

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-32501

REED'S, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State of incorporation)

35-2177773

(I.R.S. Employer Identification No.)

201 Merritt 7, Norwalk, CT

(Address of principal executive offices)

06851

(Zip Code)

(800) 997-3337

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act: none.

Title of each class

Trading Symbol(s)

Name of each exchange on which registered

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Non-accelerated filer

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.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or

issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates (excluding voting shares held by officers and directors) as of June 30, 2022 was \$14,698,231.

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. There was a total of 2,602,399 shares of Common Stock outstanding as of March 31, 2023.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS AND INFORMATION

This Annual Report on Form 10-K (“Annual Report”), the other reports, statements, and information that we have previously filed or that we may subsequently file with the Securities and Exchange Commission (“SEC”) and public announcements that we have previously made or may subsequently make include, may include, incorporate by reference or may incorporate by reference certain statements that may be deemed to be forward-looking statements. The forward-looking statements included or incorporated by reference in this Annual Report and those reports, statements, information and announcements address activities, events or developments that Reed’s, Inc. (hereinafter referred to as “we,” “us,” “our” or “Reed’s”) expects or anticipates will or may occur in the future. Any statements in this document about expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and are forward-looking statements. These statements are often, but not always, made through the use of words or phrases such as “may,” “should,” “could,” “predict,” “potential,” “believe,” “will likely result,” “expect,” “will continue,” “anticipate,” “seek,” “estimate,” “intend,” “plan,” “projection,” “would” and “outlook” and similar expressions. Accordingly, these statements involve estimates, assumptions and uncertainties, which could cause actual results to differ materially from those expressed in them. Any forward-looking statements are qualified in their entirety by reference to the factors discussed throughout this document. All forward-looking statements concerning economic conditions, rates of growth, rates of income or values as may be included in this document are based on information available to us on the dates noted, and we assume no obligation to update any such forward-looking statements.

The risk factors referred to in this Annual Report beginning on page 11 could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us, and you should not place undue reliance on any such forward-looking statements. Any forward-looking statement speaks only as of the date on which it is made, and we do not undertake any obligation to update any forward-looking statement or statements to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which will arise. In addition, we cannot assess the impact of each factor 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.

Management cautions that these statements are qualified by their terms and/or important factors, many of which are outside of our control, involve a number of risks, uncertainties and other factors that could cause actual results and events to differ materially from the statements made, including, but not limited to, the following risk factors:

- Our ability to absorb, mitigate or pass on cost increases to our bottlers/distributors and/or customers;
- The impact of rising costs, interest rates, and inflation on the discretionary income of our consumers, particularly the rising cost of energy;
- Uncertainties associated with an economic slowdown or recession that could negatively impact the financial condition of our customers and could result in a reduced demand for our products;
- The impact of the military conflict in Ukraine, including supply chain disruptions, volatility in commodity prices, increased economic uncertainty and escalating geopolitical tensions;
- The impact of logistical issues and delays;
- Our ability to effectively manage our inventories and/or our accounts receivables;
- Our ability to continue to generate sufficient cash flows to support our expansion plans and general operating activities;
- Changes in demand that are weather, or season related and/or for other reasons, including changes in product category and/or package consumption and changes in cost and availability of certain key ingredients including aluminum cans, as well as disruptions to the supply chain, as a result of climate change and poor or extreme weather conditions;
- The impact on our business of competitive products and pricing pressures and our ability to gain or maintain our share of sales in the marketplace as a result of actions by competitors;
- Our ability to implement and/or maintain price increases, including through reductions in promotional allowances;
- The effectiveness of sales and/or marketing efforts by us and/or by distributors of our products, most of whom distribute products that may be regarded as competitive with our products;
- The costs and/or effectiveness, now or in the future, of our advertising, marketing and promotional strategies;
- The failure of our co-packers to manufacture our products on a timely basis or at all;
- Our ability to make suitable arrangements and/or procure sufficient capacity for the co-packing of any of our products, the timely replacement of discontinued co-packing arrangements and/or limitations on co-packing availability;
- Volatility of stock prices which may restrict stock sales, stock purchases or other opportunities as well as negatively impact the motivation of equity award grantees;
- Any disruption in and/or lack of effectiveness of our information technology systems, including a breach of cyber security, which disrupts our business or negatively impacts customer relationships, as well as cybersecurity incidents involving data shared with third parties;
- The imposition of additional regulation imposing excise taxes and/or sales taxes on sweetened beverages or alcoholic beverages; and
- Recruitment and retention of senior management, other key employees and our employee base in general.

The foregoing list of important factors and other risks detailed from time to time in our reports filed with the SEC is not exhaustive. See “Part I, Item 1A – Risk Factors” for a more complete discussion of these risks and uncertainties and for other risks and uncertainties. Those factors and the other risk factors described therein are not necessarily all of the important factors that could cause actual results or developments to differ materially from those expressed in any of our forward-looking statements. Other unknown or unpredictable factors also could harm our results. Consequently, our actual results could be materially different from the results described or anticipated by our forward-looking statements due to the inherent uncertainty of estimates, forecasts and projections and may be better or worse than anticipated. Given these uncertainties, you should not rely on forward-looking statements. Forward-looking statements represent our estimates and assumptions only as of the date that they were made. We expressly disclaim any duty to provide updates to forward-looking statements, and the estimates and assumptions associated with them, after the date of this report, in order to reflect changes in circumstances or expectations or the occurrence of unanticipated events except to the extent required by law.

PART I

Item 1. Business

Overview

Reed's, Inc., a Delaware corporation ("Reed's", the "Company," "we," or "us" throughout this report) owns a leading portfolio of handcrafted, natural beverages that is sold in over 45,000 outlets nationwide. These outlets include the natural and specialty food channel, grocery stores, mass merchants, drug stores, convenience stores, club stores, liquor stores, and on-premises locations including bars and restaurants. Reed's two core brands are Reed's, which includes Reed's Craft Ginger Beer, Reed's Real Ginger Ale, Reed's Mules, and Reed's Hard Ginger Ale, and Virgil's Handcrafted sodas. Reed's Craft Ginger Beers are unique due to the proprietary process of using fresh ginger root combined with a Jamaican inspired recipe of natural spices, honey and fruit juices. Reed's uses this same handcrafted approach in its Reed's Real Ginger Ale and Virgil's line of great tasting, bold flavored craft sodas, including its award-winning Virgil's Root Beer.

Reed's is the leading ginger beer in the US; Virgil's is an independent natural full line craft soda and is a leader in the craft soda category.

Historical Development

Reed's Original Ginger Brew, created in 1987, was introduced to the market in Southern California stores in 1989. By 1990, we began marketing our products through United Natural Foods Inc. ("UNFI") and other natural food distributors and moved our production to a larger facility in Boulder, Colorado.

In 1991, we incorporated our business operations in the state of Florida under the name of Original Beverage Corporation and moved all production to a co-pack facility in Pennsylvania. Throughout the 1990's, we continued to develop and launch new Ginger Brew varieties. Reed's Ginger Brews reached broad placement in natural and gourmet foods stores nationwide through UNFI and other major specialty, natural/gourmet and mainstream food and beverage distributors.

In 1997, we began licensing the products of China Cola and eventually acquired the rights to that product in 2000. In 1999, we purchased the Virgil's Root Beer brand from the Crowley Beverage Company. In 2000, we moved into an 18,000-square foot warehouse property, the Brewery, in Los Angeles, California, as our headquarters. In 2001, pursuant to a reincorporation merger, we changed our state of incorporation to Delaware and also changed our name to "Reed's, Inc."

In September 2018, we completed the relocation of its headquarters to Norwalk, Connecticut. In December 2018, after a lengthy marketing and bidding process, we sold the Brewery to a company owned by Christopher J. Reed, our founder. The sale of the Brewery marked a fundamental shift in the nature of our operations and effectively eliminated our costs associated with excess manufacturing capacity.

Today, Reed's has 45 products that are sold throughout the United States, Canada, the United Kingdom, South Africa and the European Union. It produces its products through a network of nine independent manufacturers and distribution through five independent distribution centers.

Going Concern

The Company's financial statements as of December 31, 2022, were prepared on a going concern basis. For the year ended December 31, 2022, the Company recorded a net loss of \$20,057 and used cash in operations of \$15,530, and as of December 31, 2022, the Company had stockholders' deficit of \$8,470, and negative working capital of \$1,563. These conditions raise substantial doubt about the Company's ability to continue as a going concern within one year of the date that the financial statements are issued. In addition, the Company's independent registered public accounting firm, in their report on the Company's December 31, 2022, audited financial statements, raised substantial doubt about the Company's ability to continue as a going concern. As of December 31, 2022, we had a cash balance of \$533 with borrowing capacity of \$1,663. The Company believes that its current level of cash and cash equivalents are not sufficient to fund its operations for the next 12 months.

Our ability to continue as a going concern is dependent upon our ability to obtain additional financing, drive further operating efficiencies, reduce expenditures, and ultimately, create profitable operations. We may not be able to obtain additional capital on reasonable terms. Our financial statements do not include adjustments that would result from the outcome of this uncertainty. To alleviate these conditions, management is currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing will be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor sentiment with respect to us and our industry.

Industry Overview

Reed's offers its portfolio of natural hand-crafted beverages in the craft specialty foods industry as natural alternatives to the \$29 billion mainstream carbonated soft drinks ("CSD") market in the United States as measured by IRI Multi Outlet scan data. Reed's products are sold across the country and internationally in the following major channels: natural food, specialty food, grocery, mass merchant, convenience, club, drug, liquor, and on-premises locations (bars and restaurants).

Carbonated Soft Drink Industry Overview

The retail CSD category grew 14% during 2022 and the ginger ale segment grew 13% and is now a \$1.5 billion-dollar market. Ginger ale growth, we believe, is driven primarily by a consumer perception of ginger ale as a healthier alternative to other sodas. Our new line of ginger ales made with real ginger deliver on this perception and are poised to breakout in the segment.

As a result of the COVID-19 pandemic, consumers are shifting consumption to better-for-you products. We believe there is significant growth potential from consumers switching away from mainstream beverages that contain artificial ingredients and preservatives towards great-tasting, natural alternatives.

Consumer Trends Driving Growth for Our Products

The following is a list of consumer trends that are accelerating as we exit the pandemic, and which support our brands.

- **Natural:** Interest in natural products has gone mainstream.
- **Clean Label:** 62% of Americans are avoiding at least one ingredient.
- **Reduced Sugar:** A favorable trend for our zero-sugar beverages, 67% of consumers prefer low or no sugar soft drinks. Say they are reducing their sugar intake.
- **Plant Based:** 39% of consumers actively try to eat more plant-based foods.
- **Craft:** Appeal continues to grow of higher-quality, independent, and more authentic brands.
- **Premiumization:** A trend towards embracing quality has accelerated during the pandemic with consumers splurging on premium beverages at retail, including premium mixers.
- **Better-for-you Mocktails:** More consumers are seeking non-alcoholic alternatives with bold and unique flavors.

Our strategies will remain responsive to these macro consumer trends as we concentrate our efforts on developing the Company's sales and marketing functions.

Our Products

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

Reed's Craft Ginger Beer

Reed's Craft Ginger Beer is set apart from other ginger beers by its proprietary process of pressing fresh ginger root, its exclusive use of natural ingredients, and its authentic Jamaican-inspired recipe. We do not use artificial preservatives, artificial flavors, or colors, and Reed's Ginger Beer is certified kosher. We offer different levels of fresh ginger content, ranging from our lightest-spiced Original, to our medium-spiced Extra, and finally to our spiciest Strongest. We also offer three sweetener options: one with cane sugar, honey and fruit juices; one with honey and pineapple juice; and another without sugar (Zero Sugar) made from an innovative blend of natural sweeteners. In 2021, we expanded our Extra Ginger Beer portfolio into cans offerings.

As of the end of 2022, the Reed's Craft Ginger Beer line included five major varieties with a mix of bottles and cans:

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

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

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

Reed's Strongest Ginger Beer – Contains 115% more fresh ginger than Reed's Original for the strongest spice.

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

Reed's Real Ginger Ale

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

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

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

Reed's Mocktails – In 2021 Reed's line extended its Zero Sugar Ginger Ale, with the launch of Mocktail Flavors. It uses our proprietary sweetening system to match the great taste of the cane sugar version in a zero-calorie drink. The two flavors are Shirley Tempting and Transfusion.

Reed's Real Cranberry Ginger Ale – This seasonal product, launch in the fall of 2021 is our Real Ginger Ale with cranberry added. It is a consumer favorite during the holiday season and is available October through December.

Reed's Ready to Drink

Reed's Zero Sugar Classic Mule – Launched in 2020 and expanded to 42 states in 2022, Reed's first-ever alcoholic offering is packed with REAL, fresh ginger root and made through a unique handcrafted brewing and fermentation process. It contains 7% ABV, and a light-spice flavor profile with no artificial colors, gluten, GMOs or caffeine. It is the ultimate mule, made with fresh ginger root, to be enjoyed anytime, anywhere.

Reed's Zero Sugar Stormy Mule – Launched in 2022, the Stormy is the perfect companion to our Classic Mule, the Stormy Mule is the ultimate rum flavored alcohol and ginger beer. It contains 7% ABV, and a light-spice flavor profile with no artificial colors, gluten, GMOs or caffeine. It is the ultimate stormy, made with fresh ginger root, to be enjoyed anytime, anywhere.

Reed's Zero Sugar Hard Ginger Ale - Launched in late 2002, our line of light refreshing hard ginger ales are available in four flavors: Mango, Cherry Lime, Strawberry Watermelon and Pineapple Coconut. They contain 5% ABV, 100 calories and zero carbohydrates and have no added sugar, artificial colors, gluten, GMOs or caffeine. They are made with fresh ginger root, to be enjoyed anytime, anywhere.

Virgil's Handcrafted Sodas

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

The Virgil's line includes the following products:

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

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

Our Primary Markets

We target a smaller segment of the estimated \$29 billion mainstream carbonated and non-carbonated soft drink markets in the United States. Our brands are generally considered premium and natural, with upscale packaging. They are loosely defined as the craft specialty bottled carbonated soft drink category.

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

We sell to well-known popular natural food and gourmet retailers, large grocery store chains, mass merchants, club stores, convenience and drug stores, liquor stores, industrial cafeterias (corporate feeders), and to on-premises bars and restaurants nationwide and in some international markets. We also sell our products and promotional merchandise directly to consumers via the Internet through our Amazon storefront which can be accessed through our company web site www.drinkreeds.com.

Some of our representative key customers include:

- **Natural stores:** Whole Foods Market, Sprouts, Natural Grocers by Vitamin Cottage, Fresh Thyme Farmers Market, Mother's

- **Gourmet & specialty stores:** Trader Joe's, Bristol Farms, Lazy Acres, The Fresh Market, Central Market
- **Grocery and mass chains:** Kroger (and all Kroger banners), Albertson's/Safeway, Publix, Food Lion, Stop & Shop, H.E.B., Wegmans, Target, Walmart
- **Club stores:** Costco
- **Liquor stores:** BevMo!, Total Wine & More, Spec's
- **Convenience & drug stores:** CVS Health, Rite Aid

Our Distribution Network

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

Our product reaches the market in the following ways:

Direct to Natural & Specialty Wholesale Distributors

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

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

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

Direct to Store Warehouse Distribution

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

Wholesale Distribution

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

International Distribution

We presently export Reed's and Virgil's brands throughout international markets via US based exporters. International markets where our brands are present are France, UK, South Africa, portions of the Caribbean, Canada, Spain, Philippines, Israel and Australia.

International sales to some areas of the world are cost prohibitive, except for some specialty sales, since our premium sodas were historically packed in glass, which drives substantial freight costs when shipping overseas. Despite these cost challenges, we believe there are good opportunities to expand internationally, and we are increasing our marketing focus on these areas by adding freight friendly packages such as aluminum cans and also developing manufacturing partnerships in local markets whereby we ship concentrate rather than finished goods. We are open to exporting and co-packing internationally and expanding our brands into foreign markets, and we have held preliminary discussions with trading companies and import/export companies for the distribution of our products throughout Asia, Europe, Australia, and South America. We believe these areas are a natural fit for Reed's ginger products because of the popularity and importance of ginger in international markets, especially the Asian market, where ginger is a significant part of the local diet and nutrition.

We believe the strength of our brands, innovation, and marketing, coupled with the quality of our products and flexibility of our distribution network, allows us to compete effectively.

Distribution Agreements

We have entered into agreements with some of our distributors that commit us to "termination fees" if we terminate our agreements early or without cause. These agreements provide for our distributor partners to have the right to distribute our products to a defined type of retailer within a defined geographic region. As is customary in the beverage industry, if we should terminate the agreement or not automatically renew the agreement, we would be obligated to make certain payments to our distributor partners.

We constantly review our distribution agreements with our partners across North America.

Some of our outside distributors are not bound by written agreements with us and may discontinue their relationship with us on short notice. Most distributors handle a number of competitive products. In addition, our products are sometimes a small part of our distributors' businesses.

Manufacturing Our Products

All of Reed's products are produced by our co-pack partners. They brew, blend, bottle, and package our products and charge us a fee, generally by the case, for the products produced. We have a long-standing relationship with three co-packers in Pennsylvania and two in California. During 2020 we entered into co-packing agreements with a co-packer on the East Coast, Clinton's Ditch, and on the West Coast, Noel Canning. We are in discussions and negotiations with additional co-packers to secure added capability for future production needs. We periodically review our co-packing relationships to ensure that they are optimal with respect to quality of production, cost and location.

In some instances, subject to agreement, certain equipment may be purchased exclusively by us and/or jointly with our co-packers and installed at their facilities to enable them to produce certain of our products. In certain cases, such equipment remains our property and is required to be returned to us upon termination of the packing arrangements with such co-packers, unless we are reimbursed by the co-packer over a pre-determined number of cases that are produced at the facilities concerned. For most of our products there are limited co-packing facilities in our markets with adequate capacity and/or suitable equipment to package our products. We believe a short disruption or delay in production would not significantly affect our revenues; however, as alternative co-packing facilities in our markets with adequate long-term capacity may not be available for such products, either at commercially reasonable rates and/or within a reasonably short time period, if at all, a lengthy disruption or delay in production of any of such products could significantly affect our revenues.

Our ability to estimate demand for our products is imprecise, particularly with new products, and may be less precise during periods of rapid growth, including in new markets. If we materially underestimate demand for our products, and/or are unable to secure sufficient ingredients or raw materials, and/or procure adequate packing arrangements and/or obtain adequate or timely shipment of our products, we might not be able to satisfy demand on a short-term basis.

We continue to actively seek alternative and/or additional co-packing facilities with adequate capacity and capability for the production of our various products to minimize transportation costs and transportation-related damages as well as to mitigate the risk of a disruption.

Warehousing and Logistics are a significant portion of the Company's operational costs. In order to drive efficiency and reduce costs, on February 1, 2019, we entered into a strategic partnership with FitzMark to manage all freight movement for the Company. FitzMark is one of the largest distribution service providers in North America and has expertise that will provide a competitive advantage in the movement of raw materials and finished goods. This partnership supports planning and execution of all inventory movement, assessment of storage needs and cost management.

We follow a "fill as needed" model to the best of our ability and have no significant order backlog.

New Product Development

While we have simplified our business and have streamlined a significant number of SKUs in order to further our primary objective of accelerating the growth of the Reed's and Virgil's core product offerings, we believe significant opportunity remains in the natural beverage space.

Healthier alternatives will be the future for carbonated soft drinks. We will continue to drive product development in the natural, no and low sugar offerings in the "better for you" beverage categories. In addition, we believe there are powerful consumer trends that will help propel the growth of our brand portfolio including the increased consumption of ginger as a recognized superfood, the growing use of ginger beer in today's popular cocktail drinks, and consumers' increased demand for higher quality, natural handcrafted beverages.

Innovations include our compelling line of full flavor, natural, zero sugar, zero calorie sodas. Reed's has also begun to expand and broaden its product development capabilities by engaging and working with larger, experienced beverage flavor houses and innovative ingredient research and supply companies.

We believe our new business model enhances our ability to be nimble and innovative, producing category leading new products in a short period of time.

Competition

Nonalcoholic Beverages

The nonalcoholic beverage segment of the commercial beverage industry is highly competitive, consisting of numerous companies ranging from small or emerging to very large and well established. The principal areas of competition include pricing, packaging, development of new products and flavors, and marketing campaigns. Our products compete with a wide range of drinks produced by a relatively large number of manufacturers. Many of these brands have enjoyed broad, well-established national recognition for years, through well-funded advertising and other branding campaigns. Competitors in the ginger beer category include Goslings, Fever Tree, Bundaberg, Cock 'n Bull and Q; in the craft soda category we compete with brands such as Stewart's, IBC, Zevia, Henry Weinhard's, Boylan, Sprechers, and Jones Soda; In the Ginger Ale category we compete with Canada Dry, Schweppes, Seagram's, Vernor's, and Zevia.

Important factors affecting our ability to compete successfully include the taste and flavor of products, trade and consumer promotions, rapid and effective development of new, unique cutting-edge products, attractive and different packaging, branded product advertising, and pricing. We also compete for distributors who will concentrate on marketing our products over those of our competitors, provide stable and reliable distribution, and secure adequate shelf space in retail outlets. Competitive pressures in the soft drink category could also cause our products to be unable to gain or even lose market share, or we could experience price erosion.

We are also subject to increasing levels of regulatory issues including the registration and/or taxation of our products in certain new international markets, which may put us at a competitive disadvantage. (See “Government Regulation” below for additional information)

Despite our products having a relatively high price for a craft premium beverage product, minimal mass media advertising to date, and a small but growing presence in the mainstream market compared to many of our competitors, we believe our natural innovative beverage recipes, packaging, use of premium ingredients, and a proprietary ginger processing formula provide us with a competitive advantage. Our commitment to the highest quality standards and brand innovation are keys to our success.

Candy

Reed’s Crystallized Ginger and Reed’s Ginger Chews restaged their product line up in 2020. The category is small and there is not a significant number of entrants. Key competitors are Chimes and Gin Gins.

Ready to Drink:

The RTD category refers to canned cocktails that offer convenience and quality for cocktail drinkers.

The start of Covid-19, when restaurants and bars closed in March 2020, helped propel the category with consumers bringing the on-premises cocktail occasion to their homes. This was a major boost for canned, single-serve RTDs. Without the recent quality improvements of RTD cocktails, however, it’s unlikely that the category would have taken off. Today’s RTD cocktails bring much higher quality versus earlier wine coolers and malt-based hard lemonades. Premiumization has resulted in a new wave of products that boast less sugar and more transparency. Variety has also been a key driver, allowing consumers ways to experiment without buying costly ingredients or spirits. Reed’s is poised to leverage these trends by bringing high-quality, crafted Mules made with real fresh ginger to the market.

Top selling brands in the category are High Noon, Cutwater Spirits, On The Rocks, Jose Cuervo, 1800 Tequila, Buzzballz, Bacardi, The Long Drink Company, and Fisher’s Island. In the Mule segment, the key players include ‘Merican Mule, Cutwater Mule, and Copper Can.

Raw Materials

Substantially all of the raw materials used in the preparation, bottling and packaging of our products are purchased by Reed’s or by our contract packers in accordance with our specifications. Raw materials are delivered and stored at our various third-party co-packers.

Generally, the raw materials used in our products are obtained from domestic and foreign suppliers and many of the materials have multiple reliable suppliers. This provides a level of protection against a major supply constriction or adverse cost or supply impacts. Since our raw materials are common ingredients and supply is easily accessible, we have few long-term contracts in place with our suppliers.

Many outside factors such as crop yield, weather, agricultural legislation, and the geopolitical climate could impact supply and price; however, we do source certain ingredients from different regions and suppliers to mitigate some of this risk.

Industry-wide shortages of certain ingredients could from time to time in the future be encountered, which could interfere with and/or delay production of certain of our products.

Glass Bottles and Aluminum Cans

A significant component of our product cost is the purchase of glass bottles and aluminum cans. We are generally responsible for arranging for the purchase and delivery to our third-party co-packers of the containers in which our beverage products are packaged. In December 2017, we entered into an exclusive strategic partnership with Owens-Illinois (glass), and in February 2018 we entered into a strategic partnership with Crown Cork & Seal for aluminum cans. During 2022 we entered into an agreement with a packaging broker to supply us with 25 million sleek and standard 12-ounce cans during 2023. These suppliers provide expertise in emerging package and material innovation that can be leveraged to further expand marketing and package offerings.

Working Capital Practices

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. We have taken decisive action to improve our margins, including fully outsourcing our manufacturing process, streamlining our product portfolio, negotiating improved vendor contracts and restructuring our selling prices.

Licensing

During 2020 we entered into a licensing agreement with Full Sail Brewery headquartered in Hood River, Oregon to manufacture and sell our new line of Reed's Alcoholic Classic Mule in 4 and 12 pack 12-ounce cans, and 12 pack 16-ounce cans. Full Sail manages all aspects of production and distribution. We subsequently amended that agreement to assume the distribution rights from Full Sail and instead utilize Full Sail as a co-packer of our RTD Classic Mule line. We now fully control the sales and marketing process, and this change in distribution ownership enables us to recognize gross revenue as opposed to a royalty fee going forward.

Seasonality

Sales of our nonalcoholic beverages are somewhat seasonal with higher-than-average volume in the warmer months. The volume of sales in the beverage business may be affected by weather conditions.

Proprietary Rights

We own copyrights, trademarks and trade secrets relating to our products and the processes for their production; the packages used for our products; and the design and operation of various processes and equipment used in our business. Some of our proprietary rights are licensed to our co-packers and suppliers and other parties. Reed's ginger processing and brewing process finished beverage products and concentrate formulas are among its most valuable trade secrets.

We own trademarks in the United States that we consider material to our business. Trademarks in the United States are valid as long as they are in use and/or their registrations are properly maintained. Pursuant to our manufacturing and bottling agreements, we authorize our bottlers to use applicable Reed's trademarks in connection with their manufacture, sale and distribution of our products. We have registered and intend to obtain additional trademarks in international markets as may become necessary.

We use confidentiality and non-disclosure agreements with employees, manufacturers and distributors to protect our proprietary rights. Mr. Reed is also subject to an intellectual property agreement with Reed's restricting competition consistent with his fiduciary obligations to Reed's.

Regulation

Our Company is required to comply, and it is our policy to comply with all applicable laws in all jurisdictions in which we do business.

The production, distribution and sale in the United States of many of our products are subject to the Federal Food, Drug, and Cosmetic Act, the Federal Trade Commission Act, the Lanham Act, state consumer protection laws, competition laws, federal, state and local workplace health and safety laws, various federal, state and local environmental protection laws, and various other federal, state and local statutes and regulations applicable to the production, transportation, sale, safety, advertising, labeling and ingredients of such products. Outside the United States, the distribution and sale of our many products and related operations are also subject to numerous similar and other statutes and regulations.

The Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) of the state of California requires a specific warning to appear on any product containing a component listed by the state as having been found to cause cancer or birth defects. The state maintains lists of these substances and periodically adds other substances to these lists. Proposition 65 exposes all food and beverage producers to the possibility of having to provide warnings on their products in California because it does not provide for any generally applicable quantitative threshold below which the presence of a listed substance is exempt from the warning requirement. Consequently, the detection of even a trace amount of a listed substance can subject an affected product to the requirement of a warning label. However, Proposition 65 does not require a warning if the manufacturer of a product can demonstrate that the use of that product exposes consumers to a daily quantity of a listed substance that is:

- below a “safe harbor” threshold that may be established;
- naturally occurring;
- the result of necessary cooking; or
- subject to another applicable exemption.

No Company beverages produced for sale in California are currently required to display warnings under this law. We are unable to predict whether a component found in a Company product might be added to the California list in the future, although the state has initiated a regulatory process in which caffeine and other natural occurring substances will be evaluated for listing. Furthermore, we are also unable to predict when or whether the increasing sensitivity of detection methodology may become applicable under this law and related regulations as they currently exist, or as they may be amended, might result in the detection of an infinitesimal quantity of a listed substance in a beverage of ours produced for sale in California.

Bottlers of our beverage products presently offer and use non-refillable, recyclable containers in the United States. Some of these bottlers also offer and use refillable containers, which are also recyclable. Legal requirements apply in various jurisdictions in the United States and overseas requiring deposits or certain taxes or fees be charged for the sale, marketing and use of certain non-refillable beverage containers. The precise requirements imposed by these measures vary. Other types of beverage container-related deposit, recycling, tax and/or product stewardship statutes and regulations also apply in various jurisdictions in the United States and overseas. We anticipate additional, similar legal requirements may be proposed or enacted in the future at local, state and federal levels, both in the United States and elsewhere.

Legislation has been proposed in Congress and by certain state and local governments which would prohibit the sale of soft drink products in non-refillable bottles and cans or require a mandatory deposit as a means of encouraging the return of such containers, each in an attempt to reduce solid waste and litter. Similarly, we are aware of proposed legislation that would impose fees or taxes on various types of containers that are used in our business. We are not currently impacted by the policies in these types of proposed legislation, but it is possible that similar or more restrictive legal requirements may be proposed or enacted within our distribution territories in the future.

Legislation that would impose an excise tax on sweetened beverages has been proposed in the U.S. Congress, in some state legislatures and by some local governments, with excise taxes generally ranging between \$0.01 and \$0.02 per ounce of sweetened beverage. Berkeley, California became the first jurisdiction to pass such a measure, and a general tax of \$0.01 per ounce on certain sweetened drinks became effective on January 1, 2015. Other U.S. jurisdictions have passed similar measures, some of which have been challenged in litigation. The imposition of such taxes on our products would increase the cost of certain of our products or, to the extent levied directly on consumers, make certain of our products less affordable. Excise taxes on sweetened beverages already are in effect in certain foreign countries, such as France, the United Kingdom, Ireland, South Africa, Mexico and Colombia. Other countries are considering similar measures.

Alcoholic beverages are regulated by federal, state and local governments in both the U.S. and abroad whose laws and regulations govern the production, distribution and sale of alcohol beverages, including licensing, permitting, advertising and marketing. The manufacturing and sale of alcohol products requires numerous approvals, licenses and permits from governmental agencies, including, but not limited to, the U.S. Department of Treasury, the Alcohol and Tobacco Tax and Trade Bureau (“TTB”), the U.S. Department of Agriculture, the FDA, state alcohol regulatory agencies and state and federal environmental agencies. Our third-party manufacturers, in particular, are subject to audits and inspections by TTB and applicable state alcohol regulatory agencies at any time. Our alcohol beverages are also subject to various taxes, license fees, and the like levied by governmental entities as well as bonds that such entities may deem necessary to ensure compliance with applicable laws and regulations. Beginning in January 2018, the federal excise taxes imposed on domestic brewers that produce less than 2 million barrels annually were reduced from \$7.00 to \$3.50 per barrel on the first 60,000 barrels shipped annually. State and local excise taxes, on the other hand, vary based on the alcohol content and type of beverage. Federal, state, or local governments may increase such excise taxes in the future.

Our co-packers are subject to federal, state and local environmental laws and regulations, including those relating to air emissions, water discharges, the use of water resources, waste disposal, and recycling. Changes in environmental compliance mandates, and any expenditures necessary to comply with such requirements, could increase costs. In addition, continuing concern over environmental matters, including climate change, is expected to continue to result in new or increased legal and regulatory requirements (in and outside of the United States), including to reduce or mitigate the potential effects of greenhouse gases, to limit or impose additional costs on commercial water use due to local water scarcity concerns, or to expand mandatory reporting of certain environmental, social and governance metrics. Compliance with these provisions has not had, and we do not expect such compliance to have, in the near future, any material adverse effect on our capital expenditures, net income or competitive position.

We are also subject to various federal, state and international laws and regulations related to privacy and data protection, including the California Consumer Privacy Act of 2018 (“CCPA”), which became effective on January 1, 2020, and its extension, the California Privacy Rights Act (“CPRA”), which will take effect on January 1, 2023. The interpretation and application of data privacy, cross-border data transfers and data protection laws and regulations are often uncertain and are evolving in the United States and internationally. We monitor pending and proposed legislation and regulatory initiatives to ascertain their relevance to and potential impact on our business and develop strategies to address regulatory trends and developments, including any required changes to our privacy and data protection compliance programs and policies.

Our primary cost pertaining to environmental compliance activity is in recycling fees and redemption values. Various municipalities, states and foreign countries require that a deposit be charged for certain non-refillable beverage containers. The precise requirements imposed by these measures vary by jurisdiction. Other deposit, recycling, ecotaxes and/or product stewardship proposals have been, and may in the future be, introduced and enacted at the federal,

state, and local levels, and in foreign countries. In California, we are required to collect redemption values from our customers and to remit such redemption values to the State of California Department of Resources Recycling and Recovery based upon the number of cans and bottles of certain carbonated and non-carbonated products sold. In certain other states and countries where our products are sold, we are also required to collect deposits from our customers and to remit such deposits to the respective jurisdictions based upon the number of cans and bottles of certain carbonated and non-carbonated products sold in such states.

Employees

As of December 31, 2022, we had 22 full-time equivalent employees on our corporate staff. We employ additional people on a part-time basis as needed. We have never participated in a collective bargaining agreement. We believe relations with our employees are good.

Available Information

The Company maintains a website at the following address: www.drinkreeds.com. The information on the Company's website is not incorporated by reference in this report. We make available on or through our website certain reports and amendments to those reports that we file with or furnish to the Securities and Exchange Commission ("SEC") in accordance with the Securities Exchange Act of 1934, as amended ("Exchange Act"). These include our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q and our Current Reports on Form 8-K. We make this information available on our website free of charge as soon as reasonably practicable after we electronically file the information with, or furnish it to, the SEC. In addition, we routinely post on the "Investors" page of our website news releases, announcements and other statements about our business and results of operations, some of which may contain information that may be deemed material to investors. Therefore, we encourage investors to monitor the "Investors" page of our website and review the information we post on that page. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at the following address: <http://www.sec.gov>.

Item 1A. Risk Factors

The following are some of the risks and uncertainties that could cause our actual results to differ materially from those presented in our forward-looking statements. The risks and uncertainties described below are not the only ones we face but do represent those risks and uncertainties that we believe are material to us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also harm our business. All forward-looking statements in this document are based on information available to us as of the date hereof, and we assume no obligation to update any such forward-looking statements.

Summary of Material Risk Factors

- We have a history of operating losses. Our estimates regarding the sufficiency of our cash resource and capital requirements and needs for additional financing raises substantial doubt about our ability to continue as a going concern.
- We may not be able to extend or repay our indebtedness owed to our secured lenders, which would have a material adverse effect on our financial condition and ability to continue as a going concern.
- We require additional financing to support our working capital and execute our operating plans for fiscal 2023, which may not be available or may be costly and dilutive.
- We rely on contract packers to manufacture our products.
- If we are not able to pass on increases in the costs of raw materials, including aluminum cans, ingredients, fuel and/or costs of co-packing or if we experience shortages of such raw materials, our business and results of operations could be materially, adversely affected and result in a higher cost base.
- Our failure to accurately estimate demand for our products or maintain sufficient inventory levels could adversely affect our business and financial results.

- Our business is subject to seasonality, which may cause fluctuations in our operating results.
- The costs of packaging supplies, ocean and domestic freight, and inflation generally may adversely affect our results of operations.
- Global or regional catastrophic events, such as the military conflict in Ukraine, could impact our operations and affect our ability to grow our business.
- The COVID-19 pandemic has impacted and may continue to impact our business and operations.
- Climate change and natural disasters may negatively affect our business.
- If we are not able to retain the services of our workforce, there may be an adverse effect on our operations and/or our operating performance until we find suitable replacements.
- Regulations imposing excise taxes on sweetened beverages may adversely affect our business, financial condition or results of operations and inhibit the sales of products.
- Regulations concerning alcohol beverages may adversely affect our business, financial condition or results of operations and inhibit the sales of such products.
- Significant changes to or failure to comply with various environmental laws may expose us to liability and/or cause certain facilities of our co-packers to close, relocate or operate at reduced production levels, which could adversely affect our business, financial condition and results of operations.
- Uncertainty in the financial markets and other adverse changes in general economic or political conditions could adversely affect our industry, business and results of operations.

Risk Factors Relating to Our Business

There is Substantial doubt about our ability to continue as a going concern.

The Company's financial statements as of December 31, 2022, were prepared on a going concern basis. For the year ended December 31, 2022, the Company recorded a net loss of \$20,057 and used cash in operations of \$15,530, and as of December 31, 2022, the Company had stockholders' deficit of \$8,470, and negative working capital of \$1,563. These conditions raise substantial doubt about the Company's ability to continue as a going concern within one year of the date that the financial statements are issued. In addition, the Company's independent registered public accounting firm, in their report on the Company's December 31, 2022, audited financial statements, raised substantial doubt about the Company's ability to continue as a going concern. As of December 31, 2022, we had a cash balance of \$533 with borrowing capacity of \$1,663. The Company believes that its current level of cash and cash equivalents are not sufficient to fund its operations for the next 12 months.

Our ability to continue as a going concern is dependent upon our ability to obtain additional financing, drive further operating efficiencies, reduce expenditures, and ultimately, create profitable operations. We may not be able to obtain additional capital on reasonable terms. Our financial statements do not include adjustments that would result from the outcome of this uncertainty. To alleviate these conditions, management is currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing will be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor sentiment with respect to us and our industry.

We have significant obligations under payables and debt obligations. Our ability to operate as a going concern are contingent upon successfully obtaining additional financing. Failure to do so would adversely affect our ability to continue operations.

If capital is not available, we may then need to scale back or freeze our organic growth plans, sell our business under unfavorable terms, and reduce expenses to manage our liquidity and capital resources. We may not be able extend or repay our current obligations, which could impact our ability to continue to operate as a going concern.

Our ability to service our indebtedness will depend on our ability to generate cash in the future.

Our ability to make payments on our indebtedness (including our Notes) will depend on our ability to generate cash in the future. Our ability to generate cash is subject to general economic and market conditions and financial, competitive, legislative, regulatory and other factors that are beyond our control. Our business may not generate sufficient cash to fund our working capital requirements, capital expenditure, debt service and other liquidity needs, which could result in our inability to comply with financial and other covenants contained in our debt agreements, our being unable to repay or pay interest and penalties on our indebtedness, and our inability to fund our other liquidity needs. If we are unable to service our debt obligations, fund our other liquidity needs and maintain compliance with our financial and other covenants, we could be forced to curtail our operations, our creditors could accelerate our indebtedness and exercise other remedies and we could be required to pursue one or more alternative strategies, such as selling assets or refinancing or restructuring our indebtedness. However, such alternatives may not be feasible or adequate.

Holders of the Notes agreed to waive certain provisions of the Notes resulting from the delisting of the Company's common stock from the Nasdaq Capital Market and the resulting Fundamental Change and Make-Whole Fundamental Change subject to certain conditions, through May 1, 2023.

In the event of a Make-Whole Fundamental Change under the Notes, the holders of the Notes would have the right to require the Company to repurchase the Notes at a purchase price of 100% of the principal amount held by such holder, plus accrued and unpaid interest through, but not including, the repurchase date. In addition, we would also be required to pay the holders of the Notes a Make-Whole Fundamental Change payment. The repurchase of the Notes as a result of a Make-Whole Fundamental Change would likely render us insolvent and result in some type of bankruptcy, insolvency, liquidation, or reorganization event for the company. Such an event could result in substantial dilution to investors in our common stock. While we expect the holders to provide further accommodations regarding this provision, there can be no assurances that they will be able to continue to do so or that the conditions imposed will be reasonable.

In the event that management proceeds with sale assets rather than continuing to hold and operate all its assets long term, management's assessment of the fair value, and ultimate recoverability, of goodwill, intangibles, and other long-lived assets would be impacted and the Company could incur significant noncash charges and cash exit costs in future periods.

In the event that additional working capital is not available, we may be forced to scale back or freeze our growth plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future plans to manage our liquidity and capital resources. In the event that management elects to proceed with asset sales in the future rather than continue to hold and operate all its assets long term, management's assessment of the fair value, and ultimate recoverability, of goodwill, intangibles, and other long-lived assets would be impacted and the Company could incur significant noncash charges and cash exit costs in future periods.

We may not be able to extend or repay our indebtedness owed to our secured lenders, which would have a material adverse effect on our financial condition and ability to continue as a going concern.

If we are unable to service or repay these obligations at maturity and we are otherwise unable to extend the maturity dates or refinance these obligations, we would be in default. We cannot provide any assurances that we will be able to raise the necessary amount of capital to service these obligations. Upon a default, our secured lenders would have the right to exercise their rights and remedies to collect, which would include foreclosing on our assets. Accordingly, a default would have a material adverse effect on our business, and we would likely be forced to seek bankruptcy protection.

We require additional financing to support our working capital and execute our operating plans for 2023, which may not be available or may be costly and dilutive.

We require additional financing to support our working capital needs and fund our operating plans for fiscal 2023. To alleviate these conditions, management is currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor.

Additionally, these alternatives may require significant cash payments for interest and other costs or could be highly dilutive to our existing shareholders. Any such financing alternatives may not provide us with sufficient funds to meet our long-term capital requirements.

Our indebtedness and liquidity needs could restrict our operations and make us more vulnerable to adverse economic conditions.

Our existing indebtedness may adversely affect our operations and limit our growth, and we may have difficulty making debt service payments on such indebtedness as payments become due. We may also experience the occurrence of events of default or breach of financial covenants. If market or other economic conditions deteriorate, our ability to comply with these covenants may be impaired. If we violate any of the restrictions or covenants, a significant portion of our indebtedness may become immediately due and payable, our lenders' commitment to make further loans to us may terminate. We might not have, or be able to obtain, sufficient funds to make these accelerated payments.

Risks associated with the conflict in Ukraine.

The conflict in Ukraine has continued to result in worldwide geopolitical and macroeconomic uncertainty. The conflict has resulted and could continue to result in volatile commodity markets, supply chain disruptions, increased risk of cyber incidents or other disruptions to our information systems business disruptions, limitations on access to credit markets and other corporate banking services, including working capital facilities, reduced availability and increased costs for transportation, energy and packaging and raw materials and other input costs. We cannot predict how and the extent to which the conflict will affect our operations, customers, consumers or business.

The COVID-19 pandemic and mitigation measures has had an adverse impact on global economic conditions, including disruption of stock markets and may impact on our ability to obtain financing on terms acceptable to us, if at all.

In February and March 2020, the financial markets significantly declined as the reality of the COVID-19 pandemic came into focus. The extent to which the COVID-19 pandemic continues to impact our results will depend on future developments that are highly uncertain and cannot be predicted at this time, including new information that may emerge concerning the severity of the virus and its variants and the actions to contain its impact. Disruption of stock markets had an impact on the cost of capital in 2020 and may, in the future, impact on our ability to obtain financing on terms acceptable to us, if at all.

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

The prices of ingredients, other raw materials, packaging materials, aluminum cans and other containers fluctuate depending on market conditions, governmental actions, climate change and other factors beyond our control, including outbreaks of infectious diseases. Substantial increases in the prices of our or ingredients, other raw materials, packaging materials, aluminum cans and other containers, to the extent they cannot be recouped through increases in the prices of finished beverage products, could increase our and our bottling partners' operating costs and reduce our profitability. Increases in the prices of our finished products resulting from a higher cost of ingredients, other raw materials, packaging materials, aluminum cans and other containers could affect affordability in some markets and reduce our or our bottling partners' sales. In addition, some of our ingredients as well as some packaging containers, such as aluminum cans, are available from a limited number of suppliers. We and our bottling partners may not be able to maintain favorable arrangements and relationships with these suppliers, and our contingency plans may not be effective in preventing disruptions that may arise from shortages of any ingredients that are available from a limited number of suppliers. Adverse weather conditions may affect the supply of other agricultural commodities from which key ingredients for our products are derived. An increase in the cost, a sustained interruption in the supply, or a shortage of some of these ingredients, other raw materials, packaging materials, aluminum cans and other containers that may be caused by changes in or the enactment of new laws and regulations; a deterioration of our or our bottling partners' relationships with suppliers; supplier quality and reliability issues; trade disruptions; changes in supply chain; and increases in tariffs; or events such as natural disasters, widespread outbreaks of infectious diseases (such as the COVID-19 pandemic), power outages, labor strikes, political uncertainties or governmental instability, or the like could negatively impact our net operating revenues and profits.

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

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

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

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

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

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

Our marketing and sales strategy depends in large part on the availability and performance of our independent distributors. We currently do not have, nor do we anticipate in the future that we will be able to establish, long-term contractual commitments from some of our distributors. We may not be able to maintain our current distribution relationships or establish and maintain successful relationships with distributors in new geographic distribution areas. Moreover, there is the additional possibility that we may have to incur additional expenditures to attract and maintain key distributors in one or more of our geographic distribution areas in order to profitably exploit our geographic markets.

If we lose any of our key distributors or national retail accounts, our financial condition and results of operations could be adversely affected.

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

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

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

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

Our independent distributors and national accounts are not required to place minimum monthly or annual orders for our products. In order to reduce their inventory costs, independent distributors typically order products from us on a "just in time" basis in quantities and at such times based on the demand for the products in a particular distribution area. Accordingly, we cannot predict the timing or quantity of purchases by any of our independent distributors or whether any of our distributors will continue to purchase products from us in the same frequencies and volumes as they may have done in the past. Additionally, our larger distributors and partners may make orders that are larger than we have historically been required to fill. Shortages in inventory levels, supply of raw materials or other key supplies could negatively affect us.

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

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

Our dependence on independent contract manufacturers could make management of our manufacturing and distribution efforts inefficient or unprofitable.

We are expected to arrange for our contract manufacturing needs sufficiently in advance of anticipated requirements, which is customary in the contract manufacturing industry for comparably sized companies. Based on the cost structure and forecasted demand for the particular geographic area where our contract manufacturers are located, we continually evaluate which of our contract manufacturers to use. To the extent demand for our products exceeds available inventory or the production capacity of our contract manufacturing arrangements, or orders are not submitted on a timely basis, we will be unable to fulfill distributor orders on demand. Conversely, we may produce more product inventory than warranted by the actual demand for it, resulting in higher storage costs and the potential risk of inventory spoilage. Our failure to accurately predict and manage our contract manufacturing requirements and our inventory levels may impair relationships with our independent distributors and key accounts, which, in turn, would likely have a material adverse effect on our ability to maintain effective relationships with those distributors and key accounts.

Increases in costs of packaging, ingredients and contract manufacturing tolling fees may have an adverse impact on our gross margin.

Over the past few years, costs of organic and natural ingredients have increased due to increased demand and required the Company to obtain these ingredients from a wider population of qualified vendors. Packaging costs such as paper and aluminum cans have experienced industry wide price increases in the past and there is always the risk that the company's co-packers increase their toll rates based on increases in their fixed and variable costs. If the Company is unable to pass on these costs, the gross margin will be significantly impacted.

Increased market spending may not drive volume growth.

The Company's marketing efforts in the past have been limited. The current increase in marketing spending may not generate an increase in sales volume resulting in a net decrease in gross revenue.

Increases in costs of energy and freight may have an adverse impact on our gross and operating margins.

An increase in the price, disruption of supply or shortage of fuel and other energy sources in markets where our bottlers operate, which may be caused by increasing demand, by events such as natural disasters, power outages and extreme weather, or by government regulations, taxes, policies or programs designed to reduce greenhouse gas emissions to address climate change, could increase our operating costs and negatively impact our profitability. An increase in the price, disruption of supply or shortage of fuel and other energy sources in any of the markets in which our independent bottling partners operate could increase the affected independent bottling partners' operating costs and thus could indirectly negatively impact our results of operations.

Over the past few years, volatility in the global oil markets has resulted in high fuel prices, which many shipping companies have passed on to their customers by way of higher base pricing and increased fuel surcharges. With recent declines in fuel prices, some companies have been slow to pass on decreases in their fuel surcharges. If fuel prices increase again, we expect to experience higher shipping rates and fuel surcharges, as well as energy surcharges on our raw materials. It is hard to predict what will happen in the fuel markets in 2023. Due to the price sensitivity of our products, we may not be able to pass such increases on to our customers.

If we are unable to attract and retain qualified employees, our efficiency and operations would be adversely affected.

Our success depends on our ability to attract and retain highly qualified employees in such areas as sales, marketing, product development, supply chain, finance and accounting. In general, we compete to hire new employees, and, in some cases, must train them and develop their skills and competencies. Our operating results could be adversely affected by increased costs due to increased competition for employees, higher employee turnover or increased employee benefit costs. Any unplanned turnover could negatively impact our operations, financial condition and employee morale.

If we are not able to retain the services of members of senior management, there may be an adverse effect on our operations and/or our operating performance until we find suitable replacements.

Our business is dependent, to a large extent, upon the services of our senior management. We do not maintain key person life insurance on any members of our senior management. The loss of service of Chief Executive Officer, Norman E. Snyder or any other key members of our senior management could adversely affect our business until suitable replacements can be found. There may be a limited number of personnel with the requisite skills to serve in these positions, and we may be unable to locate or employ such qualified executives on acceptable terms.

If we fail to protect our trademarks and trade secrets, we may be unable to successfully market our products and compete effectively.

We rely on a combination of trademark and trade secrecy laws, confidentiality procedures and contractual provisions to protect our intellectual property rights. Failure to protect our intellectual property could harm our brand and our reputation, and adversely affect our ability to compete effectively. Further, enforcing or defending our intellectual property rights, including our trademarks, copyrights, licenses and trade secrets, could result in the expenditure of significant financial and managerial resources. We regard our intellectual property, particularly our trademarks and trade secrets, to be of considerable value and importance to our business and our success, and we actively pursue the registration of our trademarks in the United States and internationally. However, the steps taken by us to protect these proprietary rights may not be adequate and may not prevent third parties from infringing or misappropriating our trademarks, trade secrets or similar proprietary rights. In addition, other parties may seek to assert infringement claims against us, and we may have to pursue litigation against other parties to assert our rights. Any such claim or litigation could be costly. In addition, any event that would jeopardize our proprietary rights or any claims of infringement by third parties could have a material adverse effect on our ability to market or sell our brands, profitably exploit our products or recoup our associated research and development costs.

Litigation or legal proceedings could expose us to significant liabilities and damage our reputation.

We may become party to litigation claims and legal proceedings. Litigation involves significant risks, uncertainties and costs, including distraction of management attention away from our business operations. We evaluate litigation claims and legal 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 establish reserves and disclose the relevant litigation claims or legal proceedings, 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 those envisioned by our current assessments and estimates. Our policies and procedures require strict compliance by our employees and agents with all U.S. and local laws and regulations applicable to our business operations, including those prohibiting improper payments to government officials. Nonetheless, our policies and procedures may not ensure full compliance by our employees and agents with all applicable legal requirements. Improper conduct by our employees or agents could damage our reputation or lead to litigation or legal proceedings that could result in civil or criminal penalties, including substantial monetary fines, as well as disgorgement of profits.

We are subject to risks inherent in sales of products in international markets.

Our operations outside of the United States contribute to our revenue and profitability, and we believe that developing and emerging markets present important future growth opportunities for us. However, there can be no assurance that existing or new products that we manufacture, distribute or sell will be accepted or be successful in any particular foreign market, due to local or global competition, product price, cultural differences, consumer preferences or otherwise. Here are many factors that could adversely affect demand for our products in foreign markets, including our inability to attract and maintain key distributors in these markets; volatility in the economic growth of certain of these markets; changes in economic, political or social conditions, imposition of new or increased labeling, product or production requirements, or other legal restrictions; restrictions on the import or export of our products or ingredients or substances used in our products; inflationary currency, devaluation or fluctuation; increased costs of doing business due to compliance with complex foreign and U.S. laws and regulations. If we are unable to effectively operate or manage the risks associated with operating in international markets, our business, financial condition or results of operations could be adversely affected.

Fluctuations in our effective tax rate could adversely affect our financial condition and results of operations.

Changes in U.S. tax laws as a result of any legislation proposed by the new U.S. Presidential Administration or U.S. Congress, which may include efforts to change or repeal the 2017 Tax Cuts and Jobs Act and the federal corporate income tax rate reduction, could adversely affect our provision for income taxes, resulting in an adverse impact on our financial condition or results of operations.

Uncertainty in the financial markets and other adverse changes in general economic or political conditions in any of the major countries in which we do business could adversely affect our industry, business and results of operations.

Global economic uncertainties, including highly inflationary economies and foreign currency exchange rates and rising interest rates, affect businesses such as ours in a number of ways, making it difficult to accurately forecast and plan our future business activities. There can be no assurance that economic improvements will occur, or that they would be sustainable, or that they would enhance conditions in markets relevant to us. In addition, we cannot predict the duration and severity of disruptions in any of our markets or the impact they may have on our customers or business. Unfavorable economic conditions and financial uncertainties, including economic slowdowns and recessions, and unstable political conditions, including civil unrest and governmental changes, in certain of our other international markets could undermine global consumer confidence and reduce consumers' purchasing power, thereby reducing demand for our products. Included in the foregoing are long-term uncertainties surrounding the United Kingdom's withdrawal from the European Union on January 31, 2020 (commonly referred to as "Brexit") and any resulting increases in tariffs, importation restrictions, out of stocks, volatility in currency exchange rates, including the valuation of the euro and the British pound in particular, changes in the laws and regulations applied in the United Kingdom or impacts on economic and market conditions in the United Kingdom, the European Union and its member states and elsewhere. The foregoing also includes the military conflict in Ukraine and any increased economic uncertainty and volatility in commodity prices that it poses.

Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly affect our financial results.

The United States generally accepted accounting principles and related pronouncements, implementation guidelines and interpretations with regard to a wide variety of matters that are relevant to our business, such as, but not limited to, stock-based compensation, trade spend and promotions, and income taxes are highly complex and involve many subjective assumptions, estimates and judgments by our management. Changes to these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported results.

If we are unable to build and sustain proper information technology infrastructure, our business could suffer.

We depend on information technology as an enabler to improve the effectiveness of our operations and to interface with our customers, as well as to maintain financial accuracy and efficiency. If we do not allocate and effectively manage the resources necessary to build and sustain the proper technology infrastructure, we could be subject to transaction errors, processing inefficiencies, the loss of customers, business disruptions, or the loss of or damage to intellectual property through security breaches.

We could be subject to cybersecurity attacks.

Cybersecurity attacks are evolving and include malicious software, attempts to gain unauthorized access to data, and other electronic security breaches that could lead to disruptions in business processes, unauthorized release of confidential or otherwise protected information and corruption of data. Such unauthorized access could subject us to operational interruption, damage to our brand image and private data exposure, and harm our business.

Risks Factors Relating to Our Industry

The costs of packaging supplies, freight, and inflation generally may adversely affect our results of operations.

Many of our packaging supply contracts allow our suppliers to alter the costs they charge us for packaging supplies based on changes in the costs of the underlying commodities that are used to produce those packaging supplies, such as aluminum for cans, and pulp and paper for cartons and/or trays. These changes in the prices we pay for our packaging supplies occur at certain predetermined times that vary by product and supplier. In most cases, we bear the risk of increases in the costs of these packaging supplies, including the underlying costs of the commodities that comprise these packaging supplies. Recently, inflation has affected, and continues to affect certain of our raw material and packaging costs, commodities and other inputs globally. If the costs of packaging supplies and other costs, such as domestic freight rates, increase, we may be unable to pass these costs along to our customers through corresponding adjustments to the prices we charge, which could have a material adverse effect on our results of operations.

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

Consumers are concerned about health and wellness; public health officials and government officials are increasingly vocal about obesity and its consequences. There has been a trend among some public health advocates and dietary guidelines to recommend a reduction in sweetened beverages, as well as increased public scrutiny, potential new taxes on sugar-sweetened beverages, and additional governmental regulations concerning the marketing and labeling/packing of the beverage industry. Additional or revised regulatory requirements, whether labeling, tax or otherwise, could have a material adverse effect on our financial condition and results of operations. Further, increasing public concern with respect to sweetened beverages could reduce demand for our beverages and increase desire for more low-calorie soft drinks, water, enhanced water, coffee-flavored beverages, tea, and beverages with natural sweeteners. We are continuously working to launch new products that round out our diversified portfolio.

Legislative or regulatory changes that affect our products could reduce demand for products or increase our costs.

Taxes imposed on the sale of certain of our products by federal, state and local governments in the United States, Canada or other countries in which we operate could cause consumers to shift away from purchasing our beverages. Several municipalities in the United States have implemented or are considering implementing taxes on the sale of certain “sugared” beverages, including non-diet soft drinks, fruit drinks, teas and flavored waters to help fund various initiatives. These taxes could materially affect our business and financial results.

Additional taxes levied on us could harm our financial results.

Recent legislative proposals to reform U.S. taxation of non-U.S. earnings could have a material adverse effect on our financial results by subjecting a significant portion of our non-U.S. earnings to incremental U.S. taxation and/or by delaying or permanently deferring certain deductions otherwise allowed in calculating our U.S. tax liabilities.

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

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

Competition from traditional non-alcoholic beverage manufacturers may adversely affect our distribution relationships and may hinder development of our existing markets, as well as prevent us from expanding our markets.

We target a niche in the estimated \$29 billion carbonated soft drink market in the US, Canada and international markets. Our brands are generally regarded as premium and natural, with upscale packaging and are loosely defined as the artisanal (craft), premium bottled carbonated soft drink category. The soft drink industry is highly fragmented, and the craft soft drink category consists of such competitors as IBC, Stewart's, Zevia, Henry Weinhard's, Izze, Boylan, Sprechers, and Jones Soda, to name a few. These brands have the advantage of being seen widely in the national market and being commonly known for years through well-funded ad campaigns. Our products have a relatively high price for an artisanal premium beverage product, minimal mass media advertising to date and a small but growing presence in the mainstream market compared to some of our larger competitors.

The beverage industry is highly competitive. We compete with other beverage companies not only for consumer acceptance but also for shelf space in retail outlets and for marketing focus by our distributors, all of which also distribute other beverage brands. Our products compete with a wide range of drinks produced by a relatively large number of manufacturers, most of which have substantially greater financial, marketing and distribution resources than ours. Some of these competitors are placing pressure on independent distributors not to carry competitive sparkling brands such as ours. We also compete with regional beverage producers and "private label" soft drink suppliers.

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

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

Failure to introduce new products or product extensions into the marketplace as current ones mature and to meet our consumers' changing preferences could prevent us from gaining market share and achieving long-term profitability. Product lifecycles can vary, and consumers' preferences and loyalties change over time. Although we try to anticipate these shifts and innovate new products to introduce to our consumers, we may not succeed. Customer preferences also are affected by factors other than taste, such as health and nutrition considerations and obesity concerns, shifting consumer needs, changes in consumer lifestyles, increased consumer information and competitive product and pricing pressures. Sales of our products may be adversely affected by the negative publicity associated with these issues. If we do not adequately anticipate or adjust to respond to these and other changes in customer preferences, we may not be able to maintain and grow our brand image and our sales may be adversely affected.

Global economic conditions may continue to adversely impact our business and results of operations.

The beverage industry, and particularly those companies selling premium beverages, can be affected by macro-economic factors, including changes in national, regional, and local economic conditions, unemployment levels and consumer spending patterns, which together may impact the willingness of consumers to purchase our products as they adjust their discretionary spending. Adverse economic conditions may negatively impact the ability of our distributors to obtain the credit necessary to fund their working capital needs, which could negatively impact their ability or desire to continue to purchase products from us in the same frequencies and volumes as they have done in the past. If we experience adverse economic conditions in the future, sales of our products could be adversely affected, collectability of accounts receivable may be compromised, and we may face obsolescence issues with our inventory, any of which could have a material adverse impact on our operating results and financial condition.

If we encounter product recalls or other product quality issues, our business may suffer.

Product quality issues, real or imagined, or allegations of product contamination, even when false or unfounded, could tarnish our image and could cause consumers to choose other products. In addition, because of changing government regulations or implementation thereof, or allegations of product contamination, we may be required from time to time to recall products entirely or from specific markets. Product recalls could affect our profitability and could negatively affect brand image.

We could be exposed to product liability claims.

Although we have product liability and basic recall insurance, insurance coverage may not be sufficient to cover all product liability claims that may arise. To the extent our product liability coverage is insufficient, a product liability claim would likely have a material adverse effect upon our financial condition. In addition, any product liability claim brought against us may materially damage the reputation and brand image of our products and business.

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

The production, marketing and sale of our beverages, including contents, labels, caps and containers, are subject to the rules and regulations of various federal, provincial, state and local health agencies. If a regulatory authority finds that a current or future product or production run is not in compliance with any of these regulations, we may be fined, or production may be stopped, which would adversely affect our financial condition and results of operations. Similarly, any adverse publicity associated with any noncompliance may damage our reputation and our ability to successfully market our products. Furthermore, the rules and regulations are subject to change from time to time and while we closely monitor developments in this area, we cannot anticipate whether changes in these rules and regulations will impact our business adversely. Additional or revised regulatory requirements, whether labeling, environmental, tax or otherwise, could have a material adverse effect on our financial condition and results of operations.

Significant additional labeling or warning requirements may inhibit sales of affected products.

Various jurisdictions may seek to adopt significant additional product labeling or warning requirements relating to the chemical content or perceived adverse health consequences of certain of our products. These types of requirements, if they become applicable to one or more of our products under current or future environmental or health laws or regulations, may inhibit sales of such products. In California, a law requires that a specific warning appear on any product that contains a component listed by the state as having been found to cause cancer or birth defects. This law recognizes no generally applicable quantitative thresholds below which a warning is not required. If a component found in one of our products is added to the list, or if the increasing sensitivity of detection methodology that may become available under this law and related regulations as they currently exist, or as they may be amended, results in the detection of an infinitesimal quantity of a listed substance in one of our beverages produced for sale in California, the resulting warning requirements or adverse publicity could affect our sales.

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

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

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

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

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

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

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

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

The loss of our largest customers would substantially reduce revenues.

Our customers are material to our success. If we are unable to maintain good relationships with our existing customers, our business could suffer.

During the year ended December 31, 2022, the Company had two customers that accounted for approximately 17% and 16% of its sales, respectively; and during the year ended December 31, 2021, the Company had two customers that accounted for approximately 19% and 11% of its sales, respectively. These two customers serve hundreds if not thousands of various retail chains and end customers.

No other customer exceeded 10% of sales for either period.

The loss of our largest vendors would substantially reduce revenues.

Our vendors are important to our success. If we are unable to maintain good relationships with our existing vendors, our business could suffer.

During the year ended December 31, 2022, the Company's largest vendor accounted for approximately 12% of its purchases. During the year ended December 31, 2021, the Company's largest two vendors accounted for approximately 13%, and 10% of its purchases, respectively.

As of December 31, 2021, no other Company vendor accounted for more than 10% of the total accounts payable.

No other account was more than 10% of the balance of accounts payable in either period.

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

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

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

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

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

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

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

We also depend upon an uninterrupted supply of packaging materials, such as glass, cans and paper items. We obtain bottles both domestically and internationally. Any decrease in supply of these materials or increase in the prices of the materials, as a result of decreased supply or increased demand, could substantially increase our costs and adversely affect our financial performance.

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

We rely on third parties, called co-packers in our industry, to produce our beverages.

During the years ended December 31, 2022, and 2021, the Company utilized nine separate US based co-packers for most its production needs. Although there are other packers that could produce the Company's beverages, a change in packers may cause a delay in the production process, which could ultimately affect operating results.

Our co-packing arrangements with other companies are on a short-term basis and such co-packers may discontinue their relationship with us on short notice. Our co-packing arrangements expose us to various risks, including:

- if any of those co-packers were to terminate our co-packing arrangement or have difficulties in producing beverages for us, our ability to produce our beverages would be adversely affected until we were able to make alternative arrangements; and
- our business reputation would be adversely affected if any of the co-packers were to produce inferior quality.

We believe that we have substantially reduced this risk by reducing our reliance upon any single co-packer. We are in discussion and negotiation with additional co-packers to ensure added capability for future production needs.

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

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

Our manufacturing process is not patented.

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

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

Our business is dependent, to a large extent, upon the services of our management team. We do have a written employment agreement with one of four members of our management team. In addition, we do not maintain key person life insurance on any of our management team. Therefore, in the event of the loss or unavailability of any member of the management team to us, there can be no assurance that we would be able to locate in a timely manner or employ qualified personnel to replace him or her. The loss of the services of any member of our management team or our failure to attract and retain other key personnel over time would jeopardize our ability to execute our business plan and could have a material adverse effect on our business, results of operations and financial condition.

The price of our common stock may be volatile, and a shareholder's investment in our common stock could suffer a decline in value.

There has been significant volatility in the volume and market price of our common stock, and this volatility may continue in the future. In addition, factors such as quarterly variations in our operating results, litigation involving us, general trends relating to the beverage industry, actions by governmental agencies, national economic and stock market considerations as well as other events and circumstances beyond our control could have a significant impact on the future market price of our common stock and the relative volatility of such market price.

A prolonged decline in the price of our common stock could result in a reduction in the liquidity of our common stock and a reduction in our ability to raise capital. If we are unable to raise the funds required for all of our planned operations and key initiatives, we may be forced to allocate funds from other planned uses, which may negatively impact our business and operations, including our ability to develop new products and continue our current operations.

Many factors that are beyond our control may significantly affect the market price of our shares. These factors include:

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

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

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

There is currently a limited public market for our common stock. Holders of our common stock may, therefore, have difficulty selling their shares, should they decide to do so. In addition, there can be no assurances that such markets will continue or that any shares which may be purchased, may be sold without incurring a loss. Any such market price of our shares may not necessarily bear any relationship to our book value, assets, past operating results, financial condition or any other established criteria of value, and may not be indicative of the market price for the shares in the future.

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

Our board of directors has the power to issue additional shares of common or preferred stock up to the amounts authorized in our certificate of incorporation without stockholder approval, subject to restrictive covenants contained in the Company's contracts. If additional funds are raised through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders will be reduced, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we issue any additional common stock or securities convertible into common stock, such issuance will reduce the proportionate ownership and voting power of each other stockholder. In addition, such stock issuances might result in a reduction of the book value of our common stock. Any increase of the number of authorized shares of common stock or preferred stock would require board and shareholder approval and subsequent amendment to our certificate of incorporation.

Risk Factors Related to Government Regulation

Changes in government regulation, or a failure to comply with existing regulations related to sweetened beverages, could adversely affect our business, financial condition and results of operations.

Legislation that would impose an excise tax on sweetened beverages has been proposed in the U.S. Congress, in some state legislatures and by some local governments, with excise taxes generally ranging between \$0.01 and \$0.02 per ounce of sweetened beverage. The imposition of such taxes on our products would increase the cost of certain of our products or, to the extent levied directly on consumers, make certain of our products less affordable. Excise taxes on sweetened beverages already are in effect in certain foreign countries, such as France, the United Kingdom, Ireland, South Africa, Mexico and Colombia. Other countries are considering similar measures.

Public health officials and health advocates are increasingly focused on the public health consequences associated with obesity, especially as it affects children, and are seeking legislative change to reduce the consumption of sweetened beverages.

To the extent any such legislation is enacted in one or more jurisdictions where a significant amount of our products is sold, individually or in the aggregate, it could result in a reduction in demand for, or availability of, our products, and adversely affect our business, financial condition and results of operations.

The production, distribution and sale in the United States of many of our products are also currently subject to various federal and state regulations, including, but not limited to: the FD&C Act; the Occupational Safety and Health Act; various environmental statutes; data privacy laws; California Proposition 65; and various other federal, state and local statutes and regulations applicable to the production, transportation, sale, safety, advertising, labeling, packaging and ingredients of such products. Outside the United States, the production, distribution and sale of many of our products are also subject to numerous statutes and regulations. If a regulatory authority finds that a current or future product, its label, or a production run is not in compliance with any of these regulations, we may be fined, or the products in question may have to be recalled, removed from the market, reformulated and/or have the packaging changed, which could adversely affect our business, financial condition and results of operations.

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

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

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

Our co-packers are subject to a wide and increasingly broad array of federal, state, regional, local, and international environmental laws, including statutes and regulations, which aim to regulate emissions and impacts to air, land, and water. Their operations may result in odors, noise, or other pollutants being emitted. Failure to comply with any environmental laws or any future changes to them could result in alleged harm to employees or others near facilities. Significant costs to satisfy environmental compliance, remediation or compensatory requirements, or the imposition of penalties or restrictions on operations by governmental agencies or courts may adversely affect our business, financial condition, and results of operations.

Increasing concern over sustainability matters, including climate change, will likely result in new or revised laws and regulations aimed at reducing or mitigating the potential effects of greenhouse gases, restricting or increasing the costs of commercial water use due to local water scarcity concerns, or increasing mandatory reporting of certain sustainability metrics, such as recycling.

Risk Factors Related to Distribution of Alcoholic Beverages

Demand for our products may be adversely affected by many factors, including changes in consumer preferences and trends.

Consumer preferences may shift due to a variety of factors including changes in demographic and social trends, public health initiatives, product innovations, changes in vacation or leisure activity patterns and a downturn in economic conditions, which may reduce consumers' willingness to purchase distilled spirits or cause a shift in consumer preferences away from ginger beer-based cocktails toward beer, wine or non-alcoholic beverages. Our success depends in part on fulfilling available opportunities to meet consumer needs and anticipating changes in consumer preferences with successful new products and product innovations. The competitive position of our brands could also be affected adversely by any failure to achieve consistent, reliable quality in the product or in service levels to customers.

We face substantial competition in our industry and many factors may prevent us from competing successfully.

We compete based on product taste and quality, brand image, price, service and ability to innovate in response to consumer preferences. The global spirits industry is highly competitive and is dominated by several large, well-funded international companies. It is possible that our competitors may either respond to industry conditions or consumer trends more rapidly or effectively or resort to price competition to sustain market share, which could adversely affect our sales and profitability.

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

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

Class action or other litigation relating to alcohol abuse, or the misuse of alcohol could adversely affect our business.

Companies in the beverage alcohol industry are, from time to time, exposed to class action or other litigation relating to alcohol advertising, product liability, alcohol abuse problems or health consequences from the misuse of alcohol. It is also possible that governments could assert that the use of alcohol has significantly increased government funded health care costs. Litigation or assertions of this type have adversely affected companies in the tobacco industry, and it is possible that we, as well as our suppliers, could be named in litigation of this type.

Also, lawsuits have been brought in a number of states alleging that beverage alcohol manufacturers and marketers have improperly targeted underage consumers in their advertising. Plaintiffs in these cases allege that the defendants' advertisements, marketing and promotions violate the consumer protection or deceptive trade practices statutes in each of these states and seek repayment of the family funds expended by the underage consumers. While we have not been named in these lawsuits, we could be named in similar lawsuits in the future. Any class action or other litigation asserted against us could be expensive and time-consuming to defend against, depleting our cash and diverting our personnel resources and, if the plaintiffs in such actions were to prevail, our business could be harmed significantly.

Regulatory decisions and legal, regulatory and tax changes could limit our business activities, increase our operating costs and reduce our margins.

Our business is subject to extensive regulation in all of the countries in which we operate. This may include regulations regarding production, distribution, marketing, advertising and labeling of beverage alcohol products. We are required to comply with these regulations and to maintain various permits and licenses. We are also required to conduct business only with holders of licenses to import, warehouse, transport, distribute and sell beverage alcohol products. We cannot assure you that these and other governmental regulations applicable to our industry will not change or become more stringent. Moreover, because these laws and regulations are subject to interpretation, we may not be able to predict when and to what extent liability may arise. Additionally, due to increasing public concern over alcohol-related societal problems, including driving while intoxicated, underage drinking, alcoholism and health consequences from the abuse of alcohol, various levels of government may seek to impose additional restrictions or limits on advertising or other marketing activities promoting beverage alcohol products. Failure to comply with any of the current or future regulations and requirements relating to our industry and products could result in monetary penalties, suspension or even revocation of our licenses and permits. Costs of compliance with changes in regulations could be significant and could harm our business, as we could find it necessary to raise our prices to maintain profit margins, which could lower the demand for our products and reduce our sales and profit potential.

Also, the distribution of beverage alcohol products is subject to extensive taxation both in the U.S. and internationally (and, in the U.S., at both the federal and state government levels), and beverage alcohol products themselves are the subject of national import and excise duties in most countries around the world. An increase in taxation or in import or excise duties could also significantly harm our sales revenue and margins, both through the reduction of overall consumption and by encouraging consumers to switch to lower-taxed categories of beverage alcohol.

Risk Factors Related to Our Common Stock

If we are not able to achieve our objectives for our business, the value of an investment in our Company could be negatively affected.

In order to be successful, we believe that we must, among other things:

- increase the volume for our products
- continue to find savings in our cost of goods (co-packer fees, packaging and ingredients);
- expand the number of co-packers for our core and innovation products;
- continue to recruit and retain top talent;
- drive increased awareness through our brand pull campaigns, and trial and repeat purchase of our core brands;

- drive increased SKU placement on shelf, and open new outlets of retail distribution through our investment in sales resources, partnerships and trade marketing support;
- manage our operating expenses to sufficiently support operating activities and
- avoid significant increases in variable costs relating to production, marketing and distribution.

We may not be able to meet these objectives, which could have a material adverse effect on our results of operations. We have incurred significant operating expenses in the past and may do so again in the future and, as a result, will need to increase revenues in order to improve our results of operations. Our ability to increase sales volume will depend primarily on success in marketing initiatives with industry brokers, improving our distribution base with DSD companies, introducing new no sugar brands, and focusing on the existing core brands in the market. Our ability to successfully enter new distribution areas and obtain national accounts will, in turn, depend on various factors, many of which are beyond our control, including, but not limited to, the continued demand for our brands and products in target markets, the ability to price our products at competitive levels, the ability to establish and maintain relationships with distributors in each geographic area of distribution and the ability in the future to create, develop and successfully introduce one or more new brands, products, and product extensions.

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

Provisions in our certificate of incorporation and bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that:

- authorize our board of directors to issue, without further action by the stockholders, shares of undesignated preferred stock;
- specify that special meetings of our stockholders can be called only upon the request of a majority of our board of directors or our Chief Executive Officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors; and
- prohibit cumulative voting in the election of directors.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management, and may discourage, delay or prevent a transaction involving a change of control of our Company that is in the best interest of our minority stockholders. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if they are viewed as discouraging future takeover attempts.

Furthermore, we are subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a three-year period following the time that this stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. A “business combination” includes, among other things, a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested stockholder status, 15% or more of the corporation’s voting stock. Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- before the stockholder became interested, the board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances; or
- at or after the time the stockholder became interested, the business combination was approved by the board of directors of the corporation and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

The existence of this provision may have an anti-takeover effect with respect to transactions the Company's board of directors does not approve in advance. Section 203 may also discourage attempts that might result in a premium over the market price for the shares of Common Stock held by stockholders.

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

Collectively, members of our board of directors and our executive officers hold approximately 23.3% of the Company's outstanding common stock, beneficially own approximately 29.3% of our common stock and may greatly influence the outcome of all matters on which stockholders vote.

Collectively, members of our board of directors and our executive officers hold approximately 23.3% of our outstanding common stock and beneficially own approximately 29.3% of our common stock. Members of our board of directors and our executive officers may influence the outcome of certain matters on which stockholders vote. (Beneficial ownership is calculated pursuant to Section 13d-3 of the Securities Exchange Act of 1934, as amended, and includes shares underlying derivative securities which may be exercised or converted within 60 days.)

If securities analysts or industry analysts downgrade our shares, publish negative research or reports, or do not publish reports about our business, our share price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us, our business and our industry. If one or more analysts adversely change their recommendation regarding our shares or our competitors' stock, our share price would likely decline. If one or more analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our share price or trading volume to decline. As a result, the market price for our common stock may decline.

We have the ability to issue additional shares of our common stock and shares of preferred stock without asking for stockholder approval, which could cause your investment to be diluted.

Our Articles of Incorporation authorize the Board of Directors to issue up to 180,000,000 shares of common stock and up to 500,000 shares of preferred stock. The power of the Board of Directors to issue shares of common stock, preferred stock or warrants or options to purchase shares of common stock or preferred stock is generally not subject to stockholder approval. Accordingly, any additional issuance of our common stock, or preferred stock that may be convertible into common stock, may have the effect of diluting your investment, and the new securities may have rights, preferences and privileges senior to those of our common stock.

Substantial sales of our stock may impact the market price of our common stock.

Future sales of substantial amounts of our common stock, including shares that we may issue upon exercise of options and warrants, could adversely affect the market price of our common stock. Further, if we raise additional funds through the issuance of common stock or securities convertible into or exercisable for common stock, the percentage ownership of our stockholders will be reduced, and the price of our common stock may fall.

Our common stock is thinly traded, and investors may be unable to sell some or all of their shares at the price they would like, or at all, and sales of large blocks of shares may depress the price of our common stock.

Our common stock has historically been sporadically or “thinly traded,” meaning that the number of persons interested in purchasing shares of our common stock at prevailing prices at any given time may be relatively small or nonexistent. As a consequence, there may be periods of several days or more when trading activity in shares of our common stock is minimal or non-existent, as compared to a seasoned issuer that has a large and steady volume of trading activity that will generally support continuous sales without an adverse effect on share price. This could lead to wide fluctuations in our share price. Investors may be unable to sell their common stock at or above their purchase price, which may result in substantial losses. Also, as a consequence of this lack of liquidity, the trading of relatively small quantities of shares by our stockholders may disproportionately influence the price of shares of our common stock in either direction. The price of shares of our common stock could, for example, decline precipitously in the event a large number of shares of our common shares are sold on the market without commensurate demand, as compared to a seasoned issuer that could better absorb those sales without adverse impact on its share price.

We do not intend to pay any cash dividends on our shares of common stock in the near future, so our shareholders will not be able to receive a return on their shares unless they sell their shares.

We intend to retain any future earnings to finance the development and expansion of our business. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. There is no assurance that future dividends will be paid, and if dividends are paid, there is no assurance with respect to the amount of any such dividend. Unless we pay dividends, our shareholders will not be able to receive a return on their shares unless they sell such shares.

Risk Factors Related to Environmental and Social Factors

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

Water is a main ingredient in substantially all of our products, is vital to the production of the agricultural ingredients on which our business relies and is needed in our manufacturing process. It also is critical to the prosperity of the communities we serve and the ecosystems in which we operate. Water is a limited resource in many parts of the world, facing unprecedented challenges from overexploitation, increasing demand for food and other consumer and industrial products whose manufacturing processes require water, increasing pollution and emerging awareness of potential contaminants, poor management, lack of physical or financial access to water, sociopolitical tensions due to lack of public infrastructure in certain areas of the world and the effects of climate change. Lack of available water of acceptable quality, actions by governmental and non-governmental organizations, investors, customers and consumers on water scarcity and increasing pressure to conserve and replenish water in areas of scarcity and stress, including due to the effects of climate change, can lead to: supply chain disruption; adverse effects on our operations or the operations of our business partners; higher compliance costs; increased capital expenditures; higher production costs, including less favorable pricing for water; perception of our failure to act responsibly with respect to water use or to effectively respond to legal or regulatory requirements concerning water scarcity; or damage to our reputation, any of which can adversely affect our business..

Increased demand for food products and decreased agricultural productivity may negatively affect our business.

As part of the manufacture of our beverage products, we and our bottling partners use a number of key ingredients that are derived from agricultural commodities; decreased agricultural productivity in certain regions of the world as a result of changing weather patterns; increased agricultural regulations; and other factors have in the past, and may in the future, limit the availability and/or increase the cost of such agricultural commodities and could impact the food security of communities around the world.

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

There is increasing concern that a gradual increase in global average temperatures due to increased concentration of carbon dioxide and other greenhouse gases in the atmosphere will cause significant changes in weather patterns around the globe and an increase in the frequency and severity of natural disasters. Decreased agricultural productivity in certain regions of the world as a result of changing weather patterns may limit the availability or increase the cost of key agricultural commodities, which are important sources of ingredients for our products, and could impact the food security of communities around the world. Climate change may also exacerbate water scarcity and cause a further deterioration of water quality in affected regions, which could limit water availability for our independent bottlers. Increased frequency or duration of extreme weather conditions could also impair production capabilities, disrupt our supply chain or impact demand for our products. Increasing concern over climate change also may result in additional legal or regulatory requirements designed to reduce or mitigate the effects of carbon dioxide and other greenhouse gas emissions on the environment. Increased energy or compliance costs and expenses due to increased legal or regulatory requirements may cause disruptions in, or an increase in the costs associated with, the manufacturing and distribution of our beverage products. The effects of climate change and legal or regulatory initiatives to address climate change could have a long-term adverse impact on our business and results of operations.

Adverse weather conditions could reduce the demand for our products.

The sales of our products are influenced to some extent by weather conditions in the markets in which we operate. Unusually cold or rainy weather during the summer months may have a temporary effect on the demand for our products and contribute to lower sales, which could have an adverse effect on our results of operations for such periods.

Item 1B. Unresolved Staff Comments

Not applicable.

Item 2. Property

The Company leases 8,620 square feet of office space in Norwalk, Connecticut, which serves as our principal executive offices. The lease commenced September 1, 2018, and continues in effect for a period of 5.5 years.

Item 3. Legal Proceedings

From time to time, we are a party to ordinary, routine litigation incidental to our business. Our management evaluates our exposure to these claims and proceedings individually and in the aggregate and provides for potential losses on such litigation if the amount of the loss is estimable and the loss is probable.

We are not party to any material pending legal proceedings (including environmental proceedings), other than ordinary, routine litigation incidental to the business at the current time. Although the results of such litigation matters and claims cannot be predicted with certainty, we believe that the final outcome of ordinary, routine litigation will not have a material adverse impact on our financial position, liquidity, or results of operations.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Common Equity and Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock was delisted from The Nasdaq Capital Market on February 16, 2023. Concurrently, our common stock became quoted on the OTCQX Best Market. We continue to trade under the symbol “REED”.

On December 21, 2021, our shareholders approved an increase in the number of authorized shares of common stock from 120 million to 180 million. On January 24, 2023, our shareholders approved a up to a 1:50 reverse stock split of our common stock. Effective January 27, 2023, we effected the 1:50 reverse stock split of our common stock.

As of March 31, 2023, there were approximately 165 holders of record of the common stock and 2,602,399 outstanding shares of common stock. The holders of record do not include those stockholders whose shares are held of record by banks, brokers and other financial institutions.

During the year ended December 31, 2022, we repurchased 265 shares of common stock from an officer for \$2 based on the market value of share on the date repurchased. We retired the shares.

We currently have no expectation to pay cash dividends to holders of our common stock in the foreseeable future.

Unregistered Sales of Equity Securities

None that have not been previously disclosed in a Current Report on Form 8-K.

Equity Compensation Plans

Pursuant to the SEC’s Regulation S-K Compliance and Disclosure Interpretation 106.01, the information required by this Item pursuant to Item 201(d) of Regulation S-K relating to securities authorized for issuance under the Corporation’s equity compensation plans is located in Item 12 of Part III of this Annual Report and is incorporated herein by reference.

Item 6. [Reserved]

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our financial statements and the related notes appearing elsewhere in this Annual Report. This discussion and analysis may contain forward-looking statements based on assumptions about our future business. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including but not limited to those set forth under “Risk Factors” and elsewhere in this Annual Report.

In addition to our GAAP results, the following discussion includes Modified EBITDA as a supplemental measure of our performance. We present Modified EBITDA because we believe it assists investors and analysts in comparing our performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. In addition, we use Modified EBITDA in developing our internal budgets, forecasts, and strategic plan; in analyzing the effectiveness of our business strategies in evaluating potential acquisitions; making compensation decisions; and in communications with our board of directors concerning our financial performance. Modified EBITDA is not a recognized measurement under GAAP and should not be considered as an alternative to net income, income from operations or any other performance measure derived in accordance with GAAP, or as an alternative to cash flow from operating activities as a measure of liquidity. We define Modified EBITDA as net income (loss), plus interest expense, depreciation and amortization, stock-based compensation, changes in fair value of warrant expense, legal settlement, and one-time restructuring-related costs including employee severance and asset impairment.

The following discussion also includes the use of gross billing, a key performance indicator and metric. Gross billing represents invoiced amounts to distributors and retailers, excluding sales adjustments. Gross billing may include deductions from MSRP or “list price”, where applicable, and excludes promotional costs of generating such sales. Management utilizes gross billing to monitor operating performance of products and salespersons, which performance can be masked by the effect of promotional or other allowances. Management believes that the presentation of gross billing provides a useful measure of Reed’s operating performance.

Amounts presented in the discussion below are in thousands, except share and per share amounts.

Results of Operations

Overview

During the year ended December 31, 2022, the Company continued to strengthen its supply chain, implement gross margin enhancement initiatives, drive efficiencies in transportation and warehouse costs and reduce operating expenses. In addition, it continues to build its innovation pipeline with sustained growth in Reed's Real Ginger Ale and Reed's Classic Mule. At the end of the first quarter, the Company shipped its rebranded Virgil's zero sugar line in 12 oz. sleek cans and produced its new line of Reed's Hard Ginger Ale.

The Company remains focused on driving sales growth, improving gross margin, and reducing freight costs. The sales growth focus is on channel expansion, increase in store placements, new product introduction and improved sales execution. The margin enhancement initiative is driven by packaging savings, co-packer upgrades, and better leveraged purchasing and improved efficiency. Underpinning these initiatives is a focus on strategically reducing operating costs particularly delivery and handling expenses.

Recent Trends – Market Conditions

During the year ended December 31, 2022, the COVID-19 pandemic continued to impact our operating results and the Company anticipates a residual effect for the balance of the year. In addition, the pandemic could cause reduced demand for our products if, for example, the pandemic results in a recessionary economic environment which negatively effects the consumers who purchase our products. Based on the recent increase in demand for our products, we believe that over the long term, there will continue to be strong demand for our products.

Although the U.S. economy continued to grow during the first quarter of 2022, the continuing impact of the COVID-19 pandemic, higher inflation, the actions by the Federal Reserve to address inflation, and rising energy prices create uncertainty about the future economic environment which will continue to evolve and may impact our business in future periods. We have experienced supply chain challenges, including increased lead times, as well as inflation of raw materials, logistics and labor costs due to availability constraints and high demand. Although we regularly monitor companies in our supply chain, and use alternative suppliers when necessary and available, supply chain constraints could cause a disruption in our ability to obtain raw materials required to manufacture our products and adversely affect our operations. We expect the inflationary trends and supply chain pressures to continue throughout 2023.

During the year ended December 31, 2022, the Company experienced moderation from elevated freight costs. While the average cost of shipping and handling for the year ended December 31, 2022, was \$3.95 per case, which is the same as the \$3.95 per case for the year ended December 31, 2021, it was significantly higher during the first half of the year, however, was significantly reduced during the second half of the year. The Company believes these challenges will continue throughout the year. In addition, the Company experienced increases in the pricing of several of its raw materials and delays in procuring several of these items. However, mitigation plans have been implemented to manage this risk. Additionally, the Company was negatively impacted by supply chain challenges impacting our ability to benefit from strong demand for, and increased sales of our product. The disruption caused by labor shortages, significant raw material cost inflation, logistics issues and increased freight costs, and ongoing port congestion, resulted in suppressed margins and net income. The Company anticipates a continued impact throughout 2023.

Our ability to operate without significant incremental negative operational impact from the COVID-19 pandemic will in part depend on our ability to protect our employees and protect our supply chain. The Company has endeavored to follow the recommended actions of government and health authorities to protect our employees. Since the inception of the COVID-19 pandemic and through December 31, 2022, we maintained the consistency of our operations during the onset of the COVID-19 pandemic. We will continue to innovate in managing our business, coordinating with our employees and suppliers to do our part to be responsible to our employees and business partners in responding to our customers and suppliers. However, the uncertainty resulting from the pandemic could result in an unforeseen disruption to our workforce and supply chain (for example an inability of a key supplier or transportation supplier to source and transport materials) that could negatively impact our operations.

We have not observed any material impairments of our assets or a significant change in the fair value of our assets due to the COVID-19 pandemic.

During the year ended December 31, 2022, the Ukraine conflict did not have a direct material impact on our financial position, results of operations and liquidity.

Results of Operations – Year Ended December 31, 2022

The following table sets forth key statistics for the years ended December 31, 2022, and 2021, in thousands:

	Year Ended December 31,		Pct.
	2022	2021	Change
Gross billing (A)	\$ 59,464	\$ 54,658	9%
Less: Promotional and other allowances (B)	6,423	5,059	27%
Net sales	\$ 53,041	\$ 49,599	7%
Cost of goods sold	40,929	36,001	14%
<i>% of Gross billing</i>	69%	66%	
<i>% of Net sales</i>	77%	73%	
Gross profit	\$ 12,112	\$ 13,598	-11%
<i>% of Net sales</i>	23%	27%	
Expenses			
Delivery and handling	\$ 11,603	\$ 11,939	-3%
<i>% of Net sales</i>	22%	24%	
<i>Dollar per case (\$)</i>	3.95	3.95	
Selling and marketing	7,316	9,665	-24%
<i>% of Net sales</i>	14%	19%	
General and administrative	7,489	7,965	-6%
<i>% of Net sales</i>	14%	16%	
Provision for receivable with former related party	538	-	-
<i>% of Net sales</i>	1%	0%	
Total Operating expenses	26,946	29,569	-9%
Loss from operations	\$ (14,834)	\$ (15,971)	-7%
Interest expense and other expense	\$ (5,223)	\$ (431)	1,112%
Net loss	\$ (20,057)	\$ (16,402)	22%
Loss per share – basic and diluted	\$ (9.07)	\$ (8.99)	1%
Weighted average shares outstanding - basic & diluted	2,211,319	1,824,688	21%

- (A) We define gross billing as the total sales for the Company unadjusted for costs related to generating those sales. Management utilizes gross billing as an indicator of and to monitor operating performance of products and salespersons before the effect of any promotional or other allowances, which are determined in accordance with GAAP, and can mask certain performance issues. We believe that the presentation of gross billing provides a useful measure of our operating performance. Additionally, gross billing may not be comparable to similarly titled measures used by other companies, as gross billing has been defined by our internal reporting practices.
- (B) We define promotional and other allowances as costs deducted from gross billing which are associated with generating those sales. Management utilizes promotional and other allowances as an indicator of and to monitor operating performance of products, salespersons, and customer agreements. We believe that the presentation of promotional and other allowances provides a useful measure of our operating performance. The presentation of promotional and other allowances facilitates an evaluation of their impact on the determination of net sales and the spending levels incurred or correlated with such sales. The expenditures described in this line item are determined in accordance with GAAP and meet GAAP requirements, the disclosure thereof does not conform to GAAP presentation requirements. Additionally, our definition of promotional and other allowances may not be comparable to similar items presented by other companies. Promotional and other allowances primarily include consideration given to the Company's distributors or retail customers including, but not limited to the following: (i) reimbursements given to the Company's distributors for agreed portions of their promotional spend with retailers, including slotting, shelf space allowances and other fees for both new and existing products; (ii) the Company's agreed share of fees given to distributors and/or directly to retailers for in-store marketing and promotional activities; (iii) the Company's agreed share of slotting, shelf space allowances and other fees given directly to retailers; (iv) incentives given to the Company's distributors and/or retailers for achieving or exceeding certain predetermined sales goals; and (v) discounted or free products. Promotional and other allowances constitute a material portion of our marketing activities. The Company's promotional allowance programs with its numerous distributors and/or retailers are executed through separate agreements in the ordinary course of business. These agreements generally provide for one or more of the arrangements described above and are of varying durations, ranging from one week to one year.

Sales, Cost of Sales, and Gross Margins

The following chart sets forth key statistics for the transition of the Company's top line activity through the years ended December 31, 2022.

	Total 2022	Total 2021	vs PY	Per Case 2022	Per Case 2021	vs PY
Cases:						
Reed's	1,582	1,605	-1%			
Virgil's	1,209	1,388	-13%			
Total Core	2,791	2,993	-7%			
Non-Core	131	2	6432%			
Candy	18	28	-36%			
Total	2,940	3,023	-3%			
Gross Billing:						
Core	\$ 54,613	\$ 53,263	3%	\$ 19.6	\$ 17.8	10%
Non-Core	4,032	362	1014%	30.9	181.0	-83%
Candy	819	1,033	-21%	45.3	36.9	23%
Total	\$ 59,464	\$ 54,658	9%	20.2	18.1	12%
Discounts: Total	\$ (6,423)	\$ (5,059)	27%	\$ (2.2)	\$ (1.7)	31%
COGS:						
Core	\$ (37,931)	\$ (34,804)	9%	\$ (13.6)	\$ (11.6)	17%
Non-Core	(2,568)	(304)	745%	(19.7)	(152.0)	-87%
Candy	(430)	(893)	-52%	(23.8)	(31.9)	-25%
Total	\$ (40,929)	\$ (36,001)	14%	\$ (13.9)	\$ (11.9)	17%
Gross Margin:	\$ 12,112	\$ 13,598	-11%	\$ 4.1	\$ 4.5	-8%
as % Net Sales	23%	27%				

Sales, Cost of Sales, and Gross Margins

As part of the Company's ongoing initiative to simplify and streamline operations the Company has identified core products on which to place its strategic focus. These core products consist of Reed's and Virgil's branded beverages. Non-core products consist primarily of Wellness Shots, candy and slower selling discontinued Reed's and Virgil's SKUs.

Core beverage volume for the year ended December 31, 2022, represents 95% of all beverage volume.

Core brand gross billing increased by 3% to \$54,613 compared to the same period last year, driven by Reed's volume decline of 1% and Virgil's volume decline of 13%. The result is an increase in total gross billing of 9%, to \$59,464 in the year ended December 31, 2022, from \$54,658 during the year ended December 31, 2021. Price on our core brands increased 10.0% to \$19.57 per case due to a shift in mix to lower priced, higher margin products.

Discounts as a percentage of gross billing increased to 11% from 9% in the same period last year. As a result, net sales revenue grew 7% in the year ended December 31, 2022, to \$53,041, compared to \$49,599 in the same period last year.

Cost of Goods Sold

Cost of goods sold increased \$4,928 during the year ended December 31, 2022, as compared to the same period last year. As a percentage of net sales, cost of goods sold for the year ended December 31, 2022, was 77% as compared to 73% for the same period last year.

The total cost of goods per case increased to \$13.92 per case in the year ended December 31, 2022, from \$11.91 per case for the same period last year. The cost of goods sold per case on core brands was \$13.59 during the year ended December 31, 2022, compared to \$11.63 for the same period last year.

Gross Margin

Gross margin was 23% for the year ended December 31, 2022, compared to 27% for the same period last year.

Operating Expenses

Delivery and Handling Expenses

Delivery and handling expenses consist of delivery costs to customers and warehousing costs incurred for handling our finished goods after production. Delivery and handling expense decreased by \$336 in the years ended December 31, 2022, to \$11,603 from \$11,939 in the same period last year, driven by decreased volumes, ecommerce fulfilment costs, and decreasing freight rates due to market conditions. Delivery costs in the year ended December 31, 2022, were 22% of net sales and \$3.95 per case, compared to 24% of net sales and \$3.95 per case during the same period last year.

Selling and Marketing Expenses

Marketing expenses consist of direct marketing, marketing labor, and marketing support costs. Selling expenses consist of all other selling-related expenses including personnel and contractor support. Total selling and marketing expenses decreased \$2,349 to \$7,316 during the year ended December 31, 2022, compared to \$9,665 during the same period last year. As a percentage of net sales, selling and marketing costs decreased to 14% during the year ended December 31, 2022, as compared to 19% during the same period last year. The decrease was driven by lower employee related costs, stock compensation, distributor buyouts and reduced sampling and marketing spend partially offset by higher broker fees.

General and Administrative Expenses

General and administrative expenses consist primarily of the cost of executive, administrative, operations and finance personnel, as well as professional fees. General and administrative expenses decreased in the year ended December 31, 2022, to \$7,489 from \$7,965, a decrease of \$476 over the same period last year. As a percentage of net sales, general and administrative expenses decreased to 14% during the year ended December 31, 2022, as compared to 16% during the same period last year. The decrease was driven by lower legal settlements, stock compensation and employee related costs, and bad debt expense, partially offset by higher public company costs and co-packer downtime charges.

Provision for Receivable with Former Related Party

At December 31, 2022, the Company had a receivable due from California Custom Beverage, LLC's ("CCB"), an entity owned by Christopher J. Reed, a former related party. At December 31, 2022, CCB disputes that it owes \$1,043 recorded as receivable by the Company. The Company believes that it will prevail in this dispute, however, as of December 31, 2022, due to the uncertainty about the ultimate amount that will be settled, the Company has provided a reserve for \$538 based on management's estimate.

Loss from Operations

The loss from operations was \$14,834 for the year ended December 31, 2022, as compared to a loss of \$15,971 in the same period last year driven by decreased gross profit partially offset by decreases in operating expenses discussed above.

Interest and Other Income (Expense)

Interest and other income for the year ended December 31, 2022, consisted of \$5,223 of interest expense. During the same period last year, interest and other expense consisted of \$1,201 of interest expense offset by \$770 gain on forgiveness of debt.

Modified EBITDA

In addition to our GAAP results, we present Modified EBITDA as a supplemental measure of our performance. However, Modified EBITDA is not a recognized measurement under GAAP and should not be considered as an alternative to net income, income from operations or any other performance measure derived in accordance with GAAP, or as an alternative to cash flow from operating activities as a measure of liquidity. We define Modified EBITDA as net income (loss), plus interest expense, depreciation and amortization, stock-based compensation, changes in fair value of warrant expense, legal settlement, and one-time restructuring-related costs including employee severance and asset impairment.

Management considers our core operating performance to be that which our managers can affect in any particular period through their management of the resources that affect our underlying revenue and profit generating operations during that period. Non-GAAP adjustments to our results prepared in accordance with GAAP are itemized below. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Modified EBITDA, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of Modified EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

Set forth below is a reconciliation of net loss to Modified EBITDA for the year ended December 31, 2022, and 2021 (in thousands):

	Year Ended December 31,	
	2022	2021
Net loss	\$ (20,057)	\$ (16,402)
Modified EBITDA adjustments:		
Depreciation and amortization	225	243
Interest expense	5,223	1,201
Stock option and other noncash compensation	859	1,927
Provision for receivable with former related party	538	-
Gain on extinguishment of debt	-	(770)
Legal settlement	-	292
Severance costs	66	-
Total EBITDA adjustments	<u>\$ 6,911</u>	<u>\$ 2,893</u>
Modified EBITDA	<u>\$ (13,146)</u>	<u>\$ (13,509)</u>

We present Modified EBITDA because we believe it assists investors and analysts in comparing our performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. In addition, we use Modified EBITDA in developing our internal budgets, forecasts and strategic plan; in analyzing the effectiveness of our business strategies in evaluating potential acquisitions; making compensation decisions; and in communications with our board of directors concerning our financial performance. Modified EBITDA has limitations as an analytical tool, which includes, among others, the following:

- Modified EBITDA does not reflect our cash expenditures, or future requirements, for capital expenditures or contractual commitments;
- Modified EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Modified EBITDA does not reflect future interest expense, or the cash requirements necessary to service interest or principal payments, on our debts; and
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Modified EBITDA does not reflect any cash requirements for such replacements.

Liquidity, Capital Resources and Going Concern

The accompanying financial statements have been prepared under the assumption that the Company will continue as a going concern for one year from the date these financial statements are issued. Such assumption contemplates the realization of assets and satisfaction of liabilities in the normal course of business.

For the year ended December 31, 2022, the Company recorded a net loss of \$20,057 and used cash in operations of \$15,530. As of December 31, 2022, we had a cash balance of \$533, with \$110 of current availability, and \$1,633 of additional borrowing capacity, a stockholder's deficit of \$8,470 and negative working capital of \$1,563, compared to a cash balance of \$49 with borrowing capacity of \$109, stockholders' equity of \$4,203 and working capital of \$2,981 at December 31, 2021.

During the year ended December 31, 2022, the Company entered into a note purchase agreement with Whitebox Advisors, LLC and agreed to issue \$13,750 of secured convertible promissory notes (the "Notes"). The net proceeds from the issuance of the Notes, after deducting placement agent fees and other debt issuance costs, was approximately \$12,430.

The Notes will mature on May 9, 2025, bear interest at a rate of 10% per annum (with 5% per annum payable in cash and 5% per annum payable “in kind” by adding such accrued interest to the principal amount of the Notes). The Notes are secured by substantially all of the Company’s assets (including all of its intellectual property) and are subject to a collateral sharing agreement with ACS, the Company’s existing secured lender (see Note 5). During the year ended December 31, 2022, principal payments of \$800 were made, and accrued interest of \$1,052 was added to the principal balance, leaving a balance owed of \$11,502 at December 31, 2022.

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. To alleviate these conditions, management is currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor sentiment with respect to us and our industry.

We have taken decisive action to improve our margins, including fully outsourcing our manufacturing process, streamlining our product portfolio, negotiating improved vendor contracts and restructuring our selling prices.

Critical Accounting Policies and Estimates

The preparation of the Company’s financial statements in conformity with generally accepted accounting principles in the United States (“U.S. GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Some of those judgments can be subjective and complex, and therefore, actual results could differ materially from those estimates under different assumptions or conditions. Management bases its estimates on historical experience and on various assumptions that are believed to be reasonable in relation to the financial statements taken as a whole under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Management regularly evaluates the key factors and assumptions used to develop the estimates utilizing currently available information, changes in facts and circumstances, historical experience and reasonable assumptions. After such evaluations, if deemed appropriate, those estimates are adjusted accordingly. Actual results could differ from those estimates. Significant estimates include those related to assumptions used in estimates for reserves of uncollectible accounts, inventory obsolescence, depreciable lives of property and equipment, analysis of impairments of recorded long-term tangible and intangible assets, realization of deferred tax assets, accruals for potential liabilities and assumptions made in valuing stock instruments issued for services. There were no changes to our critical accounting policies described in the consolidated financial statements included in this Annual Report on Form 10-K for the fiscal year ended December 31, 2021, that impacted our condensed consolidated financial statements and related notes included herein.

Recent Accounting Pronouncements

See Note 2 of the financial statements for a discussion of recent accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

As a smaller reporting company, Reed’s is not required to provide the information required by this Item 7A.

Item 8. Financial Statements

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors of Reed's, Inc.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Reed's, Inc. (the "Company") as of December 31, 2022 and 2021, the related statements of operations, changes in stockholders' equity (deficit), and cash flows for the years then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, 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.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, during the year ended December 31, 2022, the Company incurred a net loss and utilized cash in operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans to alleviate these conditions are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the 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.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Inventory Valuation

As described in Notes 2 and 3 to the financial statements, the Company's inventories are stated at the lower of cost or net realizable value, determined on first-in, first-out ("FIFO") basis. As of December 31, 2022, the Company held inventories of \$16.2 million. In determining net realizable value, management considers historical usage, forecasted demand in relation to inventory on hand, market conditions, and other factors.

We identified the evaluation of management's estimate of the net realizable value of certain inventory as a critical audit matter, because of the significant judgments made by management in estimating future demand and market conditions which are used to arrive at the net realizable value. This required a high degree of auditor judgment and increased auditor effort in auditing such assumptions.

The primary procedures we performed to address this critical audit matter included:

- We evaluated management's product demand forecast for reasonableness considering historical sales by product, and whether they were consistent with the historical data and evidence obtained in other areas of the audit.
- We developed an independent expectation of the net realizable value of inventory using historic inventory activity and compared our independent expectation to the amount recorded in the financial statements.

Accounts payable to former related party

As described in Note 13 to the financial statements, as of December 31, 2022, the Company has an arrangement with California Custom Beverage, LLC ("CCB"), a former related party and one of its one copackers. In the opinion of management, the arrangement allows for the cost of certain services provided by CCB to be offset to certain amounts due the Company. As of December 31, 2022, the Company recorded a net payable of \$1,248 due to CCB.

We identified the net payable to CCB as a critical audit matter because of the significant judgements made by management in estimating net payable to CCB including the Company's determination that a right of offset exists related to amounts payable to and amounts receivable from CCB. This required a high degree of auditor judgement to assess the reasonableness of management's conclusions.

The primary procedures we performed related to the net payable to CCB included:

- We inquired of management and external legal counsel to gain an understanding of the relevant facts and circumstances related to the net payable to CCB.
- We obtained and read the contract, as amended, related to transactions between the Company and CCB.
- We agreed amounts to a schedule of accumulated costs and offsets.
- We evaluated the reasonableness of management's conclusions regarding the net payable to CCB.
- We assessed the sufficiency of management's disclosures related to the net payable to CCB.

We have served as the Company's auditor since 2004.

/s/Weinberg & Company, P.A.

Los Angeles, California

May 15, 2023

REED'S, INC,
BALANCE SHEETS
(Amounts in thousands, except share amounts)

	<u>December 31,</u> <u>2022</u>	<u>December 31,</u> <u>2021</u>
ASSETS		
Current assets:		
Cash	\$ 533	\$ 49
Accounts receivable, net of allowance of \$252 and \$215, respectively	5,671	5,183
Inventory, net	16,175	17,049
Receivable from former related party	777	933
Prepaid expenses and other current assets	939	1,491
<i>Total current assets</i>	<u>24,095</u>	<u>24,705</u>
Property and equipment, net of accumulated depreciation of \$787 and \$561, respectively	766	992
Intangible assets	626	624
Total assets	<u>\$ 25,487</u>	<u>\$ 26,321</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 9,805	\$ 10,434
Accrued expenses	233	286
Revolving line of credit, net of capitalized financing costs of \$363 and \$0, respectively	10,974	10,229
Payable to former related party	2,025	614
Current portion of convertible notes payable, net of debt discount of \$414 and \$0, respectively	2,434	-
Current portion of lease liabilities	187	161
<i>Total current liabilities</i>	<u>25,658</u>	<u>21,724</u>
Convertible note payable, net of debt discount of \$562 and \$0, respectively, less current portion	8,092	
Lease liabilities, less current portion	207	394
Total liabilities	<u>33,957</u>	<u>22,118</u>
Stockholders' equity (deficit):		
Series A Convertible Preferred stock, \$10 par value, 500,000 shares authorized, 9,411 shares issued and outstanding	94	94
Common stock, \$.0001 par value, 180,000,000 shares authorized; 2,519,485 and 1,874,866 shares issued and outstanding, respectively	-	-
Additional paid in capital	114,635	107,246
Accumulated deficit	(123,199)	(103,137)
Total stockholders' equity (deficit)	<u>(8,470)</u>	<u>4,203</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 25,487</u>	<u>\$ 26,321</u>

The accompanying notes are an integral part of these financial statements.

REED'S, INC.
STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2022 and 2021
(Amounts in thousands, except share and per share amounts)

	Year Ended December 31,	
	2022	2021
Net Sales	\$ 53,041	\$ 49,599
Cost of goods sold	40,929	36,001
Gross profit	<u>12,112</u>	<u>13,598</u>
Operating expenses:		
Delivery and handling expense	11,603	11,939
Selling and marketing expense	7,316	9,665
General and administrative expense	7,489	7,965
Provision for receivable with former related party	538	-
Total operating expenses	<u>26,946</u>	<u>29,569</u>
Loss from operations	(14,834)	(15,971)
Gain on extinguishment of PPP note payable	-	770
Interest expense	(5,223)	(1,201)
Net loss	(20,057)	(16,402)
Dividends on Series A Convertible Preferred Stock	<u>(5)</u>	<u>(5)</u>
Net loss attributable to common stockholders	<u>\$ (20,062)</u>	<u>\$ (16,407)</u>
Loss per share – basic and diluted	<u>\$ (9.07)</u>	<u>\$ (8.99)</u>
Weighted average number of shares outstanding – basic and diluted	2,211,319	1,824,688

The accompanying notes are an integral part of these financial statements.

REED'S, INC.
STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
For the Years Ended December 31, 2022 and 2021
(Amounts in thousands except share amounts)

	Common Stock		Preferred Stock		Additional Paid In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balance, December 31, 2020	1,726,526	\$ -	9,411	\$ 94	\$ 97,040	\$ (86,730)	\$ 10,404
Fair value of vested options	-	-	-	-	1,684	-	1,684
Fair value of warrants issued as financing costs	-	-	-	-	458	-	458
Fair value of vested restricted shares granted to officers	5,657	-	-	-	243	-	243
Dividends on Series A Convertible Preferred Stock	93	-	-	-	5	(5)	-
Repurchase of common stock	(270)	-	-	-	(15)	-	(15)
Common shares issued on exercise of options	1,260	-	-	-	32	-	32
Common shares issued for financing costs	8,000	-	-	-	472	-	472
Common shares issued pursuant to a rights offering, net of offering costs	133,600	-	-	-	7,327	-	7,327
Net Loss	-	-	-	-	-	(16,402)	(16,402)
Balance, December 31, 2021	<u>1,874,866</u>	<u>\$ -</u>	<u>9,411</u>	<u>\$ 94</u>	<u>107,246</u>	<u>(103,137)</u>	<u>4,203</u>
Fair value of vested options	-	-	-	-	701	-	701
Fair value of vested restricted shares granted to officers	8,758	-	-	-	158	-	158
Repurchase of common stock	(265)	-	-	-	(2)	-	(2)
Dividends on Series A Convertible Preferred Stock	-	-	-	-	-	(5)	(5)
Common shares issued for financing costs	2,000	-	-	-	37	-	37
Common shares issued for interest payment	262,234	-	-	-	1,461	-	1,461
Common shares issued pursuant to a rights offering, net of offering costs	371,892	-	-	-	5,034	-	5,034
Net Loss	-	-	-	-	-	(20,057)	(20,057)
Balance, December 31, 2022	<u>2,519,485</u>	<u>\$ -</u>	<u>9,411</u>	<u>\$ 94</u>	<u>\$ 114,635</u>	<u>\$ (123,199)</u>	<u>\$ (8,470)</u>

The accompanying notes are an integral part of these financial statements.

REED'S, INC.
STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2022 and 2021
(Amounts in thousands)

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
<i>Cash flows from operating activities:</i>		
Net loss	\$ (20,057)	\$ (16,402)
<i>Adjustments to reconcile net loss to net cash used in operating activities:</i>		
Depreciation	108	143
Loss on disposal of property & equipment	-	67
Gain on termination of leases	-	(2)
Gain on extinguishment of PPP note payable	-	(770)
Amortization of debt discount	530	162
Amortization of prepaid financing costs	431	295
Fair value of vested options	701	1,684
Fair value of vested restricted shares granted to directors and officers for services	158	243
Common shares issued as financing costs	37	-
Change in allowance for doubtful accounts	37	(19)
Provision for receivable with former related party	538	-
Change in inventory reserve	344	(59)
Accrued interest on convertible note	2,313	-
Lease liability	(161)	(115)
<i>Changes in operating assets and liabilities:</i>		
Accounts receivable	(525)	(446)
Inventory	531	(5,871)
Prepaid expenses and other assets	55	322
Decrease in right of use assets	117	100
Accounts payable	(629)	3,688
Accrued expenses	(58)	(609)
Net cash used in operating activities	<u>(15,530)</u>	<u>(17,589)</u>
<i>Cash flows from investing activities:</i>		
Intangible asset trademark costs	(2)	(9)
Purchase of property and equipment	-	(326)
Net cash used in investing activities	<u>(2)</u>	<u>(335)</u>
<i>Cash flows from financing activities:</i>		
Borrowings under revolving line of credit	54,564	66,234
Repayments of revolving line of credit	(53,456)	(56,005)
Capitalization of financing costs	(483)	-
Proceeds from sale of common stock	5,034	7,327
Proceeds from convertible note payable, net of expenses	12,430	-
Repayment of convertible note payable	(3,100)	-
Amounts from former related party	1,029	(193)
Principal repayments on finance lease obligation	-	(2)
Exercise of options	-	32
Repurchase of common stock	(2)	(15)
Net cash provided by financing activities	<u>16,016</u>	<u>17,378</u>
Net increase (decrease) in cash	484	(546)
Cash at beginning of period	49	595
Cash at end of period	<u>\$ 533</u>	<u>\$ 49</u>
Supplemental disclosures of cash flow information:		
Cash paid for interest	\$ 1,911	\$ 430
Non-cash investing and financing activities:		
Dividends on Series A Convertible Preferred Stock	\$ 5	\$ 5
Fair value of warrant recorded to prepaid expenses	\$ -	\$ 458
Common Shares issued for financing costs	\$ 37	\$ 472
Common Shares issued for principal payment	\$ 200	\$ -
Common Shares issued for interest payment	\$ 1,261	\$ -
Note Payable principal extinguished	\$ -	\$ 770

The accompanying notes are an integral part of these financial statements.

REED'S, INC.
NOTES TO FINANCIAL STATEMENTS
For the Years Ended December 31, 2022 and 2021
(In thousands, except share and per share amounts)

1. Operations and Liquidity

Reed's, Inc., (the "Company") is the owner and maker of Reed's Craft Ginger Beer, Reed's Real Ginger Ale, Reed's Classic and Stormy Mules, and Reed's Hard Ginger Ales and Virgil's Handcrafted Sodas. The Company was established in 1989 and is incorporated in the state of Delaware.

Effective on January 24, 2023, the Board of Directors and stockholders have approved resolutions authorizing a reverse stock split of the outstanding shares of the Company's common stock on the basis of 1 share for every 50 shares of common stock. All shares and per share amounts and information presented herein have been retroactively adjusted to reflect the reverse stock split for all periods presented.

Going Concern

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business. As reflected in the accompanying financial statements, for the year ended December 31, 2022, the Company recorded a net loss of \$20,057 and used cash in operations of \$15,530. These factors raise substantial doubt about the Company's ability to continue as a going concern within one year of the date that the financial statements are issued. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

As of December 31, 2022, we had a cash balance of \$533, with \$110 of current availability, and \$1,663 of additional borrowing capacity.

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. To alleviate these conditions, management is currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor sentiment with respect to us and our industry.

We have also taken decisive action to improve our margins, including fully outsourcing our manufacturing process, streamlining our product portfolio, negotiating improved vendor contracts and restructuring our selling prices.

Recent Trends - Market Conditions

During the year ended December 31, 2022, the COVID-19 pandemic continued to impact our operating results and the Company anticipates a residual effect for the balance of the year. In addition, the pandemic could cause reduced demand for our products if, for example, the pandemic results in a recessionary economic environment which negatively affects the consumers who purchase our products. Based on the recent increase in demand for our products, we believe that over the long term, there will continue to be strong demand for our products.

Although the U.S. economy continued to grow during the first quarter of 2022, the continuing impact of the COVID-19 pandemic, higher inflation, the actions by the Federal Reserve to address inflation, and rising energy prices create uncertainty about the future economic environment which will continue to evolve and may impact our business in future periods. We have experienced supply chain challenges, including increased lead times, as well as inflation of raw materials, logistics and labor costs due to availability constraints and high demand. Although we regularly monitor companies in our supply chain, and use alternative suppliers when necessary and available, supply chain constraints could cause a disruption in our ability to obtain raw materials required to manufacture our products and adversely affect our operations. We expect the inflationary trends and supply chain pressures to continue throughout 2023.

During the year ended December 31, 2022, the Company experienced moderation from elevated freight costs. While the average cost of shipping and handling for the year ended December 31, 2022, was \$3.95 per case, which is the same as the \$3.95 per case for the year ended December 31, 2021, it was significantly higher during the first half of the year, however, was significantly reduced during the second half of the year. The Company believes these challenges will continue throughout the year. In addition, the Company experienced increases in the pricing of several of its raw materials and delays in procuring several of these items. However, mitigation plans have been implemented to manage this risk. Additionally, the Company was negatively impacted by supply chain challenges impacting our ability to benefit from strong demand for, and increased sales of our product. The disruption caused by labor shortages, significant raw material cost inflation, logistics issues and increased freight costs, and ongoing port congestion, resulted in suppressed margins and net income. The Company anticipates a continued impact throughout 2023.

Our ability to operate without significant incremental negative operational impact from the COVID-19 pandemic will in part depend on our ability to protect our employees and protect our supply chain. The Company has endeavored to follow the recommended actions of government and health authorities to protect our employees. Since the inception of the COVID-19 pandemic and through December 31, 2022, we maintained the consistency of our operations during the onset of the COVID-19 pandemic. We will continue to innovate in managing our business, coordinating with our employees and suppliers to do our part to be responsible to our employees and business partners in responding to our customers and suppliers. However, the uncertainty resulting from the pandemic could result in an unforeseen disruption to our workforce and supply chain (for example an inability of a key supplier or transportation supplier to source and transport materials) that could negatively impact our operations.

We have not observed any material impairments of our assets or a significant change in the fair value of our assets due to the COVID-19 pandemic.

Nasdaq Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard

On August 16, 2021, the Company received a written notice from the Nasdaq Listing Qualifications staff of The Nasdaq Stock Market LLC (“Nasdaq”) that the bid price of the Company’s common stock had closed at less than \$1 per share over the previous 30 consecutive business days and, as a result, did not comply with Listing Rule 5550(a)(2) (the “Bid Price Rule”). In accordance with Listing Rule 5810(c)(3)(A), the Company was provided 180 calendar days, or until February 14, 2022, to regain compliance with the Bid Price Rule. The Company did not regain compliance during the compliance period ended February 14, 2022. Accordingly, the Company requested that Nasdaq grant the Company a second 180 calendar day period to regain compliance. On February 15, 2022, the Company was provided an additional 180 calendar day compliance period, or until August 15, 2022, to demonstrate compliance with the Bid Price Rule. The Company did not regain compliance during the compliance period ended August 15, 2022.

On August 16, 2022, the Company received a written notice from Nasdaq indicating that, based upon the Company’s continued non-compliance with the Bid Price Rule, Nasdaq had determined to delist the Company’s securities from Nasdaq unless the Company timely requested a hearing before the Nasdaq Hearings Panel (the “Panel”). The written notice also indicated that the Company was not in compliance with the \$2.5 million minimum stockholders’ equity requirement for continued listing of the Company’s common stock on Nasdaq as set forth in Nasdaq Listing Rule 5550(b)(1) (the “Minimum Stockholders’ Equity Rule”). The Company timely requested a hearing with the Panel, and after a hearing on September 28, 2022, the Company was given until February 13, 2023, to regain compliance with the Bid Price Rule, and to regain compliance with the Minimum Stockholders’ Equity Rule.

Effective January 27, 2023, the Company achieved compliance with the Bid Price Rule after effecting a 1:50 reverse split (see Reverse Stock Split below). However, after evaluating options to achieve compliance with the Minimum Stockholders’ Equity Rule, the Company’s board of directors determined not to proceed with a dilutive capital raise. On February 14, 2023, the Company received a written notice that the Nasdaq’s Listing Qualifications staff has determined that the Company’s securities were to be delisted from Nasdaq, and trading in the Company’s common stock was suspended from the Nasdaq Capital Market on February 16, 2023. On February 16, 2023, the Company’s common stock began being quoted for trading on the OTCQX US Market, operated by OTC Markets, Inc. (“OTCQX”), and the Company continues to be a reporting company under the Securities Exchange Act of 1934, as amended.

Reverse Stock Split

At a special meeting of shareholders held on January 24, 2023, the Company's shareholders granted the Company's board of directors the discretion to effect a reverse stock split of the common stock through an amendment to the Company's Certificate of Incorporation, as amended, at a ratio of any ratio not less than 1-for-6 and not more than 1-for-50, at any time on or prior to January 24, 2024, with the exact ratio to be set at a whole number within this range by the board of directors in its sole discretion. On January 25, 2023, the Company announced that its board of directors approved a 1-for-50 reverse stock split of the Company's issued and outstanding shares of common stock, par value \$0.0001 per share.

The authorized number of shares of common stock were not affected by the reverse stock split. No fractional shares were issued in connection with the reverse stock split, as all fractional shares were rounded up to the next whole share. Accordingly, all share and per share amounts presented herein with respect to common stock have been retroactively adjusted to reflect the above-described reverse stock split for all periods presented.

2. Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Those estimates and assumptions include estimates for reserves of uncollectible accounts receivables, assumptions used in valuing inventories at net realizable value, impairment testing of recorded long-term tangible and intangible assets, the valuation allowance for deferred tax assets, accruals for potential liabilities, assumptions made in valuing stock instruments issued for services, and assumptions used in valuing warrant liabilities, and assumptions used in the determination of the Company's liquidity.

Accounts Receivable

Accounts receivable are generally recorded at the invoiced amounts net of an allowance for expected losses. The Company evaluates the collectability of its trade accounts receivable based on a number of factors. In circumstances where the Company becomes aware of a specific customer's inability to meet its financial obligations to the Company, a specific reserve for bad debts is estimated and recorded, which reduces the recognized receivable to the estimated amount the Company believes will ultimately be collected. In addition to specific customer identification of potential bad debts, bad debt charges are recorded based on the Company's historical losses and an overall assessment of past due trade accounts receivable outstanding.

The allowance for accounts receivable is established through a provision reducing the carrying value of receivables. At December 31, 2022, and 2021, the allowance was \$252 and \$215, respectively.

Inventory

Inventory is stated at the lower of cost or net realizable value, with cost determined on a first-in, first-out ("FIFO") basis. We regularly review our inventory quantities on hand and record a provision for excess and obsolete inventory based primarily on our estimated forecast of product demand and our ability to sell the product(s) concerned. Demand for our products can fluctuate significantly. Factors that could affect demand for our products include unanticipated changes in consumer preferences, general market conditions or other factors, which may result in cancellations of advance orders or a reduction in the rate of reorders placed by customers. Additionally, our management's estimates of future product demand may be inaccurate, which could result in an understated or overstated provision required for excess and obsolete inventory. At December 31, 2022, and 2021, inventory has been reduced by cumulative write-downs for inventory aggregating \$479 and \$135, respectively.

Property and Equipment

Property and equipment are stated at cost. Expenditures for major renewals and improvements that extend the useful lives of property and equipment or increase production capacity are capitalized, and expenditures for repairs and maintenance are charged to expense as incurred. Depreciation is calculated using accelerated and straight-line methods over the estimated useful lives of the assets as follows:

<u>Property and Equipment Type</u>	<u>Years of Depreciation</u>
Computer hardware and software	3-7 years
Machinery and equipment	5 years

Management assesses the carrying value of property and equipment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If there is an indication of impairment, management prepares an estimate of future cash flows expected to result from the use of the asset and its eventual disposition. If these cash flows are less than the carrying amount of the asset, an impairment loss is recognized to write down the asset to its estimated fair value. For the years ended December 31, 2022 and 2021, the Company determined there were no indicators of impairment of its property and equipment.

Intangible Assets

Intangible assets are comprised of indefinite-lived brand names acquired, so classified because we anticipate that these brand names will contribute cash flows to the Company perpetually. Indefinite-lived intangible assets are not amortized but are assessed for impairment annually, or more frequently if events or circumstances indicate that assets might be impaired and evaluated annually to determine whether the indefinite useful life is appropriate. As part of our impairment test, we first assess qualitative factors to determine whether it is more likely than not the asset is impaired. If further testing is necessary, we compare the estimated fair value of our asset with its book value. If the carrying amount of the asset exceeds its fair value, as determined by its discounted cash flows, an impairment loss is recognized in an amount equal to that excess. For the years ended December 31, 2022 and 2021, the Company determined there was no impairment of its indefinite-lived brand names.

Revenue Recognition

The Company recognizes revenue in accordance with Accounting Standards Codification (ASC) 606, *Revenue from Contracts with Customers* (“ASC 606”). Revenue and costs of sales are recognized when control of the products transfers to our customer, which generally occurs upon shipment from our facilities. The Company’s performance obligations are satisfied at that time. The Company does not have any significant contracts with customers requiring performance beyond delivery, and contracts with customers contain no incentives or discounts that could cause revenue to be allocated or adjusted over time. Shipping and handling activities are performed before the customer obtains control of the goods and therefore represent a fulfillment activity rather than a promised service to the customer. All of the Company’s products are offered for sale as finished goods only, and there are no performance obligations required post-shipment for customers to derive the expected value from them.

The Company does not allow for returns, except for damaged products when the damage occurred pre-fulfilment. Damaged product returns have historically been insignificant. Because of this, the stand-alone nature of our products, and our assessment of performance obligations and transaction pricing for our sales contracts, we do not currently maintain a contract asset or liability balance for obligations. We assess our contracts and the reasonableness of our conclusions on a quarterly basis.

Cost of Goods Sold

Cost of goods sold is comprised of the costs of raw materials and packaging utilized in the manufacture of products, co-packing fees, repacking fees, in-bound freight charges, as well as certain internal transfer costs. Additionally, cost of goods sold includes direct production costs in excess of charges allocated to finished goods in production. Charges for labor and overhead allocated to finished goods are determined on a market cost basis, which may be lower than the actual costs incurred. Plant costs in excess of production allocations are expensed in the period incurred rather than added to the cost of finished goods produced. Expenses not related to the production of our products are classified as operating expenses.

Delivery and Handling Expense

Shipping and handling costs are comprised of purchasing and receiving, inspection, warehousing, transfer freight, and other costs associated with product distribution after manufacture and are included as part of operating expenses.

Advertising Costs

Advertising costs are expensed as incurred and are included in selling and marketing expense. Advertising costs aggregated \$668 and \$1,418 for the years ended December 31, 2022 and 2021, respectively.

Stock Compensation Expense

The Company periodically issues stock options and restricted stock awards to employees and non-employees in non-capital raising transactions for services and for financing costs. The Company accounts for such grants issued and vesting based on ASC 718, *Compensation-Stock Compensation* whereby the value of the award is measured on the date of grant and recognized for employees as compensation expense on the straight-line basis over the vesting period. Recognition of compensation expense for non-employees is in the same period and manner as if the Company had paid cash for the services. The Company recognizes the fair value of stock-based compensation within its Statements of Operations with classification depending on the nature of the services rendered.

The fair value of the Company's stock options is estimated using the Black-Scholes-Merton Option Pricing model, which uses certain assumptions related to risk-free interest rates, expected volatility, expected life of the stock options or restricted stock, and future dividends. Compensation expense is recorded based upon the value derived from the Black-Scholes-Merton Option Pricing model and based on actual experience. The assumptions used in the Black-Scholes-Merton Option Pricing model could materially affect compensation expense recorded in future periods.

Income Taxes

The Company uses an asset and liability approach for accounting and reporting for income taxes that allows recognition and measurement of deferred tax assets based upon the likelihood of realization of tax benefits in future years. Under the asset and liability approach, deferred taxes are provided for the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. A valuation allowance is provided for deferred tax assets if it is more likely than not these items will either expire before the Company is able to realize their benefits, or that future deductibility is uncertain. The Company's policy is to recognize interest and/or penalties related to income tax matters in income tax expense.

Loss per Common Share

Basic earnings (loss) per share is computed by dividing the net income (loss) applicable to common stockholders by the weighted average number of shares of common stock outstanding during the year. Diluted earnings (loss) per share is computed by dividing the net income applicable to common stockholders by the weighted average number of common shares outstanding plus the number of additional common shares that would have been outstanding if all dilutive potential common shares had been issued, using the treasury stock method. Potential common shares are excluded from the computation when their effect is antidilutive.

For the years ended December 31, 2022 and 2021, the calculations of basic and diluted loss per share are the same because potential dilutive securities would have had an anti-dilutive effect. The potentially dilutive securities consisted of the following:

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Warrants	235,946	90,770
Common stock equivalent of Series A Convertible Preferred Stock	753	753
Convertible note payable	955,363	-
Unvested restricted common stock	1,460	2,223
Options	164,423	210,460
Total	<u>1,357,945</u>	<u>304,206</u>

The Series A Convertible Preferred Stock is convertible into Common shares at the rate of 1:0.08.

Fair Value of Financial Instruments

The Company uses various inputs in determining the fair value of its financial assets and liabilities and measures these assets on a recurring basis. Financial assets recorded at fair value are categorized by the level of subjectivity associated with the inputs used to measure their fair value. Accounting Standards Codification Section 820 defines the following levels of subjectivity associated with the inputs:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly.

Level 3—Unobservable inputs based on the Company's assumptions.

The Company believes the carrying amounts of certain financial instruments, including cash and cash equivalents, accounts receivable, short-term bank loans, accounts payable, notes payable and other payables, approximate their fair values because of the short-term nature of such instruments. The carrying values of capital lease obligations and long-term financing obligations approximate their fair values because interest rates on these obligations are based on prevailing market interest rates.

Segments

The Company operates in one segment for the manufacture and distribution of our products. In accordance with the "Segment Reporting" Topic of the ASC, the Company's chief operating decision maker has been identified as the Chief Executive Officer and President, who reviews operating results to make decisions about allocating resources and assessing performance for the entire Company. Existing guidance, which is based on a management approach to segment reporting, establishes requirements to report selected segment information quarterly and to report annually entity-wide disclosures about products and services, major customers, and the countries in which the entity holds material assets and reports revenue. All material operating units qualify for aggregation under "Segment Reporting" due to their similar customer base and similarities in economic characteristics, nature of products and services, and procurement, manufacturing and distribution processes. Since the Company operates in one segment, all financial information required by "Segment Reporting" can be found in the accompanying financial statements.

Concentrations

The Company's cash balances on deposit with banks are guaranteed by the Federal Deposit Insurance Corporation (FDIC) up to \$250. Generally, the Company's policy is to minimize borrowing costs by immediately applying cash receipts to borrowings against its credit facility. From time to time, however, the Company may be exposed to risk for the amounts of funds held in bank accounts in excess of the FDIC limit. To minimize the risk, the Company's policy is to maintain cash balances with high quality financial institutions.

Gross sales. During the year ended December 31, 2022, the Company's largest two customers accounted for 17% and 16% of gross sales, respectively. During the year ended December 31, 2021, the Company's largest two customers accounted for 19% and 11% of gross sales, respectively.

Accounts receivable. As of December 31, 2022, the Company had accounts receivable from two customers which comprised 19% and 11% of its gross accounts receivable, respectively. As of December 31, 2021, the Company had accounts receivable from one customer which comprised 18% of its gross accounts receivable.

During the years ended December 31, 2022, and 2021, the Company utilized six separate co-packers for most its production and bottling of beverage products in the United States. The Company utilizes co-packers to produce 100% of its products. The Company has long-standing relationships with two different co-packers, and in conjunction with the sale of its manufacturing plant we entered into a third co-packing agreement with California Custom Beverage LLC (“CCB”), the purchaser of the plant (see Note 13). CCB is 100% owned by Chris Reed, founder of the Company and formerly Chief Executive Officer, Chairman, director, and most recently, Chief Innovation Officer. Although there are other packers, a change in co-packers may cause a delay in the production process, which could ultimately affect operating results.

Purchases from vendors. During the year ended December 31, 2022, the Company’s largest vendor accounted for approximately 12% of all purchases. During the year ended December 31, 2021, the Company’s largest two vendors accounted for approximately 13% and 10% of all purchases, respectively. No other vendor accounted for more than 10% of the total vendor purchases.

Accounts payable. As of December 31, 2022, no vendor accounted for more than 10% of the total accounts payable. As of December 31, 2021, no vendor accounted for more than 10% of the total accounts payable.

Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2020-06 “Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40) (“ASU 2020-06).” ASU 2020-06 reduces the number of accounting models for convertible debt instruments by eliminating the cash conversion and beneficial conversion models. The diluted net income per share calculation for convertible instruments will require the Company to use the if-converted method. For contracts in an entity’s own equity, the type of contracts primarily affected by this update are freestanding and embedded features that are accounted for as derivatives under the current guidance due to a failure to meet the settlement conditions of the derivative scope exception. This update simplifies the related settlement assessment by removing the requirements to (i) consider whether the contract would be settled in registered shares, (ii) consider whether collateral is required to be posted, and (iii) assess shareholder rights. ASU 2020-06 is effective January 1, 2024, for the Company and the provisions of this update can be adopted using either the modified retrospective method or a fully retrospective method. Early adoption is permitted, but no earlier than January 1, 2021, including interim periods within that year. Effective January 1, 2021, the Company early adopted ASU 2020-06 and that adoption did not have an impact on our financial statements and related disclosures.

In May 2021, the FASB issued ASU 2021-04 “Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40) Issuer’s Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options” (“ASU 2021-04”). ASU 2021-04 provides guidance as to how an issuer should account for a modification of the terms or conditions or an exchange of a freestanding equity-classified written call option (i.e., a warrant) that remains equity classified after modification or exchange as an exchange of the original instrument for a new instrument. An issuer should measure the effect of a modification or exchange as the difference between the fair value of the modified or exchanged warrant and the fair value of that warrant immediately before modification or exchange and then apply a recognition model that comprises four categories of transactions and the corresponding accounting treatment for each category (equity issuance, debt origination, debt modification, and modifications unrelated to equity issuance and debt origination or modification). ASU 2021-04 is effective for all entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. An entity should apply the guidance provided in ASU 2021-04 prospectively to modifications or exchanges occurring on or after the effective date. The Company adopted ASU 2021-04 effective January 1, 2022. The adoption of ASU 2021-04 did not have any impact on the Company’s financial statement presentation or disclosures.

Recently Issued Accounting Pronouncements Not Yet Adopted

In September 2016, the FASB issued ASU 2016-13, *Measurement of Credit Losses on Financial Instruments*. ASU 2016-13 requires entities to use a forward-looking approach based on current expected credit losses (“CECL”) to estimate credit losses on certain types of financial instruments, including trade receivables. This may result in the earlier recognition of allowances for losses. ASU 2016-13 is effective for the Company beginning January 1, 2023, and early adoption is permitted. The Company does not believe the potential impact of the new guidance and related codification improvements will be material to its financial position, results of operations and cash flows.

Other recent accounting pronouncements issued by the FASB, its Emerging Issues Task Force, the American Institute of Certified Public Accountants, and the Securities and Exchange Commission did not or are not believed by management to have a material impact on the Company’s present or future financial statements.

3. Inventory

Inventory is valued at the lower of cost (first-in, first-out) or net realizable value and is comprised of the following (in thousands):

	December 31, 2022	December 31, 2021
Raw materials and packaging	\$ 8,526	\$ 11,221
Finished products	7,649	5,828
Total	<u>\$ 16,175</u>	<u>\$ 17,049</u>

4. Property and Equipment

Property and equipment are comprised of the following (in thousands):

	December 31, 2022	December 31, 2021
Right-of-use assets under operating leases	\$ 724	\$ 724
Computer hardware and software	400	400
Machinery and equipment	429	429
Total cost	1,553	1,553
Accumulated depreciation and amortization	(787)	(561)
Net book value	<u>\$ 766</u>	<u>\$ 992</u>

Depreciation expense for the years ended December 31, 2022, and 2021 was \$108 and \$143, respectively, and amortization of right-of-use assets for the years ended December 31, 2022, and 2021 as \$117 and \$100, respectively.

During the year ended December 31, 2021, the Company disposed of right-of-use assets under finance leases with a cost of \$48 and accumulated amortization of \$38 and terminated \$13 of related finance leases payable.

During the year ended December 31, 2021, the Company disposed the equipment held for sale and recorded a loss on disposal of \$67.

5. Intangible Assets

Intangible assets are comprised of brand names acquired, specifically Virgil’s, and costs related to trademarks. They have been assigned an indefinite life, as we currently anticipate that they will contribute cash flows to the Company perpetually. These indefinite-lived intangible assets are not amortized but are assessed for impairment annually and evaluated annually to determine whether the indefinite useful life remains appropriate. We first assess qualitative factors to determine whether it is more likely than not that the asset is impaired. If further testing is necessary, we compare the estimated fair value of our asset with its book value. If the carrying amount of the asset exceeds its fair value, as determined by the discounted cash flows expected to be generated by the asset, an impairment loss is recognized in an amount equal to that excess. Based on management’s assessment, there were no indications of impairment at December 31, 2022.

During the year ended December 31, 2022, and 2021, the Company capitalized costs of \$2 and \$9, respectively, pertaining to legal and other fees incurred in applying for international trademarks for Reeds and Virgil’s brands.

Intangible assets consist of the following (in thousands):

	December 31, 2022	December 31, 2021
Brand names	\$ 576	\$ 576
Trademarks	50	48
Total	\$ 626	\$ 624

6. Line of Credit

Amounts outstanding under the Company’s credit facilities are as follows (in thousands):

	December 31, 2022	December 31, 2021
Line of credit – Alterna Capital Solutions	\$ 11,337	\$ -
Line of credit – Rosenthal & Rosenthal	-	10,229
Capitalized financing costs	(363)	-
Total	\$ 10,974	\$ 10,229

Alterna Capital Solutions

On March 28, 2022, the Company entered into a financing agreement with Alterna Capital Solutions (“ACS”), for a line of credit to replace its existing credit facility. The ACS line of credit is for a term of 3 years, provides for borrowings of up to \$13,000, and is secured by eligible accounts receivable and inventory. An over advance rider provides for up to \$400 of additional borrowing above the collateralized base (the “Over Advance”) up to a total borrowing of \$13,000. At December 31, 2022, \$110 of current availability and \$1,663 of borrowing capacity was available under the financing agreement.

Borrowings based on receivables bears an interest of prime plus 4.75% but not less than 8.0%. Borrowings based on inventory bears an interest of prime plus 5.25% but not less than 8.5%. The additional over advance rider bears a rate of prime plus 12.75%, but not less than 16.00%. Additionally, the line of credit is subject to monthly monitoring fee of \$1 with a minimum usage requirement on the credit facility. A loan balance of less than \$1,500 will bear interest at a rate in line with account receivables advances plus the monthly monitoring fee of \$1.

The Company incurred \$483 of direct costs of the transaction, consisting primarily of broker, bank and legal fees. These costs have been capitalized and are being amortized over the 3-year life of the ACS agreement. For the year ended December 31, 2022, amortization of debt discount was \$121, and as of December 31, 2022, the remaining unamortized debt discount balance is \$363.

Rosenthal & Rosenthal (paid off in full on March 30, 2022)

In 2018, the Company entered into a financing agreement with Rosenthal & Rosenthal, Inc. (“Rosenthal”) that provided a maximum borrowing capacity of \$13,000, based on eligible accounts receivable and inventories (the “permitted borrowings”) plus advances (an “over-advance” of up to \$4,000) in excess of permitted borrowings. On March 30, 2022, the Company paid in full the outstanding balance on its credit facility with Rosenthal with proceeds from ACS discussed above.

Borrowings under the Rosenthal financing agreement bore interest at the greater of prime or 4.75%, plus an additional 2.0% to 3.5% depending on whether the borrowing was based upon receivables, inventory or is an over-advance. Additionally, the Rosenthal line of credit was subject to monthly facility and administration fees, and aggregate minimum monthly fees (including interest) of \$4.

The line of credit was secured by substantially all of the assets, excluding intellectual property, of the Company. The over-advance was secured by all of Reed's intellectual property collateral. On March 11, 2021, the Company entered into an amendment to the Rosenthal agreement and replaced a standby letter of credit of \$1,500 by a guarantor with a \$2,000 pledge of securities to Rosenthal by John J. Bello and Nancy E. Bello, as Co-Trustees of The John and Nancy Bello Revocable Living Trust. John J. Bello, current Chairman and former Interim Chief Executive Officer of Reed's, is a related party, and greater than 5% beneficial owner of Reed's common stock. As consideration for the collateral support, Mr. Bello received 8,000 shares of Reed's restricted stock, with a fair value of \$472 which was recorded a prepaid financing cost. During the year ended December 31, 2022, \$121 of the prepaid financing cost was amortized, and as of December 31, 2022, there was no remaining unamortized prepaid finance cost balance.

The Company annually incurred an additional \$130 of fees from Rosenthal, or 1% of the \$13,000 borrowing limit. Amortization of this debt discount was \$65 and \$162 for the year ended December 31, 2022, and 2021, respectively. At December 31, 2022, there was no remaining unamortized debt discount balance.

7. Secured Convertible Notes Payable

Amounts outstanding under secured convertible notes payable are as follows (in thousands):

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Secured Convertible Note Payable	\$ 10,450	\$ -
Accrued interest	1,052	-
Capitalized financing costs	(976)	-
Total	<u>\$ 10,526</u>	<u>\$ -</u>
Current portion	<u>(2,434)</u>	<u>-</u>
Long term portion	<u>\$ 8,092</u>	<u>\$ -</u>

Secured Convertible Note Payable

In May 2022, the Company entered into a note purchase agreement and agreed to issue \$11,250 of secured convertible promissory notes (the "Notes") to entities affiliated with Whitebox Advisors, LLC (collectively, "Whitebox"). The Notes bear interest at a rate of 10% per annum (with 5% per annum payable in cash and 5% per annum payable in kind ("PIK") by adding such PIK interest to the principal amount of the Notes). The Notes are secured by substantially all of the Company's assets (including all of its intellectual property) and are subject to a collateral sharing agreement with ACS, the Company's existing secured lender (see Note 6). The Notes mature on May 9, 2025.

On May 9, 2022, the Company issued \$11,250 of Notes to Whitebox. In September 2022, the Company issued an additional \$2,500 of Notes to Whitebox. The net proceeds from the issuance of the Notes, after deducting placement agent fees and other debt issuance costs, was approximately \$12,430. In November 2022, the Company paid off the \$2,500 of Notes in cash. Beginning in August 2022, \$11,250 of the Notes have an amortization feature which requires the Company to make monthly payments of principal of \$200 plus accrued interest, payable in cash or in shares of the Company's common stock at the option of the Company. Amortization payments that are paid in shares are priced at 90% of the average of the daily volume weighted average prices of the Company's common stock during the five trading days prior to the date of amortization payment. During the year ended December 31, 2022, the Company made monthly amortization principal payments aggregating \$800, made up of \$600 in cash, and the issuance of 32,362 shares of common stock valued at \$200. At December 31, 2022, the principal balance of the Notes was \$10,450.

Effective February 10, 2023, the requirement for monthly amortization payments of \$200 due December 2022 to May 2023 was waived (see Note 15). Remaining amortization payments of principal, as amended, total approximately \$1.2 million in 2023, \$2.4 million in 2024, and \$800 in 2025, leaving a principal balance of the Notes of approximately \$6.0 million due at maturity.

Effective August 11, 2022, the Notes were amended to add a 10% fee for the amount that the Company's line of credit with ACS exceeds \$6,000, as defined (the "Excess ABL Amount"). In addition, Whitebox amended the amount of permitted indebtedness prior to September 30, 2022, to \$11.5 million. The Company was not in compliance with the Excess ABL Amount covenant at December 31, 2022, and received a waiver of this covenant violation at December 31, 2022, on February 10, 2023.

Upon conversion, holders of the Note are entitled to receive an interest make-whole payment, as defined. The make-whole amount is equal to the sum of the remaining scheduled payments of interest on the Notes to be converted that would be due if such notes matured May 9, 2025, payable, at the Company's option in cash or in shares of common stock.

During the year ended December 31, 2022, the Company recorded interest of \$3,023, made up of \$800 of interest on the Notes, \$489 related to make whole interest on the \$2,500 Notes repaid in November 2022, and \$1,734 related to the excess line of credit debt fee. During the year ended December 31, 2022, the Company made interest payments of \$1,892, made up of \$632 in cash, and the issuance of 229,871 shares of common stock valued at \$1,261. At December 31, 2022, the balance of accrued interest was \$1,052.

The initial conversion rate of the Notes is 0.08306 shares of the Company's common stock per \$1 dollar of principal converted, or approximately \$12.04 per share, subject to customary anti-dilution adjustments. In addition, if certain corporate events occur that constitute a make-whole fundamental change as defined, then the note holders are, under certain circumstances, are entitled to an increase in the conversion rate, limited to 0.12155 shares of Common Stock per \$1 dollar of principal, or approximately \$8.23 per share.

The Company's ability to settle conversions and make amortization payments and interest make-whole payments using shares of the Company's common stock is subject to certain limitations set forth in the Notes. If the Company experiences a fundamental change as defined, the holders of the notes have the right to require the Company to repurchase the notes for cash at a repurchase price equal to 100% of the principal amount, plus accrued interest thereon. Effective February 10, 2023, the repurchase price was amended to 110% of the principal amount, plus accrued interest (see Note 15). At December 31, 2022, the Notes, including accrued interest, are convertible into 955,363 shares of the Company's common stock pursuant to a share conversion cap limit as defined in the Notes.

The Company incurred \$1,320 of direct costs of the transactions, consisting primarily of placement agent fees and other offering expenses. These costs have been capitalized and are being amortized over the 3-year life of the Notes. For the year ended December 31, 2022, amortization of debt discount was \$344, and as of December 31, 2022, the remaining unamortized debt discount balance is \$976.

The Company entered into a registration rights agreement with the holders, pursuant to which the Company agreed to register for resale shares issuable under the Notes.

8. Leases Liabilities

The Company determines whether a contract is, or contains, a lease at inception. Right-of-use assets represent the Company's right to use an underlying asset during the lease term, and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Right-of-use assets and lease liabilities are recognized at lease commencement based upon the estimated present value of unpaid lease payments over the lease term. The Company leases its headquarters office, and certain office equipment and automobiles. Leases with an initial term of 12 months or less are not included on the balance sheets.

During the years ended December 31, 2022, and 2021, lease costs totaled \$178 and \$179, respectively.

As of December 31, 2021, operating lease liabilities totaled \$555. During the year ended December 31, 2022, the Company made payments of \$161 towards its operating lease liability. As of December 31, 2022, operating lease liabilities totaled \$394.

As of December 31, 2022, the weighted average remaining lease terms for an operating lease are 2.00 years. As of December 31, 2022, the weighted average discount rate for operating lease is 12.60%.

Future minimum lease payments under the leases are as follows (in thousands):

Years Ending December 31,	Amounts
2023	\$ 226
2024	221
Total payments	447
Less: Amount representing interest	(53)
Present value of net minimum lease payments	394
Less: Current portion	(187)
Non-current portion	\$ 207

9. Stockholders' Equity

Series A Convertible Preferred Stock

Series A Convertible Preferred Stock (the "Preferred Stock") consists of \$10 par value, 5% non-cumulative, non-voting, participating preferred stock, with a liquidation preference of \$10.00 per share. 500,000 shares are authorized. As of December 31, 2022, and 2021, there were 9,411 shares outstanding. Each share of Preferred Stock can be converted into 0.08 shares of the Company's common stock.

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

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

The Preferred Stock may be converted at any time, at the option of the holder, into 0.08 shares of common stock, subject to adjustment in the event of stock splits, reverse stock splits, stock dividends, recapitalization, reclassification, and similar transactions. The Company is obligated to reserve authorized but unissued shares of common stock sufficient to affect the conversion of all outstanding shares of Preferred Stock.

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

During the year ended December 31, 2021, the Company paid dividends on the Preferred Stock through the issuance of 93 shares of its common stock, respectively, which based upon the then-current market price of the stock equated to dividends of \$5 in each of the years. During the year ended December 31, 2022, the Company accrued dividends on the Preferred Stock of \$5 and is included in accrued expenses in the accompanying balance sheets. No shares of Series A preferred stock were converted into common stock in 2022.

Common Stock

The Company's common stock has a par value of \$.0001. On December 30, 2021, our shareholders approved an increase in the authorized number of common shares from 120,000,000 to 180,000,000. On December 21, 2020, our shareholders approved an increase in the authorized number of common shares from 100,000,000 to 120,000,000. As of December 31, 2022, there were 180,000,000 shares authorized, and 2,519,485 shares of common stock outstanding. As of December 31, 2021, there were 180,000,000 shares authorized, and 1,874,866 shares of common stock outstanding.

Common Stock Issuance

On March 10, 2022, the Company entered into a securities purchase agreement with certain institutional and accredited investors pursuant to which the investors agreed to purchase 371,892 shares of the Company's common stock and warrants to purchase 185,946 shares of common stock in a private placement (including 64,963 shares of the Company's common stock and warrants to purchase 32,482 shares of common stock to investors who are officers and directors of the Company). The warrants have an exercise price of \$14.39 per share for a period of five years commencing six months from the closing date of March 11, 2022. The purchase price per share of common stock and associated warrant was \$14.00 for certain investors and was \$17.51 for investors who are officers and directors of the Company in compliance with the rules of the Nasdaq Stock Market. The net proceeds to the Company, after deducting placement agent fees and other offering expenses, was approximately \$5.0 million. The officers and directors of the Company purchased approximately \$1.1 million of the securities in the offering.

In January 2022, the Company issued 2,000 shares of common stock valued at \$37 to John J. Bello and Nancy E. Bello, as Co-Trustees of The John and Nancy Bello Revocable Living Trust as consideration for the \$2,000 pledge of securities to Rosenthal (see Note 6). John J. Bello, current Chairman and former Interim Chief Executive Officer of Reed's, is a related party, and greater than 5% beneficial owner of Reed's common stock.

On May 5, 2021, the Company entered into a placement agency agreement with Roth Capital Partners, LLC (the "Placement Agent") and a securities purchase agreement with a certain purchaser for the purchase of shares of the Company's common stock, par value \$0.0001 per share, in an offering of securities registered under an effective registration statement filed with the Securities and Exchange Commission ("SEC"). In the offering, the Company sold 133,600 shares of common stock, at a price of \$59.00 per share. The offering closed on May 7, 2021, and total proceeds received, net of fees, were \$7,327. The Placement Agent was paid a total cash fee at the closing of the Offering equal to 6.5% of the gross cash proceeds received by the Company from the sale of the shares of common stock in the offering.

Common stock repurchases.

During the year ended December 31, 2022, the Company repurchased 265 shares of common stock from an officer for \$2 based on the market value of share on the date repurchased. The Company retired the shares.

During the year ended December 31, 2021, the Company repurchased 270 shares of common stock from an officer for \$15 based on the market value of share on the date repurchased. The Company retired the shares.

10. Share-Based Payments

Management believes that the ability to issue equity compensation, in order to incentivize performance by employees, directors, and consultants, is essential to the Company's growth strategy.

On December 21, 2020, the 2020 Equity Incentive Plan (the "2020 Plan") was approved by our shareholders. The 2020 Plan provides for the issuance of up to 300,000 shares. Options issued and forfeited under the 2020 plan contain an Evergreen provision and cannot be re-priced without shareholder approval. As of December 31, 2022, shares issuable under the 2020 Plan were 297,534.

The 2020 Plan permits the grant of options and stock awards to our employees, directors and consultants. The options may constitute either "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code or "non-qualified stock options". The Plan is currently administered by the board of directors. The exercise price of an option granted under the plan cannot be less than 100% of the fair market value per share of common stock on the date of the grant of the option. Options may not be granted under the plan on or after the tenth anniversary of the adoption of the plan. Incentive stock options granted to a person owning more than 10% of the combined voting power of the common stock cannot be exercisable for more than five years. When an option is exercised, the purchase price of the underlying stock is received in cash, except that the plan administrator may permit the exercise price to be paid in any combination of cash, shares of stock having a fair market value equal to the exercise price, or as otherwise determined by the plan administrator.

Restricted common stock

The following table summarizes restricted stock activity during the years ended December 31, 2022, and 2021:

	Unvested Shares	Issuable Shares	Fair Value at Date of Issuance	Weighted Average Grant Date Fair Value
Balance, December 31, 2020	3,000	-	\$ 92	\$ 44.75
Granted	4,920	-	226	46.00
Vested	(5,657)	5,657	-	-
Forfeited	(80)	-	-	44.75
Issued	-	(5,657)	(264)	-
Balance, December 31, 2021	2,183	-	54	44.75
Granted	8,839	-	156	17.68
Vested	(8,759)	8,759	-	-
Forfeited	(803)	-	(15)	18.69
Issued	-	(8,759)	(169)	-
Balance, December 31, 2022	1,460	-	\$ 26	\$ 44.75

On January 26, 2022, the board of directors of Reed's, pursuant to a joint recommendation from its governance and compensation committees, set the cash compensation of its non-employee directors at \$50,000 for fiscal 2022, payable quarterly in accordance with the company's policies for non-employee director compensation. In addition, the Company granted 8,035 restricted stock awards to five non-employee directors. 2,009 of these restricted stock awards vested on February 1, 2022, May 1, 2022, August 1, 2022, and November 1, 2022. The aggregate fair value of the stock awards was \$150 based on the market price of our common stock price which was \$16.00 per share on the date of grants and is amortized as shares vest.

During the year ended December 31, 2021, the Company issued 4,920 restricted stock awards to five non-employee directors. 1,230 of these restricted stock awards vested on February 1, 2021, May 1, 2021, August 1, 2021, and November 1, 2021. The aggregate fair value of the stock awards was \$226 based on the market price of our common stock price which was \$46.00 per share on the date of grants and is amortized as shares vest.

The total fair value of restricted common stock vesting during the year ended December 31, 2022, and 2021 was \$158 and \$243, respectively, and is included in general and administrative expenses in the accompanying statements of operations. As of December 31, 2022, the amount of unvested compensation related to issuances of restricted common stock was \$26, which will be recognized as an expense in future periods as the shares vest. When calculating basic loss per share, these shares are included in weighted average common shares outstanding from the time they vest. When calculating diluted net income per share, these shares are included in weighted average common shares outstanding as of their grant date.

Stock Options

As of December 31, 2022, the Company has issued stock options to purchase an aggregate of 164,423 shares of common stock. The Company's stock option activity during the years ended December 31, 2022, and 2021 is as follows:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2020	188,438	\$ 59.69	8.55	\$ 78
Granted	67,760	52.69		
Exercised	(1,260)	25.00		
Unvested forfeited or expired	(41,093)	61.15		
Vested forfeited or expired	(3,315)	141.57		
Outstanding at December 31, 2021	210,530	\$ 56.07	7.88	\$ -
Granted	14,696	11.69		
Exercised	-	-		
Unvested forfeited or expired	(29,050)	58.62		
Vested forfeited or expired	(31,753)	70.36		
Outstanding at December 31, 2022	164,423	\$ 48.90	7.58	\$ -
Exercisable at December 31, 2022	80,014	\$ 54.32	7.08	\$ -

During the year ended December 31, 2022, the Company approved options exercisable into 14,696 shares to be issued pursuant to Reed's 2020 Equity Incentive Plan. 14,696 options were issued to employees, 7,348 options vesting annually over a four-year vesting period, and 7,348 options vesting based on performance criteria to be established by the board of directors.

The stock options are exercisable at a price of \$11.69 per share and expire in ten years. The total fair value of these options at grant date was approximately \$122, which was determined using a Black-Scholes-Merton option pricing model with the following average assumption: stock price of \$11.69 share, expected term of six years, volatility of 82%, dividend rate of 0%, and weighted average risk-free interest rate of 2.89%. The expected term represents the weighted-average period of time that share option awards granted are expected to be outstanding giving consideration to vesting schedules and historical participant exercise behavior; the expected volatility is based upon historical volatility of the Company's common stock; the expected dividend yield is based on the fact that the Company has not paid dividends in the past and does not expect to pay dividends in the future; and the risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of measurement corresponding with the expected term of the share option award.

During the year ended December 31, 2021, the Company received proceeds of \$32 and issued 1,260 shares of common shares on the exercise of stock options.

During the year ended December 31, 2021, the Company approved options exercisable into 67,760 shares to be issued pursuant to Reed's 2020 Equity Incentive Plan. 67,760 options were issued to employees, 33,880 options vesting annually over a four-year vesting period, and 33,880 options that will vest based on performance criteria to be established by the board of directors.

The stock options are exercisable at prices ranging from \$49.00 to \$59.00 per share and expire in ten years. The total fair value of these options at grant date was approximately \$2,412, which was determined using a Black-Scholes-Merton option pricing model with the following average assumption: stock price of \$52.69 per share, expected term of six years, volatility of 79%, dividend rate of 0%, and weighted average risk-free interest rate of 0.98%. The expected term represents the weighted-average period of time that share option awards granted are expected to be outstanding giving consideration to vesting schedules and historical participant exercise behavior; the expected volatility is based upon historical volatility of the Company's common stock; the expected dividend yield is based on the fact that the Company has not paid dividends in the past and does not expect to pay dividends in the future; and the risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of measurement corresponding with the expected term of the share option award.

In the measurement of stock options granted in 2022 and 2021, the expected term represents the weighted-average period of time that share option awards granted are expected to be outstanding giving consideration to vesting schedules and historical participant exercise behavior; the expected volatility is based upon historical volatility of the Company's common stock; the expected dividend yield is based on the fact that the Company has not paid dividends in the past and does not expect to pay dividends in the future; and the risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of measurement corresponding with the expected term of the share option award.

During the year ended December 31, 2022, and 2021, the Company recognized \$701 and \$1,684 of compensation expense relating to vested stock options. As of December 31, 2022, the aggregate amount of unvested compensation related to stock options was approximately \$1,233 which will be recorded as an expense in future periods as the options vest.

As of December 31, 2022, the outstanding options have no intrinsic value. The aggregate intrinsic value was calculated as the difference between the closing market price as of December 31, 2022, which was \$3.49, and the exercise price of the outstanding stock options.

Additional information regarding options outstanding and exercisable as of December 31, 2022, is as follows:

Range of Exercise Price	Options Outstanding			Options Exercisable	
	Number of Shares Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (years)	Number of Shares Exercisable	Weighted Average Exercise Price
\$ 4.00 - \$12.00	13,495	\$ 11.42	9.39	-	\$ -
\$ 25.00 - \$37.50	21,352	29.17	7.30	16,852	27.61
\$ 44.00 - \$66.00	111,790	48.71	7.80	46,789	47.99
\$ 88.00 - \$120.00	11,803	85.88	4.61	11,630	85.60
\$ 122.00 - \$183.00	5,983	134.44	6.06	4,743	134.86
	<u>164,423</u>	<u>\$ 48.90</u>	<u>7.58</u>	<u>80,014</u>	<u>\$ 54.32</u>

11. Stock Warrants

As of December 31, 2022, the Company has issued warrants to purchase an aggregate of 235,946 shares of common stock. The Company's warrant activity during the years ended December 31, 2022, and 2021 is as follows:

	Shares	Weighted -Average Exercise Price	Weighted-Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2020	67,225	\$ 78.00	2.52	\$ -
Granted	30,000	32.00		
Exercised	-	-		
Forfeited or expired	(6,455)	202.00		
Outstanding at December 31, 2021	90,770	51.00	2.77	\$ -
Granted	185,946	14.39	4.70	
Exercised	-	-		
Forfeited or expired	(40,770)	80.97		
Outstanding at December 31, 2022	<u>235,946</u>	<u>\$ 16.99</u>	<u>4.45</u>	<u>\$ -</u>
Exercisable at December 31, 2022	<u>235,946</u>	<u>\$ 16.99</u>	<u>4.45</u>	<u>\$ -</u>

On March 10, 2022, the Company entered into a securities purchase agreement with certain institutional and accredited investors pursuant to which the investors agreed to purchase 371,892 shares of the Company's common stock and warrants to purchase 185,946 shares of common stock in a private placement. The warrants have an exercise price of \$14.39 per share for a period of five years commencing nine months from the closing date of March 11, 2022 (see Note 9).

On November 24, 2021, the Company granted John Bello, current Chairman, significant shareholder and former Interim Chief Executive Officer of Reed's, who is a related party, a 5-year warrant to purchase 30,000 shares of the Company common stock with an exercise price of \$32.00. The fair value of the warrants granted was determined to be \$458 and was recorded as a prepaid financing costs. During the year ended December 31, 2021, the Company amortized \$148 of prepaid financing costs to interest expense, leaving a balance remaining of \$310 to be amortized through July 2022. The fair value of the warrant was calculated using the Black-Scholes option pricing model using the following assumptions – stock price of \$23.00; exercise price of \$22.00; expected life of 5 years; volatility of 84.7%; dividend rate of 0% and discount rate of 0.77%. As of December 31, 2021, the outstanding warrants have no intrinsic value. The risk-free interest rate is based on rates established by the Federal Reserve Bank. The Company uses the historical volatility of its common stock to estimate its future volatility. The expected life of the warrant is based upon its remaining contractual life. The expected dividend yield reflects that the Company has not paid dividends to its common stockholders in the past and does not expect to do so in the foreseeable future.

Additional information regarding warrants outstanding and exercisable as of December 31, 2022, is as follows:

Range of Exercise Price	Warrants Outstanding			Warrants Exercisable	
	Number of Shares Outstanding	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (years)	Number of Shares Exercisable	Weighted Average Exercise Price
\$ 14.39 - \$32.20	235,946	16.99	4.45	235,946	16.99
	<u>235,946</u>	<u>\$ 16.99</u>	<u>4.45</u>	<u>235,946</u>	<u>\$ 16.99</u>

12. Income Taxes

For the years ended December 31, 2022, and 2021, a reconciliation of the effective income tax rate to the U.S. statutory rate is as follows:

	December 31, 2022	December 31, 2021
Federal statutory tax rate	(21)%	(21)%
State rate, net of federal benefit	(5)%	(5)%
	(26)%	(26)%
Effect of change in tax rate	-%	-%
Valuation allowance	26%	26%
Effective tax rate	<u>\$ -</u>	<u>\$ -</u>

As of December 31, 2022, and 2021, significant components of the Company's deferred tax assets and liabilities are as follows:

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Deferred income tax asset:		
Net operating loss carryforwards	\$ 21,117	\$ 18,573
Disqualified corporate interest expense	1,650	1,078
Stock-based compensation	1,989	1,764
Accounts receivable allowances	74	26
Inventory reserves	125	35
Operating Least Liability	103	145
Other	(70)	
Reserve for asset impairment	58	58
Gross deferred tax assets	<u>25,046</u>	<u>21,679</u>
Valuation allowance	<u>(24,967)</u>	<u>(21,570)</u>
Total deferred tax assets	79	109
Deferred tax liabilities:		
Operating lease right-of-use asset	(79)	(109)
Deferred finance costs	-	-
Total deferred tax liabilities	<u>(79)</u>	<u>(109)</u>
Net deferred tax asset (liability)	<u>\$ -</u>	<u>\$ -</u>

At December 31, 2022, and 2021, the Company had available Federal and state net operating loss carryforwards ("NOLs") to reduce future taxable income. For Federal purposes the amounts available were approximately \$91,000 and \$80,000, respectively. For state purposes approximately \$64,000 and \$51,000 was available at December 31, 2022, and 2021, respectively. The Federal carryforward for NOLs arising in years prior to 2018 is approximately \$33,000, which expires on various dates through 2037. NOLs for 2019, 2020, 2021 and 2022 of approximately \$58,000, can be carried forward indefinitely, but are only able to offset 80% of taxable income in future years. The state carryforward expires on various dates through 2042. Given the Company's history of net operating losses, management has determined that it is more likely than not that the Company will not be able to realize the tax benefit of the carryforwards. Accordingly, the Company has not recognized a deferred tax asset for this benefit.

Due to restrictions imposed by Internal Revenue Code Section 382 regarding substantial changes in ownership of companies with loss carryforwards, the utilization of the Company's NOLs may be limited as a result of changes in stock ownership. NOLs incurred subsequent to the latest change in control are not subject to the limitation.

The Company recognizes tax benefits from uncertain tax positions only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position is measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement. As of December 31, 2022, and 2021, the Company did not have a liability for unrecognized tax benefits.

The Company recognizes as income tax expense, interest and penalties on uncertain tax provisions. As of December 31, 2022, and 2021, the Company has not accrued interest or penalties related to uncertain tax positions. Tax years 2018 through 2022 remain open to examination by the major taxing jurisdictions to which the Company is subject.

Upon the attainment of taxable income by the Company, management will assess the likelihood of realizing the tax benefit associated with the use of the NOLs and will recognize the appropriate deferred tax asset at that time.

13. Transactions with California Custom Beverage, LLC, former related party

In December 2018, the Company signed a co-packing agreement with California Custom Beverage, LLC's ("CCB"), an entity owned by Christopher J. Reed, a former related party, pursuant to which CCB agreed to produce certain products for the Company for agreed fees. The co-packing agreement, as amended, includes certain provisions, among others, for product inputs, shrinkage, and quality assurance. Also beginning in 2019, CCB agreed to pay the Company a 5% royalty through 2021 on certain private label sales made by CCB.

During the years ended December 31, 2022 and 2021, the Company incurred co-packing fees due to CCB of \$3,718 and \$2,747, respectively, of which \$2,025 and \$614, were payable to CCB as of December 31, 2022 and 2021. At December 31, 2022 and 2021, the Company had also recorded receivables from CCB of \$1,315 and \$933, respectively, including royalty receivable of \$297 and \$297, and charge backs of certain costs management determined were permissible under the co-packing agreement of \$1,018 and \$636, respectively.

At December 31, 2022 and 2021, accounts receivable due from and accounts payable due to CCB were as follows:

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Accounts receivable, net of provision of \$538 and zero at December 31, 2022 and 2021, respectively	777	933
Accounts payable	(2,025)	(614)
Net (payable) receivable	<u>(1,248)</u>	<u>319</u>

At December 31, 2022, CCB disputes that it owes \$1,043 of the \$1,315 recorded as receivable by the Company. The Company believes that it will prevail in this dispute, however, as of December 31, 2022, due to the uncertainty about the ultimate amount that will be settled, the Company has provided a reserve for \$538 based on management's estimate. In addition, on April 19, 2023, the Company received a letter from CCB demanding payment of various amounts, including the \$2,025 outstanding at December 31, 2022. The Company has determined that the probability of realizing any loss on the demand from CCB is remote and therefore has not recorded any additional accruals related to the demand.

14. Commitments and Contingencies

In 2018, CCB assumed the monthly payments on our lease obligation for a Los Angeles manufacturing plant, and our release from the obligation by the lessor, however, is dependent upon CCB's deposit of \$1,200 of security with the lessor. As of December 31, 2022, \$800 has been deposited with the lessor and Chris J. Reed has placed approximately 7,260 shares of the Company's common stock valued at \$25 that remain in escrow with the lessor.

From time to time, we are a party to claims and legal proceedings arising in the ordinary course of business. Our management evaluates our exposure to these claims and proceedings individually and in the aggregate and provides for potential losses on such litigation if the amount of the loss is estimable and the loss is probable.

We believe that there are no material litigation matters at the current time. Although the results of such litigation matters and claims cannot be predicted with certainty, we believe that the final outcome of such claims and proceedings will not have a material adverse impact on our financial position, liquidity, or results of operations.

15. Subsequent Events

On February 10, 2023, the Company entered into a Partial Option Exercise and Second Amendment to 10% Convertible Notes (the "Notes", see Note 7) with Whitebox. The Notes were amended so if the Company experiences a fundamental change as defined, the holders of the notes have the right to require the Company to repurchase the notes for cash at a repurchase price equal to 110% (amended from 100%) of the principal amount, plus accrued interest. In addition, Whitebox exercised a partial option to purchase \$2,550 of additional notes (the "Option Notes") from the Company. The Option Notes bear interest at 10% per annum, payable in cash and mature on June 20, 2023. No amortization payments (as defined in the Notes) are payable on the Option Notes, and the Option Notes may be prepaid without premium or penalty.

On February 13, 2023, the Company entered into a Limited Waiver and Deferral Agreement with Whitebox. Whitebox waived the Company's covenant violation of its Excess ABL Amount (see Note 7) at November 30, 2022, December 31, 2022, and January 31, 2023, and deferred payment of the 10% fee for the Excess ABL Amount until June 2023. In addition, Whitebox also temporarily waived any requirement that the Company repurchase of the Notes in the event of fundamental change (as defined in the Notes), through April 1, 2023, subject to the terms and conditions contained therein.

As an inducement, the company issued an aggregate of 82,438 shares of common stock to the holders with a fair value of \$273. The shares issued and the shares of common stock issuable upon conversion of the Option Notes are registrable and subject to that certain Registration Rights Agreement dated May 9, 2023.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures***Evaluation of Disclosure Controls and Procedures***

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that the Company’s disclosure controls and procedures were effective as of December 31, 2022 to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Management’s Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Our management, with the participation of our Chief Executive Officer and Chief Financial Officer and the oversight of our audit committee, has evaluated the effectiveness of our internal control over financial reporting as of December 31, 2022. In assessing the effectiveness of our internal control over financial reporting, our management used the framework established in *Internal Control Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on that evaluation, our management has concluded that our internal control over financial reporting was effective as of December 31, 2022.

This Annual Report does not contain an attestation report of our independent registered public accounting firm related to internal control over financial reporting because the rules for smaller reporting companies provide an exemption from the attestation requirement.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the three-month period ended December 31, 2022, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and, therefore, can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance.

General

Reed's current directors have terms which will end at the next annual meeting of the stockholders and until each of their successors is elected and qualified. The following table sets forth certain information with respect to our current directors and executive officers as of date of this Annual Report:

Name	Position	Age
Norman E. Snyder, Jr.	Chief Executive Officer, Director	62
Joann Tinnelly	Interim Chief Financial Officer	54
Christopher Burleson	Chief Commercial Officer	41
Neal Cohane	Chief Sales Officer	62
John J. Bello	Chairman of the Board	77
Lewis Jaffe	Director, Chairman of Governance and Compensations Committee, Member of Audit and Operations Committee	66
James C. Bass	Director, Chairman of the Audit Committee and Member of Compensation Committee	71
Thomas W. Kosler	Director, Chairman of the Audit Committee	68
Louis Imbrogno, Jr.	Director, Member of the Audit Committee and Member of Compensation Committee	78
Leon M. Zaltzman	Director	54

Business Experience of Directors and Executive Officers

Norman E. Snyder, Jr. was appointed as Chief Executive Officer and director of Reed's effective March 1, 2020. Prior to his promotion, Mr. Snyder served as Chief Operating Officer of Reed's from September 2019 through February 29, 2020. Prior to joining Reed's, Mr. Snyder served as President and Chief Executive Office for Avitae USA, LLC, an emerging premium new age beverage company that markets and sells a line of ready-to-drink caffeinated waters. Prior to Avitae, he served as the President and Chief Operating Officer for Adina For Life, Inc., President and Chief Executive Officer of High Falls Brewing Company, and Chief Financial Officer, and later Chief Operating Officer of South Beach Beverage Company, known as SoBe. In prior experience, Mr. Snyder served as Controller for National Football League Properties, Inc., and in various roles at PriceWaterhouseCoopers during an eight-year tenure. Mr. Snyder earned a B.S. in Accounting from the State University of New York at Albany.

Joann Tinnelly was appointed Interim Chief Financial Officer effective March 31, 2023. She has over 30 years of finance and accounting experience in global public and private equity company environments. She is a Certified Public Accountant and has served as Vice President and Corporate Controller of Reed's since July 2018. She previously served as Interim Chief Financial Officer of Reed's, from November 22, 2019, through December 1, 2019. Prior to joining Reed's, from May 2014 to May 2017, she served as Assistant Controller of Steel Excel, Inc., a subsidiary of Steel Partners Holdings, a global diversified holding company. Prior to 2014, Ms. Tinnelly served as Vice President Financial Planning & Analysis and as Assistant Corporate Controller at USI Insurance Services, Assistant Vice President of Royal Bank of Scotland (RBS) Group, multiple financial roles at Momentive Performance Materials and General Electric and financial auditing at PriceWaterhouseCoopers. Ms. Tinnelly holds a Master of Business Administration in Finance and a Bachelor of Business Administration in Public Accounting both from Pace University.

Christopher Burleson was appointed Chief Commercial Officer effective February 1, 2023. In this role, Mr. Burleson leads the sales organization as well as partners with the operations department to streamline supply chain and cost reduction initiatives. He also focuses on strategic partnerships and growth opportunities. From April 25, 2022, to January 31, 2023, Mr. Burleson served as Chief Commercial Officer of Kin Social Tonics. From March 19, 2018, through April 22, 2022, Mr. Burleson was a Vice President and General Manager of Fever Tree, USA. Mr. Burleson also served as a director of Fever Tree USA.

Neal Cohane has served as Reed's Chief Sales Officer since March of 2008 and previously as Vice President of Sales since August 2007. From March 2001 until August 2007, Mr. Cohane served in various senior-level sales and executive positions for PepsiCo, most recently as Senior National Accounts Manager, Eastern Division. In this capacity, Mr. Cohane was responsible for all business development and sales activities within the Eastern Division. From March 2001 until November 2002, Mr. Cohane served as Business Development Manager, Non-Carbonated Division within PepsiCo where he was responsible for leading the non-carbonated category build-out across the Northeast Territory. From 1998 to March 2001, Mr. Cohane spent three years at South Beach Beverage Company, most recently as Vice President of Sales, Eastern Region. From 1986 to 1998, Mr. Cohane spent approximately twelve years at Coca-Cola of New York where he held various senior-level sales and managerial positions, most recently as General Manager New York. Mr. Cohane holds a B.S. degree in Business Administration from Merrimack College in North Andover, Massachusetts.

John J. Bello is Reed's Chairman and sales and marketing expert. Since 2001, Mr. Bello has been the Managing Director of JoNa Ventures, a family venture fund. From 2004 to 2012 Mr. Bello also served as Principal and General Partner at Sherbrooke Capital, a venture capital group dedicated to investing in leading, early-stage health and wellness companies. Mr. Bello is the founder and former CEO of South Beach Beverage Company, the maker of nutritionally enhanced teas and juices marketed under the brand name SoBe. The company was sold to PepsiCo in 2001 for \$370 million and in the same year Ernst and Young named Mr. Bello National Entrepreneur of the Year in the consumer products category for his work with SoBe. Before founding SoBe, Mr. Bello spent fourteen years at National Football League Properties, the marketing arm of the NFL and served as its President from 1986 to 1993. As the President, Mr. Bello has been credited for building NFL Properties into a sports marketing leader and creating the model by which every major sports league now operates. Prior to working for the NFL, Mr. Bello served in marketing and strategic planning capacities at the Pepsi Cola Division of PepsiCo Inc. and in product management roles for General Foods Corporation on the Sanka and Maxwell House brands. As a board chair, Mr. Bello has also worked with IZZE in brand building, marketing and strategic planning capacities. That brand was also sold to PepsiCo.

Mr. Bello earned his BA from Tufts University, cum laude, and received his MBA from the Tuck School of business at Dartmouth College as an Edward Tuck Scholar. Mr. Bello is extensively involved in non-profit work and currently serves as a Tufts University Trustee and advisory board member (athletics) and the Veteran Heritage Project in Scottsdale, Arizona. Mr. Bello also serves on the board of Rockford Fosgate, a seller of OEM audio equipment, and is executive director of Eye Therapies which has licensed its technology to Bausch and Lomb, who markets a redness reduction eye drop under the *Lumify* brand name.

James C. Bass has served as a director since September 29, 2017, is Chairman of the Audit Committee and member of the Compensation Committee. Mr. Bass is retired from the position of Chief Financial Officer and Senior Vice President of Sony Interactive Entertainment America LLC, commonly referred to as the PlayStation business of Sony where he joined in 1995 as Vice President of Finance. Mr. Bass has more than thirty-five years of financial and international management experience and was responsible for all of Sony's financial operations and controls including general accounting and financial reporting, planning, analysis and systems, treasury and risk management, internal audit, and federal, state and local income taxes. Prior experience includes holding several senior management positions encompassing fourteen years with Bristol-Myers Squibb Company, gaining international experience running operations in parts of Asia and Europe.

Mr. Bass also spent two years at Wang Laboratories as a Divisional Controller. He started his career in New York at the public accounting firm, Haskins and Sells, now Deloitte & Touche. Mr. Bass received a Bachelor of Business Administration degree in accounting and finance from Pace University, New York City. He is a Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Lewis Jaffe has served as a director since October 19, 2016, is Chairman of the Governance Committee and a member of the Audit and Compensation Committees. Since August 2014, Mr. Jaffe is an Executive-in-Residence and Clinical Faculty at the Fred Kiesner Center for Entrepreneurship, Loyola Marymount University. He is also a technology futurist, Executive Coach and Public Speaker. Since January 2010, Mr. Jaffe has served on the board of FitLife Brands Inc. (FTLF:OTCBB) and serves on its audit, compensation and governance committees. Since 2006 he has served on the board of directors of York Telecom, a private company, and serves on its compensation and governance committees. From 2006 to 2008 Mr. Jaffe was Interim Chief Executive Officer and President of Oxford Media, Inc. Mr. Jaffe has also served in executive management positions with Verso Technologies, Inc., Wireone Technologies, Inc., Pictoretel Corporation, and he was also previously a Managing Director of Arthur Andersen. Mr. Jaffe was the co-founder of MovieMe Network. Mr. Jaffe also served on the Board of Directors of Benihana, Inc. as its lead independent director from 2004 to 2012.

Mr. Jaffe is a graduate of the Stanford Business School Executive Program, holds a Bachelor of Science from LaSalle University and holds a Master's Professional Director Certification from the American College of Corporate Directors, a public company director education and credentialing program.

Louis Imbrogno, Jr. has served as a director since August 7, 2019. He served a 40-year tenure at PepsiCo, bringing extensive expertise in beverage supply chain and management. At PepsiCo he served in a variety of field operating assignments and staff positions including the role of Senior Vice President of Worldwide Technical Operations. In this role he was responsible for Pepsi-Cola's worldwide beverage quality, concentrate operations, research & development and contract manufacturing, reporting directly to the heads of Pepsi-Cola North America and PepsiCo Beverages International. Since Mr. Imbrogno's retirement from PepsiCo, he has consulted for multiple companies including PepsiCo.

Thomas W. Kosler was appointed as director effective July 1, 2022. He has served as a mentor and strategic consultant through his sole proprietorship, Kosler & Company since 2018. Prior to his retirement, from 1982 through 2018, he was the founder and owner of Kosler & Company, S.C., a boutique CPA and consulting firm. From 2001 to 2018, he was also the founder and Managing Partner of Brookhill Financial, LLC, an investment management firm focused on the retirement and investment accounts of clients of Kosler & Company, S.C. Mr. Kosler earned a B.B.A. with a major in Accounting from the University of Wisconsin - Milwaukee in 1976. Mr. Kosler was a licensed Certified Public Accountant for over 31 years, a Certified Valuation Analyst for over 16 years, a Registered Investment Advisor Representative for over 21 years and accredited in business valuations by the AICPA for over 8 years.

Leon M. Zaltzman has served as a director since March 21, 2022. Mr. Zaltzman is the founder and managing member of Union Square Park Capital Management, LLC ("USPCM"), an SEC Registered Investment Adviser firm and is also the managing member of Union Square Park GP ("USPGP"). USPCM and USPGP serve as the investment manager and general partner to Union Square Park Partners, LP ("USPP Fund"), respectively. Foregoing entities hereinafter collectively referred to as the "Union Square Entities". Prior to founding USPCM and USPGP in April 2015, Mr. Zaltzman worked at various major banks and investment firms for over twenty years. Mr. Zaltzman received an M.B.A. degree from Columbia Business School in 1997 and a B.S.B.A. degree from the University of Denver in 1992.

Legal Proceedings

In 2014, Louis Imbrogno Jr. served as Chief Executive Officer of Constar International, Inc. for a six-month period during a bankruptcy proceeding and subsequent sale in a court administered public auction. He was not an executive officer of the company prior to the initiation of the bankruptcy proceedings.

Except as described above, to the best of our knowledge, none of our executive officers or directors are parties to any material proceedings adverse to Reed's, have any material interest adverse to Reed's or have, during the past ten years been subject to legal or regulatory proceedings required to be disclosed hereunder.

Family Relationships

There are no family relationships between any of our executive officers and directors.

Corporate Governance

Audit Committee of the Board

The Audit Committee was formed in January 2007. The board has determined that each member of our Audit Committee is an "independent director" as defined by Rule 5605(a)(2) of The NASDAQ Stock Market Rules and that members of the Audit Committee are independent under the additional requirements of Rule 10A-3(b)(1) under the Securities Exchange Act of 1934 (the "Exchange Act"). The board has determined Thomas W. Kosler meets SEC requirements of an "audit committee financial expert" within the meaning of the Sarbanes Oxley Act of 2002, Section 407(b). In addition, the board determined that (i) none of the Audit Committee members have participated in the preparation of the financial statements of the company at any time during the past three years and (2) Audit Committee members are able to read and understand fundamental financial statements. Additionally, we intend to continue to have at least one member of the Audit Committee whose experience or background results in the individual's financial sophistication. The Audit Committee charter is posted on our website at www.reedsinc.com.

Code of Ethics

Our Chief Executive Officer and all senior financial officers, including the Chief Financial Officer and Interim Chief Financial Officer, are bound by a Code of Ethics that complies with Item 406 of Regulation S-B of the Exchange Act. Our Code of Ethics is posted on our website at <http://investor.reedsinc.com>.

Compliance with Section 16(a) of the Exchange Act

Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) requires our directors and executive officers and beneficial holders of more than 10% of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our equity securities.

To our knowledge, based solely upon a review of Forms 3 and 4 and amendments thereto furnished to Reed’s under 17 CFR 240.16a-3(e) during our fiscal year ended December 31, 2021, the following individuals each filed one late Form 4 representing one transaction (unless otherwise noted): Norman E. Snyder, Jr, Lewis Jaffe, Thomas W. Kosler, Rhonda Kallman (former director), Louis Imbrogno, Jr. (2 transactions), James C. Bass, Rhonda Kallman (former director) and Leon M. Zaltzman each filed one late Form 3. None of our officers or directors filed Form 5.

Stockholder Director Nomination Procedures

There have not been any material changes to the procedures by which stockholders may recommend nominees to our board of directors.

Item 11. Executive Compensation

The following table summarizes all compensation for fiscal years 2022 and 2021 earned by our “Named Executive Officers” during the reported periods:

Name and Principal Position	Year	Salary	Bonus	Stock Awards (1)	All Other Compensation (2)	Total
Norman E. Snyder, Jr. Chief Executive Officer	2021	\$ 358,750	\$ -	\$ -	\$ 14,092	\$ 372,842
	2022	\$ 360,500	\$ -	\$ -	\$ 15,721	\$ 376,221
Thomas J. Spisak Chief Financial Officer	2021	\$ 256,250	\$ -	60,746	\$ 10,638	\$ 327,634
	2022	\$ 250,075	\$ -	-	\$ 10,422	\$ 250,497
Neal Cohane Chief Sales Officer	2021	\$ 243,333	\$ -	-	\$ 15,776	\$ 259,110
	2022	\$ 250,000	\$ -	-	\$ -	\$ -

(1) The amounts represent the fair value for share-based payment awards issued during the year. The award is calculated on the date of grant in accordance with Financial Accounting Standards.

(2) Other compensation includes both cash payments and the estimated value of the use of company assets.

Employment Agreements

Norman E. Snyder, Jr.

The board appointed Mr. Snyder to the office of Chief Operating Officer, effective March 1, 2020. Mr. Snyder succeeded John J. Bello who served as Interim Chief Executive Officer from September 30, 2019, through February 29, 2020. The board granted Mr. Snyder a one-time bonus of 150,000 RSAs vesting March 1, 2020, subject to the conditions and limitations of Reed's Second Amended and Restated 2017 Incentive Compensation Plan, in conjunction with his promotion. Pursuant his employment agreement, on February 25, 2020, he received an equity award of 446,000 stock options, one-half scheduled to vest in equal increments on an annual basis for four years and remainder to vest based on performance criteria to be determined by the board of directors (or compensation committee of the board). Mr. Snyder's performance-based cash bonus was set at a target amount of 30% of base salary for the term of his service as Chief Operating Officer. The agreement provided for acceleration of equity grants triggered by a "change of control", as defined in the agreement and contains confidentiality, invention assignment and non-solicitation covenants. Mr. Snyder is also eligible to participate in the company's benefit plans available to its executive officers.

On June 24, 2020, we entered into an amended and restated employment agreement with Norman E. Snyder, Jr. reflecting his promotion to Chief Executive Officer on March 1, 2020. The term of the agreement continues through March 1, 2023, and will automatically renew for an additional one-year term, unless earlier terminated or unless notice of non-renewal is submitted by either party 90 days in advance. Pursuant to the agreement, Mr. Snyder's base salary of \$300,000 per year increased to \$350,000 on September 30, 2020, based on satisfaction of certain objectives and to \$360,500 on March 1, 2021. Mr. Snyder is also eligible to receive a performance-based cash bonus at a target amount of 50% of his base salary in effect. He is also eligible to participate in Reed's other benefit plans available to its executive officers. The agreement provides for acceleration of equity grants triggered by a "change of control", as defined in the agreement and contains customary, non-competition, confidentiality, invention assignment and non-solicitation covenants. Mr. Snyder is also entitled to six months' severance benefits in the event of termination without cause by Reed's or for good reason by Mr. Snyder, subject to execution of a release.

Thomas J. Spisak

We entered into an at-will employment agreement with Thomas J. Spisak to serve as the Chief Financial Officer of Reed's, effective December 2, 2019. Mr. Spisak's base annual base salary was increased to \$257,500 from \$250,000 effective March 1, 2020. Mr. Spisak was also eligible to receive performance-based cash bonus at a target amount of 30% of his base salary. Pursuant to his employment agreement, Mr. Spisak received an initial equity award of 150,000 incentive stock options and 150,000 restricted stock awards on March 3, 2020, one-half of the award (75,000 options and 75,000 restricted stock awards) vesting in equal increments on an annual basis for four years and the remainder (75,000 options and 75,000 restricted stock awards) vesting based on performance criteria to be determined by the board of directors or compensation committee. Mr. Spisak was also eligible to participate in Reed's other benefit plans available to its executive officers. The agreement contained customary confidentiality, non-competition and invention assignment covenants.

Thomas J. Spisak resigned from his position as Chief Financial Officer effective March 30, 2023.

Current Salary Arrangements of Other Named Executive Officers

Christopher Burleson

Mr. Burleson receives a salary of \$300,000 and is eligible for an annual performance bonus based on a target of 35% of his annual salary (to be determined by the company in its sole discretion). As an inducement to accept the position, Mr. Burleson receive a vested RSA grant of approximately 18,160 shares of common stock of Reed's valued at \$75,000 pursuant to the Reed's, Inc. 2020 Equity Incentive Compensation Plan, as amended December 30, 2021.

Neal Cohane

Neal Cohane receives an annual salary which increased from \$210,000 to \$250,000 on March 1, 2021, with a 30% bonus target, and he is eligible to participate in benefits offered by the company to its executive officers.

Change-in-Control Provisions

General Policy

It is our general policy that awards that vest over a term greater than one-year include provisions for acceleration upon a change-in-control.

Equity Compensation Plans

Our 2017 Plan provides the consequences of a change-in-control provisions may be set forth in individual award agreements. For purposes of the 2020 Plan, a “change in control” generally includes (a) the acquisition of more than 50% of the company’s common stock, (b) the acquisition within a twelve-month period of 30% or more of the Company’s common stock, (c) the replacement of a majority of the board of directors, within a twelve-month period, by directors whose election was not endorsed by the incumbent board, or (d) the acquisition of all or substantially all of the Company’s assets.

Our 2020 Plan, as amended, provides that the Compensation Committee of the board retains discretion under the 2020 Plan to determine the treatment of outstanding awards in connection with a change in control of the Company, subject to the terms of contractual agreements of executive officers. For example, the Compensation Committee may cause awards granted under the 2020 Plan to vest upon a change in control, may cancel awards in exchange for a payment of cash (or without a payment, in the case of stock options or SARs with an exercise price that exceeds fair market value), or may cause awards to be continued or substituted in connection with a change in control. For purposes of the 2020 Plan, a “change in control” generally includes (a) the acquisition of more than 50% of the company’s common stock, (b) the acquisition within a twelve-month period of 30% or more of the company’s common stock, (c) the replacement of a majority of the board of directors, within a twelve-month period, by directors whose election was not endorsed by the incumbent board of directors, or (d) the acquisition of all or substantially all of the company’s assets. The full definition of “change in control” is set out in the 2020 Plan.

General provisions of the 2017 Plan and 2020 Plan are subject to contractual modifications that may be set forth in executive employment agreements and award agreements.

Outstanding Equity Awards at Year-End

The following table sets forth information regarding unexercised options and equity incentive plan awards for each Named Executive Officer outstanding as of December 31, 2022:

Name and Position	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unearned Options	Option Exercise Price	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Rights That Have Not Vested (\$)
Norman E. Snyder, Jr. (Chief Executive Officer)	5,455	1,115	2,230	\$ 44.00	2/25/2030				
	500	-	-	\$ 25.00	3/25/2030				
	3,697	625	625	\$ 35.00	5/20/2030				
	9,875	4,030	2,015	\$ 47.50	9/16/2030				
Thomas J. Spisak (Chief Financial Officer) ⁽¹⁾	2,211	375	375	\$ 44.50	3/2/2030	375	\$ 1,309	375	\$ 1,309
	200	-	-	\$ 25.00	3/25/2030				
	9,177	3,745	1,873	\$ 47.50	9/16/2030				
Neal Cohane (Chief Sales Officer)	4,455	-	-	\$ 80.00	3/28/2028				
	1,501	-	-	\$ 25.00	3/25/2030				
	2,958	500	500	\$ 35.00	5/20/2030				
	5,043	2,057	1,029	\$ 47.50	9/16/2030				

(1) Mr. Spisak resigned effective March 30, 2023.

Director Compensation

The following table summarizes the compensation paid to our non-employee directors for the year ended December 31, 2022:

Name	Fees Earned or Paid in Cash	Stock Awards (1)	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
John J. Bello	\$ 50,000	\$ 18,180	-	-	-	\$ 68,180
Lewis Jaffe	\$ 50,000	\$ 18,130	-	-	-	\$ 68,180
James C. Bass	\$ 50,000	\$ 18,130	-	-	-	\$ 68,130
Louis Imbrogno, Jr.	\$ 50,000	\$ 18,180	-	-	-	\$ 68,130
Thomas W. Kosler (2)	\$ 25,000	\$ 11,559	-	-	-	\$ 36,559
Rhonda Kallman (3)	\$ 25,000	\$ 6,627	-	-	-	\$ 31,267
Leon M. Zaltzman (4)	\$ 0	\$ 0	-	-	-	\$ 0

(1) The amounts represent the fair value of restricted stock awards granted during the year. The award is calculated on the date of grant in accordance with Financial Accounting Standards, excluding any impact of assumed forfeiture rates.

(2) Thomas W. Kosler was appointed to the board effective July 1, 2022.

(3) Rhonda Kallman was elected to the board on December 30, 2021, at the Reed's, Inc. 2021 Annual Stockholders Meeting. She resigned from her position as director effective June 30, 2022.

(4) Leon M. Zaltzman was appointed to the board effective March 22, 2022. Mr. Zaltzman has elected to waive non-employee director compensation due

Item 12. Security Ownership of Certain Beneficial Owners, Management and Related Stockholder Matters

The following table sets forth certain information regarding our shares of common stock beneficially owned as of March 31, 2023 for (i) each Named Executive Officer and director, and (ii) all Named Executive officers and directors as a group and (iii) each stockholder known to be the beneficial owner of 5% or more of our outstanding shares of common stock. A person is considered to beneficially own any shares (i) over which such person, directly or indirectly, exercises sole or shared voting or investment power or (ii) of which such person has the right to acquire beneficial ownership at any time within 60 days through an exercise of stock options or warrants or otherwise. Unless otherwise indicated, voting and investment power relating to the shares shown in the table for our directors and executive officers is exercised solely by the beneficial owner or shared by the owner and the owner's spouse or children.

For purposes of this table, a person or group of persons is deemed to have "beneficial ownership" of any shares of common stock that such person has the right to acquire within 60 days of March 31, 2023. For purposes of computing the percentage of outstanding shares of our common stock held by each person or group of persons named above, any shares that such person or persons has the right to acquire within 60 days of March 31, 2023 is deemed to be outstanding but is not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. The inclusion herein of any shares listed as beneficially owned does not constitute an admission of beneficial ownership. Except as otherwise indicated below, the persons named in the table have sole voting and investment power with respect to all shares of common stock held by them. Unless otherwise indicated, the principal address of each listed executive officer and director is 201 Merritt 7 Corporate Park, Norwalk, Connecticut 06851.

<i>Named Beneficial Owner Directors and Named Executive Officers</i>	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned (1)
John J. Bello (2)	240,138	9.0%
Norman E. Snyder, Jr. (3)	41,546	1.6%
Neal Cohane (4)	16,454	0.7%
James C. Bass (5)	11,140	0.4%
Joann Tinnelly (6)	12,843	0.5%
Louis Imbrogno, Jr. (7)	9,617	0.4%
Lewis Jaffe (8)	7,395	0.3%
Leon M. Zaltzman (9)	467,385	17.2%
Thomas W. Kosler (10)	13,918	0.5%
Christopher Burleson	6,000	0.2%
Directors and Named Executive Officers as a group (10 persons)	826,435	29.3%
5% or greater stockholders		
Union Square Entities (11)	467,385	17.2%
Whitebox Entities (12)	257,718	9.9%

* Less than 1%

(1) Based on 2,603,661 shares outstanding as of March 10, 2022.

(2) Includes 1,000 shares issuable upon exercise of currently exercisable options, 1,607 RSAs from 2022 Board Compensation and warrants of 30,000.

(3) Includes 13,129 shares issuable upon exercise of currently exercisable options.

(4) Includes 11,832 shares issuable upon exercise of currently exercisable options.

(5) Includes 1,600 shares issuable upon exercise of currently exercisable options and 1,607 RSAs from 2022 Board Compensation.

(6) Includes 4,870 shares issuable upon exercise of currently exercisable options.

(7) Includes 1,600 shares issuable upon exercise of currently exercisable options and 1,607 RSAs from 2022 Board Compensation.

(8) Includes 1,600 shares issuable upon exercise of currently exercisable options and 1,607 RSAs from 2022 Board Compensation.

(9) Mr. Zaltzman is voting and dispositive control over shares held by the Union Square Entities.

(10) Includes 1,607 RSAs from 2022 Board Compensation

(11) Principal address is 1120 Avenue of the Americas, Suite 1512, New York, NY 10036. Mr. Zaltzman is the founder and managing member of Union Square Park Capital Management, LLC (“USPCM”), an SEC Registered Investment Adviser firm and is also the managing member of Union Square Park GP (“USPGP”). USPCM and USPGP serve as the investment manager and general partner to Union Square Park Partners, LP (“USPP Fund”), respectively. Foregoing entities hereinafter collectively referred to as the “Union Square Entities Mr. Zaltzman has voting and dispositive control over shares held by the Union Square Entities.

(12) Includes Whitebox Advisors LLC, a Delaware limited liability company (“WA”), Whitebox General Partner LLC, a Delaware limited liability company (“WGP”) and Whitebox Multi-Strategy Partners, a Cayman Islands exempted limited partnership (“WMP”). The address of the business office of WA and WGP is: 3033 Excelsior Boulevard, Suite 500, Minneapolis, MN 55416. The address of the business office of WMP is Mourant Governance Services (Cayman) Limited, 94 Solaris Avenue, Camana Bay, PO Box 1348, Grand Cayman, KY1-1108, Cayman Islands. Each of WA and WGP is deemed to be the beneficial owner of 257,718 shares (includes shares underlying \$10,711,250 principal amount and accrued interest of secured convertible promissory notes subject to 9.9% blocker). WMP may be deemed to be the beneficial owner of 148,904 shares (includes shares underlying \$10,711,250 principal amount and accrued interest of secured convertible promissory notes subject to 9.9% blocker r as applied to the aggregate number of Notes held by WA’s clients and then applied pro rata to the Notes held directly by WMP). Each of WA and WGP is deemed to beneficially own 9.9% of the common stock. WMP may be deemed to beneficially own 5.7% of the common stock.

Securities Authorized for Issuance under Equity Compensation Plans

On September 29, 2017, the 2017 Incentive Compensation Plan for 60,000 shares was approved by our shareholders. On December 13, 2018, the Amended and Restated 2017 Incentive Compensation Plan was approved by our shareholders increasing the number of shares issuable by 70,000 to 130,000. On December 16, 2019, the Second Amended and Restated 2017 Incentive Compensation Plan (“2017 Plan”) was approved by our shareholders, increasing the number of shares issuable by 20,000 to 150,000.

On December 21, 2020, the 2020 Equity Incentive Plan (“2020 Plan”) for 300,000 shares was approved by our shareholders. The 2020 Plan replaced the 2017 Plan, which would have expired by its terms on September 30, 2027. On December 30, 2021, the Amended and Restated 2020 Plan was adopted by our shareholders, increasing the 2020 Plan to 300,000 shares.

We have discontinued the 2017 Plan and all plans that preceded the 2017 Plan and will not issue any new awards under these prior plans, although awards granted under these plans will remain in effect.

The following table provides information, as of December 31, 2022, with respect to equity securities authorized for issuance under compensation plans:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted- Average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in Column (a)
Equity compensation plans approved by security holders	164,423	\$ 48.90	297,534
Equity compensation plans not approved by security holders	0	\$ -	0
TOTAL	164,423	\$ 48.90	297,534

Item 13. Certain Relationships and Related Transactions, and Director Independence

Certain Relationships and Related Transactions

Our board of directors has adopted written policies and procedures for the review of any transaction, arrangement or relationship between Reed's and one of our executive officers, directors, director nominees or 5% or greater stockholders (or their immediate family members), each of whom we refer to as a "related person," in which such related person has a direct or indirect material interest.

If a related person proposes to enter into such a transaction, arrangement or relationship, defined as a "related party transaction," the related party must report the proposed related party transaction to our Chief Financial Officer. The policy calls for the proposed related party transaction to be reviewed and, if deemed appropriate, approved by the Governance Committee. Our Governance Committee is comprised of Lewis Jaffe and Louis Imbrogno, Jr. Mr. Jaffe serves as Chairman. The board of directors has determined both of the members of the Governance Committee are independent under the rules of the Nasdaq Stock Market, LLC. If practicable, the reporting, review and approval will occur prior to entry into the transaction. If advance review and approval is not practicable, the Governance Committee will review, and, in its discretion, may ratify the related party transaction. Any related party transactions that are ongoing in nature will be reviewed annually at a minimum. The related party transactions listed below were reviewed by the full board of directors. Prior to August 2005, we did not have independent directors on our board to review and approve related party transactions. The Governance Committee shall review future related party transactions.

The following includes a summary of transactions since the beginning of fiscal 2022 or any currently proposed transaction, in which we were or are to be a participant and the amount involved exceeded or exceeds the lesser of \$120,000 or one percent of the average of our total assets at year-end for the last two completed fiscal years and in which any related person had or will have a direct or indirect material interest (other than compensation described under "Executive Compensation"). We believe the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described below were comparable to or better than terms available or the amounts that would be paid or received, as applicable, in arm's-length transactions.

John J. Bello

On March 11, 2021, we entered into an amendment to that certain Financing Agreement dated October 4, 2018, as amended or supplemented with our senior secured lender, Rosenthal & Rosenthal, Inc. ("Rosenthal") releasing and replacing that irrevocable standby letter of credit by Daniel J. Doherty, III and Daniel J. Doherty, III 2002 Family Trust in the amount of \$1.5 million, which served as financial collateral for certain obligations of Reed's under the Rosenthal credit facility, with a two million dollar (\$2,000,000) pledge of securities to Rosenthal by John J. Bello and Nancy E. Bello, as Co-Trustees of THE JOHN AND NANCY BELLO REVOCABLE LIVING TRUST, under trust agreement dated December 3, 2012 (the "Bello Trust"), evidenced by that certain Pledge Agreement to Rosenthal, and as to which Rosenthal has a first and only perfected security interest by the Securities Account Control Agreement held by securities broker).

On November 24, 2021, the Bello trust provided additional collateral support securing a \$2,500,000 over-advance under the Financing Agreement, and John J. Bello also provided a personal guarantee. The additional collateral was released on March 17, 2022, along with the personal guarantee. The initial pledged collateral was released March 30, 2022, with the pay-off of the Rosenthal facility.

John J. Bello is the current Chairman, significant stockholder and former Interim Chief Executive Officer of Reed's. As consideration for the collateral support, Mr. Bello received 8,000 shares of Reed's restricted stock and a warrant to purchase up to 30,000 shares of common stock at an exercise price of \$10.58 per share.

Lindsay Martin, daughter of John Bello, director of the Company, was employed as Vice President of Marketing during the fiscal year ended December 31, 2022. Ms. Martin was paid approximately \$185 for her services during the fiscal year ended December 31, 2022.

Leon M. Zaltzman and Union Square Entities

On March 21, 2022, the Board of Directors of Reed's, Inc., a Delaware corporation ("Reed's"), upon recommendation from its governance committee, expanded the board from six to seven members and appointed Leon M. Zaltzman ("Mr. Zaltzman") to serve as director.

Mr. Zaltzman is the founder and managing member of Union Square Park Capital Management, LLC ("USPCM"), an SEC Registered Investment Adviser firm and is also the managing member of Union Square Park GP ("USPGP"). USPCM and USPGP serve as the investment manager and general partner to Union Square Park Partners, LP ("USPP Fund"), respectively. Foregoing entities hereinafter collectively referred to as the "Union Square Entities".

USPP Fund participated in Reed's recent private placement (the "private placement") of common stock, \$0.0001 par value ("common stock"), and warrants, which closed on March 11, 2022, in the aggregate principal amount of \$3,000,000. It acquired 214,286 shares of common stock and warrants to purchase 107,143 shares of common stock in the private placement. Prior to the private placement, Mr. Zaltzman and the Union Square Entities beneficially owned approximately 7.79% of Reed's common stock. After the private placement, Mr. Zaltzman and the Union Square Entities beneficially owned approximately 17.2% of Reed's common stock. The common stock and shares of common stock underlying the warrants have the same registration rights granted to all investors in the private placement.

Warrants issued to USPP Fund are not exercisable until September 27, 2022, and carry a 19.99% beneficial ownership blocker. In conjunction with the private placement and USPP Fund's role as lead investor, Reed's and USPCM had an oral understanding pursuant to which Reed's agreed to support the nomination of USPCM's nominee, Leon M. Zaltzman, to the Reed's board, upon qualification and recommendation from Reed's governance committee. Except as set forth above, USPP Fund invested in the private placement pursuant to the same terms and conditions of the other purchasers in the private placement.

Director Independence

As of the date of this Annual Report, our board has seven directors and the following four standing committees: an Audit Committee, a Compensation Committee, a Governance Committee and an Operations Committee. The board, upon recommendation from the Compensation Committee, determined each of Lewis Jaffe, James C. Bass, Thomas W. Kosler and Louis Imbrogno, Jr. is an "independent director" as defined by Rule 5605(a)(2) of The NASDAQ Stock Market Rules (the "NASDAQ Rules"). Independence of board members is re-evaluated by the board annually. We intend to maintain at least a majority of independent directors on our board in the future.

Item 14. Principal Accounting Fees and Services

Weinberg & Company, P.A. ("Weinberg") was our independent registered public accounting firm for the years ended December 31, 2022, and 2021.

The following table shows the fees paid or accrued by us for the audit and other services provided by Weinberg for the years ended December 31, 2022, and 2021:

	<u>2022</u>	<u>2021</u>
Audit Fees	\$ 205,304	\$ 186,089
Audit-Related Fees	-	-
Tax Fees	38,674	45,184
All Other Fees	8,820	38,896
Total	<u>\$ 252,798</u>	<u>\$ 270,169</u>

As defined by the SEC, (i) "audit fees" are fees for professional services rendered by our principal accountant for the audit of our annual financial statements and review of financial statements included in our Form 10-K, or for services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years; (ii) "audit-related fees" are fees for assurance and related services by our principal accountant that are reasonably related to the performance of the audit or review of our financial statements and are not reported under "audit fees;" (iii) "tax fees" are fees for professional services rendered by our principal accountant for tax compliance, tax advice, and tax planning; and (iv) "all other fees" are fees for products and services provided by our principal accountant, other than the services reported under "audit fees," "audit-related fees," and "tax fees."

Audit Fees

Weinberg provided services for the audits of our financial statements included in Annual Reports on Form 10-K and limited reviews of the financial statements included in Quarterly Reports on Form 10-Q.

Audit Related Fees

Weinberg did not provide any professional services which would be considered “audit related fees.”

Tax Fees

Weinberg prepared our 2022 and 2021 Federal and state income tax returns.

All Other Fees

Services provided by Weinberg with respect to the filing of various registration statements made throughout the year are considered “all other fees.”

Audit Committee Pre-Approval Policies and Procedures

Under the SEC’s rules, the Audit Committee is required to pre-approve the audit and non-audit services performed by the independent registered public accounting firm in order to ensure that they do not impair the auditors’ independence. The SEC’s rules specify the types of non-audit services that an independent auditor may not provide to its audit client and establish the Audit Committee’s responsibility for administration of the engagement of the independent registered public accounting firm.

Consistent with the SEC’s rules, the Audit Committee Charter requires that the Audit Committee review and pre-approve all audit services and permitted non-audit services provided by the independent registered public accounting firm to us or any of our subsidiaries. The Audit Committee may delegate pre-approval authority to a member of the Audit Committee and if it does, the decisions of that member must be presented to the full Audit Committee at its next scheduled meeting. Accordingly, 100% of audit services and non-audit services described in this Item 14 were pre-approved by the Audit Committee.

There were no hours expended on the principal accountant’s engagement to audit the registrant’s financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant’s full-time, permanent employees.

PART IV

Item 15. Exhibits and Financial Statements

(a) 1. Financial Statements

See Index to Financial Statements in Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

2. Financial Statement Schedules

All other financial statement schedules have been omitted because they are either not applicable or the required information is shown in the financial statements or notes thereto.

3. Exhibits

See the Exhibit Index, which follows the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.

(b) Exhibits

See Item 15(a) (3) above.

(c) Financial Statement Schedules

See Item 15(a) (2) above.

Item 16. Form 10K Summary

Not applicable.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: May 15, 2023

REED'S, INC.
a Delaware corporation

By: /s/ Norman E. Snyder, Jr.

Norman E. Snyder, Jr.
Chief Executive Officer

In accordance with the Exchange Act, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Norman E. Snyder, Jr.</u> Norman E. Snyder, Jr.	Chief Executive Officer, (Principal Executive Officer), Director	May 15, 2023
<u>/s/ Joann Tinnelly</u> Joann Tinnelly	Interim Chief Financial Officer (Principal Financial Officer)	May 15, 2023
<u>/s/ John J. Bello</u> John J. Bello	Chairman of the Board	May 15, 2023
<u>/s/ Leon Michael Zaltzman</u> Leon Michael Zaltzman	Director	May 15, 2023
<u>/s/ Lewis Jaffe</u> Lewis Jaffe	Director	May 15, 2023
<u>/s/ James C. Bass</u> James C. Bass	Director	May 15, 2023
<u>/s/ Thomas Kosler</u> Thomas Kosler	Director	May 15, 2023
<u>/s/ Louis Imbrogno, Jr.</u> Louis Imbrogno, Jr.	Director	May 15, 2023

EXHIBIT INDEX

Exhibit No.	Exhibit Title	Filed Herewith	Incorporated by Reference			
			Form	Exhibit	File No.	Date Filed
3 (i)	Certificate of Incorporation of Reed's, Inc., as amended	X				
3 (ii)	Amended and Restated Bylaws of Reed's, Inc.		10-KA	3.8	001-32501	04/08/2020
4.1	Form of common stock certificate		SB-2	4.1	333-120451	
4.2	Form of series A preferred stock certificate		SB-2	4.2	333-120451	
4.3	Form of Warrant issued to Raptor/ Harbor Reed's SPV LLC on December 11, 2020		10-K	4.10	001-32501	3/30/2021
4.4	Form of Warrant (Union Square Park Partners, LP)		8-K	4.1	001-32501	3/22/2022
4.5	Form of Warrant 2022 PIPE		8-K	4.1	001-32501	3/14/2022
4.6	Form of Secured Convertible Promissory Note issued May 9, 2022		8-K	4.1	001-32501	5/10/2022
4 (vi)	Description of registrant's common stock	X				
10.1	Registration Rights Agreement by and between Reed's, Inc. and Raptor/ Harbor Reeds SPV LLC, dated December 11, 2020		10-K	10.2	001-32501	3/20/2021
10.2	Registration Rights Agreement by and between Reed's, Inc., and purchasers signatory thereto dated May 26, 2016		8-K	10.3	001-32501	6/03/2016
10.3*	Reed's, Inc. 2017 Incentive Compensation Plan		S-8	4.2	333-222741	1/29/2018
10.4*	Reed's, Inc. 2020 Equity Incentive Plan		S-8	4.2	333-252140	1/15/2021
10.5	Sublease Agreement by and between Reed's, Inc., Merritt 7 Venture L.L.C., and GE Capital US Holdings, Inc., dated September 1, 2018		10-Q	10.7	001-32501	11/14/2018
10.6	Asset Purchase Agreement by and between Reed's, Inc. and California Custom Beverage LLC dated December 31, 2018		8-K	10.1	001-32501	12/31/2018
10.7	Assignment and Assumption of Lease and Consent of Lessor by and between Reed's, Inc. and California Custom Beverage LLC dated December 31, 2018		8-K	10.2	001-32501	12/31/2018
10.8	Form of Indemnification Agreement by and between Reed's, Inc. and officers and directors		10-K	10.31	001-32501	4/01/2019
10.9*	Executive Employment Agreement by and between Reed's, Inc. and Thomas J. Spisak dated December 2, 2019		10-KA	10.38	001-32501	4/08/2020
10.10*	Form of Non-Employee Director Nonstatutory Stock Option Agreement		8-K	10.1	001-32501	
10.11*	Form of Executive Incentive Stock Option Agreement		10-K		001-32501	8/10/2020
10.12*	Amended and Restated Employment Agreement by and between Reed's, Inc. and Norman E. Snyder, Jr. dated June 24, 2020		10-Q	10.1	001-32501	8/10/2020
10.13	Form of Securities Purchase Agreement by and among Reed's, Inc. and certain investors dated March 10, 2022		8-K	10.1	001-32501	3/14/2022
10.14	Form of Registration Rights Agreement by and among Reed's, Inc. and certain investors dated March 10, 2022		8-K	10.2	001-32501	3/14/2022
10.15	Ledgered ABL Agreement by and between Reed's, Inc. and Alterna Capital Solutions, LLC dated March 28, 2022		10-K	10.31	001-32501	4/15/2022
10.16	Note Purchase Agreement by and between Reed's, Inc., Wilmington Savings Fund Society, FSB and purchasers dated May 9, 2022		8-K	10.1	001-32501	5/10/2022
10.17	Registration Rights Agreement by and between Reed's, Inc. and purchasers dated May 9, 2022		8-K	10.2	001-32501	5/10/2022
10.18	Collateral Sharing Agreement by and among Alterna Capital Solutions LLC, Reed's, Inc. and Wilmington Savings Fund Society, FSB dated May 9, 2022		8-K	10.2	001-32501	5/10/2022
10.19	Partial Option Exercise and Second Amendment to 10% Convertible Notes with Wilmington Savings Fund Society, FSB dated February 10, 2023	X				
10.20	Limited Waiver and Deferral Agreement with Wilmington Savings Fund Society, FSB dated February 10, 2023	X				
10.21	Limited Waiver and Amendment to 10% Secured Convertible Notes by and between Reed's, Inc., Wilmington Savings Fund Society, FSB, and holders effective August 11, 2022		10-Q	10.3	001-32501	11/14/2022
10.22	Limited Waiver and Amendment to 10% Secured Convertible Notes by and between Reed's, Inc., Wilmington Savings Fund Society, FSB, and holders dated April 11, 2023	X				

14.1	Code of Ethics		SB-2	14.1	333-157359
21	Subsidiaries of Reed's, Inc.	X			
23.1	Consent of Weinberg & Co., PA	X			
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.	X			
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.	X			
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith.	X			
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith.	X			
101.INS	Inline XBRL Instance Document	X			
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X			
101.DEF	Inline XBRL Taxonomy Extension Label Linkbase Document	X			
101.LAB	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X			
101.PRE	Inline XBRL Taxonomy Extension Label Linkbase Document	X			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	X			

* Indicates a management contract or compensatory plan or arrangement.

EXHIBIT A

Delaware
The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "REED'S, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE SEVENTH DAY OF SEPTEMBER, A.D. 2001, AT 1:30 O`CLOCK P.M.

CERTIFICATE OF OWNERSHIP, FILED THE NINTH DAY OF OCTOBER, A.D. 2001, AT 1:30 O`CLOCK P.M.

CERTIFICATE OF REVIVAL, FILED THE FOURTEENTH DAY OF SEPTEMBER, A.D. 2004, AT 11 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SEVENTH DAY OF SEPTEMBER, A.D. 2004, AT 1:46 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWELFTH DAY OF OCTOBER, A.D. 2004, AT 3:04 O`CLOCK P.M.

CERTIFICATE OF CORRECTION, FILED THE TENTH DAY OF NOVEMBER, A.D. 2004, AT 9:57 O`CLOCK P.M.



Jeffrey W. Bullock
Jeffrey W. Bullock, Secretary of State

3433903 8100H
SR# 20172535608

Authentication: 202382490
Date: 04-17-17



Delaware

Page 2

The First State

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CORRECTION IS THE ELEVENTH DAY OF NOVEMBER, A.D. 2004 AT 9:55 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE EIGHTEENTH DAY OF DECEMBER, A.D. 2007, AT 6:29 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-NINTH DAY OF APRIL, A.D. 2009, AT 10:54 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE SIXTEENTH DAY OF NOVEMBER, A.D. 2009, AT 2:10 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE SEVENTH DAY OF DECEMBER, A.D. 2009, AT 6:22 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "REED'S, INC.".



3433903 8100H
SR# 20172535608

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the name "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 202382490
Date: 04-17-17

**CERTIFICATE OF INCORPORATION
OF
REED'S, INC.**

ARTICLE I

The name of the corporation is Reed's, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

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

ARTICLE IV

The Corporation is authorized to issue one class of shares of stock to be designated Common Stock, \$0.0001 par value. The total number of shares that the Corporation is authorized to issue is 50,000,000 shares of Common Stock.

ARTICLE V

The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this right.

ARTICLE VI

The Corporation is to have perpetual existence.

ARTICLE VII

1. Limitation of Liability. To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or as may hereafter be amended, 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.

2. Indemnification. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person or his or her testator or intestate is or was a director, officer or employee of the Corporation, or any predecessor of the Corporation, or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation.

3. Amendments. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

ARTICLE VIII

Holders of stock of any class or series of this Corporation shall not be entitled to cumulate their votes for the election of directors or any other matter submitted to a vote of the stockholders.

ARTICLE IX

1. **Number of Directors.** The number of directors which constitutes the whole Board of Directors of the Corporation shall be designated in the Bylaws of the Corporation. Initially, the number of directors shall be one (1).

2. **Election of Directors.** Elections of directors shall not be by written ballot unless the Bylaws of the Corporation shall so provide.

3. **Designation of Initial Director.** The name and address of the initial director of the Corporation is as follows: Christopher J. Reed, 13000 South Spring Street, Los Angeles, California 90061.

ARTICLE X

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

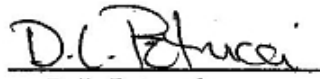
ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of 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 XIII

The name and mailing address of the incorporator are as follows D. L. Petrucci Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The undersigned incorporator hereby acknowledges that the above Certificate of Incorporation of Reed's, Inc. is his act and deed and that the facts stated therein are true.

Dated: September 7, 2001



D. L. Petrucci

CERTIFICATE OF OWNERSHIP AND MERGER
MERGING
ORIGINAL BEVERAGE CORPORATION
INTO
REED'S, INC.

ORIGINAL BEVERAGE CORPORATION, a corporation organized and existing under the laws of Florida, DOES HEREBY CERTIFY:

FIRST: That this corporation was incorporated on the 18th day of January, 1991, pursuant to chapter 607 of the Laws of the State of Florida, the provisions of which permit the merger of a corporation of another state and a corporation organized and existing under the laws of said state.

SECOND: That this corporation owns one hundred percent of the outstanding shares of the stock of Reed's, Inc., a corporation incorporated on the 7th day of September, 2001 pursuant to the General Corporation Law of the State of Delaware.

THIRD: That the directors of Original Beverage Corporation, by the following resolutions of its Board of Directors, duly adopted at a meeting held on the 16th day of August, 2001, determined to merge itself into said Reed's, Inc.:

RESOLVED, that Original Beverage Corporation merge, and it hereby does merge itself into said Reed's, Inc., which assumes all of the obligations of Original Beverage Corporation.

FURTHER RESOLVED, that the merger shall be effective upon filing with the Secretary of State of Delaware.

FURTHER RESOLVED, that the terms and conditions of the merger are as set forth in the Agreement and Plan of Merger dated as of September 7, 2001 which is attached hereto as Exhibit A and incorporated herein by this reference.

FURTHER RESOLVED, that the proposed merger shall be submitted to the stockholders of Original Beverage Corporation at a meeting of such stockholders duly called and held after notice of the purpose thereof mailed to the address of each such stockholder as it appears in the records of the corporation; and upon receiving the affirmative vote of the holders of at least a majority of the outstanding stock entitled to vote thereon of Original Beverage Corporation, the merger shall be approved.

FURTHER RESOLVED, that the proper officer of this corporation be and he or she is hereby directed to make and execute a Certificate of Ownership and Merger setting forth

a copy of the resolutions to merge itself into said Reed's, Inc. and the date of adoption thereof, and to cause the same to be filed with the Secretary of State and to do all acts and things whatsoever, whether within or without the State of Delaware, which may be in anywise necessary or proper to effect said merger.

FOURTH: That the proposed merger has been adopted, approved, certified, executed and acknowledged by Original Beverage Corporation in accordance with the laws of the State of Florida, under which the corporation was organized.

FIFTH: Anything herein or elsewhere to the contrary notwithstanding, this merger may be amended or terminated and abandoned by the Board of Directors of Original Beverage Corporation at any time prior to the time that this merger filed with the Secretary of State becomes effective.

IN WITNESS WHEREOF, said Original Beverage Corporation has caused this Certificate to be signed by Christopher J. Reed, its President, this 4th day of October, 2001.

ORIGINAL BEVERAGE CORPORATION
a Florida corporation

By: 

Christopher J. Reed, President

EXHIBIT A

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT OF MERGER (the "Agreement"), dated as of September 7, 2001, is entered into by and between Original Beverage Corporation, a Florida corporation ("OBC Florida") and Reed's, Inc., a Delaware corporation ("Newco Delaware").

WITNESSETH:

WHEREAS, OBC Florida is a corporation duly organized and existing under the laws of the State of Florida;

WHEREAS, the respective Boards of Directors of OBC Florida and Newco Delaware have determined that it is advisable and in the best interests of each of such corporations that OBC Florida merge with and into Newco Delaware (the "Merger") upon the terms and subject to the conditions set forth in this Agreement for the purpose of effecting the change of the state of incorporation of OBC Florida from Florida to Delaware;

WHEREAS, the respective Boards of Directors of OBC Florida and Newco Delaware have, by resolutions duly adopted, approved this Agreement, subject to the approval of the shareholders of each of Newco Delaware and OBC Florida; and

WHEREAS, this Agreement is intended as a tax free plan of reorganization within the meaning of Section 368 of the Internal Revenue Code;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, OBC Florida and Newco Delaware hereby agree as follows:

1. **Merger.** OBC Florida shall be merged with and into Newco Delaware and Newco Delaware shall be the surviving corporation (hereinafter sometimes referred to as the "Surviving Corporation"). The Merger shall become effective upon the date and time when this Agreement is made effective in accordance with applicable law (the "Effective Time").

2. **Governing Documents; Executive Officers and Directors.** The Certificate of Incorporation of Newco Delaware, from and after the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation without change or amendment until thereafter amended in accordance with the provisions thereof and applicable laws. The Bylaws of Newco Delaware from and after the Effective Time, shall be the Bylaws of the Surviving Corporation without change or amendment until thereafter amended in accordance with the provisions thereof, or the Certificate of Incorporation of the Surviving Corporation and applicable laws. The members of the Board of Directors and committees of the Board of Directors and the officers of OBC Florida immediately prior to the Effective Time shall be the members of the Board of Directors and committees of the Board of Directors and the officers of the Surviving Corporation from and after the Effective Time, until their respective successors have been duly elected and qualify, unless they earlier die, resign or are removed.

3. Succession. At the Effective Time, the separate corporate existence of OBC Florida shall cease, and the Surviving Corporation shall possess all the rights, privileges, powers and franchises of a public and private nature of OBC Florida; and all property, real, personal and mixed, and all debts due to OBC Florida on whatever account, as well as for share subscriptions as all other things in action belonging to OBC Florida, shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every interest shall be thereafter as effectually be the property of the Surviving Corporation as they were of OBC Florida, and the title to any real estate vested by deed or otherwise in OBC Florida shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of OBC Florida shall be preserved unimpaired, and all debts, liabilities and duties of OBC Florida shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it. All corporate acts, plans, policies, agreements, arrangements, approvals and authorizations of OBC Florida, its shareholders, Board of Directors and committees thereof, officers and agents which were valid and effective immediately prior to the Effective Time, shall be taken for all purposes as the acts, plans, policies, agreements, approvals and authorizations of the Surviving Corporation and shall be as effective and binding thereon as the same were with respect to OBC Florida. The employees and agents of OBC Florida shall become the employees and agents of the Surviving Corporation and continue to be entitled to the same rights and benefits which they enjoyed as employees and agents of OBC Florida. The requirements of any plans or agreements of OBC Florida involving the issuance or purchase by OBC Florida of certain shares of its capital stock shall be satisfied by the issuance or purchase of a like number of shares of the Surviving Corporation.

4. Further Assurances. From time to time, as and when required by the Surviving Corporation or by its successors or assigns, there shall be executed and delivered on behalf of OBC Florida such deeds and other instruments, and there shall be taken or caused to be taken by it all such further and other action, as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises and authority of OBC Florida, and otherwise to carry out the purposes of this Agreement, and the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of OBC Florida or otherwise, to take any and all such action and to execute and deliver any and all such deeds and other instruments.

5. Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:

(a) each share of the common stock, par value \$.0001 per share (the "OBC Florida Common Stock") of OBC Florida outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of common stock, par value \$.0001 per share (the "Surviving Corporation Common Stock") of the Surviving Corporation and no fractional shares shall be issued and fractions of half or more shall be rounded to a whole share and fractions of less than half shall be disregarded, such that the issued and outstanding capital stock of the Surviving Corporation resulting from the conversion of the OBC Florida Common Stock upon the Effective Time shall be equal to the number of shares of OBC Florida Common Stock at that time; and

(b) as of the Effective Time, the Surviving Corporation hereby assumes all obligations under any and all employee benefit plans of OBC Florida in effect as of the Effective Time or with respect to which employee rights or accrued benefits are outstanding as of the Effective Time and shall continue the stock option plans, warrants or other rights to purchase, or securities convertible into OBC Florida Common Stock. Each outstanding and unexercised option, warrant or other right to purchase, or security convertible into OBC Florida Common Stock shall become an option, warrant or right to purchase, or a security convertible into the Surviving Corporation Common Stock on the basis of one share of the Surviving Corporation Common Stock for each share of OBC Florida Common Stock issuable pursuant to any such option, warrant or stock purchase right or convertible security, on the same terms and conditions and at an exercise or conversion price per share equal to the exercise or conversion price per share applicable to any such OBC Florida option, warrant, stock purchase right or other convertible security at the Effective Time.

A number of shares of the Surviving Corporation Common Stock shall be reserved for issuance upon the exercise of options, warrants, stock purchase rights and convertible securities equal to the number of shares of OBC Florida Common Stock so reserved immediately prior to the Effective Time.

(c) the shares of Surviving Corporation Common Stock presently issued and outstanding in the name of OBC Florida shall be canceled and retired and resume the status of authorized and unissued shares of Surviving Corporation Common Stock, and no shares of Surviving Corporation Common Stock or other securities of OBC Florida shall be issued in respect thereof.

6. Stock Certificates. As of and after the Effective Time, all of the outstanding certificates which, immediately prior to the Effective Time, represented shares of OBC Florida Common Stock shall be deemed for all purposes to evidence ownership of, and to represent, shares of Surviving Corporation Common Stock into which the shares of OBC Florida Common Stock formerly represented by such certificates, have been converted as herein provided. The registered owner on the books and records of the Surviving Corporation or its transfer agents of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or otherwise accounted for to the Surviving Corporation or its transfer agents, have and be entitled to exercise any voting and other rights with respect to, and to receive any dividends and other distributions upon, the shares of Surviving Corporation Common Stock evidenced by such outstanding certificate as above provided.

7. Shareholder Approval. This Agreement has been approved by OBC Florida under Section 607.1103 of the Florida Business Corporation Act by the shareholders representing in excess of 50% of the issued and outstanding voting securities of OBC Florida. This Agreement has been approved by Newco Delaware under Section 253 of the General Corporation Law of the State of Delaware. The signature of OBC Florida on this Agreement shall constitute its written consent as sole shareholder of Newco Delaware, to this Agreement and the Merger.

8. Amendment. To the full extent permitted by applicable law, this Agreement may be amended, modified or supplemented by written agreement of the parties hereto, either before or

after approval of the shareholders of the constituent corporations and at any time prior to the Effective Time with respect to any of the terms contained herein.

9. Termination. At any time prior to the Effective Time, this Agreement may be terminated and the Merger may be abandoned by the Boards of Directors of OBC Florida or Newco Delaware, notwithstanding approval of this Agreement by the shareholders of Newco Delaware or by the shareholders of OBC Florida, or both, if, in the opinion of either of the Boards of Directors of OBC Florida or Newco Delaware, circumstances arise which in the opinion of such Boards of Directors, make the Merger for any reason inadvisable.

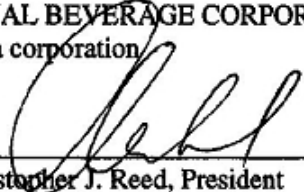
10. Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in two or more counterparts, each of which shall be deemed to be an original and the same agreement.

11. Florida Appointment. Newco Delaware hereby agrees that it may be served with process in the State of Florida in any action or special proceeding for enforcement of any liability or obligation of OBC Florida or Newco Delaware arising from the Merger. Newco Delaware appoints the Secretary of State of the State of Florida as its agent to accept service of process in any such suit or other proceeding and a copy of such process shall be mailed by the Secretary of State of Florida to Newco Delaware at 13000 South Spring Street, Los Angeles, California 90061.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, OBC Florida and Newco Delaware have caused this Agreement to be executed and delivered by their respective duly authorized officers as of the date first above written.

ORIGINAL BEVERAGE CORPORATION
a Florida corporation

By: 
Christopher J. Reed, President

REED'S, INC.
a Delaware corporation

By: 
Christopher J. Reed, President

CERTIFICATE OF RENEWAL AND REVIVAL
OF
REED'S, INC.

Reed's, Inc., a corporation organized under the laws of the State of Delaware (the "Corporation"), pursuant Section 312 of the General Corporation Law of the State of Delaware (the "GCL"), HEREBY CERTIFIES AS FOLLOWS:

1. The name of the Corporation is Reed's, Inc. The certificate of incorporation of the Corporation was filed in the Office of the Secretary of State of Delaware on September 7, 2001.
2. The Corporation's registered office in the State of Delaware is located at 222 Delaware Avenue, 9th Floor, Wilmington, New Castle County, DE 19801. The Corporation's registered agent at such address is The Delaware Corporation Agency, Inc.
3. This renewal and revival of the charter of the Corporation is to be perpetual and is to commence on February 29, 2004.
4. The Corporation was duly organized and carried on the business authorized by its charter until March 1, 2004, at which time its charter became inoperative and void for non-payment of taxes.
5. This certificate for renewal and revival is filed by authority of the persons who were the directors of the Corporation at the time its charter became void and inoperative or persons who were elected directors in accordance with Section 312(h) of the GCL.

IN TESTIMONY WHEREOF, the undersigned has executed this certificate this 9th day of September, 2004.

REED'S, INC.

By: 

Name: Christopher Reed

Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:57 PM 09/27/2004
FILED 01:46 PM 09/27/2004
SRV 040696649 - 3433903 FILE

**CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION
OF
REED'S, INC.**

Reed's, Inc., a corporation organized and existing under the laws of the State of Delaware, does hereby certify as follows:

FIRST: The name of the corporation is Reed's, Inc. (the "Corporation").

SECOND: The date on which the Corporation's original Certificate of Incorporation was filed with the Delaware Secretary of State is September 7, 2001.

THIRD: The Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware adopted resolutions by unanimous written consent effective as of August 26, 2004 to amend Article IV of the Certificate of Incorporate of the Corporation to read in its entirety as follows:

ARTICLE IV

1. This Corporation is authorized to issue 12,000,000 shares of its Capital Stock, which shall be divided into two classes known as Common Stock and Preferred Stock, respectively.
2. The total number of shares of Common Stock which this Corporation is authorized to issue is 11,500,000, with a par value of \$.0001 per share. The total number of shares of Preferred Stock which this Corporation is authorized to issue is 500,000, with a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of this Corporation is hereby authorized, within the limitations and restrictions prescribed by law or stated in this Certificate of Incorporation, and by filing a certificate pursuant to applicable law of the State of Delaware, to provide for the issuance of Preferred Stock in series and (i) to establish from time to time the number of shares to be included in each such series; (ii) to fix the voting powers, designations, powers, preferences and relative, participating, optional or

other rights of the shares of each such series and the qualifications, limitations or restrictions thereof, including but not limited to, the fixing or alteration of the dividend rights, dividend rate, conversion rights, conversion rate, voting rights, rights and terms of redemptions (including sinking fund provisions), the redemption price of prices, and the liquidation preferences of any wholly unissued series of shares of Preferred Stock; and (iii) to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

FOURTH: Thereafter, pursuant to a resolution of the Board of Directors, this Certificate of Amendment of Certificate of Incorporation was submitted to the stockholders of the Corporation in accordance with Section 228 and 242 of the General Corporate Law of the State of Delaware. The total number of outstanding shares entitled to vote or consent to this Amendment was 4,720,591 shares of Common Stock. A majority of the outstanding shares of Common stock voted in favor of this Certificate of Amendment of Certificate of Incorporation.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by its President and Chief Executive Officer this 24th day of September 2004.

REED'S, INC.

By 

Christopher J. Reed
President and Chief Executive Officer

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS
OF SERIES A PREFERRED STOCK
OF
REED'S, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware:

WHEREAS, Reed's, Inc., a corporation organized and existing under the laws of the State of Delaware (this "**Corporation**"), does hereby certify that, pursuant to the authority conferred on the Board of Directors of this Corporation by the Certificate of Incorporation, as amended, of this Corporation, in accordance with Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of this Corporation adopted the following resolution establishing a new series of preferred stock of this Corporation.

RESOLVED, that pursuant to the authority conferred on the Board of Directors of this Corporation by Article 4 of the Certificate of Incorporation, as amended, the Board of Directors of this Corporation hereby establishes a series of the authorized preferred stock of this Corporation, \$10.00 par value per share, which series will be designated as "**Series A Convertible Preferred Stock**," and which will have the following rights, preferences, privileges and restrictions (capitalized terms not defined herein shall have the meaning given to such terms in the Certificate of Incorporation, as amended, of this Corporation):

1. **Designation and Rank.** An amount of shares of the Preferred Stock shall be designated "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), par value \$10.00 per share and the number of shares constituting such series shall be 50,000. The Series A Preferred Stock will rank the common stock (Junior Securities) of the Corporation with respect to dividend rights and rights upon liquidation, winding up and dissolution.

2. **No Issuance of Additional Shares.** The number of authorized shares of Series A Preferred Stock may be reduced or eliminated by the Board of Directors of this corporation or a duly authorized committee thereof in compliance with the General Corporation Law of the State of Delaware stating that such reduction has been authorized, and the number of authorized shares of Series A Preferred Stock shall not be increased without the consent of the holders of a majority of the outstanding shares of Series A Preferred Stock.

3. **Dividends and Distributions.**

(a) Subject to the terms set forth herein and the rights of the Senior Preferred Stock, the holders of shares of Series A Preferred Stock shall be entitled to receive out of assets legally available for that purpose, an annual non-cumulative dividend equal to 5.0% from the date of issuance of the shares of Series A Preferred Stock.

*State of Delaware
Secretary of State
Division of Corporations
Delivered 03:48 PM 10/12/2004
FILED 03:04 PM 10/12/2004
SRV 040735881 - 3433903 FILE*

(b) All dividends or distributions declared upon the Series A Preferred Stock shall be declared pro rata per share.

(c) Any such dividend shall be paid in cash or shares of Common Stock, in the sole and absolute discretion of the Board of Directors. If such dividend is paid in shares of Common Stock, the Board of Directors shall determine the Fair Market Value of the Corporation's Common Stock as of the record date for such dividend (the "Record Date"), as follows:

(1) If traded on a securities exchange or through the NASDAQ National Market, the Fair Market Value of the Corporation's Common Stock shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the Record Date;

(2) If actively traded over-the-counter, the Fair Market Value of the Corporation's Common Stock shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the Record Date; and

(3) If there is no active public market, the Fair Market Value of the Corporation's Common Stock shall be the value determined in good faith by the Board of Directors on the Record Date, which determination shall, absent fraud, be binding upon all holders of shares of Series A Preferred Stock.

(d) The holders of the Series A Preferred Stock shall be entitled to payments of accrued and unpaid dividends upon liquidation of the Corporation as set forth in Section 4 below or the redemption of the Series A Preferred Stock as set forth in Section 5 below, and in each such case shall be entitled to all accrued and unpaid dividends whether or not declared by the Corporation, or as otherwise required under this Section 3.

(e) The corporation shall not declare or pay any dividend on shares of Junior Securities until the holders of the Series A Preferred Stock have received the full non-cumulative dividend accrued thereon pursuant to clause (a).

(f) In computing accrued and unpaid dividends on the Series A Preferred Stock, such dividends shall be computed on a daily basis through the date as of which such dividends are required to be paid by the terms hereof.

(g) The holders of shares of Series A Preferred Stock will be entitled to participate with the holders of Common Stock with respect to any dividend declared on the Common Stock in proportion to the number of shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock held by them.

4. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, subject to the rights of the Senior Preferred Stock and the rights of series of Preferred Stock that may from time to time come into existence in accordance with and subject to the terms hereof, including, without limitation, Section 9(b) hereof, the holders of Series A Preferred Stock shall be entitled to receive after any distribution with respect to Senior Preferred Stock and, prior and in preference to any distribution of any of the assets of this corporation to the holders of any Junior Securities by reason of their ownership thereof, an amount per share (the "Liquidation Preference") equal to the sum of (i) \$10.00 for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price") and (ii) accrued but unpaid dividends on such share (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like).

(b) Upon completion of the distribution required by subsection (a) of this Section 4, all of the remaining assets of this Corporation available for distribution to stockholders shall be distributed among the holders of all Senior Preferred Stock, Series A Preferred Stock and Junior Securities pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock).

(c) (i) For purposes of this Section 4, a liquidation, dissolution or winding up of this Corporation shall be deemed to be occasioned by, or to include (unless the holders of at least a majority of the Series A Preferred Stock then outstanding shall determine otherwise) a transaction whereby a person or group of persons acting in concert (other than current stockholders) shall:

(A) become (whether by merger, consolidation, or transfer, redemption or issuance of capital stock or otherwise) the beneficial owners (within the meaning of Rule 13d-3 under the Securities and Exchange Act of 1934, as amended) of securities constituting more than fifty percent (50%) of the combined voting power of or the economic equity interests in the then outstanding securities of the Corporation (or any surviving or resulting person); or

(B) acquire assets constituting all or substantially all of the assets of the Corporation and its subsidiaries on a consolidated basis (with (A) and/or (B) constituting a "Change in Control").

(ii) In any of such events, if the consideration received by this Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to an investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the NASDAQ National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by this Corporation and the holders of at least a majority of the outstanding shares of Series A Preferred Stock.

(B) The method of valuation of securities subject to an investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by this Corporation and the holders of at least a majority of the outstanding shares of such Series A Preferred Stock.

(iii) In the event the requirements of this Section 4 are not complied with, this Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section 4 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 4(c)(iv) hereof.

(iv) This Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe

the material terms and conditions of the impending transaction and the provisions of this Section 4, and this Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this Corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series A Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the outstanding shares of such Series A Preferred Stock.

5. Redemption.

(a) At any time, or from time to time, after June 30, 2007 the Corporation shall have the option, exercisable upon the expiration of the fifteen (15) day period after written notice delivered to the holders of Series A Preferred Stock by US Mail (the "Redemption Date") to the holders of the Series A Preferred Stock, to redeem all or any portion of the Series A Preferred Stock specified in such notice by paying in cash a sum per share equal to the Original Series A Issue Price per share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like) plus all accrued but unpaid dividends on such share (the "Redemption Price"). Any redemption of Series A Preferred Stock effected pursuant to this subsection 5(a) shall be made on a pro rata basis among the holders of the Series A Preferred Stock in proportion to the number of shares of Series A Preferred Stock proposed to be redeemed from such holders.

(b) At least fifteen (15) but no more than thirty (30) days prior to the Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the Series A Preferred Stock to be redeemed, at the address last shown on the records of this corporation for such holder, notifying such holder of the redemption to be effected on the Redemption Date, specifying the number of shares to be redeemed from such holder, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to this Corporation, in the manner and at the place designated, their certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in subsection (5)(c), on or after each Redemption Date, each holder of Series A Preferred Stock to be redeemed on such Redemption Date shall surrender to this Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the applicable Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after each Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series A Preferred

Stock designated for redemption on such Redemption Date in the Redemption Notice as holders of Series A Preferred Stock (except the right to receive the applicable Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of this Corporation legally available for redemption of shares of Series A Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, those funds that are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed such that each holder of a share of Series A Preferred Stock receives the same percentage of the applicable Series A Redemption Price. The shares of Series A Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of this Corporation are legally available for the redemption of shares of Series A Preferred Stock, such funds will immediately be used to redeem the balance of the shares that this Corporation has become obliged to redeem on any Redemption Date but that it has not redeemed.

6. Conversion. The holders of the Series A Preferred Stock shall have conversion rights (the "Conversion Rights") as follows:

(a) **Right to Convert.** Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such shares and on or prior to the date such shares are redeemed, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and non-assessable shares of Common Stock as is determined by multiplying (x) 1 by (y) the conversion rate for the Series A Preferred Stock that is in effect at the time of conversion (the "Conversion Rate"). The Conversion Rate for the Series A Preferred Stock shall be four (4).

(b) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates, duly endorsed, at the office of this Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date.

(c) Stock Splits.

(i) In the event this corporation should at any time or from time to time fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock without payment of any consideration by such holder for the additional shares of Common Stock then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately 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 of the aggregate of shares of Common Stock outstanding.

(ii) If the number of shares of Common Stock outstanding at any time is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock shall be appropriately 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 of the aggregate of shares of Common Stock outstanding.

(d) Recapitalizations. If at any time or from time to time there shall be a recapitalization or reclassification of the Common Stock (or a merger, transfer, consolidation, or exchange in respect of the Corporation's securities which does not constitute a Change in Control, other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 6 or Section 4) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of this Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 6 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(e) No Impairment. This Corporation will not, by amendment of its Certificate of Incorporation or this Certificate of Designations (except in accordance with applicable law), or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(f) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock pursuant to this Section 6, this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock.

(g) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(h) Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as shall be available to the holders of such Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, 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 this Certificate of Incorporation.

(i) Notices. Any notice required by the provisions of this Section 6 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in

the United States mail, postage prepaid, and addressed to each holder of record at their address appearing on the books of this Corporation.

(j) **Unconverted Shares.** If less than all of the outstanding shares of Series A Preferred Stock are converted pursuant to this Section 6, and such shares are evidenced by a certificate representing shares in excess of the shares being converted and surrendered to this Corporation in accordance with the procedures as the Board of Directors of this Corporation may determine, this Corporation shall execute and deliver to or upon the written order of the holder of such certificate, without charge to the holder, a new certificate evidencing the number of shares of Series A Preferred Stock not converted.

7. **Voting.** Except as provided in this Certificate of Designations or as required by law, the holders of shares of Series A Preferred Stock will have no right to vote on any matters, questions or proceedings of this Corporation including, without limitation, the election of directors.

8. **Reacquired Shares.** Any shares of Series A Preferred Stock, which have been converted or redeemed, will be retired and cancelled promptly after the acquisition thereof. All such shares will upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other certificate of designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

9. **Protective Provisions.** So long as any shares of Series A Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock:

(a) amend the Certificate of Incorporation (as amended) of this corporation or the bylaws of this corporation in any manner (including, without limitation, by means of a merger or consolidation) which adversely affects the rights of the Series A Preferred Stock; or

(b) authorize or issue, or obligate itself to issue, any other equity security having a preference over, or being on a parity with, the Series A Preferred Stock with respect to dividends, liquidation, redemption or voting, including any other security convertible into or exercisable for any equity security other than Senior Preferred Stock shares.

RESOLVED, FURTHER, that the officers of this Corporation be, and each of them hereby is, authorized and empowered on behalf of this Corporation to execute, verify and file a certificate of designations of preferences in accordance with Delaware law.

IN WITNESS WHEREOF, Reed's, Inc. has caused this certificate to be duly executed by its duly authorized officers this 30th day of June, 2004.

REED's, INC.

By: 

Christopher J. Reed
Chairman and Chief Executive
Officer

**CERTIFICATE OF CORRECTION
TO
CERTIFICATE OF DESIGNATIONS
OF
REED'S, INC.**

Reed's, Inc., a Delaware corporation (the "Corporation"), acting pursuant to Section 103(f) of the Delaware General Corporation Law in order to correct a defect in that certain Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock (the "Certificate"), filed on October 12, 2004, hereby certifies as follows:

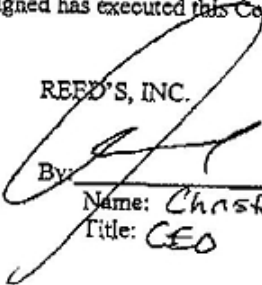
1. The Corporation filed the Certificate, designating 50,000 shares of \$10.00 par value Series A Convertible Preferred Stock.
2. The Certificate is defective because the number "50,000" should have read "75,000" instead, which corrected number represents the total number of shares of Series A Convertible Preferred Stock authorized by the Board of Directors.
3. The defect in the Certificate is hereby corrected by deleting the number "50,000" from the 3rd line (which line begins with the word "value") of numbered paragraph 1 and replacing it with the number "75,000".
4. The Certificate is further defective because certain words were inadvertently omitted from the Certificate when it was prepared.
5. The defect in the Certificate is hereby corrected by deleting the final sentence of numbered paragraph 1 in its entirety and replacing it with the following two sentences:

"The Series A Preferred Stock will rank junior, with respect to dividend rights and rights on liquidation, winding up and dissolution, to other classes or series of preferred stock which may be established by the Board of Directors of the Corporation from time to time and specifically designated as senior to the Series A Preferred Stock (the "Senior Preferred Stock"). The Series A Preferred Stock will rank senior to all other classes of preferred stock of the Corporation not so designated in accordance with the previous sentence and the common stock of the

Corporation (collectively, "Junior Securities"), with respect to dividend rights and rights upon liquidation, winding up and dissolution."

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Correction as of the 10 day of November, 2004.

REED'S, INC.

By: 
Name: Christopher J. Reed
Title: CEO

500291

**CERTIFICATE OF AMENDMENT TO
CERTIFICATE OF INCORPORATION**

OF

REED'S, INC.

Reed's Inc., a Delaware corporation (the "Corporation"), hereby certifies that the following Certificate of Amendment to the Certificate of Incorporation (the "Amendment") of the Corporation has been duly adopted by its Board of Directors and stockholders, in accordance with the Delaware General Corporation Law (the "DGCL"), as set forth below:

1. The Amendment was duly adopted by the Board of Directors of the Corporation at a meeting of the Board of Directors on October 8, 2007, setting forth the then proposed Amendment, declaring the advisability thereof, and calling for a meeting of the stockholders of the Corporation for consideration thereof, as set forth below.

2. Thereafter, at the annual meeting of stockholders of the Corporation duly called and held on November 19, 2007, the stockholders of record of the issued and outstanding capital stock of the Corporation at such meeting adopted the proposed Amendment by the vote of in excess of 50% of the issued and outstanding shares of each class of the Corporation's capital stock entitled to vote thereon. The number of shares voted for the Amendment was sufficient for approval.

3. The Amendment was duly adopted in accordance with the provisions of Section 242 of the DGCL.

4. The resolution by which the Corporation's directors and stockholders adopted the Amendment, as set forth above, provides that ARTICLE IV of the Corporation's Certificate of Incorporation, as amended to date, be amended to provide in its entirety as follows:

ARTICLE IV

1. This Corporation is authorized to issue 20,000,000 shares of its Capital Stock, which shall be divided into two classes known as Common Stock and Preferred Stock, respectively.
2. The total number of shares of Common Stock which this Corporation is authorized to issue is 19,500,000, with a par value of \$.0001 per share. The total number of shares of Preferred Stock which this Corporation is authorized to issue is 500,000, with a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of this Corporation is hereby authorized, within the limitations and restrictions prescribed by law or stated in this Certificate of Incorporation, and by filing a certificate pursuant to applicable law of the State of Delaware, to provide for the

issuance of Preferred Stock in series and (i) to establish from time to time the number of shares to be included in each such series; (ii) to fix the voting powers, designations, powers, preferences and relative, participating, optional or other rights of the shares of each such series and the qualifications, limitations or restrictions thereof, including but not limited to, the fixing or alteration of the dividend rights, dividend rate, conversion rights, conversion rate, voting rights, rights and terms of redemptions (including sinking fund provisions), the redemption price of prices, and the liquidation preferences of any wholly unissued series of shares of Preferred Stock; and (iii) to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Amendment to be executed by its President and Chief Executive Officer as of December 3, 2007.

REED'S, INC.

By: 

Name: Christopher J. Reed
Title: President and Chief
Executive Officer

REED'S, INC.

CERTIFICATE OF DESIGNATION
OF
SERIES B CONVERTIBLE PREFERRED STOCK

(Pursuant to Section 151 of the Delaware General Corporation Law)

Reed's, Inc., a Delaware corporation (the "*Corporation*"), hereby certifies that, pursuant to authority vested in the Board of Directors of the Corporation (the "*Board of Directors*") by Article Fourth of the Corporation's Certificate of Incorporation (the "*Certificate of Incorporation*") and pursuant to the provisions of Section 151 of the Delaware General Corporation Law, the following resolution was duly adopted by the Board of Directors on April 23, 2009:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors in accordance with the provisions of the Certificate of Incorporation, the Board of Directors hereby creates a series of Preferred Stock to be designated as Series B Convertible Preferred Stock, and hereby designates the number of shares, and fixes the relative rights, powers and preferences thereof, and the limitations or restrictions thereof (in addition to any provisions set forth in the Certificate of Incorporation that are applicable to the Preferred Stock of all classes and series), as follows:

SERIES B CONVERTIBLE PREFERRED STOCK

A total of one hundred and fifty thousand (150,000) shares of the authorized and unissued Preferred Stock of the Corporation, \$10.00 stated value per share, are hereby designated "Series B Convertible Preferred Stock" (the "*Series B Convertible Preferred Stock*") with such series having the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1. **Rank.** The Series B Convertible Preferred Stock shall rank (a) senior, in all matters, to (i) any class of common stock of the Corporation, including, without limitation, the Corporation's common stock, \$0.0001 par value per share (the "*Common Stock*"), and any other class or series of capital stock into which the Common Stock is reclassified or reconstituted, (ii) any other class or series of capital stock of the Corporation either specifically ranking by its terms junior to the Series B Convertible Preferred Stock or not specifically ranking by its terms senior to or on parity with the Series B Convertible Preferred Stock, and (iii) any class or series of capital stock of the Corporation into which the capital stock referred to in the preceding subclauses (i) and (ii) is reclassified or reconstituted (the capital stock referred to in this clause (a) is hereinafter referred to as the "*Junior Stock*"); (b) on parity with any class or series of capital stock of the Corporation specifically ranking by its terms on parity, in all matters expressly provided, with the Series B Convertible Preferred Stock ("*Parity Stock*"); and (c) junior, in all matters expressly provided, to the Corporation's class of Preferred Stock designated as Series A Convertible Preferred stock and any class or series of capital stock of the Corporation specifically ranking by its terms senior to the Series B Convertible Preferred Stock ("*Senior Stock*").

2. Dividends.

(a) Subject to the prior payment in full of any dividends to which any Senior Stock is entitled pursuant to the Certificate of Incorporation, as then amended to date, the holders of the Series B Convertible Preferred Stock (each, a "**Series B Holder**") shall be entitled to receive, out of funds legally available therefor, dividends (the "**Series B Dividends**"), which shall be cumulative and non-compounding and accrue on a daily basis from the date on which a particular share of Series B Convertible Preferred Stock is issued, at an annual rate equal to eight percent (8%) of the Original Purchase Price (the "**Series B Dividend Rate**," subject to increase as provided below), payable as provided in Section 2(b) hereof. As used herein, "**Original Purchase Price**" means ten dollars (\$10.00).

(b) Series B Dividends payable pursuant to Section 2(a) hereof shall be payable only when, as and if declared by the Board of Directors, quarterly in arrears on March 31, June 30, September 30, and December 31 of each year (unless such day is not a business day, in which event such Series B Dividends shall be payable on the next succeeding business day) (each such payment date being a "**Series B Dividend Payment Date**"). The amount of Series B Dividends payable on the Series B Convertible Preferred Stock for any period shorter than a full calendar quarter shall be computed on the basis of a 360-day year of twelve 30-day months. As used herein, "**Original Purchase Date**" means April 23, 2009.

(d) So long as any shares of Series B Convertible Preferred Stock are outstanding, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on any Junior Stock, or purchase, redeem or otherwise acquire for value any shares of Junior Stock until all Series B Dividends as set forth in Section 2(a) shall have been paid or declared and set apart.

(e) Any Series B Dividend shall be paid in cash or shares of Common Stock, in the sole and absolute discretion of the Board of Directors. If such dividend is paid in shares of Common Stock, the Common Stock will be valued at Fair Market Value (defined herein).

3. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or a Triggering Event (as defined herein) (each referred to herein as a "**Liquidation Event**"), after payment or provision for payment of debts and other liabilities of the Corporation and all amounts due and owing to the holders of outstanding shares of Senior Stock, if any, each holder of Series B Convertible Preferred Stock, before any distribution or payment is made upon any Junior Stock, shall be entitled to receive, out of the assets of the Corporation legally available for distribution to stockholders (the "**Available Assets**"), an amount equal to each holder's Liquidation Preference. The "**Liquidation Preference**" payable with respect to each share of Series B Convertible Preferred Stock shall be equal to the greater of (i) the sum of (A) the Original Purchase Price of such share of Series B Convertible Preferred Stock, plus (B) an amount equal to any unpaid and accrued dividends thereon up to and including the date of the Liquidation and (ii) if such share of Series B Convertible Preferred Stock were then convertible into Common Stock, such amount which the holder of Series B Convertible Preferred Stock would be entitled to receive in connection with the Liquidation Event if such holder had converted his, her or its Series B Convertible Preferred Stock immediately prior to the occurrence of the Liquidation Event. Shares of Series B Convertible Preferred Stock shall (i) not be entitled to any distributions in the event of a Liquidation Event other than a distribution in an amount

equal to the Liquidation Preference, and (ii) be deemed cancelled upon full distribution of such Liquidation Preference.

(b) If the Available Assets shall be insufficient to permit full payment of the Liquidation Preference upon a Liquidation Event to all holders of Series B Convertible Preferred Stock, as well as all payments then due or due by reason of such Liquidation Event on any Parity Stock, then the holders of Series B Convertible Preferred Stock and holders of such Parity Stock shall share ratably in any such distribution of the Corporation's assets in proportion to the full respective distributable amounts to which they are entitled.

(c) Written notice of a Liquidation Event, stating a payment date, the amount of the Liquidation Preference and the place where said sums shall be payable, shall be given by mail, postage prepaid, not less than thirty (30) nor more than sixty (60) days prior to the payment date stated therein, to all holders of Series B Convertible Preferred Stock of record, such notice to be addressed to each such stockholder at such holder's post office address as shown by the records of the Corporation.

(d) Whenever the distribution provided for in this Section 3 shall be payable in property other than cash, the value of such property shall be the Fair Market Value.

(e) As used herein, the following terms shall have the following meanings:

(i) "**Triggering Event**" means (a) a sale of all or substantially all of the assets of the Corporation to any Person, (b) any transaction or series of transactions by which any Person or group (as such term is used in Section 13(d) of the Exchange Act) becomes the beneficial owner (as so defined), directly or indirectly, of shares representing more than fifty percent (50%) of the aggregate voting power of the Corporation, or (c) a merger, consolidation, reorganization, recapitalization or other transaction or series of related transactions (a "**Recapitalization**") in which the stockholders of the Corporation owning a majority of the voting stock of the Corporation with the right to elect a majority of the Board of Directors in the aggregate immediately prior to such Recapitalization do not own a majority of such voting stock or voting power of the surviving, successor or continuing entity following such Recapitalization.

(ii) "**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

(iii) "**Affiliate**" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and, with respect to the Corporation, shall include any Person beneficially owning or holding, directly or indirectly, ten percent (10%) or more of any class of voting or equity interests of the Corporation or any subsidiary or any corporation of which the Corporation and its subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, ten percent (10%) or more of any class of voting or equity interests. As used in this definition, "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(iv) "**Fair Market Value**" shall mean the following: (i) with respect to equity securities, (A) in the event such equity securities are publicly traded, the average of the closing prices for such equity securities during the four (4) calendar weeks immediately preceding the

date of consummation of the event requiring a determination of Fair Market Value (the "**Determination Date**") on the principal national securities exchange on which such equity securities are listed or admitted to trading or, if such equity securities are not listed or admitted to trading on any national securities exchange, but are traded in the over-the-counter market, the closing sale price of such equity securities or, if no sale is publicly reported, the average of the closing bid and asked quotations for such equity securities, as reported by the electronic over-the-counter quotation system of the Financial Industry Regulatory Authority ("**FINRA**"), the OTC Bulletin Board (the "**OTCBB**"), or any comparable system or, if such equity securities are not quoted on OTCBB or a comparable system, the closing sale price of the Common Stock or, if no sale is publicly reported, the average of the closing bid and asked prices, as furnished by two members of FINRA which make a market in such equity securities selected from time to time by the Corporation for that purpose, or (B) in the event such equity securities are not publicly traded, the fair market value of such equity securities shall be determined by the affirmative vote of a majority of the members of the Board of Directors or, if the requisite approval of the Board of Directors cannot be obtained, by a nationally recognized independent appraiser or investment bank selected, in good faith, by a majority of the members of the Board of Directors; *provided, however*, in no event shall there be a reduction in the fair market value of such equity securities based upon a "minority" or similar discount or based upon the fact that there does not exist any public trading market for such equity securities; (ii) with respect to debt securities, the present value of such debt securities utilizing an interest rate equal to the prime rate on the Determination Date, as published in The Wall Street Journal, Eastern Edition, on such Determination Date; or (iii) with respect to any other property, the fair market value of such property, as determined (A) by the affirmative vote of a majority of the members of the Board of Directors or (B) if the requisite approval of the Board of Directors referred to in the preceding clause (A) cannot be obtained, by a nationally recognized independent appraiser selected, in good faith, by a majority of the members of the Board of Directors.

4. Voting Rights.

- (a) The holders of the issued and outstanding Series B Convertible Preferred Stock shall have no voting rights except as required by law or as provided in Section 4(b).
- (b) At any time when shares of Series B Convertible Preferred Stock are outstanding, in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of holders representing at least a majority of the shares of Series B Convertible Preferred Stock then outstanding, the Corporation shall not issue or authorize the issuance of any Senior Stock or Parity Stock.
- (c) Any action which by law requires the affirmative vote or consent of the holders of Series B Convertible Preferred Stock shall require the consent of holders representing at least a majority of the shares of Series B Convertible Preferred Stock then outstanding.

5. Conversion.

- (a) Optional Conversion. The holders of Series B convertible Preferred Stock shall have the following conversion rights (each shall be referred to herein as an "**Optional Conversion**"):
- (i) At any time after the Original Purchase Date the shares of Series B Convertible Preferred Stock shall be convertible at any time and from time to time, in whole or in part (but not in fractions of a share), at the option of the holder thereof, until any Redemption

Date, into such number of fully paid and nonassessable shares of Common Stock as is determined by multiplying the number of shares to be converted with the Conversion Rate.

(ii) The "**Conversion Rate**" shall be the Original Purchase Price divided by the Conversion Price at the time in effect for a share of such Series B Convertible Preferred Stock. The "**Conversion Price**" per share of Series B Convertible Preferred Stock initially shall be equal to two dollars (\$2.00), subject to adjustment from time to time as provided below.

(iii) As used herein, "**Acquisition Event**" means (A) the execution of a definitive agreement with a Person that is (1) the beneficial owner of at least a majority of the then outstanding shares of Series B Convertible Preferred Stock, or (2) an Affiliate of (1), providing for a transaction which would constitute a Triggering Event or (B) the public commencement by a Person that is not (1) the beneficial owner of at least a majority of the then outstanding shares of Series B Convertible Preferred Stock, or (3) an Affiliate of (1), of an exchange or tender offer to acquire all of the Common Stock.

(b) **Mandatory Conversion.** At any time after the Original Purchase Date, if the closing price of the Common Stock as reported by the principal exchange or quotation system on which such Common Stock is traded or reported equals or exceeds three dollars (\$3.00) per share of Common Stock of the then current Conversion Price for ten (10) consecutive trading days, then the Corporation shall have the right to cause all (but not less than all) outstanding shares of Series B Convertible Preferred Stock to be automatically converted into shares of Common Stock (such conversion being referred to herein as a "**Mandatory Conversion**" and the date on which such Mandatory Conversion becomes effective as the "**Mandatory Conversion Date**").

(c) Conversion of the Series B Convertible Preferred Stock may be effected by any holder thereof upon the surrender to the transfer agent for the Series B Convertible Preferred Stock, or at such other office or offices, if any, as the Board of Directors may designate, of the certificate for such shares of the Series B Convertible Preferred Stock to be converted accompanied (if the name(s) in which such certificate are to be registered differ from the name(s) in which the certificate formerly representing shares of Series B Convertible Preferred Stock had been registered prior to conversion) by a written notice stating the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and, if an Optional Conversion, stating that such holder elects to convert all or a specified whole number of such shares. In case such notice shall specify a name or names other than that of such holder, such notice shall be accompanied by a payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names. As promptly as practicable, and in any event within five business days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the satisfaction of the Corporation that such taxes have been paid), the Corporation shall deliver or cause to be delivered (i) certificates representing the number of validly issued, fully paid and nonassessable full shares of Common Stock to which the holder of shares of the Series B Convertible Preferred Stock being converted shall be entitled and (ii) if less than the full number of shares of the Series B Convertible Preferred Stock evidenced by the surrendered certificate or certificates being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares being converted.

(d) In the event of any Optional Conversion, such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the certificate or certificates for the shares of Series B Convertible Preferred Stock to be converted and the giving of the notice relating thereto, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the event of a Mandatory Conversion, such conversion shall be deemed to have been made on the Mandatory Conversion Date, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Mandatory Conversion Date. On the date on which a conversion is deemed pursuant to this Section 5(d) to have been made, the rights of the holder of the shares of the Series B Convertible Preferred Stock deemed to have been converted as to the shares being converted shall cease except for the right to receive shares of Common Stock in accordance herewith and the corresponding rights of a holder of Common Stock thereupon created.

(e) In connection with the conversion of any shares of the Series B Convertible Preferred Stock, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the then effective Conversion Price. If more than one share of the Series B Convertible Preferred Stock shall be surrendered for conversion by the same holder at the same time, the number of full shares of Common Stock issuable on conversion thereof shall be computed on the basis of the total number of shares of the Series B Convertible Preferred Stock so surrendered.

(f) The Corporation shall at all times reserve, and keep available for issuance upon the conversion of the Series B Convertible Preferred Stock, such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of the Series B Convertible Preferred Stock, and shall take all action required to increase the authorized number of shares of Common Stock if necessary to permit the conversion of all outstanding shares of the Series B Convertible Preferred Stock.

(g) The Conversion Price shall be subject to adjustment from time to time as follows:

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

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

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

(iv) *Shares Owned by Corporation.* For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include any shares of Common Stock then owned or held by or for the account of the Corporation.

(v) *Certificate of Independent Accountant.* The certificate of any firm of independent public accountants of recognized national standing selected by the Board of Directors of the Corporation (which may be the firm of independent public accountants regularly employed by the Corporation) shall be presumptively correct for any computation made under this Section 5(g).

(vi) *No Adjustments for Abandoning Dividend Distributions.* If the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter and before the distribution to stockholders thereof legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price or the number of shares of Common Stock issuable upon exercise of the right of conversion granted by this Section 5(g) shall be required by reason of the taking of such record.

(vii) *No Adjustments for Mergers, Reorganizations, Acquisitions or Similar Events.* There shall be no adjustment of the Conversion Price in case of the issuance of any stock of the Corporation to the security holders of any other corporation in a merger, reorganization, acquisition or other similar transaction except as set forth in this Section 5(g).

(h) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 5(g)(iii)), or in the case of a share exchange of Common Stock for securities of another corporation, or in case of any consolidation or merger of the Corporation with or into another corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety (each of the foregoing being referred to as a "*Transaction*"), each share of the Series B Convertible Preferred Stock then owned by such holder shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to consummation of such Transaction, the kind and amount of shares of stock and other securities and property receivable (including cash) upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of the Series B Convertible Preferred Stock was convertible immediately prior to such Transaction (including, on a pro rata basis, the cash, securities or property received by holders of Common Stock in any tender or exchange offer that is a step in such Transaction).

(i) Upon any adjustment of the Conversion Price then in effect, the Corporation, at its expense, shall, upon the written request of any holder of Series B Convertible Preferred Stock, promptly compute such adjustment in accordance with the terms hereof and furnish to each

holder of Series B Convertible Preferred Stock a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based.

(j) Upon any conversion of Series B Convertible Preferred Stock pursuant to this Section 5, the holder of such shares being converted shall receive any unpaid and accrued dividends on such shares being converted.

6. Redemption.

(a) At any time after the second anniversary of the Original Purchase Date, all, but not less than all, the shares of Series B Convertible Preferred Stock outstanding may be redeemed by the Corporation (a "**Mandatory Redemption**") at its sole discretion, at a price equal to the greater of (i) one hundred ten percent (110%) of the Original Purchase Price, plus an amount equal to any unpaid and accrued dividends and (ii) the Fair Market Value of such number of shares of Common Stock which the holder of the redeemed Series B Convertible Preferred Stock would be entitled to receive had the redeemed Series B Convertible Preferred Stock been converted immediately prior to the redemption. The right of the Corporation to redeem the Series B Convertible Preferred Stock provided under this Section 6(a), shall cease upon the occurrence of an Acquisition Event.

(b) Redemption Notice. Upon the determination by the Corporation to effectuate a Mandatory Redemption or a Partial Redemption, written notice of such redemption (the "**Redemption Notice**") shall be mailed, postage prepaid, to each holder of record of Series B Convertible Preferred Stock, at its post office address last shown on the records of the Corporation, not less than five (5) business days prior to the date such redemption is to occur (the "**Redemption Date**"). Each Redemption Notice shall state:

(i) the number of shares of Series B Convertible Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date;

(ii) the Redemption Date and the price the Corporation shall pay to the holders of Series B Convertible Preferred Stock upon such redemption as determined pursuant to Section 6(a), as applicable (the "**Redemption Price**"); and

(iii) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series B Convertible Preferred Stock to be redeemed.

(c) Redemption Mechanics. On any Redemption Date, the Corporation shall redeem such number of shares of Series B Convertible Preferred Stock set forth in the Redemption Notice. If on any Redemption Date the Corporation does not have sufficient funds legally available to redeem such number of shares of Series B Convertible Preferred Stock set forth in the Redemption Notice, the Corporation shall redeem a pro rata portion of each Series B Convertible Preferred Stock holder's redeemable shares out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of such shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The Corporation may delay or cancel any redemption by providing notice of such delay or cancellation to each holder of Series B Convertible Preferred Stock that received a Redemption Notice in connection with such redemption as promptly as practicable following the determination by the Corporation to delay or cancel such redemption.

(d) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series B Convertible Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 5, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Series B Convertible Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series B Convertible Preferred Stock shall promptly be issued to such holder.

(e) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series B Convertible Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Series B Convertible Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series B Convertible Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. Payment of Taxes. The Corporation shall pay all documentary, stamp, transfer and other taxes (other than taxes on income of the holders of shares of Series B Convertible Preferred Stock) and other governmental charges attributable to the issuance, delivery, conversion or redemption of shares of Series B Convertible Preferred Stock; *provided, however*, that the Corporation shall not be required to pay any taxes payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Series B Convertible Preferred Stock in respect of which such shares are being issued.

8. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series B Convertible Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth herein. The shares of Series B Convertible Preferred Stock shall have no preemptive or subscription rights.

9. Severability. If any right, preference or limitation of the Series B Convertible Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth herein which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

10. Status of Reacquired Shares. Shares of Series B Convertible Preferred Stock that have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

11. Waivers. The holders of Series B Convertible Preferred Stock shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the Delaware General Corporation Law. Any of the rights of the holders of Series B Convertible Preferred Stock set forth herein may be waived by the affirmative consent or vote of the holders of at least a majority of the then outstanding shares of Series B Convertible Preferred Stock, subject to applicable law.

12. Registration of Series B Convertible Preferred Stock. The Corporation shall register shares of the Series B Convertible Preferred Stock, upon records to be maintained by the Corporation for that purpose (the "*Series B Convertible Preferred Stock Register*"), in the name of the record holders thereof from time to time. The Corporation may deem and treat the registered holder of shares of Series B Convertible Preferred Stock as the absolute owner thereof for the purpose of any distribution to such holder, and for all other purposes, absent actual notice to the contrary.

13. Registration of Transfers. The Corporation shall register the transfer of any shares of Series B Convertible Preferred Stock in the Series B Convertible Preferred Stock Register, upon surrender of certificates evidencing such Shares to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series B Convertible Preferred Stock so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring holder.

14. Replacement Certificates. If any certificate evidencing Series B Convertible Preferred Stock is mutilated, lost, stolen or destroyed, the Corporation shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for such certificate, a new certificate, but only upon receipt of an affidavit of loss and indemnity agreement reasonably satisfactory to the Corporation evidencing such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

15. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purposes of effecting the conversion of the shares of Series B Convertible Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Convertible 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 Series B Convertible Preferred Stock, in addition to such other remedies as shall be available to the holders of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, 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.

This Certificate shall become effective upon the filing thereof with the Secretary of State of the State of Delaware.

* * *

The Corporation has caused this Certificate to be duly executed and acknowledged by its undersigned duly authorized officer this 28th day of April, 2009.

REED'S, INC.

By: 

Name: Christopher J. Reed

Title: President & Chief Executive Officer

AMENDED CERTIFICATE OF DESIGNATION

(Pursuant to Section 151 of the Delaware General Corporation Law)

The undersigned, Christopher J. Reed and Judy Holloway Reed, certify that:

ONE. They are the duly elected Chief Executive Officer and Secretary, respectively, of the Reed's, Inc., a Delaware corporation (the "*Corporation*").

TWO. The Certificate of Incorporation of this Corporation provides for a class of its authorized shares known as Preferred Stock comprised of 500,000 shares issuable from time to time in one or more series, of which 47,121 shares designated as Series A Convertible Preferred Stock are currently outstanding and no shares designated as Series B Convertible Preferred Stock are currently outstanding.

THREE. Pursuant to and in accordance with the provisions of Section 151 of the Delaware General Corporation Law and the Certificate of Incorporation of this Corporation ("*Certificate of Incorporation*"), the Board of Directors has duly authorized and adopted a resolution increasing the number of shares of authorized and unissued Preferred Stock of the Corporation designated as Series B Convertible Preferred Stock to a total of four hundred thousand (400,000) shares, an increase of two hundred fifty thousand (250,000) shares from the one hundred and fifty thousand (150,000) shares previously designated in the Certificate of Designation filed April 29, 2009.

FOUR. The Board of Directors of the Corporation ("*Board of Directors*") has duly authorized and adopted the following recitals and resolutions on November 4, 2009:

WHEREAS, the Board of Directors of this corporation is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series and the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock; and

WHEREAS, the Board of Directors has previously fixed and determined the designation of, the number of shares constituting, and the rights, preferences, privileges and restrictions relating to a Series B Convertible Preferred Stock, pursuant to a Certificate of Designation as filed with the Delaware Secretary of State on April 29, 2009; and

WHEREAS, the Board of Directors wishes to amend and restate the Certificate of Designation filed April 29, 2009 in its entirety.

WHEREAS, the Board of Directors wishes to increase the number of shares of authorized and unissued Preferred Stock of the Corporation designated as Series B Convertible Preferred Stock to a total of four hundred thousand (400,000) shares, an increase from one hundred and fifty thousand (150,000), as was previously designated in the Certificate of Designation filed April 29, 2009.

RESOLVED, a total of four hundred thousand (400,000) shares of the authorized and unissued Preferred Stock of the Corporation shall be designated as Series B Convertible Preferred Stock.

RESOLVED FURTHER, that the Board of Directors hereby amends and restates the Certificate of Designation filed April 29, 2009 in its entirety and designates the number of shares, and fixes the relative rights, powers and preferences thereof, and the limitations or restrictions of the Series B Convertible Preferred Stock (in addition to any provisions set forth in the Certificate of Incorporation that are applicable to the Preferred Stock of all classes and series), as follows:

SERIES B CONVERTIBLE PREFERRED STOCK

A total of four hundred thousand (400,000) shares of the authorized and unissued Preferred Stock of the Corporation, \$10.00 stated value per share, are hereby designated "Series B Convertible Preferred Stock" (the "*Series B Preferred*") with such series having the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1. Rank. The Series B Preferred shall rank (a) senior, in all matters, to (i) any class of common stock of the Corporation, including, without limitation, the Corporation's common stock, \$0.0001 par value per share (the "*Common Stock*"), and any other class or series of capital stock into which the Common Stock is reclassified or reconstituted, (ii) any other class or series of capital stock of the Corporation either specifically ranking by its terms junior to the Series B Preferred or not specifically ranking by its terms senior to or on parity with the Series B Preferred, and (iii) any class or series of capital stock of the Corporation into which the capital stock referred to in the preceding subclauses (i) and (ii) is reclassified or reconstituted (the capital stock referred to in this clause (a) is hereinafter referred to as the "*Junior Stock*"); (b) on parity with any class or series of capital stock of the Corporation specifically ranking by its terms on parity, in all matters expressly provided, with the Series B Preferred ("*Parity Stock*"); and (c) junior, in all matters expressly provided, to the Corporation's class of Preferred Stock designated as Series A Convertible Preferred stock and any class or series of capital stock of the Corporation specifically ranking by its terms senior to the Series B Preferred ("*Senior Stock*").

2. Dividends.

(a) Subject to the prior payment in full of any dividends to which any Senior Stock is entitled pursuant to the Certificate of Incorporation, as then amended to date, for a period of three (3) years from the date of issuance of the Series B Preferred, the holders of the Series B Preferred (each, a "*Series B Holder*") shall be entitled to receive, out of funds legally available therefor, dividends (the "*Series B Dividends*"), which shall be cumulative and non-compounding and accrue on a daily basis from the date on which a particular share of Series B Preferred is issued, at an annual rate equal to five percent (5%) of the Original Purchase Price (the "*Series B Dividend Rate*," subject to increase as provided below), payable as provided in Section 2(b) hereof. As used herein, "*Original Purchase Price*" means ten dollars (\$10.00).

(b) Series B Dividends payable pursuant to Section 2(a) hereof shall be payable in quarterly dividends equal to 1.25% of such Liquidation Value (defined below) on each of September 30, December 31, March 31 and June 30 of each year (the "*Series B Dividend Payment Date*"), for a

period of 36 months from the date of issuance of the Series B Preferred Convertible Preferred Stock. Such dividends shall be payable, on each Series B Dividend Payment Date, in additional shares of Series B Preferred Convertible Preferred Stock ("*PIK Dividends*"), or, in the sole discretion of the Board of Directors, in cash or Common Stock and such dividends shall be cumulative and shall accrue whether or not declared, earned or payable from and after the date of issue of the Series B Preferred. The shares of Series B Preferred distributed as a PIK Dividend shall be deemed to be issued and outstanding from and after such Series B Dividend Payment Date, and the amount of shares issued as a PIK Dividend shall have an aggregate Liquidation Value, at the Series B Dividend Payment Date equal to the value of the dividend accrued and payable. The initial "*Liquidation Value*" of each share of Series B Preferred will be \$10.00 per share, and thereafter, there will be added to the Liquidation Value of each share of Series B Preferred, as of any Series B Dividend Payment Date, the amount of any dividends payable on such share on that Series B Dividend Payment Date but not paid on that Series B Dividend Payment Date, whether or not such dividends are declared, earned or payable. The amount of Series B Dividends payable on the Series B Preferred for any period shorter than a full calendar quarter shall be computed on the basis of a 360-day year of twelve 30-day months.

(c) So long as any shares of Series B Preferred are outstanding, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on any Junior Stock, or purchase, redeem or otherwise acquire for value any shares of Junior Stock until all Series B Dividends as set forth in Section 2(a) shall have been paid or declared and set apart.

(d) Any Series B Dividend shall be paid in PIK Dividends, cash or shares of Common Stock, in the sole and absolute discretion of the Board of Directors.

(e) If the Corporation elects to pay any Series B Dividend due in Common Stock ("*Interest Shares*"), the issuance price of the Interest Shares will be equal to the 10-day Weighted Average Price (as defined below) of the Common Stock ending on the day prior to Series B Dividend Payment Date. "*Weighted Average Price*" means, for any security as of any date, the dollar volume-weighted average price for such security on the principal national securities exchange on which such equity securities are listed or admitted to trading ("*Principal Market*") during the period beginning at 9:30:01 a.m., New York Time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as the Principal Market publicly announces is the official close of trading) as reported by Bloomberg through its "Volume at Price" functions, or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York Time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as such market publicly announces is the official close of trading) as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be as determined by the affirmative vote of a majority of the members of the Board of Directors, or, if the requisite approval of the Board of Directors cannot be obtained, by a nationally recognized independent appraiser or investment bank selected, in good faith, by a majority of the members of the Board of Directors; *provided, however*, in no event shall there be a reduction in the fair market value of such equity securities based upon a "minority" or similar discount or based upon the fact that there does not exist any public trading market for such equity

securities. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

3. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or a Triggering Event (as defined herein) (each referred to herein as a "*Liquidation Event*"), after payment or provision for payment of debts and other liabilities of the Corporation and all amounts due and owing to the holders of outstanding shares of Senior Stock, if any, each holder of Series B Preferred, before any distribution or payment is made upon any Junior Stock, shall be entitled to receive, out of the assets of the Corporation legally available for distribution to stockholders (the "*Available Assets*"), an amount equal to each holder's Liquidation Preference. The "*Liquidation Preference*" payable with respect to each share of Series B Preferred shall be equal to the greater of (i) the Liquidation Value and (ii) if such share of Series B Preferred were then convertible into Common Stock, such amount which the holder of Series B Preferred would be entitled to receive in connection with the Liquidation Event if such holder had converted his, her or its Series B Preferred immediately prior to the occurrence of the Liquidation Event. Shares of Series B Preferred shall (i) not be entitled to any distributions in the event of a Liquidation Event other than a distribution in an amount equal to the Liquidation Preference, and (ii) be deemed cancelled upon full distribution of such Liquidation Preference.

(b) If the Available Assets shall be insufficient to permit full payment of the Liquidation Preference upon a Liquidation Event to all holders of Series B Preferred, as well as all payments then due or due by reason of such Liquidation Event on any Parity Stock, then the holders of Series B Preferred and holders of such Parity Stock shall share ratably in any such distribution of the Corporation's assets in proportion to the full respective distributable amounts to which they are entitled.

(c) Written notice of a Liquidation Event, stating a payment date, the amount of the Liquidation Preference and the place where said sums shall be payable, shall be given by mail, postage prepaid, not less than thirty (30) nor more than sixty (60) days prior to the payment date stated therein, to all holders of Series B Preferred of record, such notice to be addressed to each such stockholder at such holder's post office address as shown by the records of the Corporation.

(d) Unless otherwise provided herein, whenever the distribution provided for in this Section 3 shall be payable in property other than cash, the value of such property shall be the Fair Market Value.

(e) As used herein, the following terms shall have the following meanings:

(i) "*Triggering Event*" means (a) a sale of all or substantially all of the assets of the Corporation to any Person, (b) any transaction or series of transactions by which any Person or group (as such term is used in Section 13(d) of the Exchange Act) becomes the beneficial owner (as so defined), directly or indirectly, of shares representing more than fifty percent (50%) of the aggregate voting power of the Corporation, or (c) a merger, consolidation, reorganization, recapitalization or other transaction or series of related transactions (a "*Recapitalization*") in which the stockholders of the Corporation owning a majority of the voting stock of the Corporation with the right to elect a majority of the Board of Directors in the aggregate immediately prior to such Recapitalization do not own a majority of such voting stock or voting power of the surviving, successor or continuing entity following such Recapitalization.

(ii) "**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

(iii) "**Affiliate**" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and, with respect to the Corporation, shall include any Person beneficially owning or holding, directly or indirectly, ten percent (10%) or more of any class of voting or equity interests of the Corporation or any subsidiary or any corporation of which the Corporation and its subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, ten percent (10%) or more of any class of voting or equity interests. As used in this definition, "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(iv) "**Fair Market Value**" shall mean the following: (i) with respect to equity securities, (A) in the event such equity securities are publicly traded, the 10-day Weighted Average Price for such equity securities preceding the date of consummation of the event requiring a determination of Fair Market Value (the "**Determination Date**") (B) in the event such equity securities are not publicly traded, the fair market value of such equity securities shall be determined by the affirmative vote of a majority of the members of the Board of Directors or, if the requisite approval of the Board of Directors cannot be obtained, by a nationally recognized independent appraiser or investment bank selected, in good faith, by a majority of the members of the Board of Directors; *provided, however*, in no event shall there be a reduction in the fair market value of such equity securities based upon a "minority" or similar discount or based upon the fact that there does not exist any public trading market for such equity securities; (ii) with respect to debt securities, the present value of such debt securities utilizing an interest rate equal to the prime rate on the Determination Date, as published in The Wall Street Journal, Eastern Edition, on such Determination Date; or (iii) with respect to any other property, the fair market value of such property, as determined (A) by the affirmative vote of a majority of the members of the Board of Directors or (B) if the requisite approval of the Board of Directors referred to in the preceding clause (A) cannot be obtained, by a nationally recognized independent appraiser selected, in good faith, by a majority of the members of the Board of Directors.

4. Voting Rights.

- (a) The holders of the issued and outstanding Series B Preferred shall have no voting rights except as required by law or as provided in Section 4(b).
- (b) At any time when shares of Series B Preferred are outstanding, in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of holders representing at least a majority of the shares of Series B Preferred then outstanding, the Corporation shall not issue or authorize the issuance of any Senior Stock or Parity Stock.
- (c) Any action which by law requires the affirmative vote or consent of the holders of Series B Preferred shall require the consent of holders representing at least a majority of the shares of Series B Preferred then outstanding.

5. Conversion.

(a) **Optional Conversion.** The holders of Series B Preferred shall have the following conversion rights (each shall be referred to herein as an "**Optional Conversion**"):

(i) At any time after issuance the shares of Series B Preferred shall be convertible at any time and from time to time, in whole or in part (but not in fractions of a share), at the option of the holder thereof, until any Redemption Date, into such number of fully paid and nonassessable shares of Common Stock as is determined by multiplying the number of shares to be converted with the Conversion Rate.

(ii) The "**Conversion Rate**" shall be the Original Purchase Price divided by the Conversion Price at the time in effect for a share of such Series B Preferred. The "**Conversion Price**" per share of Series B Preferred initially shall be equal to Two Dollars (\$2.00), subject to adjustment from time to time as provided below.

(iii) As used herein, "**Acquisition Event**" means (A) the execution of a definitive agreement with a Person that is (1) the beneficial owner of at least a majority of the then outstanding shares of Series B Preferred, or (2) an Affiliate of (1), providing for a transaction which would constitute a Triggering Event or (B) the public commencement by a Person that is not (1) the beneficial owner of at least a majority of the then outstanding shares of Series B Preferred, or (3) an Affiliate of (1), of an exchange or tender offer to acquire all of the Common Stock.

(b) **Mandatory Conversion.** At any time after issuance of the Series B Preferred, if the closing price of the Common Stock as reported by the Principal Market or quotation system on which such Common Stock is traded or reported equals or exceeds Two Dollars and Seventy Five Cents (\$2.75) per share of Common Stock of the then current Conversion Price for five (5) consecutive trading days, then the Corporation shall have the right to cause all (but not less than all) outstanding shares of Series B Preferred to be automatically converted into shares of Common Stock (such conversion being referred to herein as a "**Mandatory Conversion**" and the date on which such Mandatory Conversion becomes effective as the "**Mandatory Conversion Date**").

(c) Conversion of the Series B Preferred may be effected by any holder thereof upon the surrender to the transfer agent for the Series B Preferred, or at such other office or offices, if any, as the Board of Directors may designate, of the certificate for such shares of the Series B Preferred to be converted accompanied (if the name(s) in which such certificate are to be registered differ from the name(s) in which the certificate formerly representing shares of Series B Preferred had been registered prior to conversion) by a written notice stating the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and, if an Optional Conversion, stating that such holder elects to convert all or a specified whole number of such shares. In case such notice shall specify a name or names other than that of such holder, such notice shall be accompanied by a payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names. As promptly as practicable, and in any event within five business days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the satisfaction of the Corporation that such taxes have been paid), the Corporation shall deliver or cause to be delivered (i) certificates representing the number of validly issued, fully paid and nonassessable full shares of Common Stock to which the holder of shares of the Series B Preferred being converted shall be entitled and (ii) if less than the full number of shares of the Series B Preferred evidenced by the surrendered certificate or certificates

being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares being converted.

(d) In the event of any Optional Conversion, such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the certificate or certificates for the shares of Series B Preferred to be converted and the giving of the notice relating thereto, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the event of a Mandatory Conversion, such conversion shall be deemed to have been made on the Mandatory Conversion Date, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Mandatory Conversion Date. On the date on which a conversion is deemed pursuant to this Section 5(d) to have been made, the rights of the holder of the shares of the Series B Preferred deemed to have been converted as to the shares being converted shall cease except for the right to receive shares of Common Stock in accordance herewith and the corresponding rights of a holder of Common Stock thereupon created.

(e) In connection with the conversion of any shares of the Series B Preferred, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the then effective Conversion Price. If more than one share of the Series B Preferred shall be surrendered for conversion by the same holder at the same time, the number of full shares of Common Stock issuable on conversion thereof shall be computed on the basis of the total number of shares of the Series B Preferred so surrendered.

(f) The Corporation shall at all times reserve, and keep available for issuance upon the conversion of the Series B Preferred, such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of the Series B Preferred, and shall take all action required to increase the authorized number of shares of Common Stock if necessary to permit the conversion of all outstanding shares of the Series B Preferred.

(g) The Conversion Price shall be subject to adjustment from time to time as follows:

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

(ii) *Adjustments for Non-Cash Dividends and Other Distributions.* In the event the Corporation makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution (excluding repurchases of securities by the corporation not made on a pro rata basis) payable in property or in securities of the Corporation other than shares of Common Stock, then and in each such event the holders of Series B Preferred shall

receive, at the time of such distribution, the amount of property or the number of securities of the Corporation that they would have received had their Series B Preferred been converted into Common Stock on the date of such event.

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

(iv) *Shares Owned by Corporation.* For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include any shares of Common Stock then owned or held by or for the account of the Corporation.

(v) *Certificate of Independent Accountant.* The certificate of any firm of independent public accountants of recognized national standing selected by the Board of Directors of the Corporation (which may be the firm of independent public accountants regularly employed by the Corporation) shall be presumptively correct for any computation made under this Section 5(g).

(vi) *No Adjustments for Abandoning Dividend Distributions.* If the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter and before the distribution to stockholders thereof legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price or the number of shares of Common Stock issuable upon exercise of the right of conversion granted by this Section 5(g) shall be required by reason of the taking of such record.

(vii) *No Adjustments for Mergers, Reorganizations, Acquisitions or Similar Events.* There shall be no adjustment of the Conversion Price in case of the issuance of any stock of the Corporation to the security holders of any other corporation in a merger, reorganization, acquisition or other similar transaction except as set forth in this Section 5(g).

(h) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 5(g)(iii)), or in the case of a share exchange of Common Stock for securities of another corporation, or in case of any consolidation or merger of the Corporation with or into another corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety (each of the foregoing being referred to as a "*Transaction*"), each share of the Series B Preferred then owned by such holder shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to consummation of such Transaction, the kind and amount of shares of stock and other securities and property receivable (including cash) upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of the Series B Preferred was convertible immediately prior to such Transaction (including, on a pro rata basis, the cash, securities or property received by holders of Common Stock in any tender or exchange offer that is a step in such Transaction).

(i) Upon any adjustment of the Conversion Price then in effect, the Corporation, at its expense, shall, upon the written request of any holder of Series B Preferred, promptly compute such adjustment in accordance with the terms hereof and furnish to each holder of Series B Preferred a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based.

(j) Upon any conversion of Series B Preferred pursuant to this Section 5, the holder of such shares being converted shall receive any unpaid and accrued dividends on such shares being converted.

6. Redemption.

(a) At any time after the third anniversary of the issuance of the Series B Preferred, all, but not less than all, the shares of Series B Preferred outstanding may be redeemed by the Corporation (a "**Mandatory Redemption**") at its sole discretion, at a price equal to the greater of (i) one hundred ten percent (110%) of the Original Purchase Price, plus an amount equal to any unpaid and accrued dividends and (ii) the Fair Market Value on the Redemption Date of such number of shares of Common Stock which the holder of the redeemed Series B Preferred would be entitled to receive had the redeemed Series B Preferred been converted immediately prior to the redemption. The right of the Corporation to redeem the Series B Preferred provided under this Section 6(a), shall cease upon the occurrence of an Acquisition Event.

(b) Redemption Notice. Upon the determination by the Corporation to effectuate a Mandatory Redemption or a Partial Redemption, written notice of such redemption (the "**Redemption Notice**") shall be mailed, postage prepaid, to each holder of record of Series B Preferred, at its post office address last shown on the records of the Corporation, not less than five (5) business days prior to the date such redemption is to occur (the "**Redemption Date**"). Each Redemption Notice shall state:

(i) the number of shares of Series B Preferred held by the holder that the Corporation shall redeem on the Redemption Date;

(ii) the Redemption Date and the price the Corporation shall pay to the holders of Series B Preferred upon such redemption as determined pursuant to Section 6(a), as applicable (the "**Redemption Price**"); and

(iii) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series B Preferred to be redeemed.

(c) Redemption Mechanics. On any Redemption Date, the Corporation shall redeem such number of shares of Series B Preferred set forth in the Redemption Notice. If on any Redemption Date the Corporation does not have sufficient funds legally available to redeem such number of shares of Series B Preferred set forth in the Redemption Notice, the Corporation shall redeem a pro rata portion of each Series B Preferred holder's redeemable shares out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of such shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The Corporation may delay or cancel any redemption by providing notice of such delay or cancellation to each holder of Series B Preferred

that received a Redemption Notice in connection with such redemption as promptly as practicable following the determination by the Corporation to delay or cancel such redemption.

(d) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series B Preferred to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 5, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Series B Preferred represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series B Preferred shall promptly be issued to such holder.

(e) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series B Preferred to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Series B Preferred so called for redemption shall not have been surrendered, dividends with respect to such shares of Series B Preferred shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. Payment of Taxes. The Corporation shall pay all documentary, stamp, transfer and other taxes (other than taxes on income of the holders of shares of Series B Preferred) and other governmental charges attributable to the issuance, delivery, conversion or redemption of shares of Series B Preferred; *provided, however*, that the Corporation shall not be required to pay any taxes payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Series B Preferred in respect of which such shares are being issued.

8. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series B Preferred shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth herein. The shares of Series B Preferred shall have no preemptive or subscription rights.

9. Severability. If any right, preference or limitation of the Series B Preferred set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth herein which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

10. Status of Reacquired Shares. Shares of Series B Preferred that have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

11. Waivers. The holders of Series B Preferred shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the Delaware General Corporation Law. Any of the rights of the holders of Series B Preferred set forth herein may be waived by the affirmative consent or vote of the holders of at least a majority of the then outstanding shares of Series B Preferred, subject to applicable law.

12. Registration of Series B Convertible Preferred Stock. The Corporation shall register shares of the Series B Preferred, upon records to be maintained by the Corporation for that purpose (the "*Series B Preferred Register*"), in the name of the record holders thereof from time to time. The Corporation may deem and treat the registered holder of shares of Series B Preferred as the absolute owner thereof for the purpose of any distribution to such holder, and for all other purposes, absent actual notice to the contrary.

13. Registration of Transfers. The Corporation shall register the transfer of any shares of Series B Preferred in the Series B Preferred Register, upon surrender of certificates evidencing such Shares to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series B Preferred so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring holder.

14. Replacement Certificates. If any certificate evidencing Series B Preferred is mutilated, lost, stolen or destroyed, the Corporation shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for such certificate, a new certificate, but only upon receipt of an affidavit of loss and indemnity agreement reasonably satisfactory to the Corporation evidencing such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

15. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purposes of effecting the conversion of the shares of Series B Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred; 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 Series B Preferred, in addition to such other remedies as shall be available to the holders of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, 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.

This Certificate shall become effective upon the filing thereof with the Secretary of State of the State of Delaware.

* * *

The Corporation has caused this Certificate of Designation of Series B Convertible Preferred Stock to be duly executed and acknowledged by its undersigned duly authorized officers this 10th day of November, 2009.

REED'S, INC.

By: 

Name: Christopher J. Reed

Title: President & Chief Executive Officer

REED'S, INC.

By: 

Name: Judy Holloway Reed

Title: Secretary

AMENDED CERTIFICATE OF DESIGNATION

(Pursuant to Section 151 of the Delaware General Corporation Law)

The undersigned, Christopher J. Reed and Judy Holloway Reed, certify that:

ONE. They are the duly elected Chief Executive Officer and Secretary, respectively, of the Reed's, Inc., a Delaware corporation (the "*Corporation*").

TWO. The Certificate of Incorporation of this Corporation provides for a class of its authorized shares known as Preferred Stock comprised of 500,000 shares issuable from time to time in one or more series, of which 47,121 shares designated as Series A Convertible Preferred Stock are currently outstanding and no shares designated as Series B Convertible Preferred Stock are currently outstanding.

THREE. Pursuant to and in accordance with the provisions of Section 151 of the Delaware General Corporation Law and the Certificate of Incorporation of this Corporation ("*Certificate of Incorporation*"), the Board of Directors of the Corporation ("*Board of Directors*") has duly authorized and adopted resolutions amending the Certificate of Designation originally filed April 29, 2009 and amended November 16, 2009, by decreasing the Conversion Price (defined hereinbelow) of the Series B Convertible Preferred Stock to \$1.43.

FOUR. The Board of Directors of the Corporation has duly authorized and adopted the following recitals and resolutions on December 4, 2009:

WHEREAS, the Board of Directors of this corporation is authorized to fix the number of shares of any series of Preferred Stock and to determine the designation of any such series and the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock; and

WHEREAS, the Board of Directors has previously fixed and determined the designation of, the number of shares constituting, and the rights, preferences, privileges and restrictions relating to a Series B Convertible Preferred Stock, pursuant to a Certificate of Designation as filed with the Delaware Secretary of State on April 29, 2009 and amended November 16, 2009; and

WHEREAS, the Board of Directors wishes to amend and restate the Certificate of Designation originally filed April 29, 2009 and amended November 16, 2009, by decreasing the Conversion Price (defined hereinbelow) of the Series B Convertible Preferred Stock to \$1.43.

RESOLVED, that the Board of Directors hereby amends and restates the Certificate of Designation filed April 29, 2009 and amended November 16, 2009 in its entirety and designates the number of shares, and fixes the relative rights, powers and preferences thereof, and the limitations or restrictions of the Series B Convertible Preferred Stock (in addition to any provisions set forth in the Certificate of Incorporation that are applicable to the Preferred Stock of all classes and series), as follows:

SERIES B CONVERTIBLE PREFERRED STOCK

A total of four hundred thousand (400,000) shares of the authorized and unissued Preferred Stock of the Corporation, \$10.00 stated value per share, are hereby designated "Series B Convertible Preferred Stock" (the "*Series B Preferred*") with such series having the following rights, preferences, powers, privileges and restrictions, qualifications and limitations:

1. Rank. The Series B Preferred shall rank (a) senior, in all matters, to (i) any class of common stock of the Corporation, including, without limitation, the Corporation's common stock, \$0.0001 par value per share (the "*Common Stock*"), and any other class or series of capital stock into which the Common Stock is reclassified or reconstituted, (ii) any other class or series of capital stock of the Corporation either specifically ranking by its terms junior to the Series B Preferred or not specifically ranking by its terms senior to or on parity with the Series B Preferred, and (iii) any class or series of capital stock of the Corporation into which the capital stock referred to in the preceding subclauses (i) and (ii) is reclassified or reconstituted (the capital stock referred to in this clause (a) is hereinafter referred to as the "*Junior Stock*"); (b) on parity with any class or series of capital stock of the Corporation specifically ranking by its terms on parity, in all matters expressly provided, with the Series B Preferred ("*Parity Stock*"); and (c) junior, in all matters expressly provided, to the Corporation's class of Preferred Stock designated as Series A Convertible Preferred stock and any class or series of capital stock of the Corporation specifically ranking by its terms senior to the Series B Preferred ("*Senior Stock*").

2. Dividends.

(a) Subject to the prior payment in full of any dividends to which any Senior Stock is entitled pursuant to the Certificate of Incorporation, as then amended to date, for a period of three (3) years from the date of issuance of the Series B Preferred, the holders of the Series B Preferred (each, a "*Series B Holder*") shall be entitled to receive, out of funds legally available therefor, dividends (the "*Series B Dividends*"), which shall be cumulative and non-compounding and accrue on a daily basis from the date on which a particular share of Series B Preferred is issued, at an annual rate equal to five percent (5%) of the Original Purchase Price (the "*Series B Dividend Rate*," subject to increase as provided below), payable as provided in Section 2(b) hereof. As used herein, "*Original Purchase Price*" means ten dollars (\$10.00).

(b) Series B Dividends payable pursuant to Section 2(a) hereof shall be payable in quarterly dividends equal to 1.25% of such Liquidation Value (defined below) on each of September 30, December 31, March 31 and June 30 of each year (the "*Series B Dividend Payment Date*"), for a period of 36 months from the date of issuance of the Series B Preferred Convertible Preferred Stock. Such dividends shall be payable, on each Series B Dividend Payment Date, in additional shares of Series B Preferred Convertible Preferred Stock ("*PIK Dividends*"), or, in the sole discretion of the Board of Directors, in cash or Common Stock and such dividends shall be cumulative and shall accrue whether or not declared, earned or payable from and after the date of issue of the Series B Preferred. The shares of Series B Preferred distributed as a PIK Dividend shall be deemed to be issued and outstanding from and after such Series B Dividend Payment Date, and the amount of shares issued as a PIK Dividend shall have an aggregate Liquidation Value, at the Series B Dividend Payment Date equal to the value of the dividend accrued and payable. The initial "*Liquidation Value*" of each share of Series B Preferred will be \$10.00 per share, and thereafter, there will be added to the Liquidation Value of each share of Series B

Preferred, as of any Series B Dividend Payment Date, the amount of any dividends payable on such share on that Series B Dividend Payment Date but not paid on that Series B Dividend Payment Date, whether or not such dividends are declared, earned or payable. The amount of Series B Dividends payable on the Series B Preferred for any period shorter than a full calendar quarter shall be computed on the basis of a 360-day year of twelve 30-day months.

(c) So long as any shares of Series B Preferred are outstanding, the Corporation shall not pay or declare any dividend, whether in cash or property, or make any other distribution on any Junior Stock, or purchase, redeem or otherwise acquire for value any shares of Junior Stock until all Series B Dividends as set forth in Section 2(a) shall have been paid or declared and set apart.

(d) Any Series B Dividend shall be paid in PIK Dividends, cash or shares of Common Stock, in the sole and absolute discretion of the Board of Directors.

(e) If the Corporation elects to pay any Series B Dividend due in Common Stock ("*Interest Shares*"), the issuance price of the Interest Shares will be equal to the 10-day Weighted Average Price (as defined below) of the Common Stock ending on the day prior to Series B Dividend Payment Date. "*Weighted Average Price*" means, for any security as of any date, the dollar volume-weighted average price for such security on the principal national securities exchange on which such equity securities are listed or admitted to trading ("*Principal Market*") during the period beginning at 9:30:01 a.m., New York Time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as the Principal Market publicly announces is the official close of trading) as reported by Bloomberg through its "Volume at Price" functions, or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York Time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as such market publicly announces is the official close of trading) as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be as determined by the affirmative vote of a majority of the members of the Board of Directors, or, if the requisite approval of the Board of Directors cannot be obtained, by a nationally recognized independent appraiser or investment bank selected, in good faith, by a majority of the members of the Board of Directors; *provided, however*, in no event shall there be a reduction in the fair market value of such equity securities based upon a "minority" or similar discount or based upon the fact that there does not exist any public trading market for such equity securities. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

3. Liquidation.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or a Triggering Event (as defined herein) (each referred to herein as a "*Liquidation Event*"), after payment or provision for payment of debts and other liabilities of the Corporation and all amounts due and owing to the holders of outstanding shares of Senior Stock, if any, each holder of Series B Preferred, before any distribution or payment is made upon any Junior Stock, shall be entitled to receive, out of the assets of the Corporation legally available for

distribution to stockholders (the "*Available Assets*"), an amount equal to each holder's Liquidation Preference. The "*Liquidation Preference*" payable with respect to each share of Series B Preferred shall be equal to the greater of (i) the Liquidation Value and (ii) if such share of Series B Preferred were then convertible into Common Stock, such amount which the holder of Series B Preferred would be entitled to receive in connection with the Liquidation Event if such holder had converted his, her or its Series B Preferred immediately prior to the occurrence of the Liquidation Event. Shares of Series B Preferred shall (i) not be entitled to any distributions in the event of a Liquidation Event other than a distribution in an amount equal to the Liquidation Preference, and (ii) be deemed cancelled upon full distribution of such Liquidation Preference.

(b) If the Available Assets shall be insufficient to permit full payment of the Liquidation Preference upon a Liquidation Event to all holders of Series B Preferred, as well as all payments then due or due by reason of such Liquidation Event on any Parity Stock, then the holders of Series B Preferred and holders of such Parity Stock shall share ratably in any such distribution of the Corporation's assets in proportion to the full respective distributable amounts to which they are entitled.

(c) Written notice of a Liquidation Event, stating a payment date, the amount of the Liquidation Preference and the place where said sums shall be payable, shall be given by mail, postage prepaid, not less than thirty (30) nor more than sixty (60) days prior to the payment date stated therein, to all holders of Series B Preferred of record, such notice to be addressed to each such stockholder at such holder's post office address as shown by the records of the Corporation.

(d) Unless otherwise provided herein, whenever the distribution provided for in this Section 3 shall be payable in property other than cash, the value of such property shall be the Fair Market Value.

(e) As used herein, the following terms shall have the following meanings:

(i) "*Triggering Event*" means (a) a sale of all or substantially all of the assets of the Corporation to any Person, (b) any transaction or series of transactions by which any Person or group (as such term is used in Section 13(d) of the Exchange Act) becomes the beneficial owner (as so defined), directly or indirectly, of shares representing more than fifty percent (50%) of the aggregate voting power of the Corporation, or (c) a merger, consolidation, reorganization, recapitalization or other transaction or series of related transactions (a "*Recapitalization*") in which the stockholders of the Corporation owning a majority of the voting stock of the Corporation with the right to elect a majority of the Board of Directors in the aggregate immediately prior to such Recapitalization do not own a majority of such voting stock or voting power of the surviving, successor or continuing entity following such Recapitalization.

(ii) "*Person*" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

(iii) "*Affiliate*" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person, and, with respect to the Corporation, shall include any Person beneficially owning or holding, directly or indirectly, ten percent (10%) or more of any class of voting or equity interests of the Corporation or any subsidiary or any corporation of which the Corporation and its subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, ten percent (10%) or more of any class of voting or

equity interests. As used in this definition, “*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(iv) “*Fair Market Value*” shall mean the following: (i) with respect to equity securities, (A) in the event such equity securities are publicly traded, the 10-day Weighted Average Price for such equity securities preceding the date of consummation of the event requiring a determination of Fair Market Value (the “*Determination Date*”) (B) in the event such equity securities are not publicly traded, the fair market value of such equity securities shall be determined by the affirmative vote of a majority of the members of the Board of Directors or, if the requisite approval of the Board of Directors cannot be obtained, by a nationally recognized independent appraiser or investment bank selected, in good faith, by a majority of the members of the Board of Directors; *provided, however*, in no event shall there be a reduction in the fair market value of such equity securities based upon a “minority” or similar discount or based upon the fact that there does not exist any public trading market for such equity securities; (ii) with respect to debt securities, the present value of such debt securities utilizing an interest rate equal to the prime rate on the Determination Date, as published in The Wall Street Journal, Eastern Edition, on such Determination Date; or (iii) with respect to any other property, the fair market value of such property, as determined (A) by the affirmative vote of a majority of the members of the Board of Directors or (B) if the requisite approval of the Board of Directors referred to in the preceding clause (A) cannot be obtained, by a nationally recognized independent appraiser selected, in good faith, by a majority of the members of the Board of Directors.

4. Voting Rights.

(a) The holders of the issued and outstanding Series B Preferred shall have no voting rights except as required by law or as provided in Section 4(b).

(b) At any time when shares of Series B Preferred are outstanding, in addition to any other vote required by law or the Certificate of Incorporation, without the written consent or affirmative vote of holders representing at least a majority of the shares of Series B Preferred then outstanding, the Corporation shall not issue or authorize the issuance of any Senior Stock or Parity Stock.

(c) Any action which by law requires the affirmative vote or consent of the holders of Series B Preferred shall require the consent of holders representing at least a majority of the shares of Series B Preferred then outstanding.

5. Conversion.

(a) Optional Conversion. The holders of Series B Preferred shall have the following conversion rights (each shall be referred to herein as an “*Optional Conversion*”):

(i) At any time after issuance the shares of Series B Preferred shall be convertible at any time and from time to time, in whole or in part (but not in fractions of a share), at the option of the holder thereof, until any Redemption Date, into such number of fully paid and nonassessable shares of Common Stock as is determined by multiplying the number of shares to be converted with the Conversion Rate.

(ii) The "*Conversion Rate*" shall be the Original Purchase Price divided by the Conversion Price at the time in effect for a share of such Series B Preferred. The "*Conversion Price*" per share of Series B Preferred initially shall be equal to One Dollar and Forty Three Cents (\$1.43), subject to adjustment from time to time as provided below.

(iii) As used herein, "*Acquisition Event*" means (A) the execution of a definitive agreement with a Person that is (1) the beneficial owner of at least a majority of the then outstanding shares of Series B Preferred, or (2) an Affiliate of (1), providing for a transaction which would constitute a Triggering Event or (B) the public commencement by a Person that is not (1) the beneficial owner of at least a majority of the then outstanding shares of Series B Preferred, or (3) an Affiliate of (1), of an exchange or tender offer to acquire all of the Common Stock.

(b) Mandatory Conversion. At any time after issuance of the Series B Preferred, if the closing price of the Common Stock as reported by the Principal Market or quotation system on which such Common Stock is traded or reported equals or exceeds Two Dollars and Seventy Five Cents (\$2.75) per share of Common Stock of the then current Conversion Price for five (5) consecutive trading days, then the Corporation shall have the right to cause all (but not less than all) outstanding shares of Series B Preferred to be automatically converted into shares of Common Stock (such conversion being referred to herein as a "*Mandatory Conversion*" and the date on which such Mandatory Conversion becomes effective as the "*Mandatory Conversion Date*").

(c) Conversion of the Series B Preferred may be effected by any holder thereof upon the surrender to the transfer agent for the Series B Preferred, or at such other office or offices, if any, as the Board of Directors may designate, of the certificate for such shares of the Series B Preferred to be converted accompanied (if the name(s) in which such certificate are to be registered differ from the name(s) in which the certificate formerly representing shares of Series B Preferred had been registered prior to conversion) by a written notice stating the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued and, if an Optional Conversion, stating that such holder elects to convert all or a specified whole number of such shares. In case such notice shall specify a name or names other than that of such holder, such notice shall be accompanied by a payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names. As promptly as practicable, and in any event within five business days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the satisfaction of the Corporation that such taxes have been paid), the Corporation shall deliver or cause to be delivered (i) certificates representing the number of validly issued, fully paid and nonassessable full shares of Common Stock to which the holder of shares of the Series B Preferred being converted shall be entitled and (ii) if less than the full number of shares of the Series B Preferred evidenced by the surrendered certificate or certificates being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares being converted.

(d) In the event of any Optional Conversion, such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the certificate or certificates for the shares of Series B Preferred to be converted and the giving of the notice relating thereto, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the event of a Mandatory Conversion, such

conversion shall be deemed to have been made on the Mandatory Conversion Date, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Mandatory Conversion Date. On the date on which a conversion is deemed pursuant to this Section 5(d) to have been made, the rights of the holder of the shares of the Series B Preferred deemed to have been converted as to the shares being converted shall cease except for the right to receive shares of Common Stock in accordance herewith and the corresponding rights of a holder of Common Stock thereupon created.

(e) In connection with the conversion of any shares of the Series B Preferred, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the then effective Conversion Price. If more than one share of the Series B Preferred shall be surrendered for conversion by the same holder at the same time, the number of full shares of Common Stock issuable on conversion thereof shall be computed on the basis of the total number of shares of the Series B Preferred so surrendered.

(f) The Corporation shall at all times reserve, and keep available for issuance upon the conversion of the Series B Preferred, such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of the Series B Preferred, and shall take all action required to increase the authorized number of shares of Common Stock if necessary to permit the conversion of all outstanding shares of the Series B Preferred.

(g) The Conversion Price shall be subject to adjustment from time to time as follows:

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

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

(iii) *Adjustments for Reorganizations, Reclassifications or Similar Events.* If the Common Stock shall be changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by capital reorganization, reclassification or otherwise, then each share of Series B Preferred shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the Corporation deliverable upon conversion of such shares of

Series B Preferred shall have been entitled upon such reorganization, reclassification or other event.

(iv) *Shares Owned by Corporation.* For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include any shares of Common Stock then owned or held by or for the account of the Corporation.

(v) *Certificate of Independent Accountant.* The certificate of any firm of independent public accountants of recognized national standing selected by the Board of Directors of the Corporation (which may be the firm of independent public accountants regularly employed by the Corporation) shall be presumptively correct for any computation made under this Section 5(g).

(vi) *No Adjustments for Abandoning Dividend Distributions.* If the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter and before the distribution to stockholders thereof legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price or the number of shares of Common Stock issuable upon exercise of the right of conversion granted by this Section 5(g) shall be required by reason of the taking of such record.

(vii) *No Adjustments for Mergers, Reorganizations, Acquisitions or Similar Events.* There shall be no adjustment of the Conversion Price in case of the issuance of any stock of the Corporation to the security holders of any other corporation in a merger, reorganization, acquisition or other similar transaction except as set forth in this Section 5(g).

(h) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 5(g)(iii)), or in the case of a share exchange of Common Stock for securities of another corporation, or in case of any consolidation or merger of the Corporation with or into another corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety (each of the foregoing being referred to as a "*Transaction*"), each share of the Series B Preferred then owned by such holder shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to consummation of such Transaction, the kind and amount of shares of stock and other securities and property receivable (including cash) upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of the Series B Preferred was convertible immediately prior to such Transaction (including, on a pro rata basis, the cash, securities or property received by holders of Common Stock in any tender or exchange offer that is a step in such Transaction).

(i) Upon any adjustment of the Conversion Price then in effect, the Corporation, at its expense, shall, upon the written request of any holder of Series B Preferred, promptly compute such adjustment in accordance with the terms hereof and furnish to each holder of Series B Preferred a certificate setting forth such adjustment and showing in reasonable detail the facts upon which such adjustment is based.

(j) Upon any conversion of Series B Preferred pursuant to this Section 5, the holder of such shares being converted shall receive any unpaid and accrued dividends on such shares being converted.

6. Redemption.

(a) At any time after the third anniversary of the issuance of the Series B Preferred, all, but not less than all, the shares of Series B Preferred outstanding may be redeemed by the Corporation (a "**Mandatory Redemption**") at its sole discretion, at a price equal to the greater of (i) one hundred ten percent (110%) of the Original Purchase Price, plus an amount equal to any unpaid and accrued dividends and (ii) the Fair Market Value on the Redemption Date of such number of shares of Common Stock which the holder of the redeemed Series B Preferred would be entitled to receive had the redeemed Series B Preferred been converted immediately prior to the redemption. The right of the Corporation to redeem the Series B Preferred provided under this Section 6(a), shall cease upon the occurrence of an Acquisition Event.

(b) Redemption Notice. Upon the determination by the Corporation to effectuate a Mandatory Redemption or a Partial Redemption, written notice of such redemption (the "**Redemption Notice**") shall be mailed, postage prepaid, to each holder of record of Series B Preferred, at its post office address last shown on the records of the Corporation, not less than five (5) business days prior to the date such redemption is to occur (the "**Redemption Date**"). Each Redemption Notice shall state:

(i) the number of shares of Series B Preferred held by the holder that the Corporation shall redeem on the Redemption Date;

(ii) the Redemption Date and the price the Corporation shall pay to the holders of Series B Preferred upon such redemption as determined pursuant to Section 6(a), as applicable (the "**Redemption Price**"); and

(iii) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series B Preferred to be redeemed.

(c) Redemption Mechanics. On any Redemption Date, the Corporation shall redeem such number of shares of Series B Preferred set forth in the Redemption Notice. If on any Redemption Date the Corporation does not have sufficient funds legally available to redeem such number of shares of Series B Preferred set forth in the Redemption Notice, the Corporation shall redeem a pro rata portion of each Series B Preferred holder's redeemable shares out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of such shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The Corporation may delay or cancel any redemption by providing notice of such delay or cancellation to each holder of Series B Preferred that received a Redemption Notice in connection with such redemption as promptly as practicable following the determination by the Corporation to delay or cancel such redemption.

(d) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series B Preferred to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 5, shall surrender the certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled and retired. In the event less than all of the shares of Series B Preferred represented by a certificate are

redeemed, a new certificate representing the unredeemed shares of Series B Preferred shall promptly be issued to such holder.

(e) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series B Preferred to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Series B Preferred so called for redemption shall not have been surrendered, dividends with respect to such shares of Series B Preferred shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. Payment of Taxes. The Corporation shall pay all documentary, stamp, transfer and other taxes (other than taxes on income of the holders of shares of Series B Preferred) and other governmental charges attributable to the issuance, delivery, conversion or redemption of shares of Series B Preferred; *provided, however*, that the Corporation shall not be required to pay any taxes payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the holder of the shares of Series B Preferred in respect of which such shares are being issued.

8. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series B Preferred shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth herein. The shares of Series B Preferred shall have no preemptive or subscription rights.

9. Severability. If any right, preference or limitation of the Series B Preferred set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth herein which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

10. Status of Reacquired Shares. Shares of Series B Preferred that have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

11. Waivers. The holders of Series B Preferred shall also be entitled to, and shall not be deemed to have waived, any other applicable rights granted to such holders under the Delaware General Corporation Law. Any of the rights of the holders of Series B Preferred set forth herein may be waived by the affirmative consent or vote of the holders of at least a majority of the then outstanding shares of Series B Preferred, subject to applicable law.

12. Registration of Series B Convertible Preferred Stock. The Corporation shall register shares of the Series B Preferred, upon records to be maintained by the Corporation for that purpose (the "*Series B Preferred Register*"), in the name of the record holders thereof from time to time. The Corporation may deem and treat the registered holder of shares of Series B Preferred as the absolute owner thereof for the purpose of any distribution to such holder, and for all other purposes, absent actual notice to the contrary.

13. Registration of Transfers. The Corporation shall register the transfer of any shares of Series B Preferred in the Series B Preferred Register, upon surrender of certificates evidencing such Shares to the Corporation at its address specified herein. Upon any such registration or transfer, a new certificate evidencing the shares of Series B Preferred so transferred shall be issued to the transferee and a new certificate evidencing the remaining portion of the shares not so transferred, if any, shall be issued to the transferring holder.

14. Replacement Certificates. If any certificate evidencing Series B Preferred is mutilated, lost, stolen or destroyed, the Corporation shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for such certificate, a new certificate, but only upon receipt of an affidavit of loss and indemnity agreement reasonably satisfactory to the Corporation evidencing such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a new certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Corporation may prescribe.

15. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purposes of effecting the conversion of the shares of Series B Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred; 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 Series B Preferred, in addition to such other remedies as shall be available to the holders of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, 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.

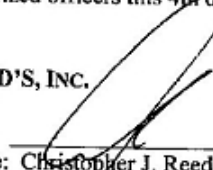
This Certificate shall become effective upon the filing thereof with the Secretary of State of the State of Delaware.

* * *


[signature page follows]

The Corporation has caused this Amended Certificate of Designation to be duly executed and acknowledged by its undersigned duly authorized officers this 4th day of December, 2009.

REED'S, INC.

By: 
Name: Christopher J. Reed
Title: President & Chief Executive Officer

REED'S, INC.

By: 
Name: Judy Holloway Reed
Title: Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:55 PM 10/10/2017
FILED 12:55 PM 10/10/2017
SR 20176550955 - File Number 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

Reed's, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions (i) authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Certificate of Incorporation (this "Amendment") to increase its authorized capital stock to Forty Million Five Hundred Thousand (40,500,000), of which Forty Million (40,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share; and (ii) declaring this Amendment to be advisable, submitted to and considered by the stockholders of the Corporation entitled to vote thereon for approval by the affirmative vote of such stockholders in accordance with the terms of the Corporation's Certificate of Incorporation, as previously amended (the "Certificate of Incorporation") and Section 242 of the General Corporation Law of the State of Delaware (the "DGCL") and recommended for approval by the stockholders of the Corporation.

SECOND: That thereafter, pursuant to resolutions of its Board of Directors, at the annual meeting of the stockholders of said Corporation, duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required by statute were voted in favor of the Amendment.

THIRD: That this Amendment was duly adopted in accordance with the terms of the Certificate of Incorporation and the provisions of Section 242 of the DGCL by the Board of Directors and stockholders of the Corporation.

FOURTH: The Certificate of Incorporation is amended by amending Article IV thereof to read in its entirety as follows:

The total number of shares of capital stock which the Corporation is authorized to issue is Forty Million Five Hundred Thousand (40,500,000), of which Forty Million (40,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding)

the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the President of the Corporation on October 9, 2017.

REED'S, INC.

By: 
Name: Valentin Stalowir
Title: President and Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:50 PM 12/17/2018
FILED 02:50 PM 12/17/2018

SR 20188191450 - File Number 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

Reed's, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions (i) authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Certificate of Incorporation (this "Amendment") to increase its authorized capital stock to Seventy Million Five Hundred Thousand (70,500,000), of which Seventy Million (70,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share; and (ii) declaring this Amendment to be advisable, submitted to and considered by the stockholders of the Corporation entitled to vote thereon for approval by the affirmative vote of such stockholders in accordance with the terms of the Corporation's Certificate of Incorporation, as previously amended (the "Certificate of Incorporation") and Section 242 of the General Corporation Law of the State of Delaware (the "DGCL") and recommended for approval by the stockholders of the Corporation.

SECOND: That thereafter, pursuant to resolutions of its Board of Directors, at the annual meeting of the stockholders of said Corporation, duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required by statute were voted in favor of the Amendment.

THIRD: That this Amendment was duly adopted in accordance with the terms of the Certificate of Incorporation and the provisions of Section 242 of the DGCL by the Board of Directors and stockholders of the Corporation.

FOURTH: The Certificate of Incorporation is amended by amending Article IV thereof to read in its entirety as follows:

The total number of shares of capital stock which the Corporation is authorized to issue is Seventy Million Five Hundred Thousand (70,500,000), of which Seventy Million (70,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the

number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the President of the Corporation on December 17, 2018.

REED'S, INC.

By: 
Name: Valentin Stalowir
Title: President and Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:07 PM 12/27/2019
FILED 04:07 PM 12/27/2019
SR 20198891386 - FileNumber 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

Reed's, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions (i) authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Certificate of Incorporation (this "Amendment") to increase its authorized capital stock to One Hundred Million Five Hundred Thousand (100,500,000), of which One Hundred Million (100,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share; and (ii) declaring this Amendment to be advisable, submitted to and considered by the stockholders of the Corporation entitled to vote thereon for approval by the affirmative vote of such stockholders in accordance with the terms of the Corporation's Certificate of Incorporation, as previously amended (the "Certificate of Incorporation") and Section 242 of the General Corporation Law of the State of Delaware (the "DGCL") and recommended for approval by the stockholders of the Corporation.

SECOND: That thereafter, pursuant to resolutions of its Board of Directors, at the annual meeting of the stockholders of said Corporation, duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required by statute were voted in favor of the Amendment.

THIRD: That this Amendment was duly adopted in accordance with the terms of the Certificate of Incorporation and the provisions of Section 242 of the DGCL by the Board of Directors and stockholders of the Corporation.

FOURTH: The Certificate of Incorporation is amended by amending Article IV thereof to read in its entirety as follows:

The total number of shares of capital stock which the Corporation is authorized to issue is One Hundred Million Five Hundred Thousand (100,500,000), of which One Hundred Million (100,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then

outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the Chief Financial Officer of the Corporation on December 20, 2019.

REED'S, INC.



By: Thomas J. Spisak
Title: Chief Financial Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:44 PM 12/31/2020
FILED 04:44 PM 12/31/2020

SR 20208813444 - File Number 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

Reed's, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions (i) authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Certificate of Incorporation (this "Amendment") to increase its authorized capital stock to One Hundred Twenty Million Five Hundred Thousand (120,500,000), of which One Hundred Twenty Million (120,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share; and (ii) declaring this Amendment to be advisable, submitted to and considered by the stockholders of the Corporation entitled to vote thereon for approval by the affirmative vote of such stockholders in accordance with the terms of the Corporation's Certificate of Incorporation, as previously amended (the "Certificate of Incorporation") and Section 242 of the General Corporation Law of the State of Delaware (the "DGCL") and recommended for approval by the stockholders of the Corporation.

SECOND: That thereafter, pursuant to resolutions of its Board of Directors, at the annual meeting of the stockholders of said Corporation, duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required by statute were voted in favor of the Amendment.

THIRD: That this Amendment was duly adopted in accordance with the terms of the Certificate of Incorporation and the provisions of Section 242 of the DGCL by the Board of Directors and stockholders of the Corporation.

FOURTH: The Certificate of Incorporation is amended by amending Article IV thereof to read in its entirety as follows:

The total number of shares of capital stock which the Corporation is authorized to issue is One Hundred Twenty Million Five Hundred Thousand (120,500,000), of which One Hundred Twenty Million (120,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of

any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the Chief Financial Officer of the Corporation on December 30, 2020.

REED'S, INC.

DocuSigned by:

ED2035E423B24CF...

By: Thomas J. Spisak
Title: Chief Financial Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:56 AM 01/10/2022
FILED 09:56 AM 01/10/2022

SR 20220073127 - File Number 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

Reed's, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Board of Directors of the Corporation has duly adopted resolutions (i) authorizing the Corporation to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Certificate of Incorporation (this "Amendment") to increase its authorized capital stock to One Hundred Eighty Million Five Hundred Thousand (180,500,000), of which One Hundred Eighty Million (180,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share; and (ii) declaring this Amendment to be advisable, submitted to and considered by the stockholders of the Corporation entitled to vote thereon for approval by the affirmative vote of such stockholders in accordance with the terms of the Corporation's Certificate of Incorporation, as previously amended (the "Certificate of Incorporation") and Section 242 of the General Corporation Law of the State of Delaware (the "DGCL") and recommended for approval by the stockholders of the Corporation.

SECOND: That thereafter, pursuant to resolutions of its Board of Directors, at the annual meeting of the stockholders of said Corporation, duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required by statute were voted in favor of the Amendment.

THIRD: That this Amendment was duly adopted in accordance with the terms of the Certificate of Incorporation and the provisions of Section 242 of the DGCL by the Board of Directors and stockholders of the Corporation.

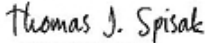
FOURTH: The Certificate of Incorporation is amended by amending Article IV thereof to read in its entirety as follows:

The total number of shares of capital stock which the Corporation is authorized to issue is One Hundred Eighty Million Five Hundred Thousand (180,500,000), of which One Hundred Eighty Million (180,000,000) shall be shares of Common Stock having a par value of \$.0001 per share and Five Hundred Thousand (500,000) shall be shares of Preferred Stock having a par value of \$10.00 per share. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of

any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the Chief Financial Officer of the Corporation on January 6, 2022.

REED'S, INC.

DocuSigned by:

ED2036E423B24CF...

By: Thomas J. Spisak
Title: Chief Financial Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:44 PM 01/25/2023
FILED 04:44 PM 01/25/2023

SR 20230258981 - File Number 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

Reed's, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), hereby adopts this Certificate of Amendment (this "Certificate of Amendment"), which amends its Certificate of Incorporation (the "Certificate of Incorporation"), as described below, and does hereby further certify that:

FIRST: The Board of Directors of the Corporation duly adopted a resolution proposing and declaring advisable the amendment to the Certificate of Incorporation described herein, and the Corporation's stockholders duly adopted such amendment, all in accordance with the provisions of Section 242 of the DGCL.

SECOND: Article FOURTH of the Certificate of Incorporation is hereby amended by adding the following paragraph to the end of such Article:

"That, effective after filing this Certificate of Amendment of Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware, on January 26, 2023 at 5:00 PM Eastern (the "Effective Time"), a one-for-fifty (1:50) reverse stock split of the Corporation's Common Stock shall become effective, pursuant to which each fifty (50) shares of Common Stock outstanding and held of record by each stockholder of the Corporation immediately prior to the Effective Time shall be reclassified and combined into one (1) validly issued, fully-paid and nonassessable share of Common Stock automatically and without any action by the holder thereof upon the Effective Time and shall represent one share of Common Stock from and after the Effective Time (such reclassification and combination of shares, the "Reverse Stock Split"). The par value of the Common Stock following the Reverse Stock Split shall remain at \$0.0001 per share. No fractional shares of Common Stock shall be issued as a result of the Reverse Stock Split. In lieu thereof, (i) with respect to holders of one or more certificates which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, upon surrender after the Effective Time of such certificate or certificates, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive one (1) additional whole share of Common Stock; provided that, whether or not fractional shares would be issuable as a result of the Reverse Stock Split shall be determined on the basis of (a) the total number of shares of Common Stock that were issued and outstanding immediately prior to the Effective Time and (b) the aggregate number of shares of Common Stock after the Effective Time into which the shares of Common Stock have been reclassified; and (ii) with respect to holders of shares of Common Stock in book-entry form in the records of the Corporation's transfer agent that were issued and outstanding immediately prior to the Effective Time, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive one (1) additional share of Common Stock automatically and without any action by the holder.

The total number of shares of capital stock which the Corporation shall have authority to issue is 180,500,000 shares consisting of (a) 180,000,000 shares of Common Stock, \$0.0001 par value per share (the "Common Stock") and (b) 500,000 shares of Preferred Stock, \$10.00 par value per share (the "Preferred Stock"). The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors of directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors of directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the Chief Financial Officer of the Corporation on January 25, 2023.

REED'S, INC.

DocuSigned by:
Thomas J Spisak
65FDE8B6168D4BE...

By: Thomas J. Spisak
Title: Chief Financial Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:44 PM 01/25/2023
FILED 04:44 PM 01/25/2023

SR 20230258981 - File Number 3433903

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
REED'S, INC.**

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FIRST: The Board of Directors of the Corporation duly adopted a resolution proposing and declaring advisable the amendment to the Certificate of Incorporation described herein, and the Corporation's stockholders duly adopted such amendment, all in accordance with the provisions of Section 242 of the DGCL.

SECOND: Article FOURTH of the Certificate of Incorporation is hereby amended by adding the following paragraph to the end of such Article:

"That, effective after filing this Certificate of Amendment of Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware, on January 26, 2023 at 5:00 PM Eastern (the "Effective Time"), a one-for-fifty (1:50) reverse stock split of the Corporation's Common Stock shall become effective, pursuant to which each fifty (50) shares of Common Stock outstanding and held of record by each stockholder of the Corporation immediately prior to the Effective Time shall be reclassified and combined into one (1) validly issued, fully-paid and nonassessable share of Common Stock automatically and without any action by the holder thereof upon the Effective Time and shall represent one share of Common Stock from and after the Effective Time (such reclassification and combination of shares, the "Reverse Stock Split"). The par value of the Common Stock following the Reverse Stock Split shall remain at \$0.0001 per share. No fractional shares of Common Stock shall be issued as a result of the Reverse Stock Split. In lieu thereof, (i) with respect to holders of one or more certificates which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, upon surrender after the Effective Time of such certificate or certificates, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive one (1) additional whole share of Common Stock; provided that, whether or not fractional shares would be issuable as a result of the Reverse Stock Split shall be determined on the basis of (a) the total number of shares of Common Stock that were issued and outstanding immediately prior to the Effective Time and (b) the aggregate number of shares of Common Stock after the Effective Time into which the shares of Common Stock have been reclassified; and (ii) with respect to holders of shares of Common Stock in book-entry form in the records of the Corporation's transfer agent that were issued and outstanding immediately prior to the Effective Time, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive one (1) additional share of Common Stock automatically and without any action by the holder.

The total number of shares of capital stock which the Corporation shall have authority to issue is 180,500,000 shares consisting of (a) 180,000,000 shares of Common Stock, \$0.0001 par value per share (the "Common Stock") and (b) 500,000 shares of Preferred Stock, \$10.00 par value per share (the "Preferred Stock"). The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of directors is hereby authorized, subject to limitations prescribed by law, to fix by resolution or resolutions the designations, powers, preferences, and rights and the qualifications, limitations, or restrictions thereof, of each such series of Preferred Stock, including without limitation, authority to fix by resolution or resolutions the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting such series and the designation thereof, or any of the foregoing. The Board of Directors of directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issue of shares of such series then outstanding, subject to the powers, preferences, and rights and the qualifications, limitations, and restrictions thereof stated in the resolution of the Board of Directors of directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of Certificate of Incorporation to be signed by the Chief Financial Officer of the Corporation on January 25, 2023.

REED'S, INC.

DocuSigned by:
Thomas J Spisak
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By: Thomas J. Spisak
Title: Chief Financial Officer

**DESCRIPTION OF THE REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

As of March 31, 2023, Reed's, Inc.'s ("Reed's," the "Company," "we," "our," "us") common stock, par value \$0.0001 per share ("Common Stock") is registered under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and quoted on OTCQX Best Market under the symbol "REED".

On December 21, 2021, our shareholders approved an increase in the number of authorized shares of common stock from 120 million to 180 million. On January 24, 2023, our shareholders approved a up to a 1:50 reverse stock split of our common stock. Effective January 27, 2023, we effected the 1:50 reverse stock split of our common stock.

DESCRIPTION OF COMMON STOCK

The following is a summary of the material terms of our common stock. This summary does not purport to be exhaustive and is qualified in its entirety by reference to our certificate of incorporation, as amended ("Certificate") and our amended and restated bylaws, as further amended ("Bylaws") and to the applicable provisions of Delaware law.

We are authorized to issue 180,000,000 shares of common stock, \$0.0001 par value. Holders of common stock are each entitled to cast one vote for each share held of record on all matters presented to shareholders. Cumulative voting is not authorized; the holders of a majority of our outstanding shares of common stock may elect all directors. Holders of common stock are entitled to receive such dividends as may be declared by our board out of funds legally available and, in the event of liquidation, to share pro rata in any distribution of our assets after payment of liabilities. Our directors are not obligated to declare a dividend. It is not anticipated that dividends will be paid in the foreseeable future. Holders of common stock do not have preemptive rights to subscribe to any additional shares we may issue in the future. There are no conversion, redemption, sinking fund or similar provisions regarding the common stock. All outstanding shares of common stock are fully paid and nonassessable.

As of March 31, 2023, there were approximately 165 holders of record of the common stock and 2,602,399 outstanding shares of common stock. The holders of record do not include those stockholders whose shares are held of record by banks, brokers and other financial institutions.

Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate and Bylaws

We are subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL"), an anti-takeover law. Subject to certain exceptions, the statute prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder unless:

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

For purposes of Section 203, a “business combination” includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the date of determination whether the person is an “Interested Stockholder” did own, 15% or more of the corporation’s voting stock.

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

We are subject to the laws of Delaware on corporate matters, including their indemnification provisions. Section 102 of the DGCL permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

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

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

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

We do currently provide liability insurance coverage for our directors and officers. We also have entered into indemnification agreements with certain of our executive officers and directors.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act") may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Transfer Agent and Registrar; Market Listing

The transfer agent for the Company's common stock is Transfer Online, Inc., telephone (503) 227-2950. Our common stock is listed on The Nasdaq Capital Market under the symbol "REED."

**PARTIAL OPTION EXERCISE AND
SECOND AMENDMENT TO THE 10% SECURED CONVERTIBLE NOTES**

THIS PARTIAL OPTION EXERCISE AND SECOND AMENDMENT TO THE 10% SECURED CONVERTIBLE NOTES (this “**Agreement**”) is dated and effective as of February 10, 2023 between REED’S, INC., a Delaware corporation (the “**Company**”), the Holders party hereto, and WILMINGTON SAVINGS FUND SOCIETY, FSB, as Holder Representative and Collateral Agent (the “**Agent**”).

1. Incorporation of Terms. All capitalized terms not otherwise defined herein shall have the same meaning as in that certain Note Purchase Agreement, dated as of May 9, 2022, as amended (the “**Note Purchase Agreement**”), between the Company, the Holder Representative and each purchaser on the schedule of purchasers thereto, or in the 10% Secured Convertible Notes dated May 9, 2022, as amended (each, a “**Note**”, and collectively, the “**Notes**”), issued by the Company pursuant to the Note Purchase Agreement, as applicable.

2. Representations and Warranties. The Company hereby represents and warrants that after giving effect to this Agreement, all representations and warranties contained in the Notes are true and correct, in all material respects, on and as of the date hereof, except (a) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (b) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects.

3. Partial Option Exercise.

(a) Pursuant to Section 2.2 of the Purchase Agreement, this Agreement shall constitute an Option Exercise Notice that each of the undersigned Purchasers is exercising in part the Third Option to purchase an aggregate amount of Option Notes as set forth below (each, a “**Purchased Third Option Note**”, and collectively, the “**Purchased Third Option Notes**”):

Purchaser	Aggregate Principal Amount of Option Notes Purchased	Aggregate Purchase Price
Whitebox Multi-Strategy Partners, LP	\$ 1,473,348.22	\$ 1,458,614.74
Whitebox Relative Value Partners, LP	\$ 816,008.24	\$ 807,848.15
Pandora Select Partners, LP	\$ 136,001.37	\$ 134,641.36
Whitebox GT Fund, LP	\$ 124,667.93	\$ 123,421.25
Total	\$ 2,550,025.76	\$ 2,524,525.50

(b) The Company and each Purchaser agree that (i) the Option Notes Closing for the purchase and sale of the Option Notes set forth above will be February 10, 2023 (or as promptly thereafter as possible), and (ii) the advance ten (10) Business Day notice required by Section 2.2 of the Note Purchase Agreement for delivery of the Option Exercise Notice is hereby waived.

(c) To avoid doubt, (i) the Company acknowledges that all shares of Common Stock issuable pursuant to the Purchased Third Option Notes constitute Registrable Securities as defined in and pursuant to the Registration Rights Agreement, (ii) the Purchased Third Option Notes shall constitute part of the same series as all other Notes issued pursuant to the Note Purchase Agreement and (iii) the Purchased Third Option Notes shall be amended as set forth in this Agreement.

4. Amendments to All Notes. The Company, the Agent and the Holders agree to amend all Notes (including, without limitation, the Purchased Third Option Notes) as follows:

(a) *Allowing Different Terms for the Purchased Third Option Notes*. Notwithstanding anything in Section 13(a) of the Notes to the contrary, the terms of the Purchased Third Option Notes may be amended as set forth in Section 5 of this Agreement despite being part of the same series as all other Notes.

(b) *Pro Rata Payments*. Section 2(g) of the Notes is amended and restated in its entirety as follows:

(g) Ranking.

(i) The Notes shall be *pari passu* in right of payment with respect to each other. All payments (other than any payments in respect of a conversion of Notes, any Initially Issued Notes Pro Rata Payments or any Purchased Third Option Notes Pro Rata Payments (collectively, the “Non-Pro Rata Payments”)) to the holders of the Notes (including the Holder) shall be made pro rata among the holders based upon the aggregate unpaid principal amount and accrued interest of the Notes outstanding as of one Business Day immediately prior to any such payment. The Borrower shall not make, and no holder of Notes shall accept, any payment (other than any Non-Pro Rata Payments) except as shall be shared ratably between the holders of the Notes so as to maintain as near as possible the amount of the indebtedness owing under the Notes pro rata according to the holders’ respective proportionate interest in the amount of Notes Obligations owed as of the date immediately prior to such payment or payments. If one holder of the Notes obtains any payment (whether voluntary, involuntary or by offset or otherwise, but not including any Non-Pro Rata Payments) of principal, interest or other amount with respect to the Notes in excess of such holder’s pro rata share of such payments obtained by all holders of the Notes, then the holder receiving such payment in excess of its pro rata share shall return to the Agent, for distribution to each of the other holders, an amount sufficient to cause all holders of the Notes to receive their respective pro rata shares of any payment of principal, interest or other amounts with respect to the Notes.

(ii) Any (A) Amortization Payments made with respect to any Notes dated May 9, 2022 (the “Initially Issued Notes”), (B) payments of Cash Interest with respect to any Initially Issued Notes, (C) compounding of PIK Interest with respect to any Initially Issued Notes, and (D) payments of Principal Amounts in connection with the maturity of any Initially Issued Notes (collectively, the “Initially Issued Notes Pro Rata Payments”) to the holders of the Initially Issued Notes (including, if applicable, the Holder) shall be made pro rata among the holders of the Initially Issued Notes based upon the aggregate unpaid principal amount and accrued interest of the Initially Issued Notes outstanding as of one Business Day immediately prior to any such payment. The Borrower shall not make, and no holder of Initially Issued Notes shall accept, any Initially Issued Notes Pro Rata Payment except as shall be shared ratably between the holders of the Initially Issued Notes so as to maintain as near as possible the amount of the indebtedness owing under the Initially Issued Notes pro rata according to the holders’ respective proportionate interest in the amount of Notes Obligations owed as of the date immediately prior to such payment or payments. If one holder of the Initially Issued Notes obtains any Initially Issued Notes Pro Rata Payment (whether voluntary, involuntary or by offset or otherwise) of principal, interest or other amount with respect to the Initially Issued Notes in excess of such holder’s pro rata share of such payments obtained by all holders of the Initially Issued Notes, then the holder receiving such payment in excess of its pro rata share shall return to the Agent, for distribution to each of the other holders, an amount sufficient to cause all holders of the Initially Issued Notes to receive their respective pro rata shares of such payment.

(iii) Any (A) payments of Cash Interest with respect to any Notes issued pursuant to the Third Option (as defined in the Purchase Agreement) (the “Purchased Third Option Notes”), (B) payments of Principal Amounts in connection with the maturity of any Purchased Third Option Notes and (C) payments in connection with an exercise of the optional prepayments rights set forth in Section 2(e) of the Purchased Third Party Notes (collectively, the “Purchased Third Option Notes Pro Rata Payments”) to the holders of the Purchased Third Option Notes (including, if applicable, the Holder) shall be made pro rata among the holders of the Purchased Third Option Notes based upon the aggregate unpaid principal amount and accrued interest of the Purchased Third Option Notes outstanding as of one Business Day immediately prior to any such payment. The Borrower shall not make, and no holder of Purchased Third Option Notes shall accept, any Purchased Third Option Notes Pro Rata Payment except as shall be shared ratably between the holders of the Purchased Third Option Notes so as to maintain as near as possible the amount of the indebtedness owing under the Purchased Third Option Notes pro rata according to the holders’ respective proportionate interest in the amount of Notes Obligations owed as of the date immediately prior to such payment or payments. If one holder of the Purchased Third Option Notes obtains any Purchased Third Option Notes Pro Rata Payment (whether voluntary, involuntary or by offset or otherwise) of principal, interest or other amount with respect to the Purchased Third Option Notes in excess of such holder’s pro rata share of such payments obtained by all holders of the Purchased Third Option Notes, then the holder receiving such payment in excess of its pro rata share shall return to the Agent, for distribution to each of the other holders, an amount sufficient to cause all holders of the Purchased Third Option Notes to receive their respective pro rata shares of such payment.

(c) *Repurchase at the Option of the Holder Upon a Fundamental Change.* Section 6(a) of each Note is hereby amended by replacing “100%” with “110%”.

5. Amendments to the Purchased Third Option Notes. The Company, the Agent and the Holders agree to amend all the Purchased Third Option Notes, but none of the other Notes, as follows:

(a) *Maturity Date*. The definition of the term “Maturity Date” of each Purchased Third Option Note shall be amended by replacing “May 9, 2025” with “June 30, 2023”.

(b) *Amortization of Principal*. Notwithstanding anything in Section 2(b) of the Purchased Third Option Notes to the contrary, no Amortization Payments shall be made on or in respect of the Purchased Third Option Notes. The Holders hereby irrevocably elect not to receive Amortization Payments with respect to the Purchased Third Option Notes at any time prior to the Maturity Date for the Purchased Third Option Notes (as amended above). Nothing in this Section 5(b) shall be construed to waive, terminate or otherwise impact in any manner the election of the Holders to receive Amortization Payments in the full amount of \$200,000 each month on Notes other than the Purchased Third Option Notes.

(c) *Interest*. Section 2(d) of the Purchased Third Option Notes is amended and restated in its entirety as follows:

(d) Interest. This Note shall bear interest on the aggregate unconverted and unamortized Principal Amount then outstanding of this Note semiannually in arrears at a rate of 10% per annum, with 10% per annum payable in cash (“Cash Interest”) and 0% per annum payable “in kind” by adding such accrued and unpaid interest to the unpaid Principal Amount of this Note (“PIK Interest”) from the Original Issue Date to, but excluding, the Maturity Date. Interest on this Note is payable in arrears on the Maturity Date. Additional Interest will be payable by the Borrower to the Holder as set forth in Section 2(d) of the Registration Rights Agreement.

(d) *Interest Make-Whole Payments*. Notwithstanding anything in Section 4(a)(ii) or Section 4(a)(iii) of the Purchased Third Option Notes to the contrary, no Holder will be entitled to receive any Interest Make-Whole Payments in connection with a conversion of all or any portion of the Purchased Third Option Notes pursuant to Section 4 of the Purchased Third Option Notes.

(e) *Optional Prepayment*. Section 2(e) of the Purchased Third Option Notes is amended and restated in its entirety as follows:

(e) Optional Prepayment. The Borrower shall have the right at any time and from time to time to prepay the Purchased Third Option Notes, in whole or in part, at a price equal to 100% of the Principal Amount of the Purchased Third Option Notes being prepaid plus all accrued and unpaid interest thereon to the date of prepayment. The Borrower shall provide the Holders of the Purchased Third Option Notes and the Agent with at least five (5) Business Days prior written notice of any election to exercise its right to prepay any portion of the Purchased Third Option Notes pursuant to this Section 2(e). Any such prepayment shall be reflected on the Conversion/PIK Schedule, containing at a minimum the information shown on Schedule 1 hereto.

6. Issuance of Additional Shares of Common Stock.

(a) Concurrently with the Option Notes Closing with respect to the Purchased Third Option Notes, and as an inducement for the Purchasers to exercise in part the Purchased Third Option Notes and for the Holders to amend the terms of the Notes as set forth in this Agreement, the Company shall issue to each Purchaser the following number of shares of Common Stock in book-entry format:

Purchaser	Shares of Common Stock
Whitebox Multi-Strategy Partners, LP	47,630
Whitebox Relative Value Partners, LP	26,380
Pandora Select Partners, LP	4,397
Whitebox GT Fund, LP	4,031
Total	82,438

(b) The Company represents and warrants to the Purchasers that, as of the date hereof and before giving effect to the issuance of shares pursuant to Section 6(a) of this Agreement, the Company has 2,520,985 shares of Common Stock issued and outstanding. The Company agrees that all shares of Common Stock issued pursuant to this Agreement constitute Registrable Securities as defined in and pursuant to the Registration Rights Agreement.

7. Acknowledgement of Timing of Registration Rights. The Company and each of the Purchasers acknowledge that a registration statement registering the resale of the Common Stock underlying the Purchased Third Option Notes and the Common Stock issuable pursuant to Section 6 of this Agreement may not be filed until the Company has filed its Annual Report on Form 10-K for the fiscal year ended December 31, 2022 (the “**Annual Report**”) and, as a result, the “**Filing Date**” (as defined in the Registration Rights Agreement) for such Common Stock shall be the date 45 calendar days after the filing of the 2022 Annual Report.

8. Binding Effect. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

9. Reaffirmation of Obligations. The Company hereby ratifies the Note Documents and acknowledges and reaffirms (a) that it is bound by all terms of the Note Documents applicable to it and (b) that it is responsible for the observance and full performance of its respective Obligations.

10. Note Document. This Agreement shall constitute a Note Document under the terms of each Note.

11. Multiple Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

12. Governing Law. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

13. Consent to Jurisdiction; Service of Process; Agreement of Jury Trial. The jurisdiction, service of process and waiver of jury trial provisions set forth in subsections 13(h) and 13(i) of the Notes are hereby incorporated by reference.

14. Agent Authorization. Each of the undersigned Holders hereby authorizes and directs Agent to execute and deliver this Agreement on its behalf and, by its execution below, each of the undersigned Holders agrees to be bound by the terms and conditions of this Agreement. In executing this Agreement, the Agent shall be entitled to all of the rights, benefits, protections, indemnities and immunities afforded to it pursuant to the Note Documents.

[Signature page follows]

IN WITNESS WHEREOF, this Partial Option Exercise and Second Amendment of the 10% Secured Convertible Notes has been duly executed and delivered by each of the parties hereto as of the date

first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: Thomas J Spisak
Title: Chief Financial Officer

DocuSigned by:
Thomas J Spisak
65FDE8B0168D4BE

HOLDERS:

Whitebox Multi-Strategy Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox Relative Value Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Holder Representative

By: _____
Name:
Title:

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Collateral Agent

By: _____
Name:
Title:

[Signature Page to Partial Option Exercise and Second Amendment of the 10% Secured Convertible Notes]

IN WITNESS WHEREOF, this Partial Option Exercise and Second Amendment of the 10% Secured Convertible Notes has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: Thomas J Spisak
Title: Chief Financial Officer

Whitebox GT Fund, LP

DocuSigned by:
Jake Mercer
1A0046E066D043B...
By: _____
Name: Jacob Mercer
Title: Authorized Signatory

HOLDERS:

Whitebox Multi-Strategy Partners, LP

DocuSigned by:
Jake Mercer
1A0046E066D043B...
By: _____
Name: Jacob Mercer
Title: Authorized Signatory

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Holder Representative

By: _____
Name: _____
Title: _____

Whitebox Relative Value Partners, LP

DocuSigned by:
Jake Mercer
1A0046E066D043B...
By: _____
Name: Jacob Mercer
Title: Authorized Signatory

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Collateral Agent

By: _____
Name: _____
Title: _____

Pandora Select Partners, LP

DocuSigned by:
Jake Mercer
1A0046E066D043B...
By: _____
Name: Jacob Mercer
Title: Authorized Signatory

[Signature Page to Partial Option Exercise and Second Amendment of the 10% Secured Convertible Notes]

IN WITNESS WHEREOF, this Partial Option Exercise and Second Amendment of the 10% Secured Convertible Notes has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: Thomas J Spisak
Title: Chief Financial Officer

HOLDERS:

Whitebox Multi-Strategy Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox Relative Value Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Holder Representative

By:  _____
Name: Raye Goldsborough
Title: Vice President

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Collateral Agen

By:  _____
Name: Raye Goldsborough
Title: Vice President

[Signature Page to Partial Option Exercise and Second Amendment of the 10% Secured Convertible Notes]

LIMITED WAIVER AND DEFERRAL AGREEMENT

THIS LIMITED WAIVER AND DEFERRAL AGREEMENT (this “**Waiver**”) is dated and effective as of February 10, 2023 between REED’S, INC., a Delaware corporation (the “**Company**”), the Holders party hereto, and WILMINGTON SAVINGS FUND SOCIETY, FSB, as Holder Representative and Collateral Agent (the “**Agent**”).

WHEREAS, on November 30, 2022, December 31, 2022 and January 31, 2023, the Indebtedness in favor of the ABL Lenders arising under the ABL Debt Documents at each such date exceeded the applicable amount set forth in clause (n) of the definition of Permitted Indebtedness by an amount equal to \$7,000,000 (the “**November 2022 Excess ABL Amount**”), \$6,476,764 (the “**December 2022 Excess ABL Amount**”), and \$3,373,450 (after accounting for the payment to the Company on February 1, 2023 of receivables owed by one of the Company’s customers identified to the Holders) (the “**January 2023 Excess ABL Amount**”), respectively, and, as a result, pursuant to Section 12(g) of the Notes (as defined below), the Company owes fees, payable in cash, of \$700,000 with regard to the November 2022 Excess ABL Amount (the “**November 2022 Excess ABL Fee**”), \$647,676 with regard to the December 2022 Excess ABL Amount (the “**December 2022 Excess ABL Fee**”) and \$337,345 with regard to the January 2023 Excess ABL Amount (the “**January 2023 Excess ABL Fee**”).

WHEREAS, with the consent of the Holders, the Company has previously paid the November 2022 Excess ABL Fee to the Holders in the form of an aggregate \$175,000 cash and 5,250,000 shares of Common Stock paid on or about December 6, 2022 (the “**November 2022 Excess ABL Payment**”).

WHEREAS, the Company requests that the payment of the December 2022 Excess ABL Fee, the January 2023 Excess ABL Fee and any fee payable pursuant to Section 12(g) of the Notes on or prior to June 30, 2023 (such fees, collectively, the “**Deferred ABL Fees**”) be deferred as set forth in this Waiver.

WHEREAS, the Holders elected to forego the monthly Amortization Payments otherwise due and payable during the period from December 1, 2022 until June 30, 2023 (collectively, the “**Foregone Amortization Payments**”).

WHEREAS, on November 13, 2022, the Company, the Holders and the Agent entered into a Limited Waiver Agreement (the “**Limited Waiver Agreement**”), pursuant to Section 4 of which the parties acknowledged the payment of certain amounts of cash and shares of Common Stock in full satisfaction of the Company’s obligations under the Side Letter (as defined in the Limited Waiver Agreement) but inadvertently omitted the payment of an aggregate 8,085 additional shares of Common Stock issued on or about October 25, 2022 in partial satisfaction of the Company’s obligations under the Side Letter (such shares, the “**October Repurchase Payment**”).

WHEREAS, concurrently with the execution of this Waiver, the Company, the Holders and the Agent are executing a Partial Option Exercise and Second Amendment to the 10% Secured Convertible Notes (the “**Option Exercise and Amendment**”) providing for, among other things, the exercise in part of the Holders’ option to purchase additional Notes pursuant to the terms of the Note Purchase Agreement (as defined below).

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Incorporation of Terms.** All capitalized terms not otherwise defined herein shall have the same meaning as in the 10% Secured Convertible Notes dated May 9, 2022, as amended (each, a “**Note**”, and collectively, the “**Notes**”), issued by the Company pursuant to that certain Note Purchase Agreement, dated as of May 9, 2022, as amended (the “**Note Purchase Agreement**”), between the Company, the Holder Representative and each purchaser on the schedule of purchasers thereto.

2. Representations and Warranties. The Company hereby represents and warrants that after giving effect to this Waiver, all representations and warranties contained in the Notes are true and correct, in all material respects, on and as of the date hereof, except (a) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (b) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects.

3. Waivers.

(a) Subject to the satisfaction of the conditions precedent set forth in Section 7 of this Waiver, Agent (as directed by all Holders below) and the Holders party hereto hereby waive the Specified ABL Events of Default under the Notes (each as listed on Annex A hereto).

(b) Subject to the satisfaction of the conditions precedent set forth in Section 7 of this Waiver, Agent (as directed by all Holders below) and the Holders party hereto hereby temporarily waive the Specified Events of Default (as listed on Annex A hereto) through and including the earlier to occur of (i) the date that any Event of Default (other than a Specified Event of Default) occurs under the Notes or any other Note Document and (ii) June 30, 2023 (such period, the “**Waiver Period**”), which waivers, in the case of clause (ii), shall become permanent if the Company is compliant with Section 7(w) of the Notes as of June 30, 2023 without regard to the waivers contained in this Section 3(b).

(c) Except as set forth in Section 3(b), in the event that the Specified Events of Default have not been resolved in a manner acceptable to the Majority Holders on or before the expiration of the applicable Waiver Period, (i) the waiver provided in Section 3(b) shall terminate immediately, (ii) the Specified Events of Default shall be deemed to have occurred and be continuing for all purposes of the Notes and the other Note Documents.

(d) Subject to the satisfaction of the conditions precedent set forth in Section 7 of this Waiver, Agent (as directed by all Holders below) and the Holders party hereto hereby waive any requirement pursuant to Section 6 of the Notes that the Company conduct a repurchase of Notes in the event of a Fundamental Change pursuant to clause (D) of the definition thereof occurring prior to April 1, 2023, provided, that, if a Fundamental Change pursuant to clause (D) of the definition thereof occurs prior to April 1, 2023, the Company shall comply with the requirements of Section 6 of the Notes as if such Fundamental Change had occurred on and as of April 1, 2023).

(e) This Section 3 shall be effective only to the extent specifically set forth herein and shall not be construed as a consent to or waiver of any breach or Default other than as specifically waived herein and shall not (i) affect the right of Agent or any of the Holders to demand strict compliance by Company with all terms and conditions of the Notes, except as specifically consented to, modified or waived by the terms hereof, (ii) be deemed a consent to or waiver of any future transaction or action on the part of any Note Party requiring the Holders’ or the Majority Holders’ consent or approval under the Notes, or (iii) diminish, prejudice or waive any of Agent’s or any Holders’ rights and remedies under the Notes or applicable law, whether arising as a consequence of any Event of Default which may now exist or otherwise, and Agent and each of the Holders hereby reserve all of such rights and remedies. For the avoidance of doubt and notwithstanding anything herein to the contrary, to the extent any provision of the Notes is qualified by, or requires the absence of, any Default or Event of Default, a Default or Event of Default shall be deemed to **not** have occurred for purposes of such provisions.

4. Treatment of Deferred ABL Fees, Determination of Excess ABL Fees and Deferred Amortization Payments.

(a) Notