruption in our supply of materials or finished inventory, including increasing inventory in anticipation of a potential supply or production interruption, could have an adverse effect on our business, financial condition, results of operations and prospects.

Class action litigation, other legal claims and regulatory enforcement actions and the lack of adequate or sufficient insurance coverage could subject us to liability for damages, civil and criminal penalties and other monetary and non-monetary liability and could otherwise adversely affect our reputation, business, financial condition, results of operations and prospects.

We operate in a highly regulated environment with constantly evolving legal and regulatory frameworks. Consequently, we are subject to a heightened risk of consumer class action litigation, other legal claims, government investigations or other regulatory enforcement actions. The product marketing and labeling practices of companies operating in the Alcoholic Beverages industry receive close scrutiny from the private plaintiff's class action bar and from public consumer protection agencies. Accordingly, there is risk that consumers will bring class action lawsuits and that the FTC and/or state attorneys general or other consumer protection law enforcement authorities will bring legal actions concerning the truth and accuracy of our product marketing and labeling claims. Examples of causes of action that may be asserted in a consumer class action lawsuit include fraud, false advertising, unfair and deceptive practices, negligent misrepresentation and breach of state consumer protection statutes. Although we have implemented policies and procedures designed to ensure compliance with existing laws and regulations, there can be no assurance that our employees, consultants, independent contractors, suppliers, manufacturers or retailers will not violate our policies and procedures. Moreover, a failure to maintain effective control processes could lead to violations, unintentional or otherwise, of laws and regulations. Legal claims, government investigations or regulatory enforcement actions arising out of our failure or alleged failure to comply with applicable laws and regulations could subject us to civil and criminal penalties and liabilities that could adversely affect our brand sales, reputation, financial condition and operating results. These liabilities could include obligations to reformulate brands or remove them from the marketplace, as well as obligations to disgorge revenue and to accept burdensome injunctions that limit our freedom to market our brands. In addition, the costs and other effects of defending potential and pending litigation and administrative actions against us may be difficult to determine and could adversely affect our reputation, business, brand image, financial condition, results of operations and prospects.

Furthermore, although we believe that the extent of our insurance coverage is consistent with industry practice, any claim under our insurance policies may be subject to certain exceptions, may not be honored fully, in a timely manner, or at all, and we may not have purchased sufficient insurance to cover all losses incurred. If we were to incur substantial liabilities, as a result of civil or criminal penalties or otherwise, or if our business operations were interrupted for a substantial period of time, we could incur costs and suffer losses. Such liabilities, including inventory and business interruption losses, may not be covered by our insurance policies. We also expect that operating as a public company will make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified people to serve on our board of directors, our board committees or as executive officers. We do not know, however, if we will be able to maintain existing insurance with adequate levels of coverage. Any significant uninsured liability may require us to pay substantial amounts, which would adversely affect our cash position and results of operations. Additionally, in the future, insurance coverage may not be available to us at commercially acceptable premiums, or at all.

Government regulation of the Internet and ecommerce is evolving, and unfavorable changes or failure by us to comply with these regulations could have an adverse effect on our business, financial condition, results of operations and prospects.

We are subject to governmental laws as well as regulations and laws specifically governing the Internet and ecommerce. Existing and future regulations and laws could impede the growth of the Internet, ecommerce or mobile commerce, which could in turn adversely affect our growth. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, content protection, electronic contracts and communications, consumer protection, sales practices and Internet neutrality. It is not clear how existing laws governing issues such as property ownership, sales and other taxes and consumer privacy apply to the Internet as the vast majority of these laws were adopted prior to the advent of the Internet and do not contemplate or address the unique issues raised by the Internet or ecommerce. It is possible that general business regulations and laws, or those specifically governing the Internet or ecommerce, may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. We cannot be sure that our practices have complied, comply or will comply fully with all such laws and regulations. Any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business and proceedings or actions against us by governmental entities, consumers, suppliers or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, decrease the use of our website and mobile applications by consumers and suppliers and may result in the imposition of monetary liabilities and burdensome injunctions. We may also be contractually liable to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any such laws or regulations. As a result, adverse developments with respect to these laws and regulations could have an adverse effect on our business, financial condition, results of operations and prospects.

Developments in labor and employment law and any unionizing efforts by employees could have an adverse effect on our business, financial condition, results of operations and prospects.

We face the risk that Congress, federal agencies or one or more states could approve legislation or regulations significantly affecting our businesses and our relationship with our employees and other individuals providing valuable services to us, such as our social media influencers. For example, the previously proposed federal legislation referred to as the Employee Free Choice Act would have substantially liberalized the procedures for union organization. None of our employees are currently covered by a collective bargaining agreement, but any attempt by our employees to organize a labor union could result in increased legal and other associated costs. Additionally, given the National Labor Relations Board's "speedy election" rule, our ability to timely and effectively address any unionizing efforts would be difficult. If we enter into a collective bargaining agreement with our employees, the terms could have an adverse effect on our costs, efficiency and ability to generate acceptable returns on the affected operations.

Federal and state wage and hour rules establish minimum salary requirements for employees to be exempt from overtime payments. For example, among other requirements, California law requires employers to pay employees who are classified as exempt from overtime a minimum salary of at least twice the minimum wage, which is currently $58,240 per year for executive, administrative and professional employees with employers that have 26 or more employees. Minimum salary requirements impact the way we classify certain employees, increases our payment of overtime wages and provision of meal or rest breaks, and increases the overall salaries we are required to pay to currently exempt employees to maintain their exempt status. As such, these requirements could have an adverse effect on our business, financial condition, results of operations and prospects.

As a producer of Alcoholic Beverages, we are regularly the subject of regulatory reviews, proceedings and audits by governmental entities, any of which could result in an adverse ruling or conclusion, and which could have a material adverse effect on our business, financial condition, results of operations and future prospects.

We are subject to extensive regulatory review, proceedings and audits in the United States pursuant to federal, state and local laws regulating the production, distribution and sale of consumable food items, and specifically Alcoholic Beverages, including by the TTB and the FDA. These and other regulatory agencies

impose a number of product safety, labeling and other requirements on our operations and sales. In California, we are subject to alcohol-related licensing and regulations by many authorities, including the ABC, which investigates applications for licenses to sell Alcoholic Beverages, reports on the moral character and fitness of alcohol license applicants and the suitability of premises where sales are to be conducted. Any governmental litigation, fines or restrictions on our operations resulting from the enforcement of these existing regulations or any new legislation or regulations could have a material adverse effect on our business, results of operations and financial results. Any government intervention challenging the production, marketing, promotion, distribution or sale of beverage alcohol or specific brands could affect our ability to sell our wines. Because litigation and other legal proceedings can be costly to defend, even actions that are ultimately decided in our favor could have a negative impact on our business, results of operations or financial results. Adverse developments in major lawsuits concerning these or other matters could result in management distraction and have a material adverse effect on our business. Furthermore, changes to the interpretation or approach to enforcement of regulations may require changes to our business practices or the business practices of our suppliers, wholesale distributors or consumers. The penalties associated with any violations or infractions may vary in severity and could result in a significant impediment to our business operations, and could cause us to have to suspend sales of our wines in a jurisdiction for a period of time.

Changes in laws and government regulations to which we are currently subject, including changes to the method or approach of enforcement of these government rules and regulations, may increase our costs or limit our ability to sell our wines into certain markets, which could materially and adversely affect our business, results of operations and financial condition.

The wine industry is subject to extensive regulation by a number of foreign and domestic agencies, state liquor authorities and local authorities. These regulations and laws dictate such matters as licensing requirements, land use, production methods, trade and pricing practices, permitted distribution channels, permitted and required labeling, advertising, sequestration of classes of wine and relations with wholesale distributors and retailers. Changes to existing laws and regulations may result in increased production and sales costs, including an increase on the applicable tax in various state, federal and foreign jurisdictions in which we do business. The amount of wine that we can sell directly to consumers in certain jurisdictions is regulated, and in certain states we are not allowed to sell wines directly to consumers at all. Changes in these laws and regulations that tighten current rules could have an adverse impact on sales or increase costs to produce, market, package or sell wine. Changes in regulation that require significant additional source data for registration and sale, in the labeling or warning requirements, or limitations on the permissibility of any component, condition or ingredient, in the places in which our wines can be sold could inhibit sales of affected products in those markets. From time to time, states also consider proposals to increase state alcohol excise taxes, which could adversely affect our profit margins. New or updated regulations, requirements or licenses, particularly changes that impact our ability to sell, or new or increased excise taxes, income taxes, property and sales taxes or international tariffs, could affect our financial condition or results of operations.

The wine industry is subject to extensive regulation by a number of foreign and domestic agencies, state liquor authorities and local authorities. These regulations and laws dictate such matters as licensing requirements, land use, production methods, trade and pricing practices, permitted distribution channels, permitted and required labeling, advertising, sequestration of classes of wine and relations with wholesale distributors and retailers. Any expansion of our existing facilities may be limited by present and future zoning ordinances, use permit terms, environmental restrictions and other legal requirements. In addition, new or updated regulations, requirements or licenses, particularly changes that impact our ability to sell DTC and/or retail accounts in California, or new or increased excise taxes, income taxes, property and sales taxes or international tariffs, could affect our financial condition or results of operations. From time to time, states consider proposals to increase state alcohol excise taxes. New or revised regulations or increased licensing fees, requirements or taxes could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Ownership of Our Securities

Our quarterly operating results may fluctuate, which could cause our stock price to decline.

Our quarterly operating results may fluctuate for a variety of reasons, many of which are beyond our control, including:

- fluctuations in revenue, including as a result of adverse market conditions due to the COVID-19 pandemic and the opening of retail and travel opportunities as the pandemic abates, the seasonality of market transactions and fluctuations in sales through our retail and ecommerce channels;
- the amount and timing of our operating expenses;
- our success in attracting and maintaining relationships with wholesale distributors and retailers;
- our success in executing on our strategy and the impact of any changes in our strategy;
- the timing and success of brand launches, including new products in beverage categories beyond wine that we may introduce;
- the timing and success of our marketing efforts;
- adverse economic and market conditions, such as those related to the current COVID-19 pandemic and other adverse domestic or global events;
- disruptions or defects in our technology platform, such as privacy or data security breaches, errors in our software or other incidents that impact the availability, reliability or performance of our platform;
- disruptions in our supply chain, such as the ability of our third-party suppliers to produce grapes or wine, the ability of wholesale distributors to distribute our brands, or in our shipping arrangements or other relationships with third-party vendors;
- the impact of competitive developments and our response to those developments;
- fluctuations in inventory and working capital;
- our ability to manage our business and future growth; and
- our ability to recruit and maintain employees.

Fluctuations in our quarterly operating results and the price of our common stock may be particularly pronounced in the current economic environment due to the uncertainty caused by and the unprecedented nature of the current COVID-19 pandemic, consumer spending patterns and the impacts of the gradual reopening of the offline economy and lessening of restrictions on movement and travel as the COVID-19 pandemic abates. Fluctuations in our quarterly operating results may cause those results to fall below our financial guidance or other projections, or the expectations of analysts or investors, which could cause the price of our common stock to decline. Fluctuations in our results could also cause other problems, including, for example, analysts or investors changing their models for valuing our common stock, particularly post-pandemic. We could experience short-term liquidity issues, our ability to retain or attract key personnel may diminish, and other unanticipated issues may arise.

We believe that our quarterly operating results may vary in the future and that period-to-period comparisons of our operating results may not be meaningful. For example, our overall historical growth rate and the impacts of the COVID-19 pandemic may have overshadowed the effect of seasonal variations on our historical operating results. Any seasonal effects may change or become more pronounced over time, which could also cause our operating results to fluctuate. You should not rely on the results of any given quarter as an indication of future performance.

The estimates of market opportunity and forecasts of market growth included in this information statement may prove to be inaccurate, and even if the markets in which we compete achieve the forecasted growth, our business could fail to grow at similar rates, if at all.

Market opportunity estimates and growth forecasts included in this information statement, including those we have generated ourselves or commissioned, are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate, particularly in light of the ongoing COVID-19 pandemic and the related economic impact. The variables that go into the calculation of our market opportunity across the markets are subject to change over time, and there is no guarantee that any

particular number or percentage of consumers covered by our market opportunity estimates will purchase our brands at all or generate any particular level of revenue for us. Any expansion in each market depends on a number of factors, including the cost and perceived value associated with our brand offerings and those of our competitors. Even if the markets in which we compete meet the size estimates and growth forecast in this information statement, our business could fail to grow at the rate we anticipate, if at all, which could adversely affect our business, financial condition, results of operations and prospects. Our growth is subject to many factors, including our success in implementing our business strategy, which is subject to many risks and uncertainties. Accordingly, the forecasts of market growth included in this information statement should not be taken as indicative of our future growth.

Our directors, officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

Our directors, officers and principal stockholders each holding more than 5% of our common stock will collectively control a significant portion of our outstanding common stock. As a result, these stockholders, if they act together, will be able to exert significant influence over the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change in control, might adversely affect the market price of our common stock and may not be in the best interests of our other stockholders.

We do not intend to pay dividends for the foreseeable future.

We currently intend to retain any future earnings to finance the operation and expansion of our business and we do not expect to declare or pay any dividends in the foreseeable future. Moreover, the terms of our existing Credit Agreements restrict our ability to pay dividends, and any additional debt we may incur in the future may include similar restrictions. In addition, Delaware law may impose requirements that may restrict our ability to pay dividends to holders of our common stock. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for our stockholders for the foreseeable future.

General Risk Factors

We will incur significant additional costs as a result of being a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.

We expect to incur costs associated with corporate governance requirements that will become applicable to us as a public company, including rules and regulations of the SEC, under the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Exchange Act. These rules and regulations are expected to significantly increase our accounting, legal and financial compliance costs and make some activities more time-consuming. We expect such expenses will further increase after we cease to qualify as an emerging growth company and smaller reporting company. We also expect these rules and regulations to make it more expensive for us to maintain directors' and officers' liability insurance. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. Furthermore, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs. Accordingly, increases in costs incurred as a result of becoming a publicly traded company may adversely affect our business, financial condition and results of operations.

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

Upon the effectiveness of the registration statement of which this information statement is a part, we will become subject to the periodic reporting requirements of the Exchange Act. We designed our disclosure controls and procedures to provide reasonable assurance 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. We believe that any disclosure controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are 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.

If we are unable to implement and maintain effective internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our reported financial information and the market price of our common stock may be negatively affected.

As a public company, we will be required to maintain internal control over financial reporting and to report any material weaknesses in such internal control. Section 404 of the Sarbanes-Oxley Act requires that we evaluate and determine the effectiveness of our internal control over financial reporting and, beginning with our second annual report after the effectiveness of the registration statement of which this information statement is a part, provide a management report on the internal control over financial reporting. If we have a material weakness in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We will be implementing the process and documentation necessary to perform the evaluation needed to comply with Section 404 of the Sarbanes-Oxley Act. We may not be able to complete our evaluation, testing and any required remediation in a timely fashion.

During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, our management will be unable to conclude that our internal control over financial reporting is effective. Moreover, when we are no longer an emerging growth company or smaller reporting company, our independent registered public accounting firm will be required to issue an attestation report on the effectiveness of our internal control over financial reporting. Even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may conclude that there are material weaknesses with respect to our internal controls or the level at which our internal controls are documented, designed, implemented or reviewed.

If we are unable to conclude that our internal control over financial reporting is effective, or, when we are no longer an emerging growth company or smaller reporting company, if our auditors were to express an adverse opinion on the effectiveness of our internal control over financial reporting because we had one or more material weaknesses, investors could lose confidence in the accuracy and completeness of our financial disclosures, which could cause the price of our common stock to decline. Internal control deficiencies could also result in a restatement of our financial results in the future.

Our ability to raise capital in the future may be limited and our failure to raise capital when needed could prevent us from growing.

In the future, we could be required to raise capital through public or private financing or other arrangements. Such financing may not be available on acceptable terms, or at all, and our failure to raise capital when needed could harm our business. We may sell common stock, convertible securities and other equity securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, investors in our common stock may be materially diluted. New investors in such subsequent transactions could gain rights, preferences and privileges senior to those of holders of our common stock. Debt financing, if available, may involve restrictive covenants and could reduce our operational flexibility or ability to achieve or maintain profitability. If we cannot raise funds on acceptable terms, we may be forced to raise funds on undesirable terms, or our business may contract or we may be unable to grow our business or respond to competitive pressures, any of which could have an adverse effect on our business, financial condition, results of operations and prospects.

Future sales and issuances of our capital stock or rights to purchase capital stock could result in additional dilution of the percentage ownership of our stockholders and could cause the price of our common stock to decline.

We may issue additional securities in the future. Future sales and issuances of our capital stock or rights to purchase our capital stock could result in substantial dilution to our existing stockholders. We may

sell common stock, convertible securities, and other equity securities in one or more transactions at prices and in a manner as we may determine from time to time. If we sell any such securities in subsequent transactions, investors may be materially diluted. New investors in such subsequent transactions could gain rights, preferences, and privileges senior to those of holders of our common stock.

Litigation or legal proceedings could expose us to significant liabilities and have a negative impact on our reputation or business.

We are, and may in the future become, party to various claims and litigation proceedings. We evaluate these claims and litigation proceedings to assess the likelihood of unfavorable outcomes and to estimate, if possible, the amount of potential losses. Based on these assessments and estimates, we may establish reserves, as appropriate. These assessments and estimates are based on the information available to management at the time and involve a significant amount of management judgment. Actual outcomes or losses may differ materially from our assessments and estimates. We are not currently party to any material litigation.

Even when not merited, the defense of these lawsuits may divert our management's attention, and we may incur significant expenses in defending these lawsuits. The results of litigation and other legal proceedings are inherently uncertain, and adverse judgments or settlements in some of these legal disputes may result in adverse monetary damages, penalties or injunctive relief against us, which could have an adverse effect on our business, financial condition, results of operations and prospects. Any claims or litigation, even if fully indemnified or insured, could damage our reputation and make it more difficult to compete effectively or to obtain adequate insurance in the future.

Furthermore, while we maintain insurance for certain potential liabilities, such insurance does not cover all types and amounts of potential liabilities and is subject to various exclusions as well as caps on amounts recoverable. Even if we believe a claim is covered by insurance, insurers may dispute our entitlement to recovery for a variety of potential reasons, which may affect the timing and, if the insurers prevail, the amount of our recovery.

Employee litigation or other unfavorable publicity could negatively affect our future business.

Our employees have in the past, and may in the future, bring employment-related lawsuits against us, including regarding injuries, a hostile workplace, discrimination, wage and hour disputes, sexual harassment, or other employment issues. In recent years there has been an increase in the number of discrimination and harassment claims generally. Coupled with the expansion of social media platforms, employer review websites and similar devices that allow individuals access to a broad audience, these claims have had a significant negative impact on some businesses. Certain companies that have faced employment- or harassment-related claims have had to terminate management or other key personnel and have suffered reputational harm that has negatively impacted their business, including their ability to attract and hire top talent. If we were to face any employment- or harassment-related claims, our business could be negatively affected in similar or other ways.

We are an "emerging growth company" and a "smaller reporting company" and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies and a smaller reporting companies will make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act, and we expect to take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not emerging growth companies. In particular, while we are an emerging growth company: we will not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act; we will be exempt from any rules that could be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor's report on financial statements; we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

In addition, while we are an emerging growth company we can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to take advantage of this extended transition period and, as a result, our operating results and financial statements may not be comparable to the operating results and financial statements of companies who have adopted the new or revised accounting standards.

We may remain an emerging growth company until as late as December 31, 2026, the fiscal year-end following the fifth anniversary of the effectiveness of the registration statement of which this information statement is a part, though we may cease to be an emerging growth company earlier under certain circumstances, including if (i) we have more than $1.07 billion in annual revenue in any fiscal year, (ii) the market value of our common stock that is held by non-affiliates exceeds $700 million as of any June 30 or (iii) we issue more than $1.0 billion of non-convertible debt over a three-year period.

Even after we no longer qualify as an emerging growth company, we may still qualify as a smaller reporting company, which would allow us to continue to take advantage of many of the same exemptions from disclosure requirements, including, among other things, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, presenting only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and reduced disclosure obligations regarding executive compensation in this effectiveness of the registration statement of which this information statement is a part and our periodic reports and proxy statements.

Investors may find our common stock less attractive to the extent we rely on the exemptions and relief granted by the JOBS Act. 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 decline or become more volatile.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This information statement contains forward-looking statements. All statements contained in this information statement other than statements of historical facts, including statements regarding our business strategy, plans, market growth and our objectives for future operations, are forward-looking statements. The words "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential" or "continue" or the negative of these terms and other similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these words.

Forward-looking statements contained in this information statement include, but are not limited to, statements about:

- estimates of our total addressable market, future results of operations, financial position, research and development costs, capital requirements and our needs for additional financing;
- our expectations about market trends and our ability to capitalize on these trends;
- the impact on our business, financial condition and results of operation from the ongoing and global COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease in the United States or worldwide;
- our ability to effectively and efficiently develop new brands of wines and introduce products in beverage categories beyond wine;
- our ability to efficiently increase online consumer acquisition;
- our ability to increase awareness of our portfolio of brands in order to successfully compete with other companies;
- our ability to maintain and improve our technology platform supporting our Winc digital platform;
- our ability to maintain and expand our relationship with wholesale distributors and retailers;
- our ability to continue to operate in a heavily regulated environment;
- our ability to establish and maintain intellectual property protection or avoid claims of infringement;
- our ability to hire and retain qualified personnel;
- our ability to obtain adequate financing in the future; and
- the volatility of the trading price of our common stock.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this information statement.

The forward-looking statements in this information statement are only predictions and are based largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements speak only as of the date of this information statement and are subject to a number of known and unknown risks, uncertainties, and assumptions, including those described in the section titled "Risk Factors." 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. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this information statement may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely upon these forward-looking statements as

predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. We undertake no obligation to update any of these forward-looking statements for any reason after the date of this information statement or to conform these statements to actual results or revised expectations, except as required by law.

You should read this information statement and the documents that we reference in this information statement and have filed with the Securities and Exchange Commission, or SEC, as exhibits to this information statement with the understanding that our actual future results, performance, and events and circumstances may be materially different from what we expect.

DIVIDEND POLICY

We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors our board of directors deems relevant, and subject to the restrictions contained in any future financing instruments. In addition, our ability to pay cash dividends is currently restricted by the terms of our Credit Agreements. Our ability to pay cash dividends on our capital stock in the future may also be limited by the terms of any preferred securities we may issue or agreements governing any additional indebtedness we may incur.

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

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and the accompanying notes thereto included elsewhere in this information statement. Some of the information contained in this discussion and analysis or set forth elsewhere in this information statement, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should read the sections titled "Risk Factors" and "Special Note Regarding Forward-Looking Statements" for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

Winc: We Bring Everyone to the Table

We are one of the fastest growing at scale wineries in the United States. Over the past two years we have grown by approximately 80% in case volume sold, with sales of over 430,000 cases in 2020. Our growth is fueled by the joint capabilities of our data-driven brand development strategy paired with a true omni-channel distribution network. We believe our balanced platform is well-suited to gain share and drive meaningful long-term growth in the approximately $400 billion Alcoholic Beverages market.

As product innovators focused on building durable brands that consumers love, we have developed a proprietary process, called *Ideate, Launch and Amplify,* that has allowed us to consistently produce quality wine brands in a capital-efficient fashion. We believe this process is unique within the Alcoholic Beverages industry incorporating the "**Best of the New**" and "**Best of the Old**" aspects of Alcoholic Beverages brand creation in a truly omni-channel fashion. The **"Best of the New"** is highlighted by our data-rich DTC relationships via the Winc digital platform. This data is a critical competitive advantage that we use to help shape the ideation and development of our brands. Our digitally native roots also provide us with a strong core competency in digital marketing and data analytics that allows us to interact in a more targeted and direct fashion with end-consumers and *Amplify* brands in ways the legacy Alcoholic Beverages companies have yet to consistently utilize. As our brand portfolio expands over time, we believe our DTC channel will become more desirable to existing and potential members who will have an increasing number of highly rated and more recognizable products to choose from each month. Our **"Best of the Old"** strategy is encompassed by our appreciation of the value creation potential and durable power of proprietary brand development, as well as the scale benefits that can be achieved by leveraging the legacy wholesale distribution channel, where the vast majority of wine is still purchased.

We generate net revenues by building durable brands that consumers love. We offer high-quality products in all 50 states either through our DTC channel or the national distribution network in our wholesale channel. Our omni-channel approach allows us to create compelling order economics, differentiated product offerings, consumer-led brands, and a loyal consumer following. We seek to meet consumers however they want to shop, balancing deep consumer connection with broad convenience and accessibility. We believe this distinctive business model has allowed us to efficiently scale our business while remaining agnostic as to the channel where consumers purchase our products. Our integrated omni-channel presence provides meaningful benefits to our consumer which we believe is not easily replicated by our competitors.

As we have executed on our omni-channel strategy, we have demonstrated success by significantly growing net revenues, continuing to improve our online operational metrics, expanding our wholesale distribution, and increasing the efficiency of our brand development process. The following financial and operational results were achieved during the year ended December 31, 2020 and 2019 and six months ended June 30, 2021 and 2020:

- we grew net revenues by 77.5% from $36.4 million for the year ended December 31, 2019 to $64.7 million for the year ended December 31, 2020 and by 20.4% from $29.2 million for the six months ended June 30, 2020 to $35.1 million for the six months ended June 30, 2021;
- we generated approximately 23.1% and 29.1% of our net revenues from our five core brands for the year ended December 31, 2020 and six months ended June 30, 2021, respectively;

- we increased net revenues for our core brands by 53.2% from $9.8 million for the year ended December 31, 2019 to $14.9 million for the year ended December 31, 2020 and by 18.2% from $8.7 million for the six months ended June 30, 2020 to $10.2 million for the six months ended June 30, 2021;
- we expanded our retail accounts by 63.6% from 4,809 for the year ended December 31, 2019 to 7,869 for the year ended December 31, 2020 and by 52.3% from 5,148 for the six months ended June 30, 2020 to 7,838 for the six months ended June 30, 2021; and
- we generated a net loss of $7.0 million for the year ended December 31, 2020, an improvement from a net loss of $8.0 million for the year ended December 31, 2019, and a net loss of $3.3 million for the six months ended June 30, 2021, an improvement from a net loss of $3.8 million for the six months ended June 30, 2020.

Impact of COVID-19

In March 2020, the World Health Organization declared the spread of COVID-19 a pandemic. Shortly thereafter, we closed our headquarters, supported our employees and contractors to work remotely, and implemented travel restrictions. We qualified as an essential business, as defined by state regulations, and therefore continued to operate our Pennsylvania fulfillment centers with reduced occupancy to maintain social distancing requirements. The reduced manpower in warehouses, together with increased DTC orders, led to minor delivery delays in some instances, but we have not experienced any significant disruptions in our supply chain or any carrier interruptions or delays. As of June 2021, we have returned to full capacity in our fulfillment centers.

The COVID-19 pandemic has also significantly accelerated consumer adoption of a wide variety of at-home delivery services, including in the Alcoholic Beverages sector. Since late March 2020, we have experienced a significant increase in DTC demand due to changes to consumer behaviors resulting from the various stay-at-home and restaurant restriction orders and other restrictions placed on consumers throughout much of the United States in response to the COVID-19 pandemic. To date, we have not seen the DTC consumers acquired during the various stay-at-home orders behave in a materially different manner than those consumers acquired prior to the COVID-19 pandemic, indicative of a more permanent shift in consumer behavior. The dramatic growth in new consumer acquisition resulted in a corresponding increase in “new consumer discount” costs in 2020, resulting in lower DTC gross margins in 2020.

Our wholesale net revenues declined in April and May of 2020 as a result of the pandemic and government measures to slow the spread of the COVID-19 pandemic, such as limited operating hours and capacity at various venues. While our wholesale net revenues increased in 2020 by 20.8% compared to 2019, we believe the rate of growth for our wholesale net revenues from 2019 to 2020 was impaired due to the pandemic, and wholesale gross profit decreased by 2.0% in 2020 compared to 2019 as a result of pandemic-related impacts. However, as quarantine restrictions are lifted by states and on-premise consumption of alcohol at venues like restaurants and bars continues to increase, we believe wholesale net revenues will be a source of growth for us.

Although the global economy has begun to recover and the widespread availability of vaccines has encouraged greater economic activity, we are continuing to monitor the situation and we cannot predict for how long, or the ultimate extent to which, the pandemic may impact our operations. The COVID-19 pandemic has been a highly disruptive economic and societal event that has had a significant impact on consumer shopping behavior.

Moreover, the duration and severity of the COVID-19 pandemic, including the length of stay-at-home and restaurant restriction orders, developments involving variants of COVID-19 and the state of economic and operating conditions, will continue to impact the markets in which we operate and make future demand difficult to forecast.

Key Factors Affecting Our Performance and Growth

Our primary goal is to grow by building a portfolio of durable brands that consumers love. As we strengthen our portfolio of brands and increase our brand awareness, we believe that it will become easier to acquire DTC consumers and grow our wholesale business.

At approximately $400 billion in sales within the United States in 2018, the Alcoholic Beverages market represents one of the largest total addressable market opportunities in the CPG landscape. Within the Alcoholic Beverages market, the wine industry is a sizable market, topping over $70 billion in the United States in 2018. We believe we are one of the few wine companies that is connecting with the next generation of consumers who prefer to shop online, and we expect that connection will lead to a significant and expanding market opportunity. With a strong portfolio of brands and driven sales and performance marketing teams, we believe we have the potential to seize a larger portion of the U.S. Alcoholic Beverages market. We believe the following factors and trends in our business have driven our growth over the past two fiscal years and are expected to be key drivers of our growth for the foreseeable future:

Brand Awareness and Loyalty

Our ability to promote and maintain brand awareness and loyalty is critical to our success. Consumer appreciation of our brands is reflected in the increase of Winc.com members in our DTC channel and the additional retail accounts in our wholesale channel. We believe we have a significant opportunity to continue to grow our brand awareness and loyalty through word of mouth, brand marketing and performance marketing. We have made significant investments to strengthen our brand and generate awareness of our products through our marketing strategy, which includes brand marketing campaigns across various platforms, including email, digital, display, site, direct-mail, commercials, and social media, as well as performance marketing efforts, including retargeting, paid search and product listing advertisements, paid social media advertisements, search engine optimization, personalized email and mobile push notifications through our mobile application. We plan to continue to invest in our brand and performance marketing to help drive our future growth.

Innovation

Ideation, development and innovation are core elements underpinning our growth strategy. The improvement of existing products and the introduction of new products have been, and continue to be, integral to our growth. While we launched an aggregate of 7 innovation brands in the last two years, we have made significant investments in our product development capabilities and plan to increase the number of launches in the future. We aim to launch 8 - 10 innovation brands a year on the digital platform. Our continued focus on brand innovation will be central to attracting and retaining consumers in the future. Our ability to successfully *Ideate*, *Launch* and *Amplify* new products will depend on a variety of factors, including our continued investment in innovation, integrated business planning processes and capabilities.

Execution of Omni-channel Strategy

The continued execution of our omni-channel strategy impacts our financial performance. We intend to continue leveraging our marketing strategy to grow our DTC channel by driving increased consumer traffic to our digital platform. We believe our digital platform is a valuable tool for creating direct connections with our consumers, influencing brand experience and understanding consumer preference and behavior. Our wholesale channel is focused on relationships with leading national distributors and retailers that have broadened our consumer reach, raised our brand awareness and allowed us to achieve additional scale. We aim to strengthen these relationships to further increase their benefit. Our ability to execute this strategy will depend on a number of factors, such as distributors' and retailers' satisfaction with the sales our products, our ability to develop high-quality and culturally relevant brands and our introduction of innovative products.

Key Financial and Operating Metrics

In addition to the measures presented in our financial statements, we use the following key financial and operational metrics to evaluate our business, measure our performance, develop financial forecasts and make strategic decisions:

	Year ended December 31,		
	2020	2019	2021
		(dollars in thousands, except average order value)	
Core brand net revenues	$ 14,939	$ 9,751	$10,221
Consolidated			
DTC			
DTC net revenues[(1)]	$ 54,854	$ 29,628	$26,852
DTC gross profit[(1)]	$ 23,055	$ 12,967	$11,496
Average order value	$ 63.04	$ 60.56	$ 69.20
Average monthly consumer retention rate	89.7%	92.2%	91.8%
Wholesale			
Wholesale net revenues[(1)]	$ 8,237	$ 6,819	$ 7,624
Wholesale gross profit[(1)]	$ 2,393	$ 2,442	$ 3,301
Retail accounts	7,869	4,809	7,839

(1) For a description of DTC net revenues, DTC gross profit, wholesale net revenues, and wholesale gross profit see "— Components of Results of Operations."

Number of Core Brands

After we launch a new brand and our data indicates that the brand is resonating with consumers, we begin to *Amplify* those brands in both DTC and wholesale. We call these brands our core brands and currently have five in our portfolio. Our in-house winemakers and brand teams are continually innovating and launching new products in an effort to find additional core brands. Each of our current core brands has individually generated more than $1.0 million in net revenues through the DTC channel in the last 12 months. Once a brand has demonstrated consumer traction by achieving this threshold, we believe we can leverage our sales channels to rapidly grow and continue to scale the brand. Each of our current core brands has generated more than $0.5 million through the wholesale channel in the last 12 months, and we believe has the potential to continue to grow sales through the wholesale channel.

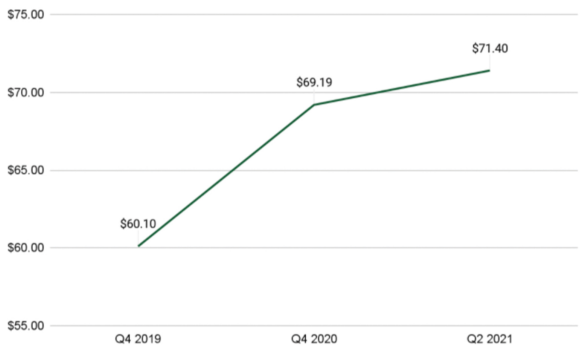
Core Brand Net Revenues

Core brand net revenues refers to the amount of total net revenues generated by our core brands in any specific period. Historically, we have seen continued growth in net revenues of our core brands and believe they are a key component of future financial success.

Average Order Value

We believe the continued growth of our average order value demonstrates both our increasing value proposition for our consumer base and their increasing affinity for our premium brands. We define average order value as the sum of DTC net revenues, divided by the total orders placed in that period. Total orders are the summation of all completed individual purchase transactions in a given period. Average order value may fluctuate as we expand into and increase our presence in additional product categories.

The following graph indicates the growth in our average order value from the quarter ended December 31, 2019 to the quarter ended December 31, 2020. Over this period, our AOV increased approximately 15.1%. For the quarter ended June 30, 2021, our AOV increased further to $71.40.



Average Monthly Consumer Retention Rate

Average monthly consumer retention rate represents the average active member balance during the month less monthly cancellations, divided by the average monthly active members.

Retail Accounts

Retail account growth is a key metric for our continued growth in wholesale as it is a measure of how widely our products are distributed. The metric represents the number of retail accounts in which we sold our products in a given period.

Components of Results of Operations

We evaluate our business and allocate resources among our reportable business segments: (i) DTC and (ii) Wholesale.

Net Revenues

We generate net revenues from the following revenue streams:

DTC — We define DTC net revenues as net revenues generated from consumers through our monthly membership or individual orders on our digital platform. Members are charged a monthly membership and are awarded credits in the same monetary value. Members can then utilize their credits to purchase our brand wines at their discretion. Members have the option to skip monthly charges, accumulate credits or use credits when purchased so that the membership is tailored to everyone's preference and lifestyle. Additionally, we have dedicated brand websites that generate orders and net revenues for our core brands. Breakage income related to prepaid credits and gift cards is reported in DTC net revenues.

Breakage revenue is recognized based on historical redemption rates of payments received in advance of performance. We determined that a percentage of prepaid credits goes unredeemed. We recognize breakage proportionally with credit redemptions in net revenues, or when redemption is remote.

Wholesale — We define wholesale net revenues as net revenues generated from wholesale distributors, state-operated licensees and directly to retail accounts. Our wholesale channel success is based on long-standing relationships with a highly developed network of distributors in all U.S. states. We work closely with wholesale distributors to increase the volume of our wines and number of products that are sold by the retail accounts in their respective territories. One wholesale distributor accounted for approximately 14% and 10% of wholesale net revenues during the year ended December 31, 2020 and 2019, respectively, and 13% and 14% of wholesale net revenues during the six months ended June 30, 2021 and 2020, respectively.

Other Non-Reportable — We also generate an immaterial amount of net revenues from a non-reportable segment that is comprised of a small business line focused on testing new products to determine if they have long-term viability prior to integration into the DTC and/or wholesale distribution channels.

Cost of Revenues

Cost of revenues consists of:

- wine-related inputs, such as grapes and semi-finished bulk wine;
- bottling materials (bottles, corks, and labeling materials);
- boxes/packaging;
- fulfillment costs (costs attributable to receiving, inspecting and warehousing inventories, picking, packaging, and preparing orders for shipment, including the variable costs of employing hourly employees and temporary staff provided by agencies at our fulfillment centers);
- credit card fees related to DTC transactions;
- inbound and outbound freight;
- storage; and
- barrel depreciation.

Gross Profit and Gross Margin

We define gross profit as net revenues less cost of revenues as discussed above. Gross margin is gross profit expressed as a percentage of net revenues. Our gross margin has fluctuated historically and may continue to fluctuate from period to period based on a number of factors, including the timing and mix of the product offerings we sell, the timing and mix of sales through our DTC and wholesale channels, and our ability to reduce costs, in any given period.

DTC Gross Profit

We define DTC gross profit as DTC net revenues less DTC cost of revenues. DTC gross margin is DTC gross profit expressed as a percentage of DTC net revenues. DTC gross margin has fluctuated historically and may continue to fluctuate from period to period based on a number of factors, including the timing and mix of the product offerings we sell, the timing and mix of sales through our DTC channels, and our ability to reduce costs, in any given period.

Wholesale Gross Profit

We define wholesale gross profit as wholesale net revenues less wholesale cost of revenues. Wholesale gross margin is gross profit expressed as a percentage of wholesale net revenues. Wholesale gross margin has fluctuated historically and may continue to fluctuate from period to period based on a number of factors, including the timing and mix of the product offerings we sell, the timing and mix of sales through our wholesale network, and our ability to reduce costs, in any given period.

Operating Expenses

Operating expenses primarily consist of marketing, personnel, and general and administrative expenses.

- Our marketing expenses consist primarily of costs incurred to acquire new consumers, retain existing consumers, build our brand awareness through various offline and online paid advertising channels, including television, digital and social media, direct mail, radio and podcasts, email, brand activations, and strategic brand partnerships.
- Our personnel expenses consist primarily of payroll and related expenses, including stock-based compensation.

- Our general and administrative expenses consist of: (i) costs associated with general corporate functions, such as depreciation expense and rent relating to facilities and equipment and insurance expense; (ii) professional fees and other general corporate costs; (iii) travel-related expenses; and (iv) customer services costs, such as third-party staffing to respond to inquiries from consumers.

We expect our operating expenses to increase substantially for the foreseeable future as we continue to increase our headcount to support our existing business, increase our member count, and grow our business. We will also incur additional expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC, additional director and officer insurance expenses, investor relations activities, and other administrative and professional services.

Contract Liability

Contract liabilities, also referred to as deferred revenues, arise as a result of the Winc.com subscription model. Deferred revenues represent payments received from consumers in advance of ordering goods and are referred to as "credits". Winc.com members are charged a monthly fee and are awarded credits equivalent to the monetary value. Members are then able to utilize member credits at their leisure to place an order on our website. Revenue is recognized when the member takes control of the ordered goods, at delivery. Credits do not expire or lose value over periods of inactivity. We are not required by law to escheat the value of unredeemed credits.

Other Income and Expense

Other income and expense consist primarily of interest expense associated with our credit facilities, rental income from sublease agreements, and changes in fair value of warrants that were issued in connection with past financing transactions. See " — Liquidity and Capital Resources — Credit Facilities."

Results of Operations

The following table summarize the results of operations for our DTC reportable segment for the years ended December 31, 2020 and 2019 and six months ended June 30, 2021 and 2020 (in thousands):

	Year ended December 31,		Six months ended June 30, (unaudited)	
	2020	2019	2021	2020
DTC Net revenues	$ 54,854	$ 29,628	$ 26,852	$ 24,823
DTC Cost of revenues	31,799	16,661	15,356	15,402
DTC Gross profit	$ 23,055	$ 12,967	$ 11,496	$ 9,421

The following table summarize the results of operations for our wholesale reportable segment for the years ended December 31, 2020 and 2019 and the six months ended June 30, 2021 and 2020 (in thousands):

	Year ended December 31,		Six months ended June 30, (unaudited)	
	2020	2019	2021	2020
Wholesale Net revenues	$ 8,237	$ 6,819	$ 7,624	$ 4,023
Wholesale Cost of revenues	5,844	4,377	4,323	2,685
Wholesale Gross profit	$ 2,393	$ 2,442	$ 3,301	$ 1,338

The following table summarize the results of operations for our other non-reportable segments for the years ended December 31, 2020 and 2019 and the six months ended June 30, 2021 and 2020 (in thousands):

	Fiscal year ended December 31,		Six months ended June 30, (unaudited)	
	2020	2019	2021	2020
Other Net revenues	$ 1,616	$ —	$ 640	$ 320
Other Cost of revenues	709	—	274	137
Other Gross profit	$ 907	—	$ 366	$ 183

Comparison of the Six Months Ended June 30, 2021 and 2020

DTC Net Revenues

DTC net revenues for the six months ended June 30, 2021 was $26.9 million, compared to $24.8 million for the six months ended June 30, 2020, an increase of $2.1 million or 8.5%. Of this increase, $3.9 million was driven by an increase in AOV of approximately 20%, partially offset by $1.9 million due to decreases in order volume of approximately 10%. During the six months ended June 30, 2021, we had a 57.0% decrease in first time orders, but increased core orders by 20.0%, which contributed to the increased AOV due to first orders containing significant discounts.

DTC Cost of Revenues

DTC cost of revenues was $15.4 million for both the six months ended June 30, 2021 and 2020. DTC cost of revenues remained relatively consistent period-over-period. However, DTC cost of revenues as a percentage of DTC net revenues decreased approximately 4.9%, resulting in increased margin. This change was primarily related to a $3.0 million decrease period-over-period in discounts related to first orders.

DTC Gross Profit

Changes in DTC gross profit are a function of the changes in DTC net revenues and DTC cost of revenues discussed above. DTC gross profit for the six months ended June 30, 2021 was $11.5 million, compared to $9.4 million for the six months ended June 30, 2020, an increase of $2.1 million or 22.3%.

Wholesale Net Revenues

Wholesale net revenues for the six months ended June 30, 2021 was $7.6 million, compared to $4.0 million for the six months ended June 30, 2020, an increase of $3.6 million or 90.0%. Growth in wholesale net revenues was primarily attributable to the growth in retail accounts through distributor relationships, which resulted in a $3.4 million increase.

Wholesale Cost of Revenues

Wholesale cost of revenues for the six months ended June 30, 2021 was $4.3 million, compared to $2.7 million for the six months ended June 30, 2020, an increase of $1.6 million or 59.3%. The increase in wholesale cost of revenues was entirely attributable to the increase in wholesale net revenues for the period.

Wholesale Gross Profit

Changes in wholesale gross profit are a function of the changes in wholesale net revenues and wholesale cost of revenues discussed above. Wholesale gross profit for the six months ended June 30, 2021 was $3.3 million compared to $1.3 million for the six months ended June 30, 2020, an increase of $2.0 million or 153.9%.

Other Net Revenues

Other non-reportable net revenues for the six months ended June 30, 2021 was $0.6 million, compared to $0.3 million for the six months ended June 30, 2020, an increase of $0.3 million or 99.4%.

Growth in other non-reportable net revenues was entirely driven by the increase in the number of products being tested for potential future growth.

Other Cost of Revenues

Other non-reportable cost of revenues for the six months ended June 30, 2021 was $0.3 million, compared to $0.1 million for the six months ended June 30, 2020, an increase of $0.2 million or 105.9%. Growth in other non-reportable cost of revenues was entirely driven by the increase in other non-reportable net revenues discussed above.

Other Gross Profit

Changes in other non-reportable gross profit are a function of the changes in other non-reportable net revenues and other non-reportable cost of revenues discussed above. Other non-reportable gross profit for the six months ended June 30, 2021 was $0.4 million compared to $0.2 million for the six months ended June 30, 2020, a slight decrease of $0.2 million or 94.6%.

Comparison of the Years Ended December 31, 2020 and 2019

DTC Net Revenues

DTC net revenues for the year ended December 31, 2020 was $54.9 million, compared to $29.6 million for the year ended December 31, 2019, an increase of $25.3 million or 85.1%. Of this increase, $24.2 million was attributable to new subscribers and $1.1 million was attributable to an increase in AOV. Order volumes began to increase substantially starting in March 2020 as states and localities imposed shelter-in-place orders in connection with the COVID-19 pandemic.

DTC Cost of Revenues

DTC cost of revenues for the year ended December 31, 2020 was $31.8 million, compared to $16.7 million for the year ended December 31, 2019, an increase of $15.1 million or 90.9%. The increase in DTC cost of revenues was primarily related to the increase in DTC net revenues described above, as well as a $1.4 million increase in fulfillment costs as we had to hire temporary staff to support sales volumes and incurred additional costs to institute safety measures to comply with federal, state, and local COVID-19 guidelines at our fulfillment centers.

DTC Gross Profit

Changes in DTC gross profit are a function of the changes in DTC net revenues and DTC cost of revenues discussed above. DTC gross profit for the year ended December 31, 2020 was $23.1 million, compared to $13.0 million for the year ended December 31, 2019, an increase of $10.1 million or 77.8%.

Wholesale Net Revenues

Wholesale net revenues for the year ended December 31, 2020 was $8.2 million, compared to $6.8 million for the year ended December 31, 2019, an increase of $1.4 million or 20.8%. Of this increase, $2.6 million was attributable to the growth in number of retail accounts, partially offset by a $1.2 million decrease in orders from restaurants due to COVID-19 pandemic restrictions. Additionally, during the years ended December 31, 2020 and 2019, 92.5% and 61.8% of wholesale net revenues were due to sales to distributors through the traditional three-tier distribution model.

Wholesale Cost of Revenues

Wholesale cost of revenues for the year ended December 31, 2020 was $5.8 million, compared to $4.4 million for the year ended December 31, 2019, an increase of $1.4 million or 33.5%. The increase was entirely attributable to the increase in wholesale net revenues for the year.

Wholesale Gross Profit

Changes in wholesale gross profit are a function of the changes in wholesale net revenues and wholesale cost of revenues discussed above. Wholesale gross profit for the year ended December 31, 2020 was $2.4 million compared to $2.4 million for the year ended December 31, 2019, a slight decrease of 2.0%.

Other Non-Reportable Segments

We did not have other non-reportable operations during the year ended December 31, 2019. As such, the increases in net revenues, costs of revenues, and gross profit were the result of establishing operations focused on testing new products during 2020.

Operating Expenses

The following table identifies our operating expenses and other income and expense items for the periods presented.

	Year ended December 31,		Six months ended June 30, (unaudited)	
Other Income and Expense Items	**2020**	**2019**	**2021**	**2020**
		(in thousands)		
Marketing	$ 17,388	$ 8,578	$ 7,979	$ 6,948
Personnel	7,582	6,328	5,387	3,466
General and administrative	7,545	7,330	5,567	3,373
Production and operations	169	88	54	89
Creative development	83	177	156	54
Total operating expenses	32,767	22,501	19,143	13,930
Interest expense	834	1,364	420	531
Change in fair value of warrants	208	137	894	229
Other income	(523)	(559)	(1,972)	(9)
Total other expense, net	519	(942)	658	751
Income tax expense	$ 27	$ 15	$ 15	$ 7

Comparison of the Six Months Ended June 30, 2021 and 2020

Marketing Expenses

Marketing expenses increased $1.0 million or 14.8% to $8.0 million for the six months ended June 30, 2021, from $7.0 million for the six months ended June 30, 2020. The increase in market expense was primarily driven by an $1.0 million increase in advertising costs as we continued to invest in digital media to attract new customers.

Personnel Expenses

Personnel expenses increased $1.9 million or 55.4%, to $5.4 million in during the six months ended June 30, 2021, from $3.5 million during the six months ended June 30, 2020. This increase was primarily attributable to a $1.0 million increase due to increased headcount to support corporate functions as we grow our business and a $0.9 million increase related to investment in our brand/creative, engineering and growth teams.

General and Administrative Expenses

General and administrative expenses increased $2.2 million or 65.0%, to $5.6 million during the six months ended June 30, 2021, from $3.4 million during the six months ended June 30, 2020. This increase was primarily attributable to $0.8 million related to increased professional services fees, specifically accounting,

legal, recruiting and consulting, as well as $0.5 million related to increased rental expense and $0.9 million related to other various internal expenses, specifically software and licenses and travel-related expenses.

Interest Expense

Interest expense decreased $0.1 million or 20.9%, to $0.4 million for the six months ended June 30, 2021, from $0.5 million for the six months ended June 30, 2020. The decrease is attributable to paying down and terminating previously outstanding debt.

Change in Fair Value of Warrants

The increase in the loss from the change in fair value of warrants is primarily due to an increase in the fair value of preferred stock. Refer to Note 10 in our consolidated financial statements as of and for the six months ended June 30, 2021 in this information statement for further information.

Income Tax Expense

Income tax expense increased 114.3% primarily due to increased state return filing requirements during the six months ended June 30, 2021.

Comparison of the Years Ended December 31, 2020 and 2019

Marketing Expenses

Marketing expenses increased $8.8 million or 102.7% to $17.4 million for the year ended December 31, 2020, from $8.6 million for the year ended December 31, 2019. The increase in market expense was primarily driven by an $8.6 million increase in advertising costs as we continued to invest in digital media to attract new customers.

Personnel Expenses

Personnel expenses increased $1.3 million or 19.8%, to $7.6 million in during the year ended December 31, 2020, from $6.3 million during the year ended December 31, 2019. This increase was primarily attributable to $0.9 million related to payroll and bonus expenses for general and administrative employees as well as $0.4 million for additional hires to support the wholesale channel.

General and Administrative Expenses

General and administrative expenses increased $0.2 million or 2.9%, to $7.5 million during the year ended December 31, 2020, from $7.3 million during the year ended December 31, 2019. This increase was primarily attributable to a $0.6 million total increase in rental-related costs, insurance premiums and professional services fees. This increase was partially offset by a $0.4 million decrease in travel-related costs as a result of travel restrictions from the COVID-19 pandemic.

Interest Expense

Interest expense decreased $0.5 million or 38.9%, to $0.8 million for the year ended December 31, 2020, from $1.4 million for the year ended December 31, 2019. The decrease was attributable to paying down and terminating previously outstanding debt during the year ended December 31, 2020.

Change in Fair Value of Warrants

The increase in the loss from the change in fair value of warrants was primarily due to an increase in the fair value of preferred stock and a decrease in the risk-free interest rate. Refer to Note 9 in our audited consolidated financial statements in this information statement for further information.

Income Tax Expense

Income tax expense increased 80.0% primarily due to increased state return filing requirements during the year ended December 31, 2020.

Liquidity and Capital Resources

Our operations have been financed to date by a combination of issuances and sales of preferred stock, borrowings under our credit facilities and cash generated from operations. Our primary cash needs have been to fund working capital requirements, debt service payments, and operating expenses (primarily marketing to increase growth and inventory to support that growth). As of June 30, 2021, we had cash on hand of $2.4 million, inventory of $22.3 million, and total current liabilities of $27.2 million. As of June 30, 2021, $6.0 million of our $7.0 million line of credit also remains undrawn. We expect that our liquidity needs for the next twelve months will be met by our cash on hand and future debt or equity raises, as necessary. We believe that we will be able to continue to operate our business for the foreseeable future.

Issuances of Preferred Stock

During the years ended December 31, 2020 and 2019, we raised total net proceeds of $15.4 million through the issuances and sales of Series C redeemable convertible preferred stock and Series D redeemable convertible preferred stock. During the six months ended June 30, 2021, we raised total net proceeds of $13.3 million from the issuances and sales of Series E redeemable convertible preferred stock and Series F redeemable convertible preferred stock.

In August 2020, we commenced an offering, pursuant to which we offered to sell shares of our Series E redeemable convertible preferred stock at a price of $1.75 per share. As of December 31, 2020, we had issued 1,603,681 shares of Series E redeemable convertible preferred stock and received net proceeds of $1.6 million in connection with the 2020 Offering. We terminated the offering on January 5, 2021 and raised net proceeds of $5.7 million through the sale of Series E redeemable convertible preferred stock.

In April 2021, we raised net proceeds of $9.1 million through the sale of Series F redeemable convertible preferred stock in a private placement (inclusive of proceeds allocated to warrants to purchase additional shares of Series F redeemable convertible preferred stock issued in connection with the Series F offering). In May 2021, the proceeds, along with additional consideration in the form of Series F redeemable convertible preferred stock, were used to finance the purchase of certain assets from Natural Merchants, Inc.

Credit Facilities

Western Alliance Bank

In October 2015, we entered into a loan and security agreement with Western Alliance Bank, which provided us with a revolving line of credit for up to $12 million, or the WAB Line of Credit. The maturity was subsequently extended to May 2020 and the WAB Line of Credit was reduced to $7.0 million. As of December 31, 2019, $6.0 million remained outstanding under the WAB Line of Credit. The amount outstanding was fully repaid during the year ended December 31, 2020, at which time the agreement was terminated. Accordingly, there was no outstanding balance as of or subsequent to December 31, 2020.

Pacific Mercantile Bank

In December 2020, we entered into a credit agreement, or the PMB Credit Agreement, with Pacific Mercantile Bank for a new $7.0 million line of credit, or the PMB Line of Credit. The PMB Line of Credit bears interest at a variable annual rate equal to 1.25% plus the Prime Rate. We had an outstanding balance of $1 million and zero under the PMB Line of Credit as of June 30, 2021 and December 31, 2020, respectively.

Multiplier Capital

In December 2017, we entered into a loan and security agreement, or the Multiplier LSA, with Multiplier Capital II, LP, or Multiplier, for a term loan of $5.0 million, all of which was disbursed to us at the time of execution. The loan matures in June 2022 and bears interest at a variable annual rate equal to the greater of 6.25% above the Prime Rate (as defined in the loan and security agreement), with a minimum interest rate of 11.5% per annum and a maximum interest rate of 14.0% per annum. In connection with the loan and security agreement, we granted Multiplier warrants to purchase shares of our Series B-1 Preferred

Stock. As of June 30, 2021 and December 31, 2020, $1.7 million and $2.5 million was outstanding under the Multiplier Capital loan, respectively. The loan is secured by all of our assets. We refer to the PMB Credit Agreement and the Multiplier LSA collectively as our Credit Agreements.

Paycheck Protection Program Loan

We applied for loans being administered by the Small Business Administration under the Coronavirus Aid, Relief, and Economic Recovery Act of 2020, or the CARES Act, to assist in maintaining payroll and operations through the period impacted by the COVID-19 pandemic. On April 20, 2020, we received a $1.4 million loan from Western Alliance Bank under the Paycheck Protection Program, or PPP. We applied for and were granted loan forgiveness in March 2021 by utilizing the funds in accordance with defined loan forgiveness guidance issued by the government.

Cash Flows

The following table summarizes our cash flows for the periods presented (in thousands):

	Year ended December 31,		Six months ended June 30, (unaudited)	
Cash Flow Activity	**2020**	**2019**	**2021**	**2020**
Net cash provided by (used in):				
Operating activities	$ 419	$ (5,972)	$ (9,149)	$ 1,509
Investing activities	(375)	(294)	(9,009)	(175)
Financing activities	546	10,781	13,546	(136)
Net increase (decrease) in cash and cash equivalents	$ 590	$ 4,515	$ (4,612)	$ 1,198

Operating cash flow is derived by adjusting our net loss for non-cash operating items, such as depreciation and amortization, provision for doubtful accounts, deferred income tax benefits or expenses, and changes in operating assets and liabilities, which reflect timing differences between the receipt and payment of cash associated with transactions and when they are recognized in our results of operations.

Net cash provided by (used in) operating activities decreased by $10.7 million to a net cash outflow of $9.1 million for the six months ended June 30, 2021. Changes in operating assets and liabilities accounted for outflows of $5.9 million for the six months ended June 30, 2021 compared to inflows of $4.5 million for the six months ended June 30, 2020. This decrease was primarily driven by an increase in cash spent on inventory to meet demand, partially offset by timing of settling accounts payable and accrued liabilities.

Net cash provided by (used in) operating activities increased by $6.4 million to a net cash inflow of $0.4 million for the year ended December 31, 2020. The increase was primarily due to an increase in our contract liabilities (unearned revenue) and the timing of settling accrued liabilities during the year ended December 31, 2020. This was in line with our membership growth and an increase in fulfillment of wholesale orders during the year ended December 31, 2019.

Cash Flows from Investing Activities

Net cash used in investing activities of $9.0 million for the six months ended June 30, 2021 consisted entirely of purchases of property and equipment and the acquisition of intangible assets through the acquisition of certain assets from Natural Merchants, Inc.

Net cash used in investing activities of $0.2 million for the six months ended June 30, 2020 primarily consisted of purchases of property and equipment.

Net cash used in investing activities of $0.4 million for the year ended December 31, 2020 consisted almost entirely of purchases of property and equipment.

Net cash used in investing activities of $0.3 million for the year ended December 31, 2019 consisted of $0.4 million of purchases of property and equipment, partially offset by $0.1 million in payments received on employee advances.

Cash Flows from Financing Activities

Net cash provided by financing activities of $13.6 million for six months ended June 30, 2021 consisted of $13.3 million in proceeds from the issuance of preferred stock, net of issuance costs, and $1.0 million from borrowings on our line of credit, partially offset by $0.8 million of repayments of long-term debt.

Net cash used in financing activities of $0.1 million for the year ended June 30, 2020 consisted of $6.0 million used to repay the previously outstanding balance on our line of credit and $0.8 million of repayments of long-term debt, partially offset by $5.3 million in proceeds from the issuance of preferred stock, net of issuance costs, and $1.4 million of proceeds from the Paycheck Protection Program note payable.

Net cash provided by financing activities of $0.5 million for the year ended December 31, 2020 consisted of $6.8 million in proceeds from the issuance of preferred stock, net of issuance costs, and $1.4 million of proceeds from the Paycheck Protection Program note payable, partially offset by $6.0 million of payments on the previously outstanding line of credit and $1.7 million for repayments of long-term debt.

Net cash provided by financing activities of $10.8 million for year ended December 31, 2019 consisted of $10.1 million in proceeds from the issuance of preferred stock, net of issuance costs, and $1.6 million from borrowings on the previously outstanding line of credit, partially offset by $0.8 million of payments on notes payable and $0.1 million used to repurchase of common stock.

Emerging Growth Company and Smaller Reporting Company Status

We are an "emerging growth company" as defined in the JOBS Act. For as long as we remain an emerging growth company, we are permitted and intend to rely on certain exemptions from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments not previously approved. In particular, in this information statement, we have provided only two years of audited financial statements and have not included all of the executive compensation-related information that would be required if we were not an emerging growth company. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

In addition, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have elected to utilize this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

We will remain an emerging growth company until the earliest of (i) December 31, 2026, (ii) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (iii) the last day of the fiscal year in which we are deemed to be a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common stock held by non-affiliates exceeded $700 million as of the last business day of the second fiscal quarter of such year or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a "smaller reporting company" as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as the market value of our voting and non-voting common stock held by non-affiliates is less than $250 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100 million during the most recently completed fiscal

year and the market value of our voting and non-voting common stock held by non-affiliates is less than $700 million measured on the last business day of our second fiscal quarter.

Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates, regulatory, and inflation.

Interest Rate Risk

Our PMB Line of Credit and term loan with Multiplier bear interest at variable rates. The nature and amount of our long-term debt can be expected to vary as a result of future business requirements, market conditions, and other factors.

We monitor our cost of borrowing under our long-term debt, taking into account our funding requirements, and our expectations for short-term rates in the future. We had a balance of $1.0 million and zero on our PMB Line of Credit as of June 30, 2021 and December 31, 2020, respectively. We had a principal balance of $1.7 million and $2.5 million on our term loan with Multiplier as of June 30, 2021 and December 31, 2020, respectively. A hypothetical 10% change in the interest rates on our line of credit and term loan for the year ended December 31, 2020 and six months ended June 30, 2021 would not have a material impact on our consolidated financial statements.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition, and operating results.

Recent Accounting Pronouncements

See Note 2 in our annual consolidated financial statements included elsewhere in this information statement for recently adopted accounting pronouncements and recently issued accounting pronouncements not yet adopted as of the dates of the statement of financial position included in this information statement.

Critical Accounting Policies and Significant Judgments Estimates

Our management's discussion and analysis of financial condition and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses incurred during the reporting periods. Certain accounting policies require the application of significant judgment by management in selecting the appropriate assumptions for calculating financial estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. On an ongoing basis, we evaluate our estimates including those related to revenue recognition, fair value of financial instruments, and stock-based compensation. These judgments are based on our historical experience, terms of our existing contracts, our evaluation of trends in the industry, and information available from outside sources as appropriate. Our actual results may differ from those estimates. While our significant accounting policies are described in the notes to our annual consolidated financial statements, also included in this information statement, we believe these critical accounting policies are the most important to understanding when evaluating our reported financial results.

Revenue Recognition

Revenue-generating activities are directly related to the sale of our wine. We recognize revenue upon completion of our performance obligation, which generally occurs when control is transferred to the

customer. This occurs when the consumer either receives the wine from their online purchase or when the customer picks up the wine from one of our distribution points. We derive the majority of our revenues from monthly subscription fees from our DTC sales channel. We also recognize income on unredeemed gift cards and prepaid credits, referred to as "breakage." Breakage is recognized proportionately using a time-based attribution method from issuance of the gift card or credit to the time when it can be determined that the likelihood of the gift card or credit being redeemed is remote and that there is no legal obligation to remit unredeemed gift cards or credits to relevant jurisdictions. The breakage rate is based on historical redemption patterns.

Fair Value of Financial Instruments

Our financial instruments include cash, accounts receivable, employee advances, accounts payable, accrued liabilities, line of credit, notes payable, and warrants. The carrying amounts of our cash and cash equivalents approximate fair value due to their high liquidity in actively quoted trading markets and their short maturities. Our accounts receivable, employee advances, accounts payable, and accrued liabilities approximate fair value due to their short maturities. The carrying value of our line of credit and notes payable is considered to approximate the fair value of such debt as of December 31, 2020 and 2019 and June 30, 2021 and 2020, based upon the interest rates that we believe we can currently obtain for similar debt. The inputs used to measure the fair value of these assets are primarily observable inputs and, as such, considered Level 1 and 2 fair value measurements. Our warrant liabilities are based primarily on unobservable inputs and are therefore considered Level 3 fair value measurements. We measure the fair value of these financial instruments using the three levels of inputs described by ASC 820.

Stock-Based Compensation

We account for stock-based compensation by estimating the fair value of stock-based payment awards at the grant date using the Black-Scholes option-pricing model, and the portion that is ultimately expected to vest is recognized as compensation expense over the requisite service period.

During the period covered by the financial statements included in this information statement, we were a privately held company with no active public market for our common stock. Accordingly, the fair value of the common stock underlying our stock-based awards has historically been determined by our Board of Directors, with input from management and corroboration from contemporaneous third-party valuations. We believe that our Board of Directors has the relevant experience and expertise to determine the fair value of our common stock. Given the absence of a public trading market of our common stock, our board of directors exercised reasonable judgment and considered numerous objective and subjective factors to determine the best estimate of the fair value of our common stock at each grant date.

The Black-Scholes option pricing model utilized inputs which are highly subjective assumptions and generally require significant judgment. These assumptions include:

- *Fair Value of Common Stock*: See the subsection titled "Common Stock Valuations" below.
- *Risk-Free Interest Rate*: The risk-free interest rate is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of the option.
- *Expected Volatility*: Because we have been privately held and do not have any trading history for our common stock, the expected volatility was estimated based on the average volatility for comparable publicly traded companies over a period equal to the expected term of the stock option grants. The comparable companies were chosen based on the similar size, stage in life cycle or area of specialty. We will continue to apply this process until a sufficient amount of historical information regarding the volatility of our own stock price becomes available.
- *Expected Term*: The expected term represents the period that the stock-based awards are expected to be outstanding and is determined using the simplified method (based on the mid-point between the vesting date and the end of the contractual term), as we do not have sufficient historical data to use any other method to estimate expected term.

- *Expected Dividend Yield*: We have never paid dividends on our common stock and have no plans to pay dividends on our common stock. Therefore, we used an expected dividend yield of zero.

See Note 11 to our consolidated financial statements as of and for the year ended December 31, 2020 and Note 12 to our condensed consolidated financial statements as of and for the six months ended June 30, 2021 included elsewhere in this information statement for more information concerning certain of the specific assumptions we used in applying the Black-Scholes option pricing model to determine the estimated fair value of our stock options granted in the year ended December 31, 2020 and six months ended June 30, 2021. Some of these assumptions involve inherent uncertainties and the application of significant judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our stock-based compensation could be materially different.

Common Stock Valuation

Historically, there has been no public market for our common stock, and, as a result, the fair value of the shares of common stock underlying our stock-based awards was estimated on each grant date by our Board of Directors. Our board of directors intended all stock options granted to have an exercise price per share not less than the per share fair value of our common stock on the date of grant. To determine the fair value of our common stock underlying option grants, our Board of Directors with input from management, considered, among other things, valuations of our common stock, which were prepared by an independent third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants 2013 Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation, or the Practice Aid*. Additionally, our Board of Directors' performed an assessment of additional objective and subjective factors that it believed were relevant, and factors that may have changed from the date of the most recent valuation through the date of the grant. These factors included, but were not limited to:

- our results of operations and financial position, including our levels of available capital resources;
- our stage of development and material risks related to our business;
- our business conditions and projections;
- the valuation of publicly traded companies in wine retail sectors and subscription services, as well as recently completed mergers and acquisitions of peer companies;
- the lack of marketability of our common stock as a private company;
- the prices at which we sold shares of our common stock to outside investors in arms-length transactions;
- the likelihood of achieving a liquidity event for our security holders, given prevailing market conditions;
- trends and developments in our industry; and
- external market conditions affecting the wine or retail industry sectors.

BUSINESS

Winc: We Bring Everyone to the Table

We are one of the fastest growing at scale wineries in the United States. Over the past two years we have grown by approximately 80% in case volume sold, with the sale of over 430,000 cases in 2020. Our growth is fueled by the joint capabilities of our data-driven brand development strategy paired with a true omni-channel distribution network. We believe our balanced platform is well-suited to gain market share and drive meaningful long-term growth in the approximately $400 billion Alcoholic Beverages market.

As product innovators focused on building durable brands that consumers love, we have developed a proprietary process, called *Ideate, Launch and Amplify,* that has allowed us to consistently produce quality wine brands in a capital-efficient fashion. We believe this process is unique within the Alcoholic Beverages industry. The key components of our brand building strategy are as follows:

***Ideate**:* The Winc digital platform is the starting point for our brand ideation process. Ongoing analysis of consumer data and ordering habits of our growing member base that consisted of more than 138,000 members as of December 31, 2020 provides near real-time insights into shifting and emerging consumer preferences. For years we have been learning and constantly refining our understanding of the key signals coming from our consumer data that we believe have the greatest predictive power. We then combine those signals with an extensive review of industry data trends and qualitative inputs from our winemakers, sommeliers and creative team to discern the most compelling product opportunities for our development team to begin the brand-building process.

***Launch**:* After our team has delivered a target product from the *Ideate* process, we then design the brand and associated beverage formulation. With our asset-light outsourced production model, we produce initial inventories and prepare to launch the product on the Winc digital platform directly into our consumer base. We were able to take the last ten innovation projects launched into the DTC channel from initial bottling to receiving consumer feedback in under two months on average, compared to what our management believes is typically a feedback cycle of 6 to 12 months for traditional winemakers. Once our products begin to be sold on the Winc digital platform, we can quickly identify brands that are demonstrating strong initial traction using a variety of key data points, such as click-through metrics, consumer ratings and social listening and re-order rates. We aim to launch 8-10 innovation brands a year on the digital platform. For those brands showing breakout potential, we further test, refine and iterate in a rapid and capital-efficient manner before ultimately *Amplifying* the most promising brands to broader distribution.

***Amplify**:* With validation from consumers and proprietary sell-through data from our Winc digital platform, we aim to take one or two of the best performing new brands each year and *Amplify* them by scaling the new products across our high-volume omni-channel distribution platform. Our proprietary data enables us to better predict and validate demand prior to a broad wholesale launch, supported by extensive digital marketing. This both lowers the launch-related risk of our brands and allows for superior targeting capabilities, which we believe increases the attractiveness of our brands to wholesale distributors and retailers, both of whom are eager to add predictably high-velocity and profitable brands to their offerings.

We believe our *Ideate, Launch and Amplify* brand development process incorporates the "**Best of the New**" and **"Best of the Old**" aspects of Alcoholic Beverages brand creation in a truly omni-channel fashion. The **"Best of the New"** is highlighted by our data-rich DTC relationships via the Winc digital platform. This data is a critical competitive advantage that we use to help shape the ideation and development of our brands. Our digitally native roots also provide us with a strong core competency in digital marketing and data analytics that allows us to interact in a more targeted and direct fashion with end-consumers and *Amplify* brands in ways the legacy Alcoholic Beverages companies have yet to consistently utilize. Our **"Best of the Old"** strategy is encompassed by our appreciation of the value creation potential and durable power of proprietary brand development, as well as the scale benefits that can be achieved by leveraging the legacy wholesale distribution channel. Today, more than 90% of wine is still purchased according to the legacy three-tier system, which mandates a supply chain through which alcohol suppliers may sell only to wholesale distributors, wholesale distributors to retailers and retailers to consumers, unless selling through direct-to-consumer licenses.

The symbiotic relationship of "**Best of the New**" and "**Best of the Old**" is highlighted in the graphic below: The "**Best of the New**", represented in yellow, highlights our ability to generate a direct connection with consumers that effectively pulls brands into retailers and wholesale distributors, while the "**Best of the Old**", represented in black, highlights our ability to effectively partner with wholesale distributors and retailers to push and ultimately scale promising brands to consumers.

We view our omni-channel platform as highly complementary because it creates a positive feedback loop where incremental scale on either side of our platform begets scale and success on the other. This **"Scale Begets Scale"** dynamic allows the online and offline businesses to be self-reinforcing rather than competing. As our brand portfolio expands over time, we believe our DTC channel will become more desirable to existing and potential members who will have an increasing number of highly rated and more recognizable products to choose from each month. We believe over time this will lower our consumer acquisition cost, or CAC, improve retention rates and increase average order value, or AOV, thereby allowing us to take a larger share of our consumer's wine-buying wallet. We expect the resulting growth in our DTC channel to provide us with increased scale and selling, general and administrative expense, or SG&A, leverage that will be used to reinvest in strengthening and better powering our data set, which we consider to be critical to driving innovation and effectively launching successful new core products into the wholesale channel. In turn, we expect this brand portfolio to further solidify our relationship with wholesale distributors, resulting in an expansion of retail accounts and shelf space with retailers and greater brand recognition on the part of consumers, which then strengthens our subscription offering, and the cycle continues. We believe that this increasingly powerful **"Scale Begets Scale"** dynamic provides us with a highly differentiated and strong competitive position within the rapidly evolving Alcoholic Beverages marketplace.

At one time, this omni-channel approach might have created the perception of a potential for "channel conflict" between us and wholesale distributors and retailers. However, we believe that our partners within the wholesale channel recognize that our Winc digital platform allows us to provide them with key data to help de-risk brand launches and increase the odds that our brands will become high performers on store shelves. Rather than disrupt the traditional wholesale distribution network, we consider our relationships with wholesale distributors and retailers to be more like strategic partnerships as we help them address the next generation of wine buyers with unique branding, digital marketing capabilities and de-risked brand launches.

Our Market Opportunity

At approximately $400 billion in sales within the United States in 2018, the Alcoholic Beverages category represents one of the largest total addressable market opportunities, or TAMs, in the entire consumer product goods, or CPG, landscape, far bigger than other leading sub-sectors, such as salty snacks, soft drinks, coffee and pet food. The attractiveness of the Alcoholic Beverages market is further enhanced by the highly recurring and frequent nature of product usage by consumers. A Wine Market Council survey of U.S. adults found that 54% consume wine at least once a week. Finally, leading Alcoholic Beverages companies have consistently reported among the highest profit margins within the broader CPG space. We believe this combination of market size, frequency of consumption and strong profitability makes the Alcoholic Beverages market a very attractive backdrop for us to pursue our open-ended platform development opportunity across other beverage verticals.

The wine market can be further delineated into three distinct price point ranges: $9.99 or lower retail price per bottle, $10.00—$29.99 retail price per bottle and $30.00 or higher retail price per bottle. We call these three price bands Value, Premium and Luxury, respectively. In 2020, the Premium price band represented 262 million cases of wine, which was nearly 70% of the overall U.S. wine market and the fastest growing price point range from 2015 through 2020. Value, on the other hand, declined over the same period. While we plan to offer products across several price points over time, we have historically achieved our greatest success by focusing on the larger and more attractive Premium category. We believe this is due to consumer preferences for a well-regarded flavor profile, a strong brand and a reasonable price point. In our view, the Premium category is where we believe that meaningful scale can be achieved by a winemaker and it is also where we intend the vast majority of our wines will be positioned going forward.

In addition to our broad exposure to the highly attractive Premium segment of the wine category, we believe we are well positioned to benefit from two additional important trends that are currently re-shaping the Alcoholic Beverages industry:

First, from a demographic perspective, we believe the rise of Millennials and Gen-Z drinkers, whom we call **"Next-Gen"** consumers, has the potential to create a large shift in market-share across the entire Alcoholic Beverages industry, as demonstrated in the wine industry. Over the last 30 years, Baby Boomers and Gen X have driven wine consumption, with approximately 73% market share in 2020. Over the next five years, the demographics of wine drinkers are expected to continue to shift to Millennial and Gen-Z consumers who are developing new taste preferences, discovery patterns, consumption frequencies and price points. With 76% of our Winc.com members aged 44 or younger, and a branding strategy that strongly resonates with these younger consumers, we believe we are well positioned to capitalize on the rapidly evolving demographic shift taking place within the wine industry.

Second, like many other sectors, the Alcoholic Beverages industry is experiencing a meaningful shift to online purchasing. This shift was accelerated by the COVID-19 pandemic, which drove increases in e-commerce spending within the Alcoholic Beverages category, one that has traditionally been slow to adopt change. As a result, online sales accelerated dramatically over the past eighteen months. The size of the DTC wine market in the U.S. as of the end of 2020 was measured by a Sovos report as $3.7 billion. However, we believe that the go-forward opportunity remains even greater, as Alcoholic Beverages remain meaningfully under-indexed relative to other CPG categories in-terms of overall e-commerce penetration. According to Information Resources, Inc., or IRI, and the International Wines and Spirits Record, or IWSR, in 2020, alcohol online penetration was only 1.6%, while CPG online penetration reached 7.8%. By 2024, it is forecasted that alcohol online penetration will reach 7.0%. While online alcohol penetration is low in comparison to CPG online penetration, the online penetration figure for alcohol in 2024 is significant because it supports our belief that alcohol will increase towards the penetration levels realized by CPG. Due to our digitally native roots and large current online presence, we believe we are well-positioned to capitalize on these shifting channel dynamics, as more and more consumers routinely discover and order their Alcoholic Beverages products online. Additionally, we believe the biggest winners in the industry will be those that most effectively create a highly synergistic omni-channel purchasing experience for their consumers.

The Competitive Landscape

By incorporating the "**Best of the New**" and "**Best of the Old**" into our business model, we currently maintain a highly differentiated competitive position within the Alcoholic Beverages industry, as we sit squarely between the legacy shelf-focused brand developers and the newer breed of DTC online-focused wineries.

Legacy shelf-focused brand aggregators have historically built and consolidated brands over the course of many years with significant capital investments in physical assets, traditional brand marketing and M&A to create the scale necessary to become preferred partners to wholesale distributors, which in turn, has allowed them to maintain a dominant share of shelf space throughout the wholesale channel.

We firmly believe a true brand builder in the Alcoholic Beverages industry must become a scaled partner to wholesale distributors and retailers, and our aspiration is to become a Top-10 partner to the major wholesale distributors. However, we plan to accomplish this in a manner that is meaningfully different from legacy brand aggregators. First, we believe our unique and modern branding resonates particularly well with the faster-growing and younger generation of wine consumers, which are becoming an increasingly important demographic to the industry. Second, we believe the combination of data generated from the Winc digital platform, our direct relationship with consumers and our digital marketing expertise materially de-risks wholesale brand launches and enables more effective targeting than more traditional branding and marketing techniques. Third, our asset-light production model is far more capital-efficient and dramatically reduces time to market for potential break-out brands, as compared to legacy shelf-focused brand aggregators. Finally, we have found that wholesale distributors and retailers greatly value the additional insights we bring them from our broader data set, which allows them to better understand emerging trends in the rapidly evolving Alcoholic Beverages market.

In stark contrast to our efforts to become a critical partner to wholesale distributors and retail chains that are seeking to effectively reach the next generation of wine consumers, many online-only wineries with a DTC subscription model have made a strategic decision to completely bypass and disintermediate the traditional wholesale distribution channel. We believe this is a less scalable business model with a substantially smaller TAM.

Our goal is to serve all Alcoholic Beverages consumers across all available distribution channels, whether they choose to purchase product in a store, in a restaurant or online. We believe this is best accomplished by building a large portfolio of durable brands that successfully scales through a true omni-channel distribution platform.

Competitive Strengths

Highly Innovative, Differentiated and Repeatable Brand Development Strategy—We have demonstrated a consistent ability to use our *Ideate, Launch and Amplify* framework to launch multiple brands that resonate with consumers and remain on strong upward growth trajectories. Since January 1, 2016, we have released five brands that, based on their success in both the DTC and wholesale channels, we consider to be part of our core brand offering today, with two of those being released in the past three years. These five core brands have been *Amplified* in the wholesale channel, representing approximately 25 % of our net revenues for the fiscal year ended December 31, 2020 and 61 % year over year core brand net revenues growth from 2019 to 2020. Each of our current core brands has individually generated more than $1.0 million in net revenues through the DTC channel and more than $0.5 million through the wholesale channel in the last 12 months, and we believe has the potential to continue to grow sales through the wholesale channel. We aim to *Amplify* one or two additional brands each year with similar revenue and growth profiles in both channels from 8-10 innovation launches, which we believe is achievable based on our track record of success. As our digital consumer base continues to grow and our processes and data analytics capabilities are further refined, we anticipate building a larger portfolio of brands that will be marketed broadly both throughout the wholesale channel, as well as on the Winc digital platform. We believe this proven ability to successfully launch brands in a repeatable and predictable fashion is a core competency for us and a durable competitive advantage.

Barrier to Entry Created by Extensive Portfolio of Owned Brands—We have successfully launched and grown multiple highly rated and award-winning wines. Summer Water, Lost Poet, Wonderful Wine Co., Chop Shop and Folly of the Beast form the focus of our portfolio, comprised of a strong and diverse collection of wine brands, our net revenues from our core brands grew by approximately 53% from 2019 to 2020. Collectively, we have won multiple awards, including Summer Water as #56 on the Top 100 wines of 2020 by Wine Enthusiast.

As evidenced in the table below, once a wine brand achieves scale, it generally maintains or grows market share for an extended period time. Therefore, we believe, in aggregate, a growing portfolio of core brands can provide us with a highly recurring revenue stream and SG&A leverage from our cost structure to enable continual reinvestment in our brand development strategy and distribution expansion. A large portfolio of successful wine brands also provides us with critical scale advantages that we believe will strengthen our relationships with wholesale distributors and retail chains. Finally, we expect that a large and increasingly well-recognized portfolio of top wine brands will enhance the Winc digital experience, thereby strengthening multiple key performance indicators, or KPIs, for our online business. Scale begets scale and it all starts with a strong core portfolio of owned brands.

Attractive Return on New Product Development—We believe our brand development framework allows us to Ideate and Launch brands in a rapid and capital-efficient fashion. In 2019 and 2020, we spent an average of approximately $270,000 per brand to develop and launch new brands. On average,the brand level gross profit from new brands has typically exceeded this initial brand investment in eight months, regardless of whether it is eventually Amplified into the wholesale channel and becomes a core component of our ongoing portfolio. We believe this ability to quickly recoup initial investments by selling newer brands through the Winc.com subscription site helps minimize financial risk associated with new product launches. Moreover, when a potentially higher performing brand is identified, we believe it has the opportunity to become a core brand in our portfolio, with appeal across both DTC and wholesale channels, and represent greater long-term return on invested capital. Each of our core brands currently generate between $1.0 million and $10.0 million in annualized revenues, and in 2020 collectively generated approximately $14.9 million in net revenues, with gross margins averaging approximately 45%.

For the year ended December 31, 2020, our five core brands generated gross profits there were on average 4.3 times greater than the average per-brand development cost of $270,000. Our largest brand, Summer Water, generated a gross profit that was 8.4 times greater than the average per brand development

cost of $270,000, and a cumulative gross profit since its launch in 2016 through the end of 2020 that was 28.8 times greater than the average per brand development cost. Even our weakest innovation brand in 2020 still generated a gross profit that was 1.3 times greater than the average development cost of $270,000.

We believe our brand development framework and portfolio management strategy represents a repeatable process that allows us to generate attractive returns on successful brand launches while minimizing the financial risk associated with new product launches. We believe we have the opportunity to continue to improve on these returns on investments in new products as our omni-channel distribution platform continues to scale with a growing number of Winc.com members and on account of a larger physical retail account presence in the wholesale channel.

Uniquely Scaled Data and Analytics Capabilities—We collect a wealth of proprietary data from the over 138,000 monthly members, as of December 31, 2020, on Winc.com providing over 4.3 million ratings of our wines. We use this data, which includes click-through rates, re-order frequency, consumer feedback and additional metrics to help shape our brand development process, optimize the Winc.com consumer experience and collaborate effectively with wholesale distributors.

However, it is not the data alone that provides us with such a differentiated competitive position, but rather the seven plus years of experience our team has had to optimize the key signal values coming from all this data. It has been a constant learning process that has increasingly deepened our understanding of how to best translate the raw data coming from Winc.com into effective brand development strategies and eventually success in the wholesale channel. We believe that the difficulty of replicating years of constant learning, iteration and improving analytic processes around this accumulating data set, along with the actual data itself, reflects the source of our data-based competitive advantage.

Global Access to Raw Materials and Dynamic Supply Chain—Due to our outsourced production model, we are not reliant on any one vineyard or geographic region to source raw material for our brands. As a scale producer, we are able to procure high quality grapes and raw materials from an ever-growing list of sources and create a supply chain that is both deep and diversified. The depth of our raw material procurement abilities has allowed our winemakers to be very creative in their winemaking formulation and enabled our top brands to scale without significant constraint. Finally, it allows us to manage inventory in a highly capital-efficient fashion. We believe this dynamism represents a meaningful strength in comparison to a more traditional asset-heavy winery built around a finite set of vineyards in one geographic region.

Rapidly Expanding Omni-channel Distribution Network—With over 138,000 Winc.com members, as of December 31, 2020, and a rapidly growing wholesale presence that serviced over 7,700 retail accounts in 2020, we have established a resilient and differentiated omni-channel distribution network. Our plan is to continue to grow both the Winc.com member base and expand our wholesale presence to at least 50,000 retail accounts in the next five years.

In our view, a key driver of success in our industry is an ability to synergistically pair proprietary brands that excite consumers with extensive omni-channel distribution. While there are thousands of small wineries in the United States, the vast majority lack the necessary distribution to achieve broad recognition of their brands through the wholesale channel. A lack of extensive distribution is the key barrier to scale for any small or emerging wine brand.

We are now well down the path of building a fully scaled omni-channel distribution network that will allow us to fully *Amplify* our brands, both online and offline, to maximize their financial impact, reach more consumers and maximize brand awareness. As described in our **"Scale Begets Scale"** strategy, as our DTC channel expands, we expect that we will have increased opportunities to innovate and market new products. Likewise, as our wholesale business scales, we believe that when we launch brands validated through our DTC channel, the brands will scale much more quickly in the wholesale channel. We view this self-reinforcing relationship as an enormous competitive differentiator in the highly fragmented wine industry, where many producers are destined to remain sub-scale due to a lack of distribution in both channels.

Growing Scale with Key Wholesale Distributors and Retailers—Historically, there has been little turnover of top suppliers to the industry's key wholesale distributors, as scaled brand aggregators and the largest wholesale distributors tend to become entrenched partners. To become a key partner to these critical wholesale distributors and fully capitalize on the growth opportunity presented by the legacy distribution

system, we intend to continue presenting key wholesale distributors and retailers with a broad portfolio of differentiated brands that we believe will resonate strongly with consumers based on extensive testing and data analysis through the Winc.com site. We believe our wines are attractive to wholesale distributors due to: (1) the uniqueness of our branding, which resonates strongly with the increasingly important younger average wine drinker; (2) the data-backed evidence of demand for our wines; and (3) superior targeting capabilities due to our data analytic and digital marketing expertise. As sales grow and we expand our portfolio of brands with success across both DTC and wholesale channels, we would expect our relationship with key wholesale distributors to also grow and expand. Once we reach our goal of becoming a top ten wine supplier to the wholesale distributors, these critical relationships become a strong differentiator and large competitive moat for us by helping us grow and maintain shelf space throughout the entire retail landscape.

Attractive Financial Profile Enables Reinvestment to Drive Growth—We believe the recurring nature of our subscription driven DTC revenues, relatively high gross margins and our asset-light business model provide us with sustainable competitive advantages to reinvest in brand building, marketing, consumer acquisition and distribution expansion. Our view is that a strong underlying financial profile that produces SG&A leverage to invest in building scale is critical to our long-term success. Key differentiators of our financial model are as follows:

- **Recurring Nature of Revenues—**We believe the stickiness of wine brands that achieve scale, high frequency usage patterns of Alcoholic Beverages consumers, recurring subscription-based revenues at Winc.com, as well as durable relationships with key wholesale distributors and retailers will enable us to grow steadily over time.
- **Attractive Gross Margins within the CPG Industry**—Alcoholic Beverage gross margins tend to be well above average when compared to the broader CPG industry. Industry constituents we surveyed had gross margins of 47.0% and 42.3% for the years ended December 31, 2020 and 2019, respectively, and our gross margins were 40.7% and 42.3% for those same periods. In comparison, the S&P 500 Consumer Staples Index had gross margins of 29.5% for the years ended December 31, 2020 and 2019, according to S&P Capital IQ. This allows us to disproportionately invest in growth over the near and intermediate-terms, which we believe will increase our operating margins through SG&A leverage as we continue to scale.
- **Asset-Light Business Model and Flexible Supply Chain**—Our dynamic supply chain and outsourced production model allow us to use SG&A leverage to invest Gross Profit dollars into building brands. It also allows us to satisfy inventory needs in a more predictable and lower-risk fashion than more asset-heavy legacy wineries.

First-Class Management Team and Organizational Structure Built for Brand Innovation—Our management team consists of brand-building specialists and operators with broad experience across the CPG industry, experienced winemakers and proven marketing professionals. Over the past several years, this team has demonstrated an ability to develop a high-growth DTC subscription platform and successfully launch a strong portfolio of wine brands into the wholesale channel with speed and scale in a repeatable fashion.

While we believe these factors will contribute to further growth and success, we cannot assure you that the market or demand for our products will continue to grow as we anticipate or that we will be able to achieve or maintain profitability in the future. If we are unable to accomplish these goals or grow our presence in both DTC and wholesale channels, our business could suffer. We have historically been dependent on a combination of debt and equity financing to fund our operations, we have incurred net losses each year since our inception and we may not be able to achieve or maintain profitability in the future.

Growth Strategies

New Brand Development and Portfolio Optimization—The primary driver of our long-term growth strategy is our ability to consistently and predictably build innovative new products that, in aggregate, become a leading portfolio of owned brands in the Alcoholic Beverages industry. The expansion and optimization of this portfolio remains a key enabler of all our other growth strategies.

Drive Efficient Online Consumer Acquisition at Winc.com—Winc.com is unique in that our leading wine subscription platform is not only designed to delight consumers, but also bring critical information

that delivers strategic value to our brand-building efforts. As a result, Winc.com is a key pillar in our broader omni-channel distribution strategy but because online consumer acquisition is not our primary driver of long-term growth, we plan to remain highly disciplined in managing our online marketing initiatives, as demonstrated through CAC. We believe this strategy allows for high returns on consumer acquisition and short payback periods. Our disciplined approach has allowed us to achieve an average LTV/CAC ratio of in excess of 3.0x when observing the 2014-2016 cohorts, which provides data to calculate this on a 5-year historical basis. Furthermore, on a nearly 5-year historical basis, our 2017 cohort has demonstrated an LTV/CAC ratio in excess of 4.0x to date, as of May 1, 2021. More recently, consumers in our 2020 cohort have already demonstrated a return of 2.3x LTV/CAC in the first year since consumer acquisition and 2.6x on a fully-aged basis, as of May 1, 2021. By increasing wholesale penetration and continuing to provide new products, we also aim to improve the retention rates and AOVs through a variety of digital analytic and marketing strategies. However, our core belief is that over time, the best and most sustainable way to retain members, and expand their purchases on our site, is to develop the strongest possible core portfolio of widely recognized, differentiated and well-loved brands and make them available on Winc.com. We believe this strategy will result in improved CACs and AOVs as well-recognized brands will draw consumers to the Winc.com site in a more organic fashion, improve the likelihood that they will remain members and increase AOVs as we take a larger share of their Alcoholic Beverages buying wallet.

Multiple Levers for Wholesale Expansion—We believe our opportunity to expand in wholesale is multi-faceted, with several key levers to drive outsized growth:

- **Wholesale Retail Account Expansion:** Our goal is to leverage our relationship with national and regional wholesale distributors to meaningfully expand our retail accounts from 7,700 retail accounts serviced in 2020 to over 50,000 retail accounts in the next five years. Recent wins with shelf-space at large chains, such as Target, Walmart, Total Wine and Spirits, Kroger and HEB, as well as strengthening relationships with key wholesale distributors has increased our confidence in an accelerated path to our retail account growth targets.
- **New Brands Drive SKU Growth:** We plan to capitalize on our ability to develop brands that consumers love in an effort to capture more shelf space with additional stock keeping units, or SKUs, at each retail location, which should grow revenues per retail account.
- **Increase Shelf Velocity:** We plan to continually *Amplify* and market our core brand portfolio on an ongoing basis to drive sell-through and increase shelf velocity. Additionally, we expect relationships with last-mile delivery providers such as Amazon Prime, GoPuff, Instacart and Drizly will help to continue to increase wholesale channel velocity.

Adjacent Category Expansion—We plan to expand our TAM by creating new innovative products that are closely adjacent to our current wine product offerings, such as Saké, Prosecco and ready to drink wine cocktails. We also believe that our unique, omni-channel platform could be applied to entirely new categories, such as spirits, beer and non-alcoholic celebratory beverages, significantly increasing our addressable market. Our goal is to create the broadest possible portfolio to maximize our exposure to the approximately $400 billion U.S. Alcoholic Beverages market. We believe our *Ideate, Launch and Amplify* brand development process can be leveraged into these other targeted categories in a seamless fashion.

Growth through Acquisitions in Highly Fragmented Markets—In addition to organic growth of our brand portfolio and distribution scale, we believe we will have opportunity to grow through acquisitions. Per the SVB 2020 State of the U.S. Wine Industry report, more than half of all small wineries have expressed an interest in engaging in M&A over the next several years as an exit opportunity. While our growth and success are not contingent upon future acquisitions, we are constantly evaluating acquisition opportunities and believe our organization is positioned to *Amplify* any brands we acquire by providing digital marketing expertise and a national wholesale distribution network to accelerate growth and improve a potential target's existing business.

In May 2021, we purchased certain assets of Natural Merchants, Inc., an international wine importer and leading purveyor of natural, organic, biodynamic and vegan wines from around the world. Initial consideration for the transaction consisted of $4.5 million in cash and 571,428 shares of our Series F redeemable convertible preferred stock. The purchase agreement also provides that the seller may receive additional consideration, if earned, in the form of performance earn-out amounts in the aggregate of up to

$4.0 million in cash over two years subject to certain conditions and the successful achievement of certain revenue targets by products developed from the seller's supplier relationships between (a) the period commencing on May 1, 2021 and ending on April 30, 2022 and (b) the period commencing on May 1, 2022 and ending on April 30, 2023.

Our Products

Our Portfolio of Core Brands

Summer Water, or SW—Launched first as a DTC product, Summer Water gained national acclaim without presence in the legacy wholesale channel. Since launching in the wholesale channel, it has continued to scale by achieving high velocity and becoming the #7 best-selling pure play rosé brand in the United States. Cases of Summer Water sold increased from approximately 29,000 in 2019 to approximately 45,000 in 2020, representing year-over-year growth of 55%. As the brand has scaled, quality continues to improve as new vintages achieve higher ratings by our members. SW is a nationally recognized brand, ranking #56 on Wine Enthusiast's top 100 Wines of the Year in 2020 and reaching 75,000 cases of production in 2020 with a single SKU. SW generated approximately $4.3 million in net revenue in the six months ended June 30, 2021. New line extensions include a chilled red "Keep it Chill", 187 milliliter single serve "Droplets" and "Bubbly" a sparkling rosé.

Wonderful Wine Company, or WWC—Despite being launched during a challenging COVID-19-impacted market, WWC achieved immediate traction with consumers and sold approximately 17,000 cases in 2020. A digital-first strategy built brand awareness rapidly and gained the interest of national retailers, such as Walmart, where the brand launched in the second quarter of 2021 and generated approximately $1.9 million in net revenue during the six months ended June 30, 2021. The brand was the result of proprietary data and insights from our DTC consumers. We expect this "better for you, better for the world" brand platform will see additional releases in environmentally sound Tetra and three-liter box formats this year.

Lost Poet, or LP—The raw material (wine) in LP is our highest-rated red blend with nearly 105,000 ratings in addition to being rated in the top 3% of the world by Vivino in 2017 and has seen increasing ratings ever since. While the high quality of the wine was validated by our DTC consumers, we did not have a scalable brand. To reach a key shopper profile for our retailers, we crafted a brand and marketing strategy to target younger female consumers by partnering with Atticus, a best-selling author and Instagram poet. The highly successful re-launch quickly achieved national press, influencer pick-up and a placement with Target. Our digital approach creates unique opportunities to develop best-in-class products and become a strategic partner in expanding the wine category with their high-value consumers. Cases of Lost Poet sold increased from approximately 5,000 in 2019 to approximately 14,000 in 2020, a 170% year-on-year growth and the brand generated approximately $0.6 million in net revenue in the six months ended June 30, 2021.

Folly of the Beast, or Folly—Our award-winning winemaker Ryan Zotovich, applied his luxury winemaking experience to create uncompromising value in this under $20.00 Pinot Noir. Folly delivers a fresh and bright style favored by younger consumers, having been ordered by approximately 147,000 distinct users. In addition to receiving 93 points from Tasting Panel, Folly is our best-selling and highest rated Pinot Noir that continues to scale in wholesale. The brand includes small-lot single vineyard bottlings from some of the top Pinot Noir vineyards in California and a recently launched Chardonnay. Folly generated approximately $2.0 million in net revenue in the six months ended June 30, 2021.

Chop Shop, or Chop—We positioned Chop as the perfect pairing for America's favorite culinary past time, BBQ. A favorite of our consumers with a 4.14 rating out of 5.00 and over 145,000 reviews, Chop continues to scale across channels generating approximately $1.4 million in net revenue in the six months ended June 30, 2021.

Our Portfolio of Non-Core Brands

Cherries and Rainbows—Low-sulfur winemaking has historically been an attribute of the small and fragmented natural wine scene. Our product team worked diligently to perfect high-quality, low-sulfur winemaking at scale before launching. The delicious flavor, low-sulfur and contemporary branding have

contributed to this brand's rapid rise first with Whole Foods and now with HEB. Initially launched as a red wine, the brand's success led to our extension of the line to include a white wine. The use of our DTC channel to test consumer receptiveness to the white wine extension exemplifies our *Ideate, Launch, Amplify* brand building strategy.

Organic and Sustainable Wines—Internal data indicates that organic and sustainable wines are of growing importance to younger consumers. While the global organic wine market is in its infancy, it is projected by TechSci Research to grow at a compound annual growth rate, or CAGR, of 12% through 2025. This emerging preference is confirmed with the success of our brands, such as WWC and Cherries and Rainbows. Additionally, through the purchase of certain assets of Natural Merchants, Inc., we have introduced an organic Top-100 Wine Enthusiast brand into our portfolio and established supplier relationships with prominent family-owned organic specialists. We believe that our digitally native model will help us increase our access to organic suppliers, providing data-driven insights to create healthier beverages for the future.

Anchor Portfolio—Our asset light production model allows for continual optimization around our consumers tastes and preferences. Each year our wine team seeks to improve our DTC experience through a globally diverse and constantly improving selection of over 100 wines.

New Products

Our innovation pipeline broadens the platform and expands on its already large total addressable market. The primary focuses for our product expansion are collaborations, line extensions, new categories, and new formats. Each new launch allows for targeted marketing and provides potential incremental value to both the online and offline channels.

Line extensions—Leveraging the brand equity and consumer base of our core brands creates an opportunity for increase in share and growth.

New brands—The fast-to-market and capital-efficient elements of our platform creates an opportunity to continually innovate within traditional categories to assess breakout potential.

Saké—We are planning for our first launch into an adjacent category to be with saké, a category that is extremely fragmented. We believe market opportunity exists for a category leader in the U.S. market. We intend to test and iterate in the DTC channel on blends, styles and brand identities in the fourth quarter of 2021 with the data and feedback from our consumers influencing the final product.

Ready to Drink Cocktails—Our innovation pipeline includes formulations and brands to address this rapidly expanding market opportunity with our unique omni-channel strategy and capabilities.

Alternative Packaging Formats—Younger consumers are driving packaging innovation in the wine space. Portability, convenience and environmental impact are key drivers in this innovation. Cans, Tetra, Box, Bag and PET (polyethylene terephthalate) are currently in development.

Spirits and Beer—As the digital landscape continues to evolve and younger consumers purchase across categories and the digital landscape, we are uniquely positioned to successfully expand into other categories within the Alcoholic Beverages industry.

Non-Alcoholic Celebratory Beverages—Our first non-alcoholic wine launched in 2021 and we see expansion opportunities existing in non-alcoholic and functional beverages.

Despite the success and growth of our brands we have experienced to date, we will need to continue to convince consumers and wholesalers of the quality of our products in order to reach our growth potential and achieve and sustain profitability. If we fail to do so, we may be unable to establish adequate brand recognition or consumer growth, and our business could suffer.

Company History

Winc (formerly Club W) launched in 2011 with the goal of making discovering great wine easy. The company's founders set out to create a model that catered to a broad audience to curate and personalize the process of buying and enjoying wine. Under the guidance of winemaker, sommelier and Co-Founder

Brian Smith, Club W transitioned to producing fully proprietary products in 2014. Club W rebranded as Winc in 2016. The rebrand was not only a reflection of the company's past transition into fully proprietary products, but the company's expansion beyond its successful online membership. As consumers were beginning to foreshadow our most successful products through their proprietary data, our wholesale channel was launched in late 2015. Over the past six years, we have continued to focus on building its portfolio of brands that are helping to scale both the DTC and wholesale channels.

Omni-Channel Platform

DTC Subscription

Winc.com is our online platform that provides an authentic brand experience for our consumers while driving engagement and also providing feedback for future product development. We had 138,599 members as of December 31, 2020, up 94% from 71,370 the year prior. We acquire consumers through a mix of paid and non-paid advertising. Our paid advertising may include search engine marketing, display, paid social media and product placement and traditional advertising, such as direct mail, television, radio and magazine advertising. Our non-paid advertising efforts include search engine optimization, non-paid social media, e-mail and SMS marketing.

Our online process helps guide consumers towards a discounted first purchase, typically consisting of a four-bottle order and then encourages consumers to sign up for a Winc.com membership. Our membership is a subscription where members are charged a set monthly amount and then given credits, which can be used at any time to purchase products on Winc.com. Unused credits roll over each month and never expire. This credit model allows us to collect predictable revenue monthly from our consumers, while allowing our consumers the flexibility of ordering wines they want when they need them.

In addition to being the main revenue driver for the company today, we believe our DTC platform provides strategic benefit to our entire ecosystem. Through the Winc.com shopping experience, members have the option of selecting from our curated recommendations or purchasing products of their choice. After each purchase, members are encouraged to rate their wines in order to improve their recommendations in the future—this direct consumer connection allows us to collect data on our products and unlock unique consumer insights that then help to improve our ability to market and sell through alternative channels. It also allows for an improved experience for our consumers, helping to increase the value of our offerings to them through personalized recommendations.

Wholesale

In the United States, the sale of wines and alcoholic beverages is regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and is either subject to the government-mandated three-tier system or can be sold directly to consumers through our DTC channel, subject to other Alcoholic Beverages rules and regulations. We historically have sold through our DTC channel, but increasingly we are selling through the three-tier system, which establishes three categories of licensees: the producer (the party that makes the wine), the wholesale distributor (the party that buys the wine from the producer and then sells to the retailer) and the retailer (the party that sells the wine to the end consumer). In this framework, we act as the producer in our wholesale channel, selling our products to distributors who in turn contract directly with retailers. We assess our wholesale breadth by looking at locations sold, velocity and total SKUs per retail account.

- As a result of our relationship with wholesale distributors, in 2020 we are able to distribute across all 50 states and have serviced over 7,700 retail accounts and seven countries.
- Wholesale distributor accounts are split between on-premise and off-premise retailers. Of the over 7,700 retail accounts serviced in 2020, over 5,000 were for off-premise consumption (grocery stores, wine shops and liquor stores) and over 2,500 were on-premise consumption (restaurants, bars and other venues).
- In 2020, we sold approximately 100,000 cases of wine through our wholesale channel to these collective off-premise and on-premise retailers.

- Our largest retail accounts through distributors on a trailing 12-month basis as of June 30, 2021 are Whole Foods, the Pennsylvania Liquor Control Board, or PLCB, the Liquor Control Board of Ontario, or LCBO, Albertsons, Fresh Market, Target, Binny's and HEB. Under the three-tier system, our retail accounts are managed through our distributors, and we do not maintain any direct contractual relationships with those retailers.

Our typical agreements with distributors generally have a term of approximately five years and can be terminated by the distributor for any reason upon advance notice or by either party if the other party is in breach, though the laws and regulations of several states prohibit changes of wholesale distributors except under certain limited circumstances, which makes it difficult to terminate a wholesale distributor for poor performance without reasonable cause as defined by applicable statutes. Distributors purchase products from us at prevailing prices in the applicable territory.

As a result of the COVID-19 pandemic that took place during the majority of 2020, on-premise wine sales for the wine industry in the United States decreased according to International Wine and Spirits Record, going from 20.4% of total sales in 2019 to 7.1% in 2020. Off-premise, on the other hand, increased from 79.6% of total sales in 2019 to 92.9% in 2020 as a result of quarantining and restaurant shut-downs. As quarantine restrictions are lifted by states and on-premise consumption resumes, we believe this will be a source of growth for us as on-premise wine sales increase post COVID.

Further expanding our potential for wholesale, as well as our DTC sales, is the potential for M&A in the highly fragmented winery industry. As of January 2021, per Wine Vine Analytics, the number of wineries in the United States reached 11,053, a 4.9% CAGR since 2015. Wines Vines Analytics estimates that 97% of those wineries are small wineries (defined as less than 50,000 cases per year). Additionally, per the SVB 2020 State of the U.S. Wine Industry report, more than half of all small wineries have expressed an interest in engaging in M&A over the next several years as an exit opportunity, representing a tremendous opportunity for consolidation of brands that have market fit, but who lack the relationships in wholesale to scale effectively. We believe this opens up attractive acquisition opportunities for us in the future.

Retail Accounts

Retail account growth is a key metric for our continued growth in wholesale as it is a measure of how widely our products are distributed. We began building our business with independents and have expanded to find increasing success in regional and national retail accounts. From 2019 to 2020 we grew from over 4,700 to over 7,700 retail accounts delivering a 63% increase. This is still a relatively small footprint when considering the universe of potential retail accounts which leaves a large addressable market. Continued investment in the wholesale sales team will strengthen our ability to service a growing retail account base. Lastly we believe future growth will be accelerated by new core brands and acquired brands with existing significant retail account bases.

Average Sales Velocity

Sales velocity, which we define as sales per point of distribution, is an important metric that measures how well our products sell when on the shelf. In 2020 our average sales velocity in the channel was 4.27 cases per retail account per year per SKU. We believe that the trial, storytelling and digital marketing in the DTC channel creates awareness for our brands even in early stages of distribution. This awareness along with eye catching brands and highly rated wines at high velocity price points all contribute to velocity.

Stock Keep Unit or SKUs per Retail Account

High velocity brands with an expanding retail account base create future opportunities for additional SKUs to find shelf space within each existing retail account. We believe that continuing to expanding our core portfolio and increasing the number of SKUs carried by each retail account will allow us to increase wholesale revenue over time.

Sales & Marketing Strategy

DTC Consumer Metrics

Throughout our history, we have maintained a disciplined, data-driven and returns-based focus on the deployment of marketing dollars to grow our consumer base and acquire new members. We have a well-diversified mix of consumer acquisition channels that has allowed us to scale while acquiring consumers at

a profitable rate. We also offer a strong value proposition through our portfolio of brands and digital experience that drives consumer loyalty, retention, and consumer lifetime value. Management targets a 3.0x LTV/CAC ratio over five years and 1.0x return on CAC within the first twelve months following consumer acquisition. Our disciplined approach has allowed us to achieve these targets over the past five years. We believe we are well-positioned to expand our DTC business and continue to drive sustainable growth by executing on the following consumer acquisition and retention strategies:

Consumer Acquisition

Our business performance depends, in part, on our continued ability to cost-effectively acquire new consumers within our DTC channel. We define consumer acquisition cost, or CAC, as performance and marketing expense attributable to consumer acquisition less the gross profit from gift card sales, divided by the number of new members that have signed up to participate in the Winc.com membership program for that same period.

Loyalty & Retention

We intend to drive continued revenue growth on the Winc.com platform by enhancing our consumer value proposition and increasing loyalty and consumer retention. Our consumers have shown they love to explore new products and as we introduce additional brands to our platform, we believe the value proposition will increase and further drive retention. Continued improvement of our digital product and use of data science to draw insights from our millions of website data points will allow us to eliminate friction in the shopping experience, improve our personalized product recommendations, and build on our portfolio of brands that our members know and love. We have observed historical success in these strategies that have led to increases in consumer lifetime value and average order values over the last several years, and we believe those trends will continue with further product innovation and enhancement of the digital product.

Our continued success depends in part on our ability to retain, and drive repeat purchases from, our existing consumers. We monitor retention across our entire DTC consumer base. Our goal is to attract and convert visitors into active consumers and foster relationships that drive repeat purchases. Newly acquired consumers frequently make one or more repeat purchase in the same year, which is supplemented by the embedded growth from prior-year cohorts' consumers who continue to purchase from us. We expect the percentage of net revenues from repeat consumers to increase in the coming years as we look to maintain our high month over month retention rate. In 2020, we exhibited an 89.6% average monthly consumer retention rate, defined as consumers who bought in one month and made a subsequent purchase in the following month, which we believe reflects our ability to retain our consumers through differentiated product offerings and a customized consumer experience. We believe that the development of differentiated product offerings, community-driven brands and customized digital consumer experience leads to higher retention rates among repeat users.

Consumer Lifetime Revenue

We define consumer lifetime revenue, or LTR, for any member or group of members as of any date, as the total revenue generated from each member or group of members as of such date on the Winc digital platform. Revenue is generated through purchases of product from the digital platform as well as unused membership credits. We have been able to increase subscription LTR with continued investment in our brand portfolio and overall shopping experience, with 2019 and 2020 outperforming earlier year's cohorts in their respective periods. The general trend of Cohort LTRs has been up over the past five years.

Consumer Lifetime Value

We define consumer lifetime value, or LTV, as the total gross profit generated from each member on the Winc digital platform on a 5-year historical basis, adjusted for any unused credit breakages. To determine the total gross profit generated from each member, we reduce our revenue for any unused credit breakages, multiply each month of revenue by the associated average gross margin percentage generated in 2020, then sum the dollar values on a cumulative basis. To properly account for gross margin differences between the discounted initial purchase and subsequent months, we multiply the average 2020 gross margin percentage from initial discounted purchases to the first month of revenues and the average 2020 gross

margin percentages from such segment purchases to the revenues from all subsequent months. This means our DTC gross margin percentage in our segment analysis, which does not distinguish between first purchases and subsequent purchases, may not correspond directly with the gross margin percentages used here.

Consumer Lifetime Value / Consumer Acquisition Cost (LTV/CAC)

Our disciplined approach has allowed us to achieve an average LTV/CAC ratio of in excess of 3.0x when observing the 2014-2016 cohorts, which provides data to calculate this on a 5-year historical basis. Furthermore, on a nearly 5-year historical basis, our 2017 cohort has demonstrated an LTV/CAC ratio in excess of 4.0x to date, as of May 1, 2021. More recently, consumers in our 2020 cohort have already demonstrated a return of 2.3x LTV/CAC in the first year since consumer acquisition and 2.6x on a fully-aged basis, as of May 1, 2021. We aim to target a 3.0x LTV/CAC ratio on a 5-year historical basis for future performance. Despite this track-record of recent success, we aim to target a 3.0x LTV/CAC ratio for future performance.

DTC Strategic Summary

Because the Winc.com DTC segment is but one segment of our overall growth and brand-building strategy that should also benefit from strong wholesale growth, we have made the strategic decision to be very disciplined around consumer acquisition cost and maintain a strong returns-based focus for our DTC segment versus an overly aggressive growth-based focus, regardless of cost. This will be particularly important during periods when industrywide consumer acquisition costs are rising rapidly. We also believe our ability to build a broad portfolio of core brands, that benefit from substantial brand recognition and consumer loyalty due to their extensive retail shelf presence, will organically support, if not enhance several key DTC success metrics over time. This disciplined capital allocation philosophy is a key differentiator for us versus many DTC-only competitors in the Alcoholic Beverages industry.

Wholesale Sales growth

Our wholesale sales force is composed of team members across the United States focused on expanding our retail account base and increasing our sales velocity in chain, on-premise and off premise retail accounts. Our wholesale portfolio is sold in all 50 states and countries. In 2020, we sold to over 7,700 retail accounts, more than 63% growth from 2019. With an addressable market of more than 500,000 licensed retail accounts within the United States alone, there is ample opportunity for further expansion.

In addition to expanding the overall number of our retail accounts, we also expect to be able to increase the number of cases we sell per brand in our existing retail accounts given success we have had to date selling through wholesale distributors and retailers. Growth in wholesale is furthered by the expansion of SKUs that we will be able to offer to wholesale distributors and retailers. With each subsequent brand that demonstrates traction in both our wholesale and DTC channels, we believe we will continue to acquire shelf space share in these retailers. The opportunity to scale our SKU count will occur as we find brands that complement our current core brands—Summer Water, Folly of the Beast, Lost Poet, Wonderful Wine Co. and Chop Shop. We will launch new innovative brands through our *Ideate*, *Launch* and *Amplify* framework, but will also look to acquire brands that are ripe for wholesale expansion.

Winemaking

With the vast majority of work happening in the vineyard, we have a long-term focus on investing in sustainable and organic farming and winemaking practices. Because at the heart of all great wine is great raw material, we are champions of minimal intervention winemaking practices, which allows us to respect the raw product, shape award winning wines and leave vineyards in a healthy state for future harvests. We seek low sugar, low sulfite, vegan wines, which we believe deliver the most natural expression of quality.

We source from exceptional vineyards and partner with exceptional winemakers from around the world. Our relationships with independent winemakers and growers allow us to deliver even greater quality and diversity. The hundreds of unique wines we have bottled from around the globe range from classic blends to obscure, single vineyard fringe projects. We feel an obligation to showcase the best that every region, varietal and style has to offer, at the best value possible.

By deploying a multipronged sourcing strategy on a global basis, we are able to adapt to changing consumer market dynamics, opportunistic sourcing and shifting consumer demand. We believe our strategy across categories allows us the flexibility and scope to source the best possible product in a more capital-efficient fashion than most wineries at scale whose product decisions are driven by significant assets or holdings.

Brand Case Studies: Summer Water and Lost Poet

The following case studies help illustrate the effectiveness of our innovation platform at developing successful brands at scale by both improving wine quality based on early brand success and developing a culturally relevant brand to match a quality wine, as validated by our DTC consumers.

Summer Water—Summer Water is an example of our *Ideate*, *Launch*, *Amplify* strategy. Launched with only 300 cases of spot market rosé, we received immediate feedback from our DTC consumers that the brand was resonating. This allowed us to quickly iterate on the product to match the potential for the brand. The wine team changed the blend and style to Grenache and Syrah, respectively, and created a scaleable sourcing strategy. A national DTC footprint allowed us to *Amplify* in a way that many start up brands with regional distribution cannot, due to limited product availability for consumers. Our *Amplification* strategy included rich storytelling, influencer campaigns, performance marketing and a focus on non-wine consumer press, knowing that anyone engaging with the content could ultimately purchase the wine even with no shelf presence. With a belief that our brands need to be present at all consumer touch points, we launched into wholesale in California and immediately saw the value of our digital marketing strategy as the brand gained traction with prestigious restaurant and retail accounts. The brand was picked up by Whole Foods in Southern California and quickly became their best-selling rosé. This success propelled the brand into more retail accounts and ultimately set the stage for national wholesale expansion where it has continued to find success, most recently in Walmart and other national chains. Today, Summer Water is the #7 best-selling pure play rosé brand in the United States. From a winemaking perspective, Summer Water proves our ability to improve quality even when rapidly scaling. The 2020 vintage was awarded 92 points and #56 on the top 100 wines of 2020 by Wine Enthusiast. Brand extensions in sparkling, single serve, and a chillable red set the stage for long term durable growth and scale.

Lost Poet—Lost Poet is a case study in the power and flexibility of our platform to innovate. In this case our team matched a proven blend with a next generation *Amplification* strategy. Based on our proprietary data and over 70,000 consumer ratings at an average of rating 4.14 out of 5.00, we knew that this raw material had a flavor profile and style that was resonating with our community. What we didn't have was a brand concept that could match the growth potential of this wine that had been validated by our younger consumers. With the goal of engaging a very important shopper profile for retailers we partnered with Atticus, a best-selling author and Instagram poet with a younger female audience. We employed a next-gen brand and *Amplification* strategy including influencer partnerships, digital marketing and trial in DTC. Once *Amplified* we presented the brand and the associated data set to the buying team at Target. In the first quarter of 2021, Lost Poet launched into 347 Target stores. We believe that with early success and an evergreen marketing strategy we can achieve national distribution soon, as the velocity of growth has exceeded our expectations and we feel the stage is set for national expansion. We believe that not only can we deliver culturally relevant and high-velocity brands to our collaborators through our unique marketing capabilities, but, as seen through our proprietary data, insights and ability to innovate, we can become a valued partner in expanding future sales with younger consumers.

Supply Chain Overview

We have developed a highly efficient supply chain that minimizes capital investment and provides a broad range of supply and production alternatives.

Use of co-manufacturers

We operate using an asset-light model by leveraging a network of co-manufactures in California to accomplish our various production and bottling needs; a relationship known in the wine industry as Alternating Proprietor agreements. This model allows us to lower the up-front capital expenditures necessary

to manufacture wines and reduce the personnel costs related to manufacturing. We dictate to the co-manufacturing facility all workflows, and the co-manufacturing facility, in turn, carries out the winery production. Under our direction, we have the ability to work with our co-manufacturers to maintain high standards, oversight and ensure compliance with all requirements while utilizing the co-manufacturers' facility and staff on our behalf.

Inventory management

We aim to curate a diverse and balanced selection of wines to our members. Inventory is managed by the constant evaluation of consumer data and channel performance, allowing us to embrace omni-channel inventory balancing. As a result, we have never experienced dead stock or back vintage, which we believe is very unique in the traditional winery landscape. Through data-driven models, we have been able to predict and anticipate demand for our products. For example, we analyzed ratings and site behavior for the 2019 Cabernet Sauvignon varietal of our Porter & Plot brand to launch the same wine as a limited exclusive in our wholesale channel. Our product planning strategy takes into account many factors, including but not limited to price points, varietals, countries of origin, wine style and brands. Our proprietary DTC data enables us to understand buying behaviors, product preferences, read SKU velocities and evaluate consumer ratings to inform our overall product breath and volume needs. Traditional wineries do not have access to this real time indication on performance and thus wait for third-party data, which is often significantly lagging to current volume, to make decisions on a go forward plan. As a result, traditional wineries invest in product, even new vintages, before they have a sense of performance. We believe our data-driven production plan is incredibly nimble and, thus, our inventory can flex up or down based on the demands of our DTC and wholesale channels. Additionally, balancing inventory between channels with our biggest brands means we can release new vintages and wines in-line with consumer and wholesale buyer expectations.

Sourcing

Our sourcing is approached under two main channels; grape to glass and contract wines. There are two categories of contract wines; contract and spot market sourcing. By deploying a multipronged sourcing strategy on a global basis, our team has the ability to adapt to changing consumer market dynamics, opportunistic sourcing and shifting consumer demand. We believe our strategy across categories allows us the flexibility and scope to source the best possible product in a capital-efficient fashion not typically employed with more vertically-integrated traditional wineries.

Grape to glass

We utilize our direct grower relationships and broker network to secure grapes for these programs. We deploy a grape to glass strategy for projects that require a very distinct style. Summer Water is a great example of this strategy. The grapes and winemaking for this project are very specific to achieve the quality and style that has made it so successful; our primary suppliers for this project are Coastal Vineyard Care, and Santa Barbara Highlands Vineyard. We believe thoughtful sourcing, farming, winemaking are integral to achieving this level of quality even as we continue to scale.

Contract wine

Contract wine is wine that is purchased from a third party to make on our behalf. Generally, the third party is vertically-integrated and we can leverage that integration by signing a bulk wine agreement to get high quality to price ratio and can still be made under the direction of our winemaking team. Contract wine holds four main benefits; securing hard to find and in demand varietals, securing long term growth hedging against any possible short supply, establishing a consistent price point and quality for a component of a blend or brand, and cash flow efficiency. We are only required to put a deposit on wine, as opposed to realizing all costs and then holding in tank until it matures and is ready for bottle (a process typically ranging from six to twelve months). These contracts are anywhere from one to three years. Our winemaking team works in collaboration with these third parties to shape the wines and pursue optimization and improvements on quality with each new vintage. Our primary contract wine suppliers include Lange Twins, Central Coast Wine Services and O'Neill Wines.

Spot market

Components of blends or wines purchased outside of contract are classified as spot market purchases. While we have a trusted network of growers and collaborators, global supply and demand of high-quality wine is rarely in balance. We believe we are in a position to take advantage of these conditions when it ultimately benefits our consumers with respect to price and eventual wine quality. This represents the most capital efficient part of the supply chain as it is just in time sourcing. While not our core, this strategy has been very helpful in efficiently scaling production to meet high growth and allows for low risk testing of new collaborators and styles.

Bottling

We have partnered with seven different bottling facilities, utilizing an Alternating Proprietor agreement, within the state of California. Each facility possesses its own niche strengths and capabilities, including but not limited to: organically certified, cost and scale flexibility as well as formulation and packaging competencies. Our dedicated and experience winemaking and product operations team manage the planning, production and supply chain to ensure bottling timelines, budgets, and the needs of our sales channels are met.

Labeling

We have in-house branding and compliance teams that work hand-in-hand to create visually appealing labels for our consumers in accordance with TTB requirements. Labels are printed by various vendors in the United States and shipped to our bottling facilities in accordance with production timelines. We work with several different vendors to ensure optimal pricing as well as access to the latest printing capabilities and technology.

Warehousing and product distribution

Finished inventory is freighted to our two warehouse and fulfillment centers located in Santa Maria, California and Garnet Valley, Pennsylvania. These bi-coastal locations allow delivery of 80% of orders within two days, using ground shipping. Our investment in these Winc-operated warehouses differentiates us from competitors who often use third party logistics. By comparison, we custom pack and ship finished products to our DTC consumers across the United States as well as house inventory for wholesale pick-up.

Inventory levels are tracked and maintained through our warehouse management system. We regularly evaluate our distribution infrastructure and capacity to ensure that we are able to meet our anticipated needs and support our continued growth across all sales channels.

As a result of our direct involvement in warehousing and product distribution we believe we have greater flexibility on multi-channel fulfillment. In fact, we have even been previously engaged by direct competitors to fulfill and ship orders due to our high-level performance and product expertise.

Shipping and Delivery

Inventory to fulfill our DTC orders is stored between two Winc-operated fulfillment centers. Inventory is balanced between these two warehouses to pick, pack and ship orders based on best-cost-routing to ensure the shortest delivery times and lowest shipping cost. We have negotiated proprietary contracts with the largest national shippers, with FedEx shipping the majority of our DTC orders. Final delivery to consumers through FedEx requires age verification and signature.

Environmental, Social and Governance, or ESG, Practices

We are committed to making wines that not only taste good today, but also contribute to good for tomorrow. Environment sustainability is a key focus across all parts of our business from the farms and vineyards we partner with to the bottles and boxes our consumers receive. Additionally, we strive to operate a socially impactful company that considers the well-being of all persons involved in our process to deliver

great products to our consumers. Lastly, we are focused on strict governance standards for running our company in a fair and open manner.

Environmental

We have been actively involved in environmentally sustainable and organic wine-making, and expect to continue our growth into this important area. Our Wonderful Wine Co. brand features all sustainably farmed and pesticide-free grapes, and lightweight glass that requires less energy and less water to produce than the glass we previously used. The industry is growing towards more of a market share for sustainable and organic wines, and our goal is to experience similar growth in sustainable and organic wines.

The vineyard and winery

Sustainability is a winemaking philosophy that encourages mindfulness in three categories: social (livable wages, benefits, safe working environment, continued education and career growth), ecological (stewardship of the land i.e., safe usage of agrichemicals, water usage, vineyard health through cover crops, preservation of local flora and fauna), and economic (a viable business model that ensures company health and longevity). Our sustainable wine follows the philosophy outlined above and is all Sustainable (Certified through Third Party Agencies—Lodi Rules, SIP, CSWGA). Certified Sustainable means the vineyard and wine have passed rigid non-negotiable standards as outlined by the governing agency. Over 50 requirements and practices must be implemented and tracked through independent records and on-site inspections.

Organic international sourcing

The majority of our international sourcing from France, Spain, Argentina, and Italy is currently certified organic. Grapes are certified organic by a third party (NOP, ECCOCERT, USDA or CCOF). These certifiers work together to enforce the standards, ensuring a level playing field and protecting consumer confidence. In order to label any domestic or international wines as organic all certification has to then be verified by the TTB. In addition, our purchase of certain assets of Natural Merchants, Inc., an international wine importer in May 2021 gives us core capabilities and access to organic farmed grapes that will be used across our products to increase the amount of sustainably and organic farmed grapes we use in our wines.

Environmentally-Friendly Logistics and Manufacturing

By using flexi-tanks to ship our wines and bottling closer to the point of sale, we can ship more than twice as much wine per container, reducing our carbon footprint on shipping. When we transfer our wines over road, we do not use refrigerated trucks, which emit CO2 and increase vehicle fuel demand, instead opting for reusable insulated blankets and truck liners. The boxes our consumers receive are made from 70% post-consumer materials and are 100% recyclable. They have been designed to use the least amount of corrugate possible while keeping our members' wine secure for delivery to their doorstep. Additionally, we expect to switch to Vinc Neo Corks in the majority of our future SKU production, which is expected to have a negative carbon footprint. These corks are 100% plant based, 100% sustainable and made from discarded materials in an effort to eliminate as much waste as possible. We have also removed foils from most of our bottles to further reduce waste. Most of our foils are now made from polylaminate, more easily recyclable than aluminum counterparts. We also expect to incorporate light weight glass into our production. Light weight glass takes less energy and less water to manufacture than the average weight bottle.

Human Capital

We are building a team that shares our goals of creating products that help to enhance our consumer's everyday celebrations. We are driven and committed to building a high performance team that is driven to build a great company and continue to improve themselves. We are believers in challenging the status quo in an industry that has been mostly unchanged for 100 years and are motivated to find increasingly better ways to bring everyone to the table. We are led by Geoff McFarlane and Brian Smith's combined leadership in CPG brand-building and wine-making over the last 20 years. They are joined on the executive team by Matt Thelen, with more than ten years of strategy experience in highly-regulated sectors; Carol Brault, boasting more than 30 years of finance experience in the CPG space; and Erin Green, responsible

for startup operations for over a decade. However, without the awesome individuals who work at Winc, our leadership team would not have been able to execute on our success to date.

We are growing fast and recognize that the awesome individuals who work at Winc are at the center of our success. We are investing into improving our community and employee development and continue to be hungry. As of June 30, 2021, we had a total of 97 full-time employees, as well as a limited number of temporary employees and consultants. In building our high-performing teams, we have invested in leadership, marketing, digital and technology capabilities. Embedded in our culture are core values that honor diversity and inclusion, which allow us to attract and retain valuable talent. We offer a competitive compensation and benefits program and opportunities for our employees to grow and develop personally and professionally. Our corporate social responsibility efforts provide opportunities for employees to give back to communities in need through volunteerism, donation matching and paid volunteer time off. We foster an environment of community and support within our organization. We maintain a strong relationship with our employees and have never experienced a labor-related work stoppage.

IT Systems

Winc.com is a platform that has been built by our internal team in order to execute on our membership-based subscription model and deliver on a best-in-class member experience through unique & proprietary features. Through this platform, we are able to operationalize our credits-based membership model and have a full suite of customization opportunities on the website, something that DTC businesses built on out-of-the-box platforms may not have. Additionally, our homegrown digital product experimentation platform allows us to rapidly test new ideas to improve consumer acquisition efficiency, gather consumer feedback and data, increase average order value, and improve the member experience.

Competition

The Alcoholic Beverages industry generally, and the wine industry in particular, is intensely competitive. We compete with online DTC wine retailers, such as Naked Wines, Firstleaf and Bright Cellars, which curate wines based on consumers' preferences, and online wine clubs. However, unlike us, none of these companies function as fully-integrated wineries with nationally distributed brands. We believe our brands attract member loyalty and give us a competitive advantage.

In addition to online wine retailers, we also compete with other wineries that ship directly to consumers and distribute their wines through third parties to restaurants and brick-and-mortar retailers, such as Constellation Brands, E & J Gallo Winery and Duckhorn Vineyards. The wines we produce and distribute compete with domestic and foreign wines in the premium, super-premium and ultra-premium wine market segments. Our wines also compete with other alcoholic and, to a lesser degree, non-Alcoholic Beverages, for shelf space in retail stores and for marketing focus by independent wholesale distributors, many of which carry extensive brand portfolios.

We believe our ability to compete effectively in our industry is primarily on the basis of developing a portfolio of high-quality and culturally relevant brands and innovative products that resonate with our consumers.

Intellectual Property

Our ability to compete in our industry depends in part on our ability to obtain, maintain, establish, protect and enforce our intellectual property rights. We protect our intellectual property rights through a combination of trademark and trade secret protection, and other intellectual property protections under applicable law. We register domain names, trademarks, and service marks in the United States and abroad. We also seek to protect and avoid disclosure of our intellectual property through confidentiality, non-disclosure and invention assignment agreements with our employees, and through appropriate agreements with our suppliers and others. Our intellectual property is an important component of our business, and we believe that our know-how and continued innovation are important to developing and maintaining our competitive position. We also believe having distinctive marks that are readily identifiable on our products is an important factor in continuing to build our brand and distinguish our products. We consider the WINC logo trademarks to be among our most valuable intellectual property assets. In addition, we have registered

the trademarks for many of our wines and product names, and have also obtained trademark protection for several of our tag lines. Several of our wine brands, services and accessories are under registered U.S. trademarks. Each registration is renewable indefinitely so long as the Company is making a bona fide usage of the trademark. As of December 31, 2020, between the United States and foreign jurisdictions, we own approximately 95 registered trademarks and 10 pending trademarks, including registrations for "WINC" and "SUMMER WATER". We do not currently own any patents or registered copyrights and primarily rely on trademarks and trade secret protection.

While there is no active litigation involving any of our trademarks or other intellectual property rights, and we have not received any notices of trademark or other intellectual property infringement, we may be required to enforce or defend our intellectual property rights against third parties in the future. See "Risk Factors—Risks Related to Intellectual Property and Data Privacy" for additional information regarding these and other risks related to our intellectual property portfolio and their potential effect on us.

Government Regulation

Regulatory framework

We, along with our contract growers, producers, manufacturers, wholesale distributors, retail accounts and ingredients and packaging suppliers, are subject to extensive regulations in the United States and abroad by federal, state and local government authorities with respect to registration, production processes, product attributes, packaging, labeling, storage, shipping and distribution of wine.

We are also subject to state and local tax requirements in all states where our wine is sold. We and our third-party providers monitor the requirements of relevant jurisdictions to maintain compliance with tax liability and reporting matters.

Alcohol-related regulation

We are subject to extensive alcohol-related regulation in the United States by federal, state and local laws regulating the production, distribution and sale of Alcoholic Beverages, including by the TTB and the FDA. The TTB is primarily responsible for overseeing alcohol production records supporting tax obligations, issuing wine labeling guidelines, including grape source and bottle fill requirements, as well as reviewing and issuing certificates of label approval, which are required for the sale of wine through interstate commerce. We carefully monitor compliance with TTB rules and regulations, as well the state law of each state in which we sell our wines. In California, we are subject to alcohol-related licensing and regulations by many authorities, including the ABC. ABC agents and representatives investigate applications for licenses to sell Alcoholic Beverages, report on the moral character and fitness of alcohol license applicants and the suitability of premises where sales are to be conducted and enforce California Alcoholic Beverages laws. We are also subject to municipal authorities with respect to aspects of our operations, including applicable land use laws and the terms of our use permits.

Employee and occupational safety regulation

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

Environmental regulation

As a result of our agricultural and wine production activities, we and certain third parties with which we work are subject to federal, state and local environmental laws and regulations. Federal regulations govern, among other things, air emissions, wastewater and storm water discharges, and the treatment, handling and storage and disposal of materials and wastes. State environmental regulations and authorities intended to address and oversee environmental issues are largely state-level analogs to federal regulations

and authorities intended to perform the similar purposes. In California, we are also subject to state-specific rules, such as those contained in the California Environmental Quality Act, California Air Resources Act, Porter-Cologne Water Quality Control Act, California Water Code sections 13300-13999 and Title 23 of the California Administrative Code and various sections of the Health and Safety Code. We are also subject to municipal environmental regulations that address a number of elements of our wine production process, including air quality, the handling of hazardous waste, recycling, water use and discharge, emissions and traffic impacts.

Labeling regulation

Many of our wines are identified by their appellation of origin, which are among the most highly regarded wine growing regions in the world. An appellation may be present on a wine label only if it meets the requirements of applicable state and federal regulations that seek to ensure the consistency and quality of wines from a specific territory. These appellations designate the specific geographic origin of most or all (depending on the appellation) of the wine's grapes, and can be a political subdivision (e.g., a country, state or county) or a designated viticultural area. The rules for vineyard designation are similar. Most of our labels maintain the same appellation of origin from year to year. From time to time, our winemakers choose to change the appellation of one of our wines to take advantage of high-quality grapes in other areas or to change the profile of a wine.

Privacy and security regulation

Our Company collects personal information from individuals. Accordingly, we are or may become subject to numerous data privacy and security related regulations, including but not limited to: U.S. state privacy, security and breach notification laws. Certain U.S. states have adopted robust data privacy and security laws and regulations and others are considering doing so. For example, the CCPA, which took effect in 2020, imposes obligations and restrictions on businesses regarding their collection, use, and sharing of personal information and provides new and enhanced data privacy rights to California residents, such as affording them the right to access and delete their personal information and to opt out of certain sharing of personal information. Further, the CPRA was recently voted into law by California residents. The CPRA significantly amends the CCPA, and imposes additional data protection obligations on covered companies doing business in California, including additional consumer rights processes and opt outs for certain uses of sensitive data. It also creates a new California data protection agency specifically tasked with enforcing the law, which will likely result in increased regulatory scrutiny of California businesses in the areas of data protection and security. In addition, the FTC and many state attorneys general are interpreting existing federal and state consumer protection laws to impose evolving standards for the online collection, use, dissemination and security of information about individuals. As we expand our business in the future, we may increasingly become subject to data privacy and security laws in foreign jurisdictions. In response to the data privacy laws and regulations discussed above and those in other countries in which we do business, we have implemented several technological safeguards, processes, contractual third-parties provisions, and employee trainings to help ensure that we handle information about our employees and consumers in a compliant manner. We maintain a privacy policy and related procedures, and train our workforce to understand and comply with applicable privacy laws. See "Risk Factors — Risks Related to Intellectual Property and Data Privacy" for additional information regarding the risks related to compliance with data privacy and security laws and their potential effect on us.

Facilities

Following the outbreak of COVID-19, we have implemented various social distancing measures, including implementing a virtual-first employment model in an effort to provide a safe work environment. We currently do not occupy and have two non-cancelable sublease agreements for our former corporate headquarters located at 5340 Alla Road Suite 105 Los Angeles, California, consisting of approximately 18,920 square feet of office space, pursuant to sublease agreements that expire in 2023. This lease expires in 2023 and provides us with an option to extend it for five years. We entered a lease for additional office space located at 1745 Berkeley St., Studio 1, Santa Monica, CA 90404, consisting of approximately 2,970 rentable square feet, on June 28, 2021. The lease expires in 2024. As of December 31, 2020, we also had two non-cancelable operating leases for warehouse facilities located in Santa Maria, California and Garnet

Valley, Pennsylvania where we occupy approximately 60,548 and 53,040 square feet, respectively. The Santa Maria warehouse lease expires in 2023, with an option to extend the lease for one year, while the Garnet Valley warehouse lease expires in 2022, with two options to extend the lease for five years. In total, we have over approximately 113,000 square feet of facility space that can be leveraged to fulfill DTC and retail orders. We believe that our current facilities are suitable and adequate to meet our current needs.

Legal Proceedings

We are subject to various legal proceedings and claims that arise in the ordinary course of our business. Although the outcome of these and other claims cannot be predicted with certainty, we do not believe the ultimate resolution of the current matters will have a material adverse effect on our business, financial condition, results of operations or prospects.

MANAGEMENT

Executive Officers and Directors

The following table sets forth information for our executive officers and directors as of June 30, 2021.

Name	Age	Current Position
Executive Officers		
Geoffrey McFarlane	37	Chief Executive Officer, Founder and Director
Brian Smith	47	President, Founder and Chairperson of the Board of Directors
Matthew Thelen	35	General Counsel and Chief Strategy Officer
Carol Brault	56	Chief Financial Officer
Erin Green	37	Chief Operating Officer
Non-Employee Directors		
Laura Joukovski	47	Director
Xiangwei Weng	52	Director
Patrick DeLong	56	Director
Alesia Pinney	57	Director
Mary Pat Thompson	58	Director

Executive Officers

Geoffrey McFarlane has served as our Chief Executive Officer since May 2018 and as a director since August 2011, building Winc into a vertically integrated winery. As a serial entrepreneur, Mr. McFarlane has a versatile background as a founder, executive and advisor for a wide variety of companies. In 2011, Mr. McFarlane co-founded Winc and served as the company's chief operating officer from August 2011 to January 2018 before becoming the chief executive officer. Prior to Winc, he was founder and chief executive officer of a restaurant and hotel group, Pizza Republica and the Jet Hotel, with seven locations and over 200 employees, from May 2004 until April 2012. Mr. McFarlane also serves as a director of several private companies, including Amass Brands Inc., a botanical beverage and personal care product company, since January 2017, Voyage SMS Inc., an ecommerce mobile messaging platform, since February 2018 and Westbound and Down Inc., a Colorado brewpub, since December 2015. In 2013, Mr. McFarlane filed a voluntary petition for personal bankruptcy under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the District of Colorado. The resulting case was closed in 2016. We believe Mr. McFarlane is qualified to serve on our board of directors due to his integral knowledge of the company, industry expertise and extensive experience developing and growing consumer-oriented beverage businesses.

Brian Smith has served as our President since May 2018 and as Chairperson of the Board of Directors since June 2020. Mr. Smith combines his years of experience as a sommelier, winemaker, brand builder, and entrepreneur to oversee what we believe is the world's most innovative and culturally relevant wine program. Prior to Winc, Mr. Smith founded Jolie Folle, a millennial focused wine brand, which he sold the company in 2017. Before that, he served as Wine Director of Clo Wine Bar. Mr. Smith began his career in finance at Man Group PLC and founded his first company, Meritage Group, a Virgin Islands based commodities brokerage that catered to hedge funds and commodity traders, in 2004. Mr. Smith graduated from the University of Vermont with a bachelor's degree in Cultural Anthropology. We believe Mr. Smith is qualified to serve on our board of directors due to his central knowledge of the company as a co-founder and years of experience creating and growing wine-focused hospitality concepts.

Matthew Thelen has served as our General Counsel since October 2014 and Chief Strategy Officer since April 2021. He leads the Company's corporate strategy and financing initiatives and any special projects that fall outside the typical business remit. As General Counsel, he oversees all Winc legal matters, including beverage regulatory compliance, corporate, commercial transactional, intellectual property, consumer protection, employment, litigation and privacy practice areas. Previously, Mr. Thelen was an

intellectual property strategy and valuation professional for Ocean Tomo, a San Francisco based merchant bank, and an attorney at Collins, Collins, Muir & Stewart. He received a Bachelor of Economics from the University of San Diego and a Juris Doctorate and Masters of Business Administration from the University of Notre Dame.

Carol Brault has served as our Chief Financial Officer since April 2021. Previously, Ms. Brault served as our Vice President of Finance from February 2018 to April 2021. Before joining Winc, Ms. Brault was Accounting Director at The Honest Company, a consumer products company that supplies baby, personal, beauty and home products for ethical consumerism. Prior to that, she served as controller for Bare Escentuals from 2013 until 2016 and held leadership roles in several prominent multi-national companies, including Bath & Body Works, LBrands, The Longaberger Company and Honda of America Manufacturing, Inc. In addition to, her extensive career includes consulting for various companies on financial and organization guidance to start-up, mid-size and multimillion-dollar organizations. Ms. Brault has a Bachelor of Science in Business Administration/Accounting from The Ohio State University Fisher College of Business.

Erin Green has served as our Chief Operating Officer since April 2021, and is responsible for all operational functions of the business and the strategic vision of Winc's national wholesale team. Ms. Green previously served as our Vice President of Operations from December 2018 until April 2021 where she built our wholesale distribution channel and scaled our sales team in addition to overseeing all day-to-day operations and the winemaking team. Prior to that she held the Director of Operations role from January 2015 until November 2017 focused on primarily on optimization of our warehousing, logistics, shipping and packaging. Previous to Winc, Erin worked at LivingSocial overseeing all deal operations and ran point on the Amazon partnership. Ms. Green has a bachelor's degree in Fine Arts from Indiana University.

Non-Employee Directors

Laura Joukovski has served on our board of directors since July 2019. Ms. Joukovski is the CEO of Global Fashion Brands with TechStyle Fashion Group. TechStyle is a portfolio of digital fashion brands in Los Angeles. Ms. Joukovski leads the Global Fashion Brands, including JustFab, ShoeDazzle and FabKids. She was a founding team member of FabKids, and has built out the eco-system of TechStyle businesses across a variety of executive roles since the FabKids acquisition in 2013. We believe Ms. Joukovski is qualified to serve on our board of directors due to industry expertise and extensive experience developing and growing consumer-oriented businesses.

Xiangwei Weng has served on our board of directors since June 2015. Mr. Weng is the founder of Shining Capital Management and has an extensive experience in investment banking and private equity investment. Before founding Shining Capital in 2008, Mr. Weng served as an Executive Director at the Corporate Finance Department and Head of Mergers & Acquisitions for China at Goldman Sachs (Asia) L.L.C. From 2005 to 2007, he served as General Manager and In Charge of Corporate Operations at Gome Electrical Appliances Holding Limited. He also worked at Morgan Stanley from 1998 to 2005, where he was a Vice President in the M&A and Restructuring Group. Mr. Weng received a bachelor's degree in Physics from Peking University and a Ph.D. degree in Biophysics from University of California at Berkeley. We believe Mr. Weng is qualified to serve on our board of directors due to his industry, investment banking and private equity finance expertise.

Patrick DeLong has served on our board of directors since December 2019. Mr. DeLong is the Founder and Principal of Azur Associates, a leading fine beverage consultancy that was founded in 2019. Mr. DeLong has over 30 years of experience working with leading consumer brands across private and public companies. Prior to founding Azur, Mr. DeLong was an executive for 12 years at Crimson Wine Group, where he served as President and Chief Executive Officer from 2014 to June 2019 and as Chief Operating & Financial Officer from 2007 to 2014. Before that, Mr. DeLong served as the Senior Vice President & CFO of Icon Estates, a fine wine division of Constellation Brands, Inc., from 2004 to 2006 and consulting Chief Operating Officer for the Francis Ford Coppola companies from 2006 to 2007. From 1998 to 2004, Mr. DeLong was at the Robert Mondavi Corporation in a variety of executive leadership roles, including Senior Vice President of Finance & Planning. Earlier in his career, Mr. DeLong worked in operating management with Carnival Corporation and began his career with Deloitte working in both audit and consulting and was a certified public accountant. Mr. DeLong holds a bachelor's degree in business

administration from California Polytechnic State University, San Luis Obispo and conducted post-graduate master's studies in applied economics at Seattle University. We believe Mr. DeLong is qualified to serve on our board of directors due to his finance and industry expertise and extensive experience developing and growing consumer-oriented beverage businesses.

Alesia Pinney has served on our board of directors since April 2021. Ms. Pinney has served as the Executive Vice President and Chief Legal Officer at Avalara, Inc., a publicly traded company that provides cloud-based compliance solutions for transaction taxes, since April 2013 and has almost 30 years of experience in legal, advisory and operational leadership roles. Ms. Pinney has served as a member of the board of directors for various entities, including the Washington State Trust for Public Land, and is a director at Sharkbite Games, Inc. Ms. Pinney has a Bachelor's Degree in Accounting from Seattle University, a Master's of Taxation from the University of Denver and Juris Doctor from Seattle University's School of Law. We believe Ms. Pinney is qualified to serve on our board of directors due to her extensive finance and legal experience.

Mary Pat Thompson has served on our board of directors since May 2021. Ms. Thompson has served as a consultant for Bruckmann, Rosser, Sherril & Co., a private equity firm focused on growth capital investments in the consumer products, specialty retail and restaurant sectors, since January 2019; as the President of Titan Technologies, Inc., a leading regional technology solutions provider, since October 2003; as a director for H&E Equipment Services, Inc., an equipment rental company, since September, 2019; and as Chief Financial Officer of Taronis Fuels, Inc., a clean fuel technology company, since April, 2021. She is also a licensed CPA in the State of Idaho. Previously, she served as Senior Vice President of Finance of Animal Health at AmerisourceBergen, a provider of drug distribution and consulting services related to medical business operations and patient services, from February 2015 until October 2018, and has over 30 years of experience in accounting and advisory leadership roles. Prior to her tenure at AmerisourceBergen, Ms. Thompson served as the Chief Financial Officer, Senior Vice President of Finance and Corporate Secretary of MWI Veterinary Supply Inc., an international animal health products supplier, from 2005 to 2015. Ms. Thompson also serves as a member of the board of directors for various entities, including Organika Inc., AAA Oregon/Idaho and Regence BlueShield of Idaho. Ms. Thompson has a bachelor's degree in Business Accounting from the University of Idaho. We believe Ms. Thompson is qualified to serve on our board of directors due to her extensive private equity and finance experience.

Family Relationships

There are no family relationships among any of our directors or executive officers.

Director Independence

Under the rules of the New York Stock Exchange, independent directors must comprise a majority of a listed company's board of directors. In addition, rules require that, subject to specified exceptions, each member of a listed company's audit, compensation, and nominating and corporate governance committees be independent. Under these rules, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (1) accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries; or (2) be an affiliated person of the listed company or any of its subsidiaries. We intend to satisfy the audit committee independence requirements of Rule 10A-3 as of the time of effectiveness of the registration statement of which this information statement forms a part.

Our board of directors has undertaken a review of the independence of each director and considered whether each director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. As a result of this review, our board of directors determined that Laura Joukovski, Xiangwei Weng, Patrick DeLong, Alesia Pinney and Mary Pat

Thompson are "independent directors" as defined under the applicable rules and regulations of the SEC and the listing requirements and rules of the NYSE, representing five of our seven directors. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities and current and prior relationships as they may relate to us and our management, including the beneficial ownership of our capital stock by each non-employee director and any transactions involving them described in the section titled "Certain Relationships and Related Party Transactions."

Board Committees

Upon the effectiveness of the registration statement of which this information statement forms a part, our board of directors will have an audit committee, a compensation committee and a nominating and corporate governance committee, each of which has the composition and the responsibilities described below. In addition, from time to time, special committees may be established under the direction of our board of directors when necessary to address specific issues.

Each of the audit committee, the compensation committee and the nominating and corporate governance committee will operate under a written charter that will be approved by our board of directors in connection with the effectiveness of the registration statement of which this information statement forms a part. A copy of each of the audit committee, compensation committee and nominating and corporate governance committee charters will be available on our website. The reference to our website in this information statement does not include or incorporate by reference the information on or available through our website into this information statement.

Audit Committee

Our audit committee oversees our corporate accounting and financial reporting process and assists our board of directors in monitoring our financial systems. Our audit committee will be responsible for, among other things:

- appointing, compensating, retaining, evaluating, terminating and overseeing our independent registered public accounting firm;
- discussing with our independent registered public accounting firm their independence from management;
- reviewing with our independent registered public accounting firm the scope and results of their audit;
- approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;
- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; and
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters.

Compensation Committee

Our compensation committee oversees our compensation policies, plans and benefits programs. Our compensation committee will be responsible for, among other things:

- reviewing and approving corporate goals and objectives relevant to the compensation of our Chief Executive Officer, evaluating our Chief Executive Officer's performance in light of these goals and objectives and setting compensation; reviewing and setting or making recommendations to our board of directors regarding the compensation of our other executive officers;

- reviewing and approving or making recommendations to our board of directors regarding our incentive compensation and equity-based plans and arrangements; and
- appointing and overseeing any compensation consultants.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee oversees and assists our board of directors in reviewing and recommending nominees for election as directors. Our nominating and corporate governance committee will be responsible for, among other things:

- identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors;
- recommending to our board of directors the nominees for election to our board of directors at annual meetings of our stockholders;
- evaluating the overall effectiveness of our board of directors; and
- developing and recommending to our board of directors a set of corporate governance guidelines and principles.

Role of the Board in Risk Oversight

Our board of directors has an active role, as a whole and also at the committee level, in overseeing the management of our risks. Our board of directors is responsible for general oversight of risks and regular review of information regarding our risks, including credit risks, liquidity risks and operational risks. The compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements. The audit committee is responsible for overseeing the management of risks relating to accounting matters and financial reporting. The nominating and corporate governance committee is responsible for overseeing the management of risks associated with the independence of our board of directors and potential conflicts of interest. Although each committee is responsible for evaluating certain risks and overseeing the management of such risks, the entire board of directors is regularly informed through discussions from committee members about such risks. Our board of directors believes its administration of its risk oversight function has not negatively affected our board of directors' leadership structure.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee is an officer or one of our employees. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of any entity that has one or more executive officers serving on our board of directors or compensation committee.

EXECUTIVE AND DIRECTOR COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "2020 Summary Compensation Table" below. In 2020, our "named executive officers" and their positions were as follows:

- Geoffrey McFarlane, Chief Executive Officer;
- Brian Smith, President; and
- Matthew Thelen, Chief Strategy Officer & General Counsel.

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the effectiveness of the registration statement of which this information statement forms a part may differ materially from the currently planned programs summarized in this discussion.

2020 Summary Compensation Table

The following table sets forth information concerning the compensation of our named executive officers for the year ended December 31, 2020.

Name and Principal Position	Salary ($)	Bonus ($)(1)	Option Awards ($)(2)	Non-Equity Incentive Plan Compensation ($)	All Other Compensation ($)(3)	Total
Geoffrey McFarlane Chief Executive Officer	288,000	115,200	30,415	0	0	433,615
Brian Smith President	288,000	117,456	30,415	0	1,339	437,210
Matthew Thelen Chief Strategy Officer & General Counsel	215,000	86,000	87,400	0	1,144	389,544

(1) Amounts reflect discretionary bonuses payable with respect to 2020 performance and, with respect to Mr. Smith, a one-time bonus of $2,256.

(2) Amounts reflect the full grant-date fair value of stock options granted during 2020 computed in accordance with ASC Topic 718, rather than the amounts paid to or realized by the named individual. We provide information regarding the assumptions used to calculate the value of all option awards made to executive officers in Note 11 to our consolidated financial statements included in this information statement.

(3) Amounts include one-time Company gifts and a related tax gross-up payment.

NARRATIVE TO SUMMARY COMPENSATION TABLE

2020 Salaries

The named executive officers receive a base salary to compensate them for services rendered to our company. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive's skill set, experience, role and responsibilities.

The 2020 Summary Compensation Table above shows the actual base salaries paid to each named executive officer in 2020.

2020 Bonuses

In 2020, each of Geoffrey McFarlane, our Chief Executive Officer, Brian Smith, our President, and Matthew Thelen, our Chief Strategy Officer and General Counsel, was eligible to receive an annual discretionary cash bonus based on our company's overall performance, with such amount ultimately determined in the sole discretion of our board of directors. The actual annual bonuses paid to Messrs. McFarlane, Smith and Thelen were $115,200, $117,456 and $86,000, respectively.

Equity Compensation

We have historically used stock options as the primary incentive for long-term compensation to our employees (including our named executive officers) because they are able to profit from stock options only if our stock price increases relative to the stock option's exercise price, which is set at the fair market value of our common stock as of the applicable grant date. Generally, the stock options we grant vest with respect to 25% of the stock options awarded after a one-year cliff and then in equal monthly installments during the three-year period thereafter, subject to the employee's continued service with us as of the vesting date. In 2020, we granted stock options to Messrs. McFarlane, Smith and Thelen. The equity awards granted to our named executive officers in 2020 are discussed below.

2020 Stock Option Awards

In April 2020, we granted stock options covering 174,000 shares of our common stock to each of Messrs. McFarlane and Smith and 500,000 shares of common stock to Mr. Thelen. These stock options vest with respect to 25% of the shares underlying each stock option on January 1, 2021 and as to the remaining 75% of the underlying shares in equal monthly installments during the three-year period thereafter. If a "corporate transaction" occurs and the applicable executive is terminated either (i) for "cause" by our company, or (ii) by the executive with "good reason" (each as defined in the applicable executive's option agreement), within twenty-four months after the closing date of the corporate transaction, then 100% of the shares underlying the option will immediately become fully vested.

Equity Compensation Plans

We currently maintain the Winc, Inc. 2013 Stock Plan, or the 2013 Plan, in order to offer persons we select an opportunity to acquire a proprietary interest in our company's success, or to increase such interest, through the acquisition of shares of company stock. As noted above, we generally offer stock options to certain of our employees, including our named executive officers, and consultants as the long-term incentive component of our compensation program. For additional information about the 2013 Plan, please see the section titled "2013 Equity Incentive Plan" below.

Other Elements of Compensation

Retirement Plans

We currently maintain a 401(k) retirement savings plan, or the 401(k) plan, for our employees, including our named executive officers, who satisfy certain eligibility requirements. Our named executive officers are eligible to participate in the 401(k) plan on the same terms as other full-time employees. The U.S. Internal Revenue Code of 1986, as amended, or the Code, allows eligible employees to defer a portion of

their compensation, within prescribed limits, on a pre-tax basis through contributions to the 401(k) plan. Currently, we do not offer any employer matching contribution to participants in the 401(k) plan. We believe that providing a vehicle for tax-deferred retirement savings through our 401(k) plan adds to the overall desirability of our compensation package and further incentivizes our employees, including our named executive officers, in accordance with our compensation policies.

Employee Benefits and Perquisites

Health Welfare Plans. All of our full-time employees, including our named executive officers, are eligible to participate in our health and welfare plans, including:

- medical, dental and vision benefits;
- short-term and long-term disability insurance; and
- life insurance.

We believe the perquisites described above are necessary and appropriate to provide a competitive compensation package to our named executive officers.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes the number of shares of common stock underlying outstanding equity incentive plan awards for each named executive officer as of December 31, 2020. Each equity award listed in the following table was granted under the 2013 Plan.

			Option Awards					
Name	Grant Date		Vesting Commencement Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date
Geoffrey McFarlane	)	8/29/2013(1	5/1/2013	1,239,064	—	—	0.06	8/27/2023
	)	12/12/2013(1	5/1/2013	312,500	—	—	0.06	12/10/2023
	)	5/13/2019(1	4/1/2014	450,211	—	—	0.16	6/09/2024
	)(3)	5/13/2019(2	1/1/2018	400,000	—	—	0.16	5/1/2028
	)	5/13/2019(1	9/1/2015	250,000	—	—	0.16	2/10/2026
	)(3)	6/21/2019(2	4/1/2019	3,000,000	—	—	0.16	6/20/2029
	)	6/21/2019(4	N/A	—	—	1,500,000	0.16	6/20/2029
	)(3)	4/28/2020(2	1/1/2020	174,000	—	—	0.50	4/27/2030
Brian Smith	)(3)	5/13/2019(2	1/1/2018	437,500	162,500	—	0.16	5/1/2028
	)	5/13/2019(1	4/1/2014	200,000	—	—	0.16	6/9/2024
	)	5/13/2019(1	9/1/2015	250,000	—	—	0.16	2/10/2026
	)(3)	6/21/2019(2	4/1/2019	1,250,000	1,750,000	—	0.16	6/20/2029
	)	6/21/2019(4	N/A	—	—	1,500,000	0.16	6/20/2029
	)(3)	4/28/2020(2	1/1/2020	—	174,000		0.50	4/27/2030
Matthew Thelen	)	5/13/2019(1	10/21/2014	102,000	—	—	0.16	12/14/2024
	)	5/13/2019(1	3/7/2016	10,000	—	—	0.16	3/5/2026
	)	5/13/2019(1	1/1/2017	19,583	417	—	0.16	12/12/2027
	)(3)	5/13/2019(2	1/1/2018	91,145	33,855	—	0.16	5/1/2028
	)(3)	6/21/2019(2	4/1/2019	290,770	407,080	—	0.16	6/20/2029
	)(3)	4/28/2020(2	1/1/2020		500,000	—	0.50	4/27/2030

(1) This option vests and, as applicable, becomes exercisable with respect to 25% of the total number of shares underlying the option upon completion of twelve months of continuous service after the vesting commencement date and as to 1/48th of the total number of shares underlying the option for each month of continuous service thereafter.

(2) This option is early exercisable.

(3) This option vests and, as applicable, becomes exercisable with respect to 25% of the total number of shares underlying the option upon completion of twelve months of continuous service after the vesting commencement date and as to 1/48th of the total number of shares underlying the option for each month of continuous service thereafter. In the event the option holder's continuous service is terminated within twenty-four months after the closing date of a corporate transaction (i) by the Company without cause (as defined in the 2013 Plan), or (ii) by the option holder without good reason, 100% of the total number of shares underlying the option shall vest and become exercisable.

(4) This option vests and becomes exercisable immediately prior to the consummation of a corporate transaction based on the achievement of certain enterprise valuation goals in connection with the corporate transaction.

Executive Compensation Arrangements

We have not entered into any written employment agreements or offer letters with any of our named executive officers.

Director Compensation

During the year ended December 31, 2020, we did not provide any cash, equity or other compensation to our non-employee directors. Our CEO and President, Messrs. McFarlane and Smith, are also members of our board of directors but did not receive any additional compensation for service as a director. See the section titled "Executive and Director Compensation" for more information.

The table below shows the aggregate numbers of option awards (exercisable and unexercisable) held as of December 31, 2020 by each non-employee director who held outstanding equity awards as of such date.

Name	Options Outstanding at Fiscal Year End
Patrick DeLong	194,553
Laura Joukovski	246,300

Equity Incentive Plans

2013 Stock Plan

We maintain the 2013 Winc, Inc. Stock Plan, or the 2013 Plan. A total of 9,590,000 shares of our common stock are reserved for issuance under the 2013 Plan. The 2013 Plan will terminate on July 14, 2027 unless the plan is amended to increase the number of shares reserved under the 2013 Plan (in which case, the 2013 Plan will terminate ten years after the date such amendment is approved by our board of directors) or earlier terminated by our board of directors.

Eligibility and Administration. Employees, consultants, and outside directors employed or engaged by us or our affiliates are eligible to receive awards under the 2013 Plan. The 2013 Plan is administered by our board of directors, which may delegate its duties and responsibilities to one or more committees of the board of directors, as the board of directors deems appropriate. The board of directors has the authority determine the purchase price of shares offered under the plan; the authority to determine the applicable terms and conditions of stock grant, purchase, and option agreements; determine the exercisability provisions of stock option agreements; determine the expiration date of any option awarded under the 2013 Plan; within the limitations of the 2013 Plan, modify, extend, assume, and accept cancellation of any outstanding options awarded under the 2013 Plan (except to the extent any modification does not impair an optionee's rights under or increase his or her obligations without such optionee's consent); full authority and discretion to take any other actions it deems necessary or advisable for the administration of the 2013 Plan; and amend, suspend, or terminate the 2013 Plan at any time and for any reason.

Awards. The 2013 Plan provides for the direct award and sale of shares, as well as the grant of nonqualified stock options and incentive stock options. Each award under the 2013 Plan is evidenced by a separate agreement between our company and the participant, which details all terms and conditions of the awards, including any applicable vesting and payment terms and post-termination exercise limitations. The following types of awards have been granted under the 2013 Plan:

- Nonqualified Stock Options. Nonqualified stock options provide for the purchase of shares of our common stock in the future at an exercise price set on the grant date. The exercise price of a stock option is fixed by the board of directors and may not be less than 100% of the fair market value of the underlying share on the date of grant. The term of a stock option is determined by our board of directors, but may not exceed ten years. Vesting conditions determined by our board of directors may apply to stock options and may include the

occurrence of certain events, the passage of a specified period of time, achievement by us of certain performance goals, and/or other fulfillment of certain conditions.

- Incentive Stock Options. Incentive stock options are designed to comply with the provisions of the Code and are subject to specified restrictions contained in the Code applicable to incentive stock options. Among such restrictions, incentive stock options must have an exercise price of not less than the fair market value of a share of common stock on the date of grant, may only be granted to employees, must expire within a specified period of time following the participant's termination of employment, and must be exercised within ten years after the date of grant. In the case of an incentive stock option granted to an individual who owns (or is deemed to own) more than 10% of the total combined voting power of all classes of our capital stock on the date of grant, the exercise price must be at least 110% of the fair market value of a share of common stock on the date of grant and the incentive stock option must expire on the fifth anniversary of the date of its grant.

The 2013 Plan also permits the direct award and sale of stock but no such awards or sales have been made under the 2013 Plan.

Certain Transactions. In the event of certain transactions and events affecting our common stock, such as stock dividends, stock splits, or a combination or other change in shares of our common stock, the 2013 Plan provides that proportionate adjustments shall automatically be made to the number and type of shares that may be issued under the 2013 Plan, the number, type, and price per share of stock subject to outstanding awards granted under the 2013 Plan, and the repurchase price applicable to stock granted under the 2013 Plan pursuant to the award agreement. In the event of an extraordinary dividend payable in a form other than stock in an amount that has a material effect on the fair market value of the stock, a recapitalization, a spin-off, or a similar occurrence, the board of directors, in its sole discretion, may make appropriate adjustments to the number and type of shares that may be issued under the 2013 Plan, the number, type, and price per share of stock subject to outstanding awards granted under the 2013 Plan, and the repurchase price applicable to stock granted under the 2013 Plan pursuant to the award agreement; provided, that the board of directors shall make any such adjustment as may be required by Section 21502(o) of the California Corporations Code.

In the event of a corporate transaction, all stock under the 2013 Plan and all options and other plan awards outstanding on the effective date of the transaction shall be treated in the manner described in the definitive transaction agreement. The treatment specified in such transaction agreement may include one or more of the following with respect to each outstanding option or award: (i) arrange for the assumption, continuation, or substitution of the awards by the surviving corporation; (ii) make a payment equal to the excess of the value of the property received by the option holder as a result of the transaction over the per-share exercise price of the option; (iii) cancel any award, provided the option holder is given at least five days' notice and an opportunity to exercise his option to the extent the option is vested; (iv) suspend option holders' rights to exercise during a limited period of time preceding the closing of the transaction; and (v) suspend option holders' early exercise rights, provided that the option may be exercised to the extent vested following the close of the transaction. In addition, the board of directors has discretion to accelerate the vesting and exercisability of an option or any other award under the 2013 Plan in connection with a corporate transaction.

Plan Amendment and Termination. Our board of directors may amend, suspend, or terminate the 2013 Plan at any time and for any reasons, provided that no such amendment shall be made without stockholder approval to the extent such approval is required by law or the amendment (i) increases the number of shares available under the 2013 Plan, or (ii) materially changes the class of persons who are eligible for grants of incentive stock options under the 2013 Plan. Further, no such amendment, suspension or termination shall impair the rights of participants under outstanding awards without the consent of the affected participants.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In addition to the equity and other compensation, termination, change in control and other arrangements discussed in the section titled "Executive and Director Compensation," the following is a description of each transaction since January 1, 2018 and each currently proposed transaction which:

- we have been or are to be a participant;
- the amount involved exceeded or will exceed the greater of $120,000 or 1% of the average of our total assets at year-end for the last two completed fiscal years; and
- any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest.

Loans to Executive Officers

In February, April and May 2021, in order to fund the exercise of options to purchase our common stock, we entered into full recourse promissory notes with Geoffrey McFarlane, our Chief Executive Officer and a member of our board of directors, Matthew Thelen, our General Counsel and Chief Strategy Officer, Brian Smith, our President and the Chairperson of our board of directors, Carol Brault, our Chief Financial Officer and Erin Green, our Chief Operating Officer, for an aggregate principal amount of $1,076,128, $501,776, $975,000, $414,270 and $468,500 respectively, which we refer to as the Management Notes. The Management Notes are secured by the shares issued pursuant to such option exercises, including an aggregate of 7,325,775 shares, 1,604,850 shares, 5,724,000 shares, 1,018,374 shares and 1,000,000 shares held by Mr. McFarlane, Mr. Thelen, Mr. Smith, Ms. Brault and Ms. Green, respectively. The aggregate principal balance of the promissory notes is approximately $3.4 million. The promissory notes are prepayable at any time without penalty and the February and April notes accrue interest at 2.25% per annum, the May notes accrue interest at 4.07% per annum, compounding annually, and is payable at the earlier of: (i) the date of any sale, transfer or other disposition of all or any portion of the pledged shares, (ii) five years from the date of the promissory note and (iii) the latest date repayment must be made in order to prevent a violation of Section 13(k) of the Securities Exchange Act of 1934, as amended. The promissory notes will be extinguished prior to the effectiveness of the registration statement of which this information statement forms a part.

Investors' Rights Agreement

In connection with our Series F redeemable convertible preferred stock financing, we entered into a seventh amended and restated investors' rights, voting and right of first refusal and co-sale agreements containing registration rights, information rights, rights of first offer, voting rights and rights of first refusal, among other things, with certain holders of our capital stock. Geoffrey McFarlane, our Chief Executive Officer and member of our board of directors, and Brian Smith, our President and the Chairperson of our board of directors, are parties to our investors' rights and right of first refusal and co-sale agreements.

Series C Preferred Stock Financing

In April 2019, we issued and sold shares of our Series C redeemable convertible preferred stock to investors that included entities affiliated with Cool Japan Fund, a beneficial owner of more than 5% of our capital stock. The affiliated entities purchases an aggregate of 8,209,586 shares of Series C redeemable convertible preferred stock for a total purchase price of approximately $1.2181.

Indemnification Agreements

We have entered into, and plan on entering into, indemnification agreements with each of our directors and executive officers. See "Description of Capital Stock — Limitations on Liability and Indemnification Matters."

Policies and Procedures for Related Party Transactions

Our board of directors intends to adopt a written related person transaction policy prior to the effectiveness of the registration statement of which this information statement forms a part setting forth the

policies and procedures for the review and approval or ratification of related person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we were or are to be a participant, where the amount involved exceeds $120,000 and a related person had, has or will have a direct or indirect material interest, including without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our audit committee is tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction with an unrelated party, whether the transaction is inconsistent with the interests of the Company and our stockholders and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock, as of July 12, 2021 by:

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

The number of shares beneficially owned by each stockholder is determined under rules issued by the SEC. Under these rules, a person is deemed to be a "beneficial" owner of a security if that person has or shares voting power or investment power, which includes the power to dispose of or to direct the disposition of such security. Except as indicated in the footnotes below, we believe, based on the information furnished to us, that the individuals and entities named in the table below have sole voting and investment power with respect to all shares of common stock beneficially owned by them, subject to any applicable community property laws.

Applicable percentage ownership is based on 91,553,437 shares of our common stock outstanding as of July 12, 2021 after giving effect to the conversion of all of our outstanding shares of preferred stock into common stock on a one-for-one basis.

In computing the number of shares beneficially owned by a person and the percentage ownership of such person, we deemed to be outstanding all shares subject to options, warrants or other rights held by such person that are currently exercisable or would become exercisable or would vest based on service-based vesting conditions within 60 days of July 12, 2021. However, except as described above, we did not deem such shares outstanding for the purpose of computing the percentage ownership of any other person.

	Total Shares Beneficially Owned	
Name of Beneficial Owner[1]	**Shares**	**%**
5% Stockholders		
Entities affiliated with Bessemer Venture Partners[2]	13,071,280	14.3%
Entities affiliated with Shining Capital[3]	8,065,276	8.8
Entities affiliated with Cool Japan Fund[4]	8,209,586	9.0
Named Executive Officers and Directors		
Geoffrey McFarlane[5]	8,841,443	9.7
Matthew Thelen[6]	1,604,850	1.8
Brian Smith[7]	6,029,000	6.6
Laura Joukovski[8]	246,300	*
Xiangwei Weng[9]	—	—
Patrick DeLong[10]	170,216	*
Alesia Pinney	—	—
Mary Pat Thompson	—	—
All Executive Officers and Directors as a Group (eight individuals)	16,891,809	18.4%

* Less than 1%.

(1) Unless otherwise indicated, the address of all listed stockholders is c/o Winc, Inc., 1745 Berkeley St, Studio 1, Santa Monica, CA 90404.

(2) Consists of (i) 460,000 shares of Series Seed Preferred Stock, 2,116,963 shares of Series A Preferred Stock and 1,114,897 shares of Series B Preferred Stock held of record by Bessemer Venture Partners VIII Institutional L.P. ("BVP VIII Inst."), (ii) 452,109 shares of Series Seed Preferred Stock, 2,080,646 shares of Series A Preferred Stock and 1,457,500 shares of Series B Preferred Stock

held of record by 15 Angels II LLC ("15A"), which is wholly owned by BVP VIII Inst., (iii) 381,680 shares of Series B Preferred Stock and 884,700 shares of Series B-1 Preferred Stock held of record by GoBlue Ventures LLC ("GoBlue"), which is wholly owned by BVP VIII Inst., (iv) 382,491 shares of Series Seed Preferred Stock, 1,760,258 shares of Series A Preferred Stock, 1,244,406 shares of Series B Preferred Stock and 735,630 shares of Series B-1 Preferred Stock held of record by Wahoowa Ventures LLC ("Wahoowa"), which is wholly owned by Bessemer Venture Partners VIII L.P. ("BVP VIII," together with BVP VIII Inst., the "Funds"). Deer VIII & Co. L.P. is the general partner of the Funds. Deer VIII &Co. Ltd., is the general partner of Deer VIII & Co. L.P. Robert M. Stavis, David J. Cowan, Byron B. Deeter, Robert P. Goodman and Jeremy S. Levine are the directors of Deer VIII & Co. Ltd. and hold the voting and dispositive power for the Funds. Investment and voting decisions with respect to shares of the Company held by BVP VIII Inst., 15A, GoBlue and Wahoowa are made by the directors of Deer VIII & Co. Ltd. acting as an investment committee. The address for BVP VIII Inst., 15A, GoBlue and Wahoowa is c/o Bessemer Venture Partners, 1865 Palmer Avenue, Suite 104, Larchmont, NY 10538.

(3) Consists of (i) 3,435,122 shares of Series B Preferred Stock held of record by Dreamer Pathway Limited (BVI), (ii) 3,435,122 shares of Series B Preferred Stock held of record by Shiningwine Limited (BVI) and (iii) 1,195,032 shares of Series B-1 Preferred Stock held by Dream Catcher Investments. The address for each of the foregoing entities is Suite 8101, Level 81, International Commerce Centre, 1 Austin Road West Kowloon, Hong Kong, Hong Kong. Xiangwei Weng may be deemed to have voting and dispositive power over the shares held by the foregoing entities.

(4) Consists of (i) 4,925,752 shares of Series C Preferred Stock held of record by Sake Ventures, LLC and (ii) 3,283,834 shares of Series C Preferred Stock held of record by Rice Wine Ventures, LLC. The address for each of the foregoing entities is 17F Roppongi Hills Mori Tower, 6-10-1, Roppongi, Minato-ku, Tokyo, 106-6117, Japan. Cool Japan Fund Inc., the parent company of such entities may be deemed to have voting and dispositive power over the shares held by these entities. Voting and disposition decisions at Cool Japan Fund Inc. with respect to the shares of common stock held by Sake Ventures, LLC and Rice Wine Ventures, LLC are made by a committee of more than three individuals, and decisions are made by majority vote. Each of the members of the committee disclaims beneficial ownership of any of the common stock held by Sake Ventures, LLC and Rice Wine Ventures, LLC, except to the extent of their pecuniary interest therein.

(5) Consists of (i) 7,575,775 shares of common stock held directly by Geoffrey McFarlane, and (ii) 1,227,500 shares of common stock and 38,168 shares of Series B-1 Preferred Stock held by the McFarlane Family Trust, of which Mr. McFarlane is one of the two trustees and not currently a beneficiary.

(6) Consists of 1,604,850 shares of common stock held directly by Matthew Thelen.

(7) Consists of 6,029,000 shares of common stock held directly by Brian Smith.

(8) Consists of 246,300 shares of common stock that can be acquired upon the exercise of options that will be vested within 60 days of July 12, 2021.

(9) Consists of 8,065,276 shares of Preferred Stock beneficially owned by Shining Capital over which Mr. Weng exercises voting control. Mr. Weng does not individually own any securities of the Company.

(10) Consists of 170,216 shares of common stock that can be acquired upon the exercise of options that will be vested within 60 days of July 12, 2021.

DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock and certain provisions of our Ninth Amended and Restated Certification of Incorporation are summaries and are qualified in their entirety by reference to the full text of the Ninth Amended and Restated Certification of Incorporation, which is filed as an exhibit to this Information Statement.

General

Our authorized capital stock consists of 195,573,971 shares, each with a par value of $0.0001 per share, of which:

- 115,490,000 shares are designated as common stock; and
- 80,083,971 shares are designated as preferred stock.

Voting Rights

The holders of common stock are entitled to one vote for each share of common stock.

The holders of preferred stock are entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of preferred stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by other provisions of the Ninth Amended and Restated Certification of Incorporation, holders of preferred stock shall vote together with holders of common stock as a single class.

Dividend Rights

For any dividends paid on common stock or any class or series of capital stock convertible into common stock, the holders of shares of our preferred stock are entitled to a proportionate dividend as if all shares of such class or series had been converted into common stock, calculated on the record date for determination of holders entitled to receive such dividend.

For any dividends paid on any class or series of capital stock that is not convertible into common stock, the holders of shares of our preferred stock are entitled to a dividend at a rate per share of determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the applicable original issue price (subject to appropriate adjustments) and (B) multiplying such fraction by an amount equal to the applicable original issue price.

Election of Directors

The holders of record of the shares of our series A preferred stock, series B preferred stock and series C preferred stock, each exclusively and as a separate class, are entitled to elect one director each to our board of directors.

The holders of record of the shares of common stock, exclusively and as a separate class, are entitled to elect one director to our board of directors.

The holders of record of the shares of common stock and of any other class or series of voting stock (including our preferred stock), exclusively and voting together as a single class, are entitled to elect the balance of the total number of directors on our board of directors.

Conversion

The holders of our preferred stock have conversion rights. Each share of preferred stock shall be convertible, at the option of the holder, at any time and without the payment of additional consideration by the holder into such number of fully paid and non-assessable shares of common stock as is determined by dividing the applicable original issue price by the applicable conversion price at the time of conversion, as set forth in the Ninth Amended and Restated Certificate of Incorporation. Such initial conversion price, and

the rate at which shares of preferred stock may be converted into shares of common stock, shall be subject to adjustments as provided in the Ninth Amended and Restated Certificate of Incorporation.

No fractional shares of common stock are issued upon conversion of the preferred stock. In lieu of any fractional shares, the Company shall pay cash equal to such fraction multiplied by the fair market value of a share of common stock as determined in good faith by the Board of Directors of the Company.

At conversion, any shares of preferred stock shall be retired and cancelled and may not be reissued as shares of such series.

Options

As of June 30, 2021, options to purchase 4,488,527 shares of our common stock were outstanding under our 2013 Plan, with a weighted-average exercise price of $0.48 per share.

Warrants

As of June 30, 2021, we had one warrant to purchase an aggregate of up to 54,745 shares of our redeemable convertible Series Seed preferred stock outstanding with an exercise price of approximately $0.27 per share. Unless earlier exercised, this warrant will expire in 2023.

As of June 30, 2021, we had one warrant to purchase an aggregate of up to 22,901 shares of our redeemable convertible Series B preferred stock outstanding with an exercise price of $1.31 per share. Unless earlier exercised, this warrant will expire in 2026.

As of June 30, 2021, we had two warrants to purchase an aggregate of up to 866,323 shares of our redeemable convertible Series B-1 preferred stock outstanding with an exercise price of $1.31 per share. Unless earlier exercised, these warrants will expire in 2024 and 2027, respectively.

As of June 30, 2021, we had 27 warrants to purchase an aggregate of up to 2,285,714 shares of our redeemable convertible Series F preferred stock outstanding with an exercise price of $1.75 per share. Unless earlier exercised, these warrants will expire on the earlier of April 6, 2026 or upon the occurrence of a deemed liquidation event under our certificate of incorporation.

The warrants will automatically be exercised prior to their respective expiration date to the extent that the fair market value of our common stock is greater than the exercise price of the warrant at its expiration date.

Liquidation

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of Series F Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to holders of shares of any other class of the company's preferred stock.

After the payment of all preferential amounts required to be paid to the holders of shares of preferred stock, the remaining assets of the Company available for distribution to its stockholders shall be distributed among the holders of shares of common stock, pro rata based on the number of shares held by each such holder.

Deemed liquidation events include: (a) a merger or consolidation or (b) the sale, lease, transfer, exclusive license or other disposition of substantially all of the Company's assets.

Registration Rights

Our seventh amended and restated investors' rights agreement, or the investors' rights agreement, grants the parties thereto certain registration rights in respect of the "registrable securities" held by them, which securities include, with certain exceptions, shares of our common stock issued or issuable (i) upon the conversion of shares of our redeemable convertible preferred stock, (ii) upon conversion or exercise of warrants to purchase our Series F redeemable convertible preferred stock (iii) as a dividend or other

distribution with respect to the shares described in the clauses (i) and (ii). Under the investors' rights agreement, we will pay all expenses relating to such registrations, including the reasonable fees and disbursements of one counsel for the participating holders, and the holders will pay all underwriting discounts and commissions relating to the sale of their shares. The investors' rights agreement also includes customary indemnification and procedural terms.

Holders of shares of our common stock (including shares issuable upon the conversion of our redeemable convertible preferred stock) are entitled to such registration rights pursuant to the investors' rights agreement. These registration rights will expire on the earlier of the date that is: (1) five years after the completion of our first underwritten public offering of securities; and (2) the occurrence of a deemed liquidation, as described in our certificate of incorporation.

Demand Registration Rights

At any time beginning 180 days after our first underwritten public offering of securities, certain holders of not less than 40% of the registrable securities then outstanding may, on not more than two occasions, request that we prepare, file and maintain a registration statement to register at least 40% of the registrable securities then outstanding, or a lesser percentage of registrable securities if the anticipated aggregate offering price, net of underwriting discounts and commissions, would exceed $15.0 million. If at any time we are eligible to use a registration statement on Form S-3, certain holders of not less than 20% of the registrable securities then outstanding may request that we prepare, file and maintain a registration statement on Form S-3 covering the sale of their registrable securities, but only if the anticipated offering price, net of underwriting discounts and commissions, would exceed $5.0 million.

Piggyback Registration Rights

In the event that we propose to register any of our securities under the Securities Act in connection with the public offering of such securities solely for cash, either for our own account or for the account of other security holders, the stockholders party to the investors' rights agreement will be entitled to certain "piggyback" registration rights allowing them to include their registrable securities in such registration, subject to certain customary marketing and other limitations.

Anti-Takeover Provisions

Ninth Amended and Restated Certification of Incorporation and Amended and Restated Bylaws

Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the voting power of our shares of voting capital stock outstanding will be able to elect all of our directors.

The foregoing provision will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of our company by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of our Company. These provisions are also designed to reduce our vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy rights. However, these provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of deterring hostile takeovers or delaying changes in control of our company or our management.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon closing of the transaction that 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 began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) 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
- on or after such date, the business combination is approved by our board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving 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;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an 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.

Listing

None of our classes of equity securities are currently listed on any stock exchange.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Registrant is governed by the Delaware General Corporation Law, or DGCL. Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal 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 was or is 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 officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that such person's conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

The Registrant's amended and restated certificate of incorporation will authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL.

Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

We have entered into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

RECENT SALES OF UNREGISTERED SECURITIES

Since June 1, 2018, we made sales of the following unregistered securities:

1. In April 2021, we issued 5,714,284 shares of our Series F redeemable convertible preferred stock and 2,285,713 Series F warrants to various investors at a price of $1.75 per share pursuant to the Series F preferred stock and warrant purchase agreement, and received aggregate gross proceeds of $10.0 million. In May 2021, we issued 571,428 shares of our Series F redeemable convertible preferred stock as consideration for the purchase of certain assets of Natural Merchants, Inc. We paid $0.8 million in fees to a placement agent in connection with the Series F issuances.

2. From November 2020 through February 2021, we issued 4,266,224 shares of our Series E redeemable convertible preferred stock to various investors at a price of $1.75 per share pursuant to the Series E preferred stock purchase agreement, and received aggregate gross proceeds of $7.5 million in an offering made pursuant to Regulation A.

3. From April 2020 through July 2020, we issued 6,583,273 shares of our Series D redeemable convertible preferred stock to various investors at a price of $1.41 per share pursuant to the Series D preferred stock purchase agreement, and received aggregate gross proceeds of $9.2 million in an offering made pursuant to Regulation A.

4. In April 2019, we issued 8,209,586 shares of our Series C redeemable convertible preferred stock to various investors at a price of $1.218 per share pursuant to the Series C preferred stock purchase agreement, and received aggregate gross proceeds of $10.0 million. We paid $0.5 million in fees to a placement agent in connection with the Series C issuances.

5. We granted stock options under the 2013 Plan to purchase an aggregate of 15,785,113 shares of our common stock at a weighted average exercise price of $0.28 per share, of which 9,556,189 were subsequently terminated by their terms. Options to purchase an aggregate of 3,052,928 shares of our common stock were exercised at a weighted average exercise price of $0.10 per share.

Unless otherwise stated, the issuances of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D 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 pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. Individuals who purchased securities as described above represented their intention 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 affixed to the share certificates issued in such transactions.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions or any public offering.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Winc, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Winc, Inc. and its subsidiary (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations, redeemable convertible preferred stock and stockholders' deficit and cash flows for the years then ended, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Baker Tilly US, LLP

We have served as the Company's auditor since 2015.

Los Angeles, California

June 18, 2021

WINC, INC.
CONSOLIDATED BALANCE SHEETS
December 31, 2020 and 2019
(in thousands, except share and per share data)

	December 31, 2020	December 31, 2019
Assets		
Current assets		
Cash	$ 7,008	$ 6,418
Accounts receivable, net of allowance for doubtful accounts and sales returns of $0.2 million and $0.3 million as of December 31, 2020 and 2019, respectively	1,505	1,368
Employee advances	34	18
Inventory	11,880	8,489
Prepaid expenses and other current assets	3,012	2,631
Total current assets	23,439	18,924
Property and equipment, net	654	804
Other assets	131	88
Total assets	$ 24,224	$ 19,816
Liabilities, Redeemable Convertible Preferred Stock, and Stockholders' Deficit		
Current liabilities		
Accounts payable	$ 3,673	$ 3,799
Accrued liabilities	4,759	2,511
Contract liabilities	8,691	1,138
Current portion of long term debt	1,526	1,416
Line of credit	—	6,000
Total current liabilities	18,649	14,864
Deferred rent	223	309
Warrant liabilities	1,067	859
Paycheck Protection Program note payable	1,364	—
Long term debt	812	2,339
Other liabilities	496	—
Total liabilities	22,611	18,371
Commitments and contingencies (Note 10)		
Redeemable Convertible Preferred stock, $0.0001 par value, 71,512,354 and 61,512,354 shares authorized as of December 31, 2020 and 2019, respectively, 58,144,584 and 51,212,274 shares issued and outstanding as of December 31, 2020 and 2019, respectively, aggregate liquidation preference of $71,746,475 and $61,407,451 as of December 31, 2020 and 2019, respectively	56,462	49,629
Stockholders' Deficit		
Common stock, $0.0001 par value, 106,910,000 shares authorized, 7,566,479 and 7,116,479, shares issued and outstanding as of December 31, 2020 and 2019, respectively	1	1
Treasury stock (1,350,000 shares outstanding as of December 31, 2020 and 2019)	) (7	) (7
Additional paid-in capital	2,229	1,936
Accumulated deficit	(57,072)	(50,114)
Total stockholders' deficit	(54,849)	(48,184)
Total liabilities, redeemable convertible preferred stock, and stockholders' deficit	$ 24,224	$ 19,816

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

WINC, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2020 and 2019
(in thousands, except per share data)

	Year Ended December 31,	
	2020	**2019**
Net revenues	$ 64,707	$ 36,447
Cost of revenues	38,352	21,038
Gross profit	26,355	15,409
Operating expenses		
Marketing	17,388	8,578
Personnel	7,582	6,328
General and administrative	7,545	7,330
Production and operations	169	88
Creative development	83	177
Total operating expenses	32,767	22,501
Loss from operations	(6,412	(7,092
Other (expense) income		
Interest expense	)(834	(1,364
Change in fair value of warrant liabilities	)(208	)(137
Other income	523	559
Total other expense, net	)(519	)(942
Loss before income taxes	(6,931	(8,034
Income tax expense	27	15
Net loss	$ (6,958	$ (8,049
Net loss per common shares – basic and diluted	$ ()0.97	$ ()1.11
Weighted average common shares outstanding – basic and diluted	7,138,671	7,232,041

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

WINC, INC.
CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
For the Years Ended December 31, 2020 and 2019
(in thousands, except share data)

	Redeemable Convertible Preferred Stock		Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Outstanding Shares	Amount	Number of Outstanding Shares	Amount	Number of Outstanding Shares	Amount			
Balance as of December 31, 2018	41,748,044	$39,500	7,294,387	$ 1	(1,350,000)	$ (7)	$ 1,804	$ (42,065)	$ (40,267)
Repurchase of common stock	—	—	(177,908)	—	—	—	(90)	—	(90)
Stock-based compensation	—	—	—	—	—	—	222	—	222
Issuance of Series C Preferred Stock, net of $500 of issuance costs	8,209,586	9,500	—	—	—	—	—	—	—
Issuance of Series D Preferred Stock, net of $1,145 of issuance costs	1,254,644	629	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	(8,049)	(8,049)
Balances as of December 31, 2019	51,212,274	49,629	7,116,479	1	(1,350,000)	(7)	1,936	(50,114)	(48,184)
Stock-based compensation	—	—	—	—	—	—	275	—	275
Stock option exercises	—	—	450,000	—	—	—	18	—	18
Issuance of Series D Preferred Stock, net of $2,285 of issuance costs	5,328,629	5,248	—	—	—	—	—	—	—
Issuance of Series E Preferred Stock, net of $1,121 of issuance costs	1,603,681	1,585	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	(6,958)	(6,958)
Balances as of December 31, 2020	58,144,584	$56,462	7,566,479	$ 1	(1,350,000)	$ (7)	$ 2,229	$ (57,072)	$ (54,849)

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

WINC, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2020 and 2019
(in thousands)

	Year Ended December 31,	
	2020	**2019**
Cash flows from operating activities		
Net loss	$ (6,958)	$ (8,049)
Adjustments to reconcile net loss to net cash provided by (used) in operating activities:		
Depreciation and amortization of property and equipment	510	633
Amortization of debt issuance costs	251	338
Stock-based compensation	275	222
Change in fair value of warrant liabilities	208	137
Changes in operating assets and liabilities:		
Accounts receivable	(137)	(321)
Inventory	(3,391)	614
Prepaid and other current assets	(381)	(701)
Other assets	(43)	—
Accounts payable	(126)	871
Accrued liabilities	2,248	764
Contract liabilities	7,553	(324)
Deferred rent	(86)	(55)
Other liabilities	496	(101)
Net cash provided by (used in) operating activities	419	(5,972)
Cash flows from investing activities		
Purchases of property and equipment	(359)	(385)
Collections from (loans for) employee advances	(16)	91
Net cash used in investing activities	(375)	(294)
Cash flow from financing activities		
Repurchase of common stock	—	(90)
(Payments) borrowings on line of credit, net	(6,000)	1,575
Proceeds received for the issuance of common stock	18	—
Payments on notes payable	—	(833)
Proceeds from Paycheck Protection Program note payable	1,364	—
Repayments of long-term debt	(1,669)	—
Proceeds from issuance of preferred stock, net of issuance costs	6,833	10,129
Net cash provided by financing activities	546	10,781
Net increase in cash	590	4,515
Cash – beginning of year	6,418	1,903
Cash – end of year	$ 7,008	$ 6,418
Supplemental disclosures of cash flow information		
Cash paid during the year for:		
Interest	$ 597	$ 796
Income taxes paid	$ 27	$ 15

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

1. DESCRIPTION OF BUSINESS

Winc, Inc. (the "Company" or "Winc") is a Delaware corporation, which was originally incorporated on August 11, 2011. The Company offers participation in its membership rewards program ("Insider Access") that enables consumers to gain access to member-only pricing, emails, newsletters, special offers, and other updates to maximize their experience. The Company provides personalized consumer recommendations, delivering a shipment of wine per month for a monthly fee. The Company has a direct-to-consumer model, which involves the Company bottling, labeling, and distributing wine under its own winery license. The Company also features wines at select retailers and restaurants nationwide. A variety of the wines offered online and through wholesale are produced at third-party vineyards and wineries.

The Company sources from vineyards and works with winemakers and ships all wine, domestic and international, in bulk containers to a centralized winemaking and bottling facility on California's Central Coast.

2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying consolidated financial statements include the accounts of Winc and its wholly-owned subsidiary. The Company prepares its consolidated financial statements and related disclosures in conformity with accounting principles generally accepted in the United States ("GAAP"). All significant intercompany transactions have been eliminated.

Reclassifications

Certain reclassifications have been made to the prior periods' consolidated financial statements in order to conform to the current period presentation. These reclassifications did not impact any prior amounts of net loss or cash flows.

Correction of Prior Period Accounting for Warrants

In connection with the preparation of its annual financial statements for the year ended December 31, 2020, the Company identified an error in its previously issued annual financial statements related to the classification and measurement of warrants to purchase its Series B-1 Preferred Stock that were issued in conjunction with a previous debt instrument. The Company did not allocate a portion of the proceeds from the debt instrument to the warrant at issuance based on the stand-alone fair value of the warrant. The error impacts the years ended December 31, 2017, 2018, and 2019.

Management assessed the materiality of the error in accordance with Securities and Exchange Commission ("SEC") Staff Accounting Bulletin ("SAB") No. 99, *Materiality*, as codified in Accounting Standards Codification ("ASC") 250 ("ASC 250"), *Presentation of Financial Statements*, and SAB 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Consolidated Statements of Income, Balance Sheets, Shareholders Equity and Cash Flows*, also as codified in ASC 250. Based on such analysis of quantitative and qualitative factors, the Company concluded that the error does not represent a material misstatement of previously issued consolidated financial statements and, therefore, no amendments to previously filed reports with the SEC are required.

While the impact of the error was not a material misstatement to any previously issued consolidated financial statements, correcting the aggregate impact of the error in the results of operations for the year ended December 31, 2020 would result in a material misstatement of the consolidated financial statements for the year ended December 31, 2020. Accordingly, the Company concluded it was appropriate to correct the consolidated financial statements as of and for the year ended December 31, 2019 presented herein. Therefore, the Company recognized an adjustment to decrease its previously stated accumulated deficit by $0.6 million as of January 1, 2019 to recognize the aggregate impact on the Company's results of operations through that date and an adjustment to increase its previously stated interest expense by $0.3 million for the year ended December 31, 2019.

Liquidity Matters

The Company has incurred losses and has an accumulated deficit of $57.1 million as of December 31, 2020. The Company's primary liquidity sources are operating cash flow, cash on hand, and short-term investments. Although the Company did not experience a substantial decrease in cash flow from operations as a result of the impact of the COVID-19 pandemic, it obtained relief under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in the form of a $1.4 million "Paycheck Protection Program" ("PPP") loan in April 2020. The loan was subsequently forgiven in March 2021 prior to any principal or interest payments being made. Through the year ended December 31, 2020, the Company has been dependent on debt, equity financing, and the PPP loan to fund its operations. During the second quarter of 2021, the Company issued and sold 5,714,284 shares of Series F redeemable convertible preferred stock, for net proceeds of $9.1 million (excludes the issuance of 571,428 shares of Series F Preferred Stock in connection with the purchase of certain assets of Natural Merchants, Inc. — see Note 17).

The Company's management believes it will continue to obtain third party financing to support future operations until the Company itself achieves profitability on a stand-alone basis. However, there can be no assurance that projected revenue growth and improvement in operating results will occur or that the Company will successfully implement its plans. In the event cash flow from operations and borrowings are not sufficient, additional sources of financing, such as equity offerings, will be required in order to maintain the Company's current operations. Based upon the Company's current operating plan, management believes that the Company's existing cash as of December 31, 2020, plus the net proceeds from its Series E and Series F redeemable convertible preferred stock financings during the first and second quarters of 2021, is sufficient to support operations for at least the next 12 months following issuance of these consolidated financial statements.

COVID-19 Pandemic

On March 11, 2020, the World Health Organization characterized the outbreak of COVID-19 as a global pandemic and recommended containment and mitigation measures. In response, extraordinary actions were taken by international, federal, state, and local public health and governmental authorities to contain and combat the outbreak and spread of COVID-19 in regions throughout the world. These actions included travel bans, quarantines, "stay-at-home" orders, and similar mandates for many individuals to substantially restrict daily activities and for many businesses to curtail or cease normal operations. Some of these measures have since been rescinded, but the Company continues to take precautionary measures in order to minimize the risk of the virus to its employees and the communities in which it operates. While the impacts of COVID-19 have generally stabilized during 2021, there remains uncertainty around the broader implications of the COVID-19 pandemic on the Company's results of operations and overall financial performance. The COVID-19 pandemic has, to date, not had a material adverse impact on its results of operations or the ability to raise funds to sustain operations. The economic effects of the pandemic and resulting long-term societal changes are currently not predictable, and the future financial impacts could vary from those foreseen.

Risks and uncertainties

The Company's future results of operations involve risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, rapid technological change, continued demand for the Company's products, stability of global financial markets, cybersecurity breaches and other disruptions that could compromise the Company's information or results, business disruptions that are caused by natural disasters or pandemic events, competition from substitute products and larger companies, government regulations and oversight, patent and other types of litigation, ability to protect proprietary technology, and dependence on key individuals.

Emerging growth company status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those

standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it: (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates. The Company expects to use the extended transition period for any other new or revised accounting standards during the period in which it remains an emerging growth company.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk primarily consist of cash. The Company's cash is held by financial institutions in the United States ("U.S."), which management believes to be financially sound, and, accordingly, minimal credit risk exists with respect to the financial institutions. At times, the Company's deposits held in the U.S. may exceed the Federal Depository Insurance Corporation insured limits. No losses have been experienced related to such amounts.

Segments

Operating segments are defined as components of an entity for which separate financial information is available and that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Company determined that the CEO and President act together as the Company's CODM. The CODM reviews financial information separately for DTC and wholesale for purposes of making operating decisions, allocating resources, and evaluating financial performance. As such, the Company has determined that it operates in two reportable segments. See Note 14 for disaggregated financial information by reportable segment.

Business Combinations and Asset Acquisitions

The Company accounts for business combinations and asset acquisitions in accordance with Accounting Standards Codification ("ASC") 805, *Business Combinations*. The results of acquisitions are included in the Company's consolidated financial statements from the date of the acquisition. Purchase accounting results in acquired assets and liabilities generally being recognized at their estimated fair values on the acquisition date. In a business combination, any excess consideration over the fair value of assets acquired and liabilities assumed is recognized as goodwill. In an asset acquisition, any excess consideration over the fair value of assets acquired and liabilities assumed is allocated to the assets acquired and liabilities assumed on a relative fair value basis. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates, including the selection of valuation methodologies, estimates of future revenue, costs, and cash flows, discount rates, and selection of comparable companies. The Company engages the assistance of valuation specialists in concluding on fair value measurements in connection with management's determination of the fair values of assets acquired and liabilities assumed. During the measurement period of a business combination, if new information is obtained about facts and circumstances that existed as of the acquisition date, changes in the estimated fair values of the net assets recorded may change the amount of the purchase price allocable to the excess over the fair value of assets acquired.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the consolidated financial statements and accompanying Notes. Significant estimates include, but are not limited to, fair value of financial instruments, revenue recognition, and stock-based compensation. Actual results may differ materially from these estimates.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable is stated as the amount billed, net of an allowance for doubtful accounts and sales returns. The Company's allowance for doubtful accounts is adjusted periodically and is based on

management's consideration of the age, nature of the past due accounts, historical losses, existing economic conditions, and specific analysis of each account. Changes in the Company's estimate to the allowance for doubtful accounts are recorded through bad debt expense and individual accounts are charged against the allowance when all reasonable collection efforts are exhausted. Collections of previously written off accounts are recognized as an offset to bad debt expense in the period they are received. As of December 31, 2020 and 2019, the allowance for doubtful accounts and sales returns was $0.2 million and $0.3 million, respectively.

The following table summarizes the allowance for doubtful accounts (in thousands):

	December 31,	
	2020	2019
Beginning balance	$ 272	$ 109
Provision	2,667	1,289
Write-offs, net	(2,701)	(1,126)
Ending balance	$ 238	$ 272

Inventory

Inventory consists primarily of finished products (ready for sale), boxes/packaging, and raw materials (juice, wine, bottles, labels, etc.) and all inventories are stated at the lower of cost or net realizable value, using the first-in, first-out method. All inventories are classified as current assets in accordance with recognized industry practice, although a portion of such inventories will be aged for periods longer than one year. The Company periodically reviews inventory for obsolete, spoiled, or slow-moving items based on prior sales, forecasted demand, and historical experience, and as of December 31, 2020 and 2019, no allowance was required. However, inventory is reduced for estimated losses related to shrinkage, which is based on historical losses verified by physical inventory counts. As of December 31, 2020 and 2019, there was no material shrinkage allowance.

Property and Equipment

Property and equipment are stated at cost and depreciated using the straight-line method over their estimated useful lives. Leasehold improvements are amortized over the shorter of the lease term or the estimate useful lives of the assets. The following table presents the estimated useful lives generally assigned to each asset category:

Category	Useful Life
Machinery and equipment	2 – 5 years
Computers and server equipment	3 – 5 years
Furniture and fixtures	5 years
Leasehold improvements	5 years
Purchased software and licenses	5 years
Capitalized software	3 – 5 years
Website development	2 years

Expenditures associated with upgrades and enhancements that improve, add functionality, or otherwise extend the life of property and equipment are capitalized, while expenditures that do not, such as repairs and maintenance, are expensed as incurred. Total repairs and maintenance amounted to $0.1 million for both the years ended December 31, 2020 and 2019.

Impairment of Long-lived Assets

The Company reviews its depreciable long-lived assets for impairment when there is evidence that events or changes in circumstances indicate that the carrying values may not be recoverable. An impairment loss may be recognized when the undiscounted cash flows expected to be generated by a long-lived asset

(or group assets) are less than its carrying value. Any required impairment loss would be measured as the amount by which the asset's carrying value exceeds its fair value and would be recorded as a reduction in the carrying value of the related asset and charged against earnings. There was no impairment of long-lived assets recognized by the Company during the years ended December 31, 2020 or 2019.

Leases and Deferred Rent

The Company accounts for leases in accordance with ASC 840, *Leases*. The Company categorizes leases at their inception as either operating or capital. Under ASC 840, a lease arrangement is classified as a capital lease if at least one of the following criteria are met: (i) transfer of ownership to the Company prior to or shortly after the end of the lease term, (ii) the Company has a bargain purchase option during or at the end of the lease term, (iii) the lease term is equal to 75% or more of the underlying asset's economic life, or (iv) the present value of future minimum lease payments (excluding executory costs) is equal to 90% or more of the fair value of the leased property.

Rent expense is recorded on a straight-line basis over the lease term. Deferred rent is the difference between rent payments and rent expense in any period and is recorded as a liability in the consolidated balance sheets and amortized as a reduction of rent expense over the term of the lease.

Warrant Liabilities

The Company has issued warrants to purchase redeemable convertible preferred stock in conjunction with certain debt and equity financings. The Company accounts for its issued warrants as liabilities (in accordance with ASC 480) in the consolidated balance sheets. The warrant liabilities are initially measured at fair value, resulting in an implied discount on the related financing arrangement (recognized as a partial offset to the principal balance of the financing). Changes in the fair value of the warrants are recognized in earnings during each period.

For the years ended December 31, 2020 and 2019, the Company recognized other expense of $0.2 million and $0.1 million, respectively, related to the change in the fair value of issued warrants. See Note 9 for description of warrant liabilities and the related valuations.

Redeemable Convertible Preferred Stock

The Company classifies redeemable convertible preferred stock outside of stockholders' deficit on the accompanying balance sheets. The Company records the issuance of redeemable convertible preferred stock at the issuance price, net of related issuance costs.

Revenue Recognition

The Company adopted the revenue recognition guidelines in accordance with ASC 606, *Revenue from Contracts with Customers* ("ASC 606"), effective January 1, 2019. ASC 606 provides that revenues are to be recognized when control of promised goods or services is transferred to a customer in an amount that reflects the consideration expected to be received for those goods or services. Revenue is recognized when or as the performance obligation has been satisfied and control of the product has transferred to the customer. In evaluating the timing of the transfer of control of products to customers, the Company considers several indicators, including significant risks and rewards of products, the right to payment, and the legal title of the products. Deferred revenue represents billings or payments received in advance of services performed.

The Company generates revenue from the following revenue streams:

Direct to Consumer Sales: Wine sales direct to customers through monthly membership or individual orders of bottles. Customers can skip a month and a membership is not required to purchase wine.

Wholesale Sales: Direct-to-buyer wine sales in large quantities to various businesses and other wholesale customers.

Breakage Sales: Sales recognized from the unused gift cards and prepaid credits.

The Company's primary performance obligation is to transfer a specific quantity of wine to the customer, whether that be to the consumer directly or through wholesale. The Company's principal terms of DTC sales are FOB destination and the Company transfers control and records revenue for online wine sales upon receipt of the wine by the customer. Wholesale revenue is recognized when the wholesale customer picks up the wine from one of the Company's distribution points. Accordingly, revenues from online and wholesale sales are recognized at a point in time when the customer obtains control of the wine. Revenue is measured as the amount of consideration the Company expects to receive in exchange for the transfer of wine and is generally based on a fixed price according to a contract. Shipping and handling fees charged to customers are reported within revenue and the Company elected to exclude sales tax assessed by a government authority from the transaction price. Incidental items that are immaterial in the context of the contract are recognized as expense. The Company does not have any significant financing components as payment is received at or shortly after the point of sale. Costs incurred to obtain a contract are expensed as incurred when the amortization period is less than a year.

Sales allowances related to returns are generally not material to the consolidated financial statements. Estimates for sales allowances are based on, among other things, an assessment of historical trends, information from customers, and anticipated returns related to current sales activity. These estimates are established in the period of sale and reduce revenue in the period of sale.

Gift cards and prepaid credits are recorded as a contract liability when sold and recorded as revenue when the customer redeems the gift card or prepaid credit. Based on historical redemption rates, a percentage of gift cards and prepaid credits will not be redeemed, which is referred to as "breakage." Breakage revenue is recognized in proportion to the pattern of redemption by the customer, which the Company determined to be the historical redemption rate.

Cost of Revenues

Cost of revenues consists of wine-related costs, bottling materials, packaging, fulfillment costs, credit card fees, shipping costs, storage costs, and barrel depreciation.

Advertising Costs

Advertising costs are expensed in the period incurred (included in marketing expenses in the consolidated statements of operations) and amounted to $16.7 million and $8.1 million for the years ended December 31, 2020 and 2019, respectively.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718, *Stock Compensation*. The Company accounts for all stock-based awards granted to employees and non-employees as stock-based compensation expense based on the grant date fair value. Stock-based compensation is classified in the accompanying consolidated statements of operations based on the function to which the related services are provided. The Company recognizes stock-based compensation expense for employees on a straight-line basis over the requisite service period. Forfeitures are accounted for as they occur. Compensation expense totaled $0.3 million and $0.2 million, for the years ended December 31, 2020 and 2019, respectively.

The fair value of each stock option grant is estimated on the date of grant using the Black-Scholes option-pricing model, which requires inputs based on the following subjective assumptions:

Expected Term — The expected term represents the period that the Company's stock options are expected to be outstanding and is determined using the simplified method (based on the mid-point between the vesting date and the end of the contractual term) as the Company has concluded that its stock option exercise history does not provide a reasonable basis upon which to estimate expected term.

Volatility — Because the Company is privately held and does not have an active trading market for its common stock, the expected volatility was estimated based on the average volatility for comparable publicly-traded companies, over a period equal to the expected term of the stock option grants.

Risk-free Rate — The risk-free rate assumption is based on the U.S. Treasury zero coupon issues in effect at the time of grant for periods corresponding with the expected term of the option.

Dividends — The Company has never paid, and does not anticipate paying, dividends on its common stock. Therefore, the Company uses an expected dividend yield of zero.

Income Taxes

The Company provides for income taxes using the asset and liability method. Deferred income taxes are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted statutory tax rates in effect for years in which differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance to reflect uncertainty associated with their ultimate realization. The Company's net deferred tax assets have a full valuation allowance against them due to such uncertainty.

The Company evaluates its uncertain tax positions in a two-step process. First, the Company determines whether it is more likely than not that a tax position will be sustained upon examination by the taxing authorities. If a tax position meets the more-likely-than-not recognition threshold it is then measured to determine the amount of benefit to recognize in the consolidated financial statements. The tax position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company currently does not have any unrecognized tax benefits.

Fair Value of Financial Instruments

The Company's financial instruments include cash, accounts receivable, employee advances, accounts payable, accrued liabilities, line of credit, and notes payable. The Company believes that the fair value of these financial instruments approximates their carrying amounts based on current market indicators, such as prevailing market rates and the short-term maturities of certain financial instruments.

The Company measures the fair value of financial assets and liabilities recorded at fair value based on the guidance of ASC 820, *Fair Value Measurements and Disclosures* ("ASC 820") which defines fair value, establishes a framework for measuring fair value, and establishes a fair value hierarchy, which requires an entity to expand disclosures about fair value measurements.

ASC 820 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

Level 1–Quoted prices in active markets for identical assets or liabilities.

Level 2–Observable inputs other than quoted prices in active markets for identical assets or liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data.

Level 3–Inputs that are unobservable and supported by little or no market activity.

The Company uses Level 3 inputs (see Note 9) to derive the estimated fair value of its warrant liabilities, which are measured on a recurring basis. The Company did not have any other assets or liabilities that were measured using Level 3 inputs on a recurring or nonrecurring basis during the years ended December 31, 2020 and 2019. There were no transfers between levels during the years ended December 31, 2020 and 2019.

Internally Developed Software Costs

Computer software development costs are expensed as incurred, except for internal use software or website development costs that qualify for capitalization as described below, and include compensation and related expenses, costs of computer hardware and software, and costs incurred in developing features and functionality.

For computer software developed or obtained for internal use, costs that are incurred in the preliminary project and post implementation stages of software development are expensed as incurred. Costs incurred during the application and development stage are capitalized. Capitalized costs are amortized using the straight-line method over a three-year estimated useful life, beginning in the period in which the software is available for use. Capitalized software development costs, net of accumulated amortization, totaled $0.5 million and $0.6 million, as of December 31, 2020 and 2019, respectively. Amortization of software costs was $0.4 million for both the years ended December 31, 2020 and 2019.

Earnings per Share

Basic earnings (loss) per share attributable to common stockholders is calculated by dividing net income (loss) attributable to common stockholders by the weighted average shares outstanding during the period, without consideration for common stock equivalents. Diluted earnings (loss) per share attributable to common stockholders is calculated by adjusting weighted average shares outstanding for the dilutive effect of common stock equivalents outstanding for the period, determined using the treasury-stock and if-converted methods.

Recently Adopted Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers*. This guidance supersedes the revenue recognition requirements of Topic 605, including most industry-specific revenue recognition guidance. The core principle of the guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In August 2015, the FASB issued ASU 2015-14, *Revenue from Contracts with Customers*, which amended ASU 2014-09 to defer the effective date for implementation for nonpublic entities to fiscal years beginning after December 15, 2018, and interim reporting periods beginning after December 15, 2019.

In May 2016, the FASB issued ASU 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*. The amendments in this Update do not change the core principle of the guidance in Topic 606. Rather, the amendments in this Update affect only the narrow aspects of Topic 606, which include the following:

1) Collectability criterion

2) Presentation of sales taxes and other similar taxes collected from customers

3) Noncash consideration

4) Contract modifications at transition

5) Completed contracts at transition

The effective date and transition requirements for the amendments in this Update are the same as the effective date and transition requirements of Update 2014-09.

The Company adopted the new standard effective January 1, 2019 using the modified retrospective approach applied to those contracts which were not completed as of January 1, 2019. As part of the adoption of the ASU, the Company elected the following transition practical expedients: (i) to reflect the aggregate of all contract modifications that occurred prior to the date of initial application when identifying satisfied and unsatisfied performance obligations, determining the transaction price, and allocating the transaction price; (ii) to recognize the incremental costs of obtaining a contract as an expense when the period is one year or less; and (ii) to apply the standard only to contracts that are not completed at the initial date of application. Because contract modifications are minimal, there is not a significant impact as a result of electing these practical expedients. The adoption of this guidance on January 1, 2019 did not have a material impact on the Company's financial position, results of operations, or cash flows.

In June 2018, the FASB issued ASU 2018-07, *Compensation — Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*, which simplifies the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees,

with certain exceptions. The Company adopted this standard as of January 1, 2019, which did not have a material impact on its consolidated financial statements.

New Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* which supersedes FASB ASC Topic 840, *Leases (Topic 840)* and provides principles for the recognition, measurement, presentation, and disclosure of leases for both lessees and lessors. The new standard requires the lessees to classify leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee, and such classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than twelve months regardless of classification. Leases with a term of twelve months or less will be accounted for similar to existing guidance for operating leases. In November 2019, the FASB issued ASU No. 2019-10, *Financial Instruments — Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842)*: Effective Dates, which revised the effective date for ASU No. 2016-02, Leases (Topic 842) for fiscal years beginning after December 15, 2020. In June 2020, the FASB issued ASU No. *2020-05, Revenue From Contracts With Customers (Topic 606)* and *Leases (Topic 842): Effective Dates for Certain Entities*, further delaying the effective date for ASU No. *2016-02, Leases (Topic 842)* to fiscal years beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022. The Company adopted ASU No. 2019-10 and ASU No. 2020-05 upon issuance by the FASB. The Company currently is assessing the impact of ASU No. 2016-02 on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments — Credit Losses (Topic 326)*, as amended, which sets forth a "current expected credit loss" (CECL) model that requires the Company to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost and applies to certain off-balance sheet credit exposures. The standard is effective for fiscal years beginning after December 15, 2022. Early adoption is permitted. The Company is currently evaluating the impact of adopting this standard on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to accounting for income taxes. The new standard removes certain exceptions to the general principles in Topic 740 and clarifies and amends existing guidance to improve consistent application. The standard is effective for fiscal years beginning after December 15, 2021. Early adoption is permitted. The Company is currently evaluating the impact of adopting this standard on its consolidated financial statements.

3. INVENTORY

Inventory consists of the following as of December 31, 2020 and 2019 (in thousands):

	December 31,	
	2020	2019
Raw materials	$ 4,753	$3,099
Finished goods	6,980	5,281
Packaging	147	109
Total inventory	$11,880	$8,489

4. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets consist of the following as of December 31, 2020 and 2019 (in thousands):

	December 31,	
	2020	2019
Prepaid wine crushing services	$1,252	$1,939
Prepaid insurance and benefits	372	343
Prepaid software licenses	151	130
Prepaid marketing	151	103
Deposits	19	14
Prepaid other	1,067	102
Total prepaid expenses and other current assets	$3,012	$2,631

5. PROPERTY AND EQUIPMENT

Property and equipment, net consists of the following as of December 31, 2020 and 2019 (in thousands):

	December 31,	
	2020	2019
Capitalized software	$ 1,966	$ 1,680
Furnitures and fixtures	643	643
Leasehold improvements	304	299
Machinery and equipment	262	211
Website development	168	168
Computers and server equipment	153	135
Purchased software and licenses	132	132
	3,628	3,268
Less: accumulated depreciation and amortization	(2,974)	(2,464)
Total property and equipment, net	$ 654	$ 804

Depreciation and amortization expense totaled $0.5 million and $0.6 million during the years ended December 31, 2020 and 2019, respectively.

The following table summarizes amortization expense expected to be recognized for the Company's capitalized software as of December 31, 2020 (in thousands):

Years ending December 31,	
2021	$289
2022	147
2023	52
Total	$488

6. ACCRUED LIABILITIES

Accrued liabilities consisted of the following as of December 31, 2020 and 2019 (in thousands):

	December 31,	
	2020	2019
Inventory received not billed	$1,944	$1,086
Accrued payroll liabilities	659	174
Accrued marketing	634	351
Accrued shipping	472	89
Accrued alcohol and tobacco tax	318	111
Other	732	700
Total accrued liabilities	$4,759	$2,511

7. DEBT

In October 2015, the Company entered into a Loan and Security Agreement with Western Alliance Bank for a revolving line of credit of up to $12 million (the "WAB Line of Credit"). The WAB Line of Credit was subsequently amended to reduce the capacity to $7 million and extend the maturity to May 2020, at which point it was terminated. In December 2020, the Company entered into a Credit Agreement with Pacific Mercantile Bank for a new $7 million line of credit (the "PMB Line of Credit"). The PMB Line of Credit bears interest at a variable annual rate equal to 1.25% plus the Prime Rate (the Prime Rate was 3.25% and 4.75% as of December 31, 2020 and 2019, respectively). The combined balance of the Company's lines of credit as of December 31, 2020 and 2019 was zero and $6.0 million, respectively. The Company was in compliance with the line of credit covenants as of December 31, 2020.

In December 2017, the Company entered into a Loan and Security Agreement with Multiplier Capital for a term loan of $5 million. The loan has a maturity date of June 29, 2022 and bears an interest at a variable annual rate equal to 6.25% above the Prime Rate, with a minimum interest rate of 11.5% and a maximum interest rate of 14% (applicable rate was 11.5% as of December 31, 2020 and 2019). The balance as of December 31, 2020 and 2019, net of unamortized debt issuance costs, was $2.3 million and $3.8 million, respectively. The Company was in compliance with the term loan covenants as of December 31, 2020.

Interest expense on the Company's line of credit and term loan for the years ended December 31, 2020 and 2019 totaled $0.8 million and $1.1 million, respectively.

The following table summarizes the Company's stated debt maturities and scheduled principal repayments as of December 31, 2020 (in thousands):

Years ending December 31,[1]	
2021	$1,667
2022	833
Total	$2,500

(1) Excludes debt issuance costs, which are presented net against the related debt balance in the consolidated balance sheets.

In connection with entering into and amending certain debt agreements, the Company granted warrants to purchase a fixed number of the Company's preferred shares, all of which remain outstanding as of December 31, 2020. See Note 9 for further information.

Paycheck Protection Program Loan

On April 20, 2020, the Company received a PPP loan administered by the Small Business Administration under the CARES Act. The Company received a $1.4 million loan from Western Alliance

Bank to help maintain payroll and operations through the period impacted by the COVID-19 pandemic. The Company applied for and was granted loan forgiveness in March 2021 (see Note 17).

8. RELATED PARTY TRANSACTIONS

During the years ended December 31, 2020 and 2019, the Company collected zero and $0.1 million, respectively, of receivables from employees and gave no material advances in either year. The receivables are presented as employee advances in the accompanying consolidated balance sheets.

During each of the years ended December 31, 2020 and 2019, the Company paid a related party $0.1 million for brand consulting services.

9. WARRANT LIABILITIES

In connection with certain past debt and equity financings, the Company issued the following warrants, all of which were exercisable upon issuance:

Date Issued	Number of Shares	Preferred Stock Series	Price per Share	Expiration Date
July 3, 2013	54,745	Series Seed	$ 0.27400	July 3, 2023
April 15, 2016	22,901	Series B	$ 1.30997	April 15 2026
December 7, 2017	6,679	Series B-1	$ 1.31000	December 7, 2024
December 29, 2017	859,644	Series B-1	$ 1.31000	December 29, 2027

The warrants are recognized as liabilities in the consolidated balance sheets and are subject to re-measurement at each balance sheet date from issuance. Any change in fair value is recognized as a component of other income (expense) in the period of change. As of December 31, 2020, all warrants remain outstanding.

The valuation of the Company's warrants contained unobservable inputs that reflected the Company's own assumptions for which there was little market data. Accordingly, the Company's warrants were measured at fair value on a recurring basis using unobservable inputs and were classified as Level 3 inputs. The fair value of the warrant liabilities was determined using the Black-Scholes option pricing model and the following assumptions:

	Year Ended December 31,	
	2020	2019
Risk free interest rate	0.25%	1.36%
Expected term (in years)	2.50 – 6.99	3.50 – 7.99
Dividend yield	—	—
Expected volatility	60%	60%
Fair value of preferred stock	$1.75	$1.41

As of December 31, 2020 and 2019, the Company estimated the fair value of warrants using Black-Scholes model to be $1.1 million and $0.9 million, respectively.

The following table provides a roll-forward of the aggregate fair value of the Company's warrant liabilities (in thousands):

	Warrant Liabilities
Fair value at December 31, 2018	$ 722
Change in fair value of warrant	137
Fair value at December 31, 2019	859
Change in fair value of warrant	208
Fair value at December 31, 2020	$ 1,067

10. COMMITMENTS AND CONTINGENCIES

Operating Leases

As of December 31, 2020, the Company had two non-cancelable operating leases for various facilities, which expire in December 2022 and January 2023, respectively. Minimum future rental commitments under non-cancelable operating leases, primarily for equipment and office facilities, as of December 31, 2020 are as follows (in thousands):

Years ending December 31,	
2021	$1,081
2022	1,069
2023	28
Total	$2,178

The Company is also party to two non-cancelable sublease agreements and had one additional sublease agreement expire in April 2020. Both subleases are set to expire in December 2022. Minimum future sublease rental income under the non-cancelable operating subleases as of December 31, 2020, are as follows (in thousands):

Years ending December 31,	
2021	$ 762
2022	785
Total	$1,547

Rent expense was $1.2 million and $1.1 million for the years ended December 31, 2020 and 2019, respectively, and is included in general and administrative expenses on the accompanying consolidated statements of operations. Included in other income in the accompanying consolidated statements of operations for the years ended December 31, 2020 and 2019 is rental income from sublease agreements of $0.6 million and $0.3 million, respectively.

Legal

The Company is involved, from time to time, in disputes that are incidental to its business. Management has reviewed these matters to determine if reserves are required for losses that are probable to materialize and reasonable to estimate in accordance with the authoritative guidance on accounting for contingent losses. Management evaluates such reserves, if any, based upon several criteria including the merits of each claim, settlements discussions, and advice from outside legal counsel, as well as indemnification of amounts expended by the Company's insurers or others, if any.

In management's opinion, none of these legal matters, individually or in the aggregate, are likely to have a material adverse effect on the Company's combined financial position or results of operations.

11. STOCK-BASED COMPENSATION

All employees are eligible to be granted options to purchase common stock under the Company's 2012 and amended 2013 Equity Incentive Plans (the "Equity Plans"). Under provisions of the 2012 and 2013 Equity Plans, the Company is authorized to issue up 409,565 shares and 21,995,249 of its common stock, respectively, of which 20,372,067 have been granted under stock option awards as of December 31, 2020. The purpose of the Company's stock-based compensation awards is to incentivize employees and other individuals who render services to the Company by providing opportunities to purchase stock in the Company.

All options granted under the 2012 and 2013 Equity Incentive Plans will expire five and ten years, respectively, from their date of issuance. Stock options generally have a four-year vesting period from their date of issuance.

The Company's Board of Directors administer the Equity Plans, select the individuals to whom options will be granted, determine the number of options to be granted and the term and exercise price of each option. Incentive stock options and non-statutory stock options granted pursuant to the terms of the Equity Plans cannot be granted with an exercise price of less than 100% of the fair market value of the underlying Company stock on the date of the grant (110% if the award is issued to an individual that owns 10% or more of the Company's outstanding stock). The term of the options granted under the Equity Plans cannot be greater than 10 years (five years for incentive stock options granted to optionees who have greater than 10% ownership interest in the Company). Options granted generally vest 25% on the one-year anniversary of the date of grant with the remaining balance vesting equally on a monthly basis over the subsequent three years.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model for incentive stock options granted to employees and on the reporting date for non-employees. Because option-pricing models require the use of subjective assumptions, changes in these assumptions can materially affect the fair value of the options. The assumptions presented in the table below represent the weighted average of the applicable assumption used to value stock options at their grant date. The Company estimates expected volatility based on historical and implied volatility data of comparable companies. The expected term, which represents the period of time that options granted are expected to be outstanding, is estimated using the "simplified method."

The risk-free rate assumed in valuing the options is based on the U.S. Treasury yield curve in effect at the time of grant for the expected term of the option. The following table summarizes the key valuation assumptions for options granted during the years ended December 31, 2020 and 2019:

	Year Ended December 31,	
	2020	2019
Risk free interest rates	0.34% – 0.44%	1.69% – 1.87%
Expected term (in years)	5.46 – 6.09	5.52 – 6.25
Dividend yield	—	—
Expected volatility	36.20% – 36.76%	34.80% – 35.55%
Fair value of common stock	$0.17 – $0.24	$0.06 – $0.19

The following tables summarize the activity of the Company's stock options for the years ended December 31, 2020 and 2019:

	Number of Shares	Weighted Average Exercise Price per Share	Weighted Average Remaining Contract Term (in years)	Aggregate Intrinsic Value (in thousands)
Options outstanding as of December 31, 2018	7,540,709	$ 0.35	6.77	
Exercised	—	—	—	—
Granted	11,073,886	0.17	9.11	3,694
Forfeited	(1,010,140	0.34	—	158
Expired	) (11,457	0.50	—	1
Options outstanding as of December 31, 2019	17,592,998	$ 0.16	8.02	
Exercised	(450,000	0.21	4.99	173
Granted	2,855,500	0.50	9.42	252
Forfeited	) (65,953	0.48	—	7
Expired	(1,108,925	0.21	—	424
Options outstanding as of December 31, 2020	18,823,620	$ 0.21	7.51	

The weighted average grant date fair value per share of stock options granted during the years ended December 31, 2020 and 2019 was $0.19 and $0.06, respectively. During the year ended December 31,

2020, the aggregate intrinsic values of stock option awards exercised was $0.2 million, determined at the date of option exercise. There were no stock option awards exercised during the year ended December 31, 2019.

The aggregate intrinsic value was calculated as the difference between the exercise prices of the underlying stock option awards and the estimated fair value of the Company's common stock on the date of exercise. Total unvested shares under options as of December 31, 2020 and 2019, totaled 10,569,732 and 8,481,034, respectively.

The total fair value of shares vested as of December 31, 2020 and 2019 was $4.9 million and $1.8 million, respectively.

Total stock-based compensation expense for the year ended December 31, 2020 and 2019 was $0.3 million and $0.2 million, respectively, and is recognized as a personnel expense in the consolidated statements of operations. Total unrecognized compensation cost related to unvested stock options as of December 31, 2020 is $0.7 million and is expected to be recognized over a weighted average period of 1.45 years.

12. EMPLOYEE BENEFIT PLAN

The Company has a 401(k) defined contribution plan which permits participating U.S. employees to defer up to a maximum of 100% of their compensation, subject to limitations established by the Internal Revenue Service. Employees aged 21 and older are eligible to contribute to the plan starting 30 days after their employment date. Once eligible, participants are automatically enrolled to contribute 6% of eligible compensation or may elect to contribute a whole percentage of their eligible compensation subject to annual Internal Revenue Code limits. The Company made no contributions for the years ended December 31, 2020 and 2019.

13. STOCKHOLDERS' EQUITY AND REDEEMABLE CONVERTIBLE PREFERRED STOCK

Eighth Amended and Restated Certification of Incorporation

In accordance with the Eighth Amended and Restated Certificate of Incorporation dated December 8, 2020, the Company is authorized to issue two classes of stock, common stock and preferred stock. As of December 31, 2020, the Company shall have authority to issue 106,910,000 shares of common stock with par value of $0.0001 per share and 71,512,354 shares of preferred stock with par value of $0.0001 per share.

Redeemable Convertible Preferred Stock

Redeemable convertible preferred stock consisted of the following (in thousands, except share data):

	December 31, 2020				
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Aggregate Liquidation Preference	Common Stock Issuable on Conversion
Series Seed Preferred Stock	13,296,372	13,241,627	$ 3,628	$ 3,628	13,241,627
Series A Preferred Stock	8,276,928	8,276,928	9,458	10,006	8,276,928
Series B Preferred Stock	13,381,711	13,358,810	17,472	17,499	13,358,810
Series B-1 Preferred Stock	7,736,552	6,870,679	8,942	13,501	6,870,679
Series C Preferred Stock	8,209,586	8,209,586	9,500	15,000	8,209,586
Series D Preferred Stock	10,611,205	6,583,273	5,877	9,306	6,583,273
Series E Preferred Stock	10,000,000	1,603,681	1,585	2,806	1,603,681
Total	71,512,354	58,144,584	$56,462	$71,746	58,144,584

	December 31, 2019				
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Aggregate Liquidation Preference	Common Stock Issuable on Conversion
Series Seed Preferred Stock	13,296,372	13,241,627	$ 3,628	$ 3,628	13,241,627
Series A Preferred Stock	8,276,928	8,276,928	9,458	10,006	8,276,928
Series B Preferred Stock	13,381,711	13,358,810	17,472	17,499	13,358,810
Series B-1 Preferred Stock	7,736,552	6,870,679	8,942	13,501	6,870,679
Series C Preferred Stock	8,209,586	8,209,586	9,500	15,000	8,209,586
Series D Preferred Stock	10,611,205	1,254,644	629	1,773	1,254,644
Total	61,512,354	51,212,274	$49,629	$61,407	51,212,274

During the year ended December 31, 2019, the Company raised capital of $9.5 million (net of issuance costs) through the sale of 8,209,586 shares of Series C redeemable convertible preferred stock (the "Series C Preferred Stock") at $1.2181 per share.

During the years ended December 31, 2019 and 2020, the Company raised capital of $5.9 million (net of issuance costs) through the sale of 6,583,273 shares of Series D redeemable convertible preferred stock (the "Series D Preferred Stock") at $1.4136 per share.

During the year ended December 31, 2020, the Company raised capital of $1.6 million (net of issuance costs) through the sale of 1,603,681 shares of Series E redeemable convertible preferred stock (the "Series E Preferred Stock") at $1.75 per share.

Unless otherwise indicated, all attributes described below applied to Series Seed Preferred Stock, Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock.

Voting Rights

The holders of common stock are entitled to one vote for each share of common stock.

The holders of preferred stock are entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of preferred stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by other provisions of the Certificate of Incorporation, holders of preferred stock shall vote together with holders of common stock as a single class.

Dividends

The Company shall not declare, pay, or set aside any dividends on shares of any other class or series of capital stock of the Company (other than dividends on shares of common stock payable in shares of common stock) unless the holders of preferred stock shall simultaneously receive a dividend on each outstanding share of preferred stock in an amount at least equal to (i) in the case of a dividend on common stock or any class or series that is convertible into common stock, that dividend per share of preferred stock as would equal the product of (a) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into common stock and (b) the number of shares of common stock issuable upon conversion of a share of preferred stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into common stock, at a rate per share of preferred stock determined by (a) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (b) multiplying such fraction by an amount equal to the applicable original issue price; provided that, if the Company declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Company, the dividend payable to the

holders of preferred stock pursuant to Section 1 of the Company's Seventh Amended and Restated Certificate of Incorporation shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest preferred stock dividend.

Through December 31, 2020, there were no dividends declared, paid, or set aside.

Conversion

The holders of preferred stock have conversion rights. Each share of preferred stock shall be convertible, at the option of the holder at any time and without the payment of additional consideration by the holder into such number of fully paid and non-assessable shares of common stock as is determined by dividing the applicable original issue price by the applicable conversion price at the time of conversion. The Series Seed conversion price is equal to $0.274. The Series A conversion price is equal to $1.2089. The Series B conversion price is equal to $1.3099. The Series B-1 conversion price is equal to $1.31. The Series C conversion price is equal to $1.2181. The Series D conversion price is equal to $1.4136. The Series E conversion price is equal to $1.75. Such initial conversion price, and the rate at which shares of preferred stock may be converted into shares of common stock, shall be subject to adjustments as provided in the Eighth Amended and Restated Certificate of Incorporation.

No fractional shares of common stock are issued upon conversion of the preferred stock. In lieu of any fractional shares, the Company shall pay cash equal to such fraction multiplied by the fair market value of a share of common stock as determined in good faith by the Board of Directors of the Company.

At conversion, any shares of preferred stock shall be retired and cancelled and may not be reissued as shares of such series.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, and Series B-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of Series B Preferred Stock, Series A Preferred Stock, Series Seed Preferred Stock or Common Stock

The holders of shares of preferred stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of common stock by reason of their ownership thereof, an amount per share equal to the greater of (i) one and one-half times the original issue price (for Series C and Series B-1 Preferred Stock) and one times the original issue price (for Series E, Series D, Series B, Series A, and Series Seed Preferred Stock), plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of preferred stock been converted into common stock.

After the payment of all preferential amounts required to be paid to the holders of shares of preferred stock, the remaining assets of the Company available for distribution to its stockholders shall be distributed among the holders of shares of common stock, pro rata based on the number of shares held by each such holder.

Deemed liquidation events include: (a) a merger or consolidation or (b) the sale, lease, transfer, exclusive license, or other disposition of substantially all of the Company's assets.

Through December 31, 2020, no liquidation events had occurred.

14. SEGMENT INFORMATION

The Company evaluates its business and allocates resources based on its two reportable business segments: DTC and Wholesale. The Company has a non-reportable segment that is comprised of a small business line focused on testing new products to determine if they have long-term viability prior to integration into the DTC and/or Wholesale distribution channels. The accounting policies of the segments are the

same as those described in Note 2. The Company does not report asset information by segment because that information is not used to evaluate Company performance or allocate resources between segments.

The Company evaluates performance based on Gross Profit, which is defined in accordance with US GAAP.

The following tables summarize information for the reportable segments (in thousands):

For the year ended December 31, 2020:

	DTC	Wholesale	Other non-reportable	Corporate non-segment	Total
Net revenue	$ 54,854	$ 8,237	$ 1,616	$ —	$ 64,707
Cost of revenues	(31,799)	(5,844)	(709)	—	(38,352)
Gross profit	**23,055**	**2,393**	**907**	**—**	**26,355**
Operating expenses	(18,448)	(2,748)	(1,257)	(10,314)	(32,767)
Interest expense	—	—	—	(834)	(834)
Change in fair value of warrant liabilities	—	—	—	(208)	(208)
Other income	—	—	—	523	523
Income (loss) before income taxes	**$ 4,607**	**$ (355)**	**$ (350)**	**$ (10,833)**	**$ (6,931)**

For the year ended December 31, 2019:

	DTC	Wholesale	Other non-reportable	Corporate non-segment	Total
Net revenue	$ 29,628	$ 6,819	$ —	$ —	$ 36,447
Cost of revenues	(16,661)	(4,377)	—	—	(21,038)
Gross profit	**12,967**	**2,442**	**—**	**—**	**15,409**
Operating expenses	(9,981)	(1,121)	—	(11,399)	(22,501)
Interest expense	—	—	—	(1,364)	(1,364)
Change in fair value of warrant liabilities	—	—	—	(137)	(137)
Other income	—	—	—	559	559
Income (loss) before income taxes	**$ 2,986**	**$ 1,321**	**$ —**	**$ (12,341)**	**$ (8,034)**

15. BASIC AND DILUTED NET LOSS PER SHARE

Basic net loss per share is based upon the weighted average number of common shares outstanding. Dilution is computed by applying the treasury stock and if-converted methods, as applicable. For both periods presented, the weighted average number of shares used to compute basic and diluted loss per share is the same since the effect of potentially dilutive securities is antidilutive. The redeemable convertible preferred stock are considered participating securities; however, they were excluded from the computation of basic loss per share in the periods of net loss as there is no contractual obligation or terms for the holders to share in the losses of the Company. See Note 13 for additional information regarding the rights of preferred stockholders.

The following securities were excluded due to their anti-dilutive effect on net loss per common share recorded in each of the years:

	Year Ended December 31,	
	2020	2019
Stock options	18,823,620	17,592,998
Redeemable convertible preferred stock	58,144,584	51,212,274
Warrants to purchase redeemable convertible preferred stock	943,969	943,969
Total	77,912,173	69,749,241

16. INCOME TAXES

The components of income tax expense are as follows for the years ended December 31, 2020 and 2019 (in thousands):

	Year Ended December 31,	
	2020	2019
Current:		
Federal	$—	$—
State	27	15
Total current	27	15
Total provision for income taxes	$27	$15

Deferred income tax assets and liabilities are comprised of the following as of December 31, 2020 and 2019 (in thousands):

	Year Ended December 31,	
	2020	2019
Deferred tax assets:		
Net operating loss carry forwards	$ 13,009	$ 11,943
Interest carryforwards	736	592
Other	707	708
Gross deferred income tax assets	14,452	13,243
Less: Valuation allowance	(14,452)	(13,243)
Net deferred tax assets	$ —	$ —

A reconciliation of income tax expense to the amounts computed by applying the statutory federal income tax rate to income before income tax are as follows for the years ended December 31, 2020 and 2019 (in thousands):

	Year Ended December 31,	
	2020	2019
Statutory income tax benefit	$ (1,456)	$ (1,687)
State and local taxes, net of federal tax benefit	(282)	(597)
Nondeductible expenses	92	84
Change in valuation allowance	1,388	2,153
Change in rate (state)	106	8
Other	179	54
Income tax provision	$ 27	$ 15

The Company establishes a valuation allowance when it is more likely than not that the Company's recorded net deferred tax asset will not be realized. In determining whether a valuation allowance is required,

the Company takes into account all positive and negative evidence with regard to the utilization of a deferred tax asset. As of December 31, 2020 and 2019, the valuation allowance for deferred tax assets totaled approximately $14.5 million and $13.2 million, respectively.

The Company plans to continue to provide a full valuation allowance on future tax benefits until it can sustain an appropriate level of profitability and until such time, the Company would not expect to recognize any significant tax benefits in its future results of operations.

As of December 31, 2020, the Company has net operating loss carryforwards for federal and state income tax purposes of approximately $47.5 million and $47.1 million, respectively. Federal net operating loss carryforwards, except those arising in tax years beginning after December 31, 2017, begin to expire in 2032, unless previously utilized. Federal net operating loss carryforwards arising in tax years beginning after December 31, 2017 have an indefinite carryforward period and do not expire, but the deduction for these carryforwards is limited to 80% of current-year taxable income for taxable years beginning after 2020. State net operating loss carryforwards begin to expire in 2028. The utilization of net operating loss carryforwards may be limited under the provisions of Internal Revenue Code Section 382 and similar state provisions due to a change in ownership.

The Company has not recognized any liability for unrecognized tax benefits. The Company expects any resolution of unrecognized tax benefits, if created, would occur while the full valuation allowance of deferred tax assets is maintained; therefore, the Company does not expect to have any unrecognized tax benefits that, if recognized, would affect the effective tax rate.

The Company's continuing practice is to recognize interest and/or penalties related to income tax matters in income tax expense. As of December 31, 2020, the Company had no accrual for the payment of interest or penalties. For Federal purposes, the years subject to examination are 2017 through 2020. For state purposes, the years subject to examination are 2016 through 2020. In addition, the utilization of net loss carryforwards is subject to Internal Revenue Service review for the periods in which those net losses were incurred. The Company is not under audit by any taxing jurisdictions at this time. The Company does not anticipate any significant decreases in unrecognized tax benefits within the next twelve months.

On March 27, 2020, the CARES Act was enacted in response to the COVID-19 pandemic. The CARES Act, among other things, modified the business interest deduction limitation for tax years beginning in 2019 and 2020 from 30% of adjusted taxable income ("ATI") to 50% of ATI. The CARES Act also permitted net operating loss carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, net operating losses incurred in 2018, 2019, and 2020 can be carried back to each of the five preceding taxable years to generate a refund of previously paid income taxes. The interest expense and net operating loss provisions of the CARES Act are not expected to have a material impact on the Company's consolidated financial statements.

17. SUBSEQUENT EVENTS

Employee Promissory Notes

Between February and April 2021, the Company entered into full recourse promissory notes with its CEO, General Counsel, President, and CFO related to stock option exercises for 3,982,233 shares, 683,617 shares, 2,334,625 shares, and 299,718 shares, respectively. The aggregate principal balance of the promissory notes was $1.1 million. The promissory notes are prepayable at any time at the option of the employee. Interest accrues at 2.25% per annum, compounding annually, and is payable at the earlier of: (i) the date of any sale, transfer or other disposition of all or any portion of the shares, (ii) five years from the date of the promissory note, or (iii) the latest date repayment must be made in order to prevent a violation of Section 13(k) of the Securities Exchange Act of 1934.

In May 2021, the Company entered into additional full recourse promissory notes with its CEO, General Counsel, President, CFO, and COO related to stock option exercises for 3,343,542 shares, 921,233 shares, 3,389,375 shares, 1,018,274 shares, and 1,000,000 shares, respectively. The aggregate principal balance of the promissory notes was $2.4 million. The promissory notes are prepayable at any time at the option of the employee. Interest accrues at 4.02% per annum, compounding annually, and is payable at the earlier of:

(i) the date of any sale, transfer or other disposition of all or any portion of the shares, (ii) five years from the date of the promissory note, or (iii) the latest date repayment must be made in order to prevent a violation of Section 13(k) of the Securities Exchange Act of 1934.

PPP Loan Forgiveness

Under the CARES Act, PPP loan recipients were able to apply for forgiveness of a portion or the loan in its entirety. In March 2021, the Company's PPP loan of $1.4 million was forgiven in its entirety prior to any interest payments or repayments of principal. Accordingly, upon forgiveness of the PPP loan in March 2021, the Company recognized other income of $1.4 million.

Series F Preferred Stock Issuance

During the second quarter of 2021, the Company raised net proceeds of $9.1 million through the sale of 5,714,284 shares of Series F Preferred Stock (excludes the issuance of 571,428 shares of Series F Preferred Stock in connection with the purchase of certain of Natural Merchants, Inc. discussed below). Additionally, during the second quarter of 2021, the Company issued warrants to purchase an aggregate of 2,285,714 shares of Series F Preferred Stock for $1.75 per share.

Purchase of Certain Assets of Natural Merchants, Inc.

In May 2021, the Company purchased certain assets of an international wine importer for a total purchase price of up to $13 million (comprised of up to $12 million in cash and $1 million in Winc Series F preferred stock). The initial cost is $8 million cash and $1 million of Winc Series F preferred stock (571,428 shares at $1.75 per share). The additional $4 million of cash payments are contingent upon achieving certain performance targets during 2021 and 2022 (up to $2 million of additional consideration in each year).

The Company has evaluated subsequent events through June 18, 2021, the date the consolidated financial statements were available to be issued and concluded that no other events have occurred subsequent to December 31, 2020 that require consideration as adjustments to or disclosure in its consolidated financial statements, other than those disclosed above.

WINC, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	June 30, 2021 (unaudited)	December 31, 2020
Assets		
Current assets		
Cash	$ 2,396	$ 7,008
Accounts receivable, net of allowance for doubtful accounts and sales returns of $0.5 million and $0.2 million as of June 30, 2021 and December 31, 2020, respectively	3,790	1,505
Employee advances	35	34
Inventory	22,280	11,880
Prepaid expenses and other current assets	4,065	3,012
Total current assets	32,566	23,439
Property and equipment, net	694	654
Intangible assets, net	9,960	—
Other assets	617	131
Total assets	$ 43,837	$ 24,224
Liabilities, Redeemable Convertible Preferred Stock, and Stockholders' Deficit		
Current liabilities		
Accounts payable	$ 7,720	$ 3,673
Accrued liabilities	6,258	4,759
Contract liabilities	10,627	8,691
Current portion of long-term debt	1,590	1,526
Line of credit	1,000	—
Total current liabilities	27,195	18,649
Deferred rent	170	223
Warrant liabilities	3,995	1,067
Paycheck Protection Program note payable	—	1,364
Long-term debt, net	—	812
Early exercise stock option liability	1,947	—
Other liabilities	1,468	496
Total liabilities	34,775	22,611
Commitments and contingencies (Note 11)		
Redeemable convertible preferred stock, $0.0001 par value, 80,083,782 and 71,512,354 shares authorized, 67,092,839 and 58,144,584 shares issued and outstanding, aggregate liquidation preference of $87,405,921 and $71,746,475 as of June 30, 2021 and December 31, 2020, respectively	68,896	56,462
Stockholders' deficit		
Common stock, $0.0001 par value, 115,490,000 and 106,910,000 shares authorized as of June 30, 2021 and December 31, 2020, respectively, 24,441,049 and 7,566,479, shares issued and outstanding as of June 30, 2021 and December 31, 2020, respectively	2	1
Employee promissory notes	(3,453)	—
Treasury stock (1,350,000 shares outstanding as of June 30, 2021 and December 31, 2020)	(7)	(7)
Additional paid-in capital	4,033	2,229
Accumulated deficit	(60,409)	(57,072)
Total stockholders' deficit	(59,834)	(54,849)
Total liabilities, redeemable convertible preferred stock, and stockholders' deficit	$ 43,837	$ 24,224

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

WINC, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except share and per share amounts)

	Six Months Ended June 30,	
	2021	**2020**
Net revenues	$ 35,116	$ 29,166
Cost of revenues	19,953	18,224
Gross profit	15,163	10,942
Operating expenses		
Marketing	7,979	6,948
Personnel	5,387	3,466
General and administrative	5,567	3,373
Production and operations.	54	89
Creative development	156	54
Total operating expenses.	19,143	13,930
Loss from operations	(3,980)	(2,988)
Other income (expense)		
Interest expense	) (421	)(531
Change in fair value of warrant liabilities	) (893	)(229
Other income, net.	1,972	9
Total other income (expense), net	658	)(751
Loss before income taxes.	(3,322)	(3,739)
Income tax expense	15	7
Net loss	$ (3,337)	$ (3,746)
Net loss per common share−basic and diluted.	$)(0.24	$ (0.53)
Weighted-average common shares outstanding−basic and diluted	14,038,864	7,116,479

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

WINC, INC.
CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(Unaudited)
(In thousands, except share amounts)

	Redeemable Convertible Preferred Stock		Common Stock		Treasury Stock		Promissory Notes for Common Stock Issued	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Outstanding Shares	Amount	Number of Outstanding Shares	Amount	Number of Outstanding Shares	Amount				
Balance as of December 31, 2020	58,144,584	$ 56,462	7,566,479	$ 1	(1,350,000)	$ (7)	$ —	$ 2,229	$ (37,072)	$ (34,849)
Stock-based compensation	—	—	—	—	—	—	—	172	—	172
Stock option exercises	—	—	16,874,570	1	—	—	—	1,627	—	1,628
Vesting of early exercised stock options								5		5
Employee promissory notes issued for the exercise of stock options	—	—	—	—	—	—	(3,453)	—	—	(3,453)
Issuance of Series E Preferred Stock, net of $499 of issuance costs	2,662,543	4,162	—	—	—	—	—	—	—	—
Issuance of Series F Preferred Stock, net of $694 of issuance costs	5,714,284	7,272	—	—	—	—	—	—	—	—
Issuance of Series F Preferred Stock in connection with an acquisition	571,428	1,000	—	—	—	—	—	—	—	—
Net loss	—	—	—	—	—	—	—	—	(3,337)	(3,337)
Balances as of June 30, 2021	67,092,839	$ 68,896	24,441,049	$ 2	(1,350,000)	$ (7)	$ (3,453)	$ 4,033	$ (40,409)	$ (39,834)
Balance as of December 31, 2019	51,212,274	$ 49,629	7,116,479	$ 1	(1,350,000)	$ (7)		$ 1,936	$ (30,114)	$ (28,184)
Stock-based compensation	—	—	—	—	—	—		110	—	110
Issuance of Series D Preferred Stock, net of $1,831 of issuance costs	5,067,180	5,333	—	—	—	—		—	—	—
Net loss	—	—	—	—					(3,746)	(3,746)
Balances as of June 30, 2020	56,279,454	$ 54,962	7,116,479	$ 1	(1,350,000)	$ (7)		$ 2,046	$ (33,860)	$ (31,820)

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

WINC, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOW
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2021	**2020**
Cash flows from operating activities		
Net loss	$ (3,337)	$(3,746)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities		
Depreciation and amortization expense	294	269
Amortization of debt issuance costs	85	137
Stock-based compensation	172	110
Change in fair value of warrant liabilities	893	229
Interest income from employee promissory notes	(17)	—
Gain on debt forgiveness–Paycheck Protection Program note payable	(1,364)	—
Change in operating assets and liabilities		
Accounts receivable	(790)	(1,966)
Inventory	(8,271)	(126)
Prepaid expenses and other current assets	(1,053)	(204)
Other assets	(486)	1
Accounts payable	2,296	3,594
Accrued liabilities	499	125
Contract liabilities	1,936	3,032
Deferred rent	(53)	(40)
Other liabilities	47	154
Net cash (used in) provided by operating activities	(9,149)	1,509
Cash flows from investing activities		
Cash paid for asset acquisitions	(8,758)	—
Purchase of property and equipment	(251)	(156)
Cash paid for Employee Advances	—	(19)
Net cash used in investing activities	(9,009)	(175)
Cash flows from financing activities		
Proceeds from Paycheck Protection Program note payable	—	1,364
Borrowings (payments) on line of credit, net	1,000	(6,000)
Repayments of long-term debt	(833)	(833)
Proceeds from issuance of preferred stock and warrants to purchase preferred stock, net of issuance costs	13,309	5,333
Proceeds from exercise of employee stock options	70	—
Net cash provided by (used in) financing activities	13,546	(136)
Net (decrease) increase in cash	(4,612)	1,198
Cash-beginning of period	7,008	6,418
Cash-end of period	$ 2,396	$ 7,616
Supplemental disclosures of cash flow information		
Interest paid	$ 131	$ 431
Taxes paid	$ 37	$ 7
Noncash investing and financing activities		
Accrued preferred stock issuance costs	$ 83	$ —
Employee promissory notes issued for stock option exercises	$ 3,453	$ —
Vesting of early exercised stock options	$ 5	$ —
Forgiveness of Paycheck Protection Program note payable	$ 1,364	$ —
Issued shares of redeemable convertible preferred stock in connection with acquisitions	$ 1,000	$ —

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

Winc, Inc.
Notes to the Condensed Consolidated Financial Statements
(Unaudited)

1. DESCRIPTION OF BUSINESS

Winc, Inc. (the "Company" or "Winc") is a Delaware corporation, which was originally incorporated on August 11, 2011. The Company offers participation in its membership rewards program ("Insider Access") that enables consumers to gain access to member-only pricing, emails, newsletters, special offers, and other updates to maximize their experience. The Company provides personalized consumer recommendations, delivering a shipment of wine per month for a monthly fee. The Company has a direct-to-consumer model, which involves the Company bottling, labeling, and distributing wine under its own winery license. The Company also features wines at select retailers and restaurants nationwide. A variety of the wines offered online and through wholesale are produced at third-party vineyards and wineries.

The Company sources from vineyards and works with winemakers and ships all wine, domestic and international, in bulk containers to a centralized winemaking and bottling facility on California's Central Coast.

2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of Winc and its wholly-owned subsidiaries have been prepared in conformity with accounting principles generally accepted in the United States ("GAAP") and are the responsibility of the Company's management. These unaudited interim condensed consolidated financial statements do not include all of the information and notes required by U.S. GAAP for annual financial statements. Accordingly, these unaudited interim condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes for the year ended December 31, 2020 contained herein. The Company's accounting policies are consistent with those presented in the audited consolidated financial statements included herein. All significant intercompany balances and transactions have been eliminated in consolidation.

The accompanying balance sheet at December 31, 2020 has been derived from the audited balance sheet at December 31, 2020 contained herein. Results of operations for interim periods are not necessarily indicative of the results of operations for a full year.

Reclassifications

Certain reclassifications have been made to the prior periods' consolidated financial statements in order to conform to the current period presentation. These reclassifications did not impact any prior amounts of net loss or cash flows.

Liquidity Matters

As of June 30, 2021, the Company had $2.4 million of cash and an accumulated deficit of $60.4 million, and for the six months ended June 30, 2021, the Company incurred a net loss of $3.3 million and negative cash flows from operating activities of $9.1 million. Through the six months ended June 30, 2021, the Company has been dependent on debt and equity financing to fund its operations. During the first half of 2021, the Company issued and sold 5,714,284 shares of Series F redeemable convertible preferred stock for net proceeds of $9.1 million (excludes the issuance of 571,428 shares of Series F Preferred Stock in connection with the acquisition of certain assets of Natural Merchants, Inc. — see Note 3 — and includes proceeds allocated to warrants issued in connection with the Series F offering — see Note 10) and 2,662,543 shares of Series E redeemable convertible preferred stock for net proceeds of $4.2 million.

The Company's management believes it will continue to obtain third party financing to support future operations until the Company itself achieves profitability on a stand-alone basis. However, there can be no assurance that projected revenue growth and improvement in operating results will occur or that the

Company will successfully implement its plans. In the event cash flow from operations and borrowings are not sufficient, additional sources of financing, such as public or private equity offerings, will be required in order to maintain the Company's current operations. Management determined that current and expected financial conditions and liquidity do not raise substantial doubt about the entity's ability to continue as a going concern. Management believes that the Company's existing cash as of June 30, 2021, plus net proceeds from future debt and/or equity offerings, is sufficient to support operations for at least the next 12 months following issuance of these condensed consolidated financial statements.

COVID-19 Pandemic

On March 11, 2020, the World Health Organization characterized the outbreak of COVID-19 as a global pandemic and recommended containment and mitigation measures. In response, extraordinary actions were taken by international, federal, state, and local public health and governmental authorities to contain and combat the outbreak and spread of the COVID-19 pandemic in regions throughout the world. These actions included travel bans, quarantines, "stay-at-home" orders, and similar mandates for many individuals to substantially restrict daily activities and for many businesses to curtail or cease normal operations. Some of these measures have since been rescinded, but the Company continues to take precautionary measures in order to minimize the risk of the virus to its employees and the communities in which it operates. While the impacts of the COVID-19 pandemic have generally stabilized during 2021, there remains uncertainty around the broader implications of the COVID-19 pandemic on the Company's results of operations and overall financial performance. The COVID-19 pandemic has, to date, not had a material adverse impact on its results of operations or the ability to raise funds to sustain operations. The economic effects of the pandemic and resulting long-term societal changes are currently not predictable, and the future financial impacts could vary from those foreseen.

Emerging growth company status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it: (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these condensed consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates. The Company expects to use the extended transition period for any other new or revised accounting standards during the period in which it remains an emerging growth company.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the condensed consolidated financial statements and accompanying notes. Significant estimates include, but are not limited to, fair value of financial instruments, fair value of acquired assets, revenue recognition, and stock-based compensation. Actual results may differ materially from these estimates.

Accounts Receivable and Allowance for Doubtful Accounts

The following table summarizes the allowance for doubtful accounts (in thousands):

	June 30, 2021	December 31, 2020
Beginning balance	$ 238	$ 272
Provision	1,786	2,667
Write-offs, net	(1,545)	(2,701)
Ending balance	$ 479	$ 238

Employee Promissory Notes

Periodically, the Company issues promissory notes to employees in connection with the exercise of stock options. The promissory notes are prepayable at any time at the option of the employee and are payable at the earlier of: (i) the date of any sale, transfer or other disposition of all or any portion of the shares, (ii) five years from the date of the promissory note, or (iii) the latest date repayment must be made to prevent a violation of Section 13(k) of the Securities Exchange Act of 1934. Upon issuance, employee promissory notes are recorded as a component of stockholder's deficit in the consolidated balance sheets.

Intangible Assets

Intangible assets acquired in a business combination or assets acquisition are initially recorded at fair value or relative fair value, respectively. Intangible assets with a definite useful life are amortized on a straight-line basis over the estimated useful life of the related assets.

The Company reviews its intangible assets for impairment at least annually or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. If such circumstances are determined to exist, an estimate of undiscounted future cash flows produced by the asset, including its eventual residual value, is compared to the carrying value to determine whether an impairment exists. In the event that such cash flows are not expected to be sufficient to recover the carrying amount of the assets, the assets are written down to their estimated fair values.

The Company recognized no impairment charges during the six months ended June 30, 2021 or 2020.

New Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* which supersedes FASB ASC Topic 840, *Leases (Topic 840)* and provides principles for the recognition, measurement, presentation, and disclosure of leases for both lessees and lessors. The new standard requires the lessees to classify leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee, and such classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than twelve months regardless of classification. Leases with a term of twelve months or less will be accounted for similar to existing guidance for operating leases. In November 2019, the FASB issued ASU No. 2019-10, *Financial Instruments — Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842)*: Effective Dates, which revised the effective date for ASU No. 2016-02, Leases (Topic 842) for fiscal years beginning after December 15, 2020. In June 2020, the FASB issued ASU No. *2020-05, Revenue From Contracts With Customers (Topic 606)* and *Leases (Topic 842): Effective Dates for Certain Entities*, further delaying the effective date for ASU No. *2016-02, Leases (Topic 842)* to fiscal years beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022. The Company adopted ASU No. 2019-10 and ASU No. 2020-05 upon issuance by the FASB. The Company currently is assessing the impact of adopting ASU No. 2016-02 on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments — Credit Losses (Topic 326)*, as amended, which sets forth a "current expected credit loss" (CECL) model that requires the Company to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost and applies to certain off-balance sheet credit exposures. The standard is effective for fiscal years beginning after December 15, 2022. Early adoption is permitted. The Company is currently evaluating the impact of adopting this standard on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which is intended to simplify various aspects related to accounting for income taxes. The new standard removes certain exceptions to the general principles in Topic 740 and clarifies and amends existing guidance to improve consistent application. The standard is effective for fiscal years beginning

after December 15, 2021. Early adoption is permitted. The Company is currently evaluating the impact of adopting this standard on its consolidated financial statements.

3. ACQUISITION OF CERTAIN ASSETS OF NATURAL MERCHANTS, INC.

In May 2021, the Company purchased certain assets of a boutique wine distributor, primarily consisting of relationships with certain suppliers, for a total purchase price of up to $13 million (comprised of up to $12 million in cash and $1 million in Winc Series F preferred stock). The initial purchase price was $8 million cash and $1 million of Series F preferred stock (571,428 shares at $1.75 per share). The additional $4 million of cash payments are contingent upon achieving certain performance targets during 2021 and 2022 (up to $2 million of additional consideration in each year).

The acquisition was accounted for as an asset acquisition and resulted in the recognition of $10 million of intangible assets and $2 million of net working capital. The Company capitalized transaction costs of $0.4 million related to the acquisition. Additionally, the Company recognized $2 million of contingent consideration as a liability as it was concluded to be probable of being paid to the seller. The acquired intangible assets, primarily consisting of relationships with certain suppliers, have a useful life of 20 years.

The Company recognized amortization expense related to the acquired intangible assets of $0.1 million and zero during the six months ended June 30, 2021 and 2020

4. INVENTORY

Inventory consists of the following as of June 30, 2021 and December 31, 2020 (in thousands):

	June 30, 2021	December 31, 2020
Raw materials	$ 4,220	$ 4,753
Finished goods	17,932	6,980
Packaging	128	147
Total inventory	$ 22,280	$ 11,880

5. PREPAID EXPENSES AND OTHER CURRENT ASSETS

Prepaid expenses and other current assets consists of the following as of June 30, 2021 and December 31, 2020 (in thousands):

	June 30, 2021	December 31, 2020
Prepaid wine crushing services	$ 1,539	$ 1,252
Prepaid freight	1,049	488
Prepaid software licenses	242	151
Prepaid software licenses	225	151
Prepaid insurance and benefits	186	372
Deposits	65	19
Prepaid other	759	579
Total prepaid expenses and other current assets	$ 4,065	$ 3,012

6. PROPERTY AND EQUIPMENT

Property and equipment, net consists of the following as of June 30, 2021 and December 31, 2020 (in thousands):

	June 30, 2021	December 31, 2020
Capitalized software	$ 2,117	$ 1,966
Furnitures and fixtures	643	643
Machinery and equipment	318	262
Leasehold improvements	306	304
Computers and server equipment	194	153
Website development	168	168
Purchased software and licenses	132	132
	3,878	3,628
Less: accumulated depreciation and amortization	(3,184)	(2,974)
Total property and equipment, net	$ 694	$ 654

Depreciation and amortization expense totaled $0.3 million during both the six months ended June 30, 2021 and 2020, respectively.

7. ACCRUED LIABILITIES

Accrued liabilities consists of the following as of June 30, 2021 and December 31, 2020 (in thousands):

	June 30, 2021	December 31, 2020
Inventory received not billed	$ 1,955	$ 1,944
Accrued acquisition consideration	1,000	—
Accrued payroll liabilities	708	659
Accrued marketing	384	634
Accrued professional fees	366	57
Accrued alcohol and tobacco tax	312	318
Accrued shipping	278	472
Other	1,255	675
Total accrued liabilities	$ 6,258	$ 4,759

8. DEBT

In October 2015, the Company entered into a Loan and Security Agreement with Western Alliance Bank for a revolving line of credit of up to $12 million (the “WAB Line of Credit”). The WAB Line of Credit was subsequently amended to reduce the capacity to $7 million and extend the maturity to May 2020, at which point it was terminated. In December 2020, the Company entered into a Credit Agreement with Pacific Mercantile Bank for a new $7 million line of credit (the “PMB Line of Credit”). The PMB Line of Credit bears interest at a variable annual rate equal to 1.25% plus the Prime Rate (the Prime Rate was 3.25% as of both June 30, 2021 and December 31, 2020). The balance on the Company’s line of credit as of June 30, 2021 and December 31, 2020 was $1.0 million and zero, respectively. The Company was in compliance with the line of credit covenants as of June 30, 2021. The Company’s line of credit is within level 2 of the fair value hierarchy and its carrying value approximates its fair value.

In December 2017, the Company entered into a Loan and Security Agreement with Multiplier Capital for a term loan of $5 million. The loan has a maturity date of June 29, 2022 and bears interest at a

variable annual rate equal to 6.25% above the Prime Rate, with a minimum interest rate of 11.5% and a maximum interest rate of 14.0% (applicable rate was 11.5% as of both June 30, 2021 and December 31, 2020). The balance as of June 30, 2021 and December 31, 2020, net of unamortized debt issuance costs, was $1.6 million and $2.3 million, respectively. The Company was in compliance with the term loan covenants as of June 30, 2021. The Company's term loan is within level 2 of the fair value hierarchy and its carrying value approximates its fair value.

Interest expense on the Company's line of credit and term loan for the six months ended June 30, 2021 and 2020 was $0.4 million and $0.5 million, respectively.

The following table summarizes the Company's stated debt maturities and scheduled principal repayments as of June 30, 2021 (in thousands):

Year ending December 31,[1]	
2021 (six months)	$ 833
2022	833
Total	$1,667

(1) Excludes debt issuance costs, which are presented net against the related debt balance in the consolidated balance sheets.

In connection with entering into and amending certain debt agreements, the Company granted warrants to purchase a fixed number of shares of the Company's preferred stock, all of which remain outstanding as of June 30, 2021. See Note 10 for further information.

Paycheck Protection Program Loan

On April 20, 2020, the Company received a Paycheck Protection Program loan administered by the Small Business Administration under the Coronavirus Aid, Relief, and Economic Security Act. The Company received a $1.4 million loan from Western Alliance Bank to help maintain payroll and operations through the period impacted by the COVID-19 pandemic. The Company applied for and was granted loan forgiveness for the full principal balance in March 2021 prior to making any interest or principal payments. Accordingly, the Company recognized other income of $1.4 million upon forgiveness.

9. RELATED PARTY TRANSACTIONS

Employee Advances

During the six months ended June 30, 2021 and 2020, the Company collected zero receivables from employees and gave no material advances in either period. The receivables are presented as employee advances in the accompanying consolidated balance sheets.

Employee Promissory Notes

Refer to Note 12 for information regarding promissory notes issued to employees in connection with stock option exercises.

Other Related Party Transactions

During both the six months ended June 30, 2021 and 2020, the Company paid a related party less than $0.1 million for brand consulting services.

10. WARRANT LIABILITIES

In connection with certain past debt and equity financings, the Company issued the following warrants, all of which were exercisable upon issuance:

Date Issued	Number of Shares	Preferred Stock Series	Price per Share	Expiration Date
July 3, 2013	54,745	Series Seed	$ 0.27400	July 3, 2023
April 15, 2016	22,901	Series B	$ 1.30997	April 15 2026
December 7, 2017	6,679	Series B-1	$ 1.31000	December 7, 2024
December 29, 2017	859,644	Series B-1	$ 1.31000	December 29, 2027
April 6, 2021	2,285,714	Series F	$ 1.75000	April 6, 2026

The warrants are recognized as liabilities in the consolidated balance sheets and are subject to re-measurement at each balance sheet date after issuance. Any change in fair value is recognized as a component of other income (expense) in the period of change. As of June 30, 2021, all warrants remain outstanding.

The valuation of the Company's warrants contained unobservable inputs that reflected the Company's own assumptions for which there was little market data. Accordingly, the Company's warrants were measured at fair value on a recurring basis using unobservable inputs and were classified as Level 3 inputs. The fair value of the warrant liabilities was determined using the Black-Scholes option pricing model and the following assumptions:

	Six Months Ended June 30,	
	2021	2020
Risk free interest rates	0.87% – 1.45%	0.25%
Expected term (in years)	2.01 – 6.50	3.01 – 7.50
Dividend yield	—	—
Expected volatility	60%	60%
Fair value of preferred stock	$2.11	$1.75

As of June 30, 2021 and December 31, 2020, the Company estimated the fair value of warrants using Black-Scholes model to be $4.0 million and $1.1 million, respectively.

The following table provides a roll-forward of the aggregate fair value of the Company's warrant liabilities (in thousands):

	Warrant Liabilities
Fair value at December 31, 2019	$ 859
Change in fair value of warrant	229
Fair value at June 30, 2020	1,088
Change in fair value of warrant	) (21
Fair value at December 31, 2020	1,067
Issuance of Series F warrants	2,035
Change in fair value of warrant	893
Fair value at June 30, 2021	$ 3,995

11. COMMITMENTS AND CONTINGENCIES

Operating Leases

As of June 30, 2021, the Company had three non-cancelable operating leases for various facilities, which expire in June 2022, December 2022 and January 2023, respectively. Minimum future rental commitments under non-cancelable operating leases, primarily for equipment and office facilities, as of June 30, 2021 are as follows (in thousands):

Years ending December 31,	
2021 (six months)	$ 626

Years ending December 31,	
2022	1,147
Total	$1,773

As of June 30, 2021, the Company had entered into one additional non-cancelable operating lease that had not yet commenced. While the timing of lease commencement is uncertain, the Company expects the lease to commence during the third quarter of 2021, at which time the Company will begin making minimum rent payments. Minimum future rental commitments under this lease are $0.5 million over the 38-month term.

The Company is also party to two non-cancelable sublease agreements and had one additional sublease agreement expire in April 2020. Both subleases are set to expire in December 2022. Minimum future sublease rental income under the non-cancelable operating subleases as of June 30, 2021, are as follows (in thousands):

Years ending December 31,	
2021 (six months)	$ 382
2022	785
Total	$1,547

Legal

The Company is involved, from time to time, in disputes that are incidental to its business. Management has reviewed these matters to determine if reserves are required for losses that are probable to materialize and reasonable to estimate in accordance with the authoritative guidance on accounting for contingent losses. Management evaluates such reserves, if any, based upon several criteria including the merits of each claim, settlements discussions, and advice from outside legal counsel, as well as indemnification of amounts expended by the Company's insurers or others, if any.

In management's opinion, none of these legal matters, individually or in the aggregate, are likely to have a material adverse effect on the Company's combined financial position or results of operations.

12. STOCK-BASED COMPENSATION

All employees are eligible to be granted options to purchase common stock under the Company's 2012 and amended 2013 Equity Incentive Plans (the "Equity Plans"). Under provisions of the 2012 and 2013 Equity Plans, the Company is authorized to issue up to 409,565 shares and 21,995,249 of its common stock, respectively, of which 21,837,199 have been granted under stock option awards as of June 30, 2021. The purpose of the Company's stock-based compensation awards is to incentivize employees and other individuals who render services to the Company by providing opportunities to purchase stock in the Company.

All options granted under the 2012 and 2013 Equity Incentive Plans will expire five and ten years, respectively, from their date of issuance. Stock options generally have a four-year vesting period from their date of issuance.

The Company's Board of Directors administer the Equity Plans, select the individuals to whom options will be granted, determine the number of options to be granted and the term and exercise price of each option. Incentive stock options and non-statutory stock options granted pursuant to the terms of the Equity Plans cannot be granted with an exercise price of less than 100% of the fair market value of the underlying Company stock on the date of the grant (110% if the award is issued to an individual that owns 10% or more of the Company's outstanding stock). The term of the options granted under the Equity Plans cannot be greater than 10 years (five years for incentive stock options granted to optionees who have greater than 10% ownership interest in the Company). Options granted generally vest 25% on the one-year anniversary of the date of grant with the remaining balance vesting equally on a monthly basis over the subsequent three years.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model for incentive stock options granted to employees and on the reporting date for non-employees. Because option-pricing models require the use of subjective assumptions, changes in these assumptions can materially affect the fair value of the options. The assumptions presented in the table below represent the weighted average of the applicable assumption used to value stock options at their grant date. The Company estimates expected volatility based on historical and implied volatility data of comparable companies. The expected term, which represents the period of time that options granted are expected to be outstanding, is estimated using the "simplified method."

The risk-free rate assumed in valuing the options is based on the U.S. Treasury yield curve in effect at the time of grant for the expected term of the option. The following table summarizes the key valuation assumptions for options granted during the six months ended June 30, 2021 and 2020:

	Six Months Ended June 30,	
	2021	2020
Risk free interest rates	0.98% – 1.11%	0.40% – 0.44%
Expected term (in years)	5.53 – 6.12	5.46 – 5.99
Dividend yield	—	—
Expected volatility	36.91% – 37.10%	36.20% – 36.54%
Fair value of common stock	$0.23 – $0.25	$0.17 – $0.18

The following table summarizes stock option activity under the Company's stock-based compensation plan during the six months ended June 30, 2021:

	Shares Available for Grant	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (in Years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of December 31, 2020	18,823,620	$ 0.21	7.52	—
Exercised	(16,874,570)	0.21	7.07	7,632
Granted	3,446,000	0.66	7.90	—
Forfeited	(880,274)	0.62	—	35
Expired	(26,249)	0.47	—	25
Outstanding as of June 30, 2021	4,488,527	0.48	8.19	—
Vested and exercisable as of June 30, 2021	1,474,508	$ 0.26	5.44	$ 584

During the six months ended June 30, 2021, the weighted-average grant date fair value per share of stock options granted was $0.24. During the six months ended June 30, 2021, the aggregate intrinsic values of stock option awards exercised was $7.6 million, determined at the date of option exercise.

The aggregate intrinsic value was calculated as the difference between the exercise prices of the underlying stock option awards and the estimated fair value of the Company's common stock on the date of exercise. Total unvested and unexercised shares under options as of June 30, 2021 and December 31, 2020, totaled 3,014,019 and 10,569,732, respectively.

The total fair value of shares vested and unexercised as of June 30, 2021 and December 31, 2020 was $1.0 million and $4.9 million, respectively.

Total stock-based compensation expense for the six months ended June 30, 2021 and 2020 was $0.2 million and $0.1 million, respectively, and is recognized as a personnel expense in the consolidated statements of operations. Total unrecognized compensation cost related to unvested stock options as of June 30, 2021 is $1.2 million and is expected to be recognized over a weighted average period of 1.58 years.

Common Stock Subject to Repurchase

The Equity Plans allow for the early exercise of stock options for certain individuals, as determined by the Board of Directors. Common stock purchased pursuant to an early exercise of stock options is not

deemed to be outstanding for accounting purposes until those shares vest. The consideration received for an exercise of an option is considered to be a deposit of the exercise price and the related dollar amount is recorded as a liability. Upon termination of service, the Company may, at their discretion, repurchase unvested shares acquired through early exercise of stock options at a price equal to the price per share paid upon the exercise of such options. The Company includes unvested shares subject to repurchase in the number of shares of common stock outstanding on the statement of redeemable convertible preferred stock and stockholders' deficit.

During the six months ended June 30, 2021, options to purchase 6,566,375 shares of common stock were exercised early. The Company had a liability of $1.9 million and zero as of June 30, 2021 and December 31, 2020, respectively, related to early exercises of stock options, which is recorded as early exercise stock option liability in the condensed consolidated balance sheets. The liability is reclassified into stockholders' deficit as the awards vest.

Employee Promissory Notes

Between February and May 2021, the Company entered into full recourse promissory notes with its CEO, General Counsel, President, CFO, and COO related to stock option exercises for a total of 7,325,775 shares, 1,604,850 shares, 5,724,000 shares, 1,018,374 shares, and 1,000,000 shares, respectively. The aggregate principal balance of the promissory notes was $3.5 million. The notes issued in February and April accrue interest at 2.25% per annum and the May notes accrue interest at 4.07% per annum, compounding annually. The promissory notes are prepayable at any time at the option of the employee and are payable at the earlier of: (i) the date of any sale, transfer or other disposition of all or any portion of the shares, (ii) five years from the date of the promissory note, or (iii) the latest date repayment must be made to prevent a violation of Section 13(k) of the Securities Exchange Act of 1934.

13. EMPLOYEE BENEFIT PLAN

The Company has a 401(k) defined contribution plan which permits participating U.S. employees to defer up to a maximum of 100% of their compensation, subject to limitations established by the Internal Revenue Service. Employees aged 21 and older are eligible to contribute to the plan starting 30 days after their employment date. Once eligible, participants are automatically enrolled to contribute 6% of eligible compensation or may elect to contribute a whole percentage of their eligible compensation subject to annual Internal Revenue Code limits. The Company made no contributions during the six months ended June 30, 2021 or the year ended December 31, 2020.

14. STOCKHOLDERS' EQUITY AND REDEEMABLE CONVERTIBLE PREFERRED STOCK

Eighth Amended and Restated Certification of Incorporation

In accordance with the Eighth Amended and Restated Certificate of Incorporation dated April 1, 2021, the Company is authorized to issue two classes of stock, common stock and preferred stock. As of June 30, 2021, the Company shall have authority to issue 115,490,000 shares of common stock with par value of $0.0001 per share and 80,083,782 shares of preferred stock with par value of $0.0001 per share.

At June 30, 2021, outstanding shares of common stock included 6,543,818 shares subject to repurchase related to stock options early exercised and unvested.

Redeemable Convertible Preferred Stock

Redeemable convertible preferred stock consisted of the following (in thousands, except share data):

	June 30, 2021				
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Aggregate Liquidation Preference	Common Stock Issuable on Conversion
Series Seed Preferred Stock	13,296,372	13,241,627	$ 3,628	$ 3,628	13,241,627

	June 30, 2021				
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Aggregate Liquidation Preference	Common Stock Issuable on Conversion
Series A Preferred Stock	8,276,928	8,276,928	9,458	10,006	8,276,928
Series B Preferred Stock	13,381,711	13,358,810	17,472	17,499	13,358,810
Series B-1 Preferred Stock	7,736,552	6,870,679	8,942	13,501	6,870,679
Series C Preferred Stock	8,209,586	8,209,586	9,500	15,000	8,209,586
Series D Preferred Stock	10,611,205	6,583,273	5,877	9,306	6,583,273
Series E Preferred Stock	10,000,000	4,266,224	5,747	7,466	4,266,224
Series F Preferred Stock	8,571,428	6,285,712	8,272	11,000	6,285,712
Total	80,083,782	67,092,839	$68,896	$87,406	67,092,839

	December 31, 2020				
	Shares Authorized	Shares Issued and Outstanding	Net Carrying Value	Aggregate Liquidation Preference	Common Stock Issuable on Conversion
Series Seed Preferred Stock	13,296,372	13,241,627	$ 3,628	$ 3,628	13,241,627
Series A Preferred Stock	8,276,928	8,276,928	9,458	10,006	8,276,928
Series B Preferred Stock	13,381,711	13,358,810	17,472	17,499	13,358,810
Series B-1 Preferred Stock	7,736,552	6,870,679	8,942	13,501	6,870,679
Series C Preferred Stock	8,209,586	8,209,586	9,500	15,000	8,209,586
Series D Preferred Stock	10,611,205	6,583,273	5,877	9,306	6,583,273
Series E Preferred Stock	10,000,000	1,603,681	1,585	2,806	1,603,681
Total	71,512,354	58,144,584	$56,462	$71,746	58,144,584

During the six months ended June 30, 2021, the Company raised capital of $13.3 million (net of issuance costs) through: (i) the sale of 5,714,284 shares of Series F redeemable convertible preferred stock (the "Series F Preferred Stock") at $1.75 per share (inclusive of proceeds allocated to warrants issued in connection with the Series F offering — see Note 10) and (ii) the sale of 2,662,543 shares of Series E Preferred Stock at $1.75 per share.

During the year ended December 31, 2020, the Company raised capital of $5.2 million (net of issuance costs) through the sale of 5,328,629 shares of Series D redeemable convertible preferred stock (the "Series D Preferred Stock") at $1.4136 per share.

During the year ended December 31, 2020, the Company raised capital of $1.6 million (net of issuance costs) through the sale of 1,603,681 shares of Series E redeemable convertible preferred stock (the "Series E Preferred Stock") at $1.75 per share.

Unless otherwise indicated, all attributes described below apply to Series Seed Preferred Stock, Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock.

Voting Rights

The holders of common stock are entitled to one vote for each share of common stock.

The holders of preferred stock are entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of preferred stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by other provisions of the Certificate of Incorporation, holders of preferred stock shall vote together with holders of common stock as a single class.

Dividends

The Company shall not declare, pay, or set aside any dividends on shares of any other class or series of capital stock of the Company (other than dividends on shares of common stock payable in shares of common stock) unless the holders of preferred stock shall simultaneously receive a dividend on each outstanding share of preferred stock in an amount at least equal to (i) in the case of a dividend on common stock or any class or series that is convertible into common stock, that dividend per share of preferred stock as would equal the product of (a) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into common stock and (b) the number of shares of common stock issuable upon conversion of a share of preferred stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into common stock, at a rate per share of preferred stock determined by (a) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (b) multiplying such fraction by an amount equal to the applicable original issue price; provided that, if the Company declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Company, the dividend payable to the holders of preferred stock pursuant to Section 1 of the Company's Seventh Amended and Restated Certificate of Incorporation shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest preferred stock dividend.

Through June 30, 2021, there were no dividends declared, paid, or set aside.

Conversion

The holders of preferred stock have conversion rights. Each share of preferred stock shall be convertible, at the option of the holder at any time and without the payment of additional consideration by the holder into such number of fully paid and non-assessable shares of common stock as is determined by dividing the applicable original issue price by the applicable conversion price at the time of conversion. The Series Seed conversion price is equal to $0.274. The Series A conversion price is equal to $1.2089. The Series B conversion price is equal to $1.3099. The Series B-1 conversion price is equal to $1.31. The Series C conversion price is equal to $1.2181. The Series D conversion price is equal to $1.4136. The Series E and Series F conversion prices are equal to $1.75. Such initial conversion price, and the rate at which shares of preferred stock may be converted into shares of common stock, shall be subject to adjustments as provided in the Ninth Amended and Restated Certificate of Incorporation.

No fractional shares of common stock are issued upon conversion of the preferred stock. In lieu of any fractional shares, the Company shall pay cash equal to such fraction multiplied by the fair market value of a share of common stock as determined in good faith by the Board of Directors of the Company.

At conversion, any shares of preferred stock shall be retired and cancelled and may not be reissued as shares of such series.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of Series F Preferred Stock, Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, and Series B-1 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of Series B Preferred Stock, Series A Preferred Stock, Series Seed Preferred Stock or Common Stock.

The holders of shares of preferred stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of common stock by reason of their ownership thereof, an amount per share equal to the greater of (i) one and one-half times the original issue price (for Series C and Series B-1 Preferred Stock) and one times the original issue price (for Series F, Series E, Series D, Series B, Series A, and Series Seed Preferred

Stock), plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of preferred stock been converted into common stock.

After the payment of all preferential amounts required to be paid to the holders of shares of preferred stock, the remaining assets of the Company available for distribution to its stockholders shall be distributed among the holders of shares of common stock, pro rata based on the number of shares held by each such holder.

Deemed liquidation events include: (a) a merger or consolidation or (b) the sale, lease, transfer, exclusive license, or other disposition of substantially all of the Company's assets.

Through June 30, 2021, no liquidation events had occurred.

15. SEGMENT INFORMATION

The Company evaluates its business and allocates resources based on its two reportable business segments: Direct to Consumer ("DTC") and Wholesale. The Company has a non-reportable segment that is comprised of a small business line focused on testing new products to determine if they have long-term viability prior to integration into the DTC and/or Wholesale distribution channels. The Company does not report asset information by segment because that information is not used to evaluate Company performance or allocate resources between segments.

The Company evaluates performance based on Gross Profit (calculated in accordance with GAAP).

The following tables summarize information for the reportable segments (in thousands):

For the six months ended June 30, 2021:

	For the Six Months Ended June 30, 2021				
	DTC	Wholesale	Other non-reportable	Corporate non-segment	Total
Net revenues	$ 26,852	$ 7,624	$ 640	$ —	$ 35,116
Cost of revenues	(15,356)	(4,323)	(274)	—	(19,953)
Gross profit	**11,496**	**3,301**	**366**	**—**	**15,163**
Operating expenses	(10,288)	(2,205)	(887)	(5,763)	(19,143)
Interest expense	—	—	—	(421)	(421)
Change in fair value of warrant liabilities	—	—	—	(893)	(893)
Other income	—	—	—	1,972	1,972
Income (loss) before income taxes	**$ 1,208**	**$ 1,096**	**$(521)**	**$(5,105)**	**$ (3,322)**

For the six months ended June 30, 2020:

	For the Six Months Ended June 30, 2020				
	DTC	Wholesale	Other non-reportable	Corporate non-segment	Total
Net revenues	$ 24,823	$ 4,023	$ 320	$ —	$ 29,166
Cost of revenues	(15,402)	(2,685)	(137)	—	(18,224)
Gross profit	**9,421**	**1,338**	**183**	**—**	**10,942**
Operating expenses	(7,743)	(1,571)	(98)	(4,518)	(13,930)
Interest expense	—	—	—	(531)	(531)
Change in fair value of warrant liabilities	—	—	—	(229)	(229)
Other income	—	—	—	9	9

	For the Six Months Ended June 30, 2020				
	DTC	Wholesale	Other non-reportable	Corporate non-segment	Total
Income (loss) before income taxes	**$1,678**	**$ (233)**	**$ 85**	**$(5,269)**	**$(3,739)**

16. BASIC AND DILUTED NET LOSS PER SHARE

Basic net loss per share is based upon the weighted average number of common shares outstanding. Dilution is computed by applying the treasury stock and if-converted methods, as applicable. For both periods presented, the weighted average number of shares used to compute basic and diluted loss per share is the same since the effect of potentially dilutive securities is antidilutive. The convertible preferred stock are considered participating securities; however, they were excluded from the computation of basic loss per share in the periods of net loss as there is no contractual obligation or terms for the holders to share in the losses of the Company. See Note 14 for additional information regarding the rights of preferred stockholders.

The following securities were excluded due to their anti-dilutive effect on net loss per common share recorded for the six months ended June 30, 2021 and 2020:

	Six Months Ended June 30,	
	2021	2020
Stock options outstanding	4,488,527	18,401,287
Unvested stock options early exercised	6,543,818	—
Redeemable convertible preferred stock	67,092,839	56,279,454
Warrants to purchase redeemable convertible preferred stock	3,229,683	943,969
Total	81,354,867	75,624,710

17. INCOME TAXES

The components of income tax expense are as follows for the six months ended June 30, 2021 and 2020 (in thousands):

	Six Months Ended June 30,	
	2021	2020
Current:		
Federal	$ —	$ —
State	15	7
Total current	15	7
Total provision for income taxes	$ 15	$ 7

The effective tax rate for the six months ended June 30, 2021 and June 30, 2020, differs from the U.S. federal statutory primarily due to a full valuation allowance related to the Company's deferred tax assets.

The Company is subject to taxation in the United States and various state jurisdictions. The Company is generally subject to examination by tax authorities in the U.S. federal and state jurisdictions for 2017 and 2016, respectively, and forward. However, to the extent allowed by law, the taxing authorities may have the right to examine periods where net operating losses were generated and carried forward, and make adjustments to the amount of the net operating losses. The Company is not currently under examination by any jurisdictions.

As of June 30, 2021, the Company has not recognized any liability for unrecognized tax benefits. The Company expects any resolution of unrecognized tax benefits, if created, would occur while the full

valuation allowance of deferred tax assets is maintained; therefore, the Company does not expect to have any unrecognized tax benefits that, if recognized, would affect the effective tax rate. The Company does not expect a significant change in the amount of unrecognized tax benefits in the next twelve months. The Company's continuing practice is to recognize interest and/or penalties related to income tax matters in income tax expense. As of June 30, 2021, the Company had no accrual for the payment of interest or penalties.

18. SUBSEQUENT EVENTS

The Company has evaluated subsequent events through August 17, 2021, the date the condensed consolidated financial statements were available to be issued and concluded that no other events have occurred subsequent to June 30, 2021 that require consideration as adjustments to or disclosure in its condensed consolidated financial statements, other than those disclosed above.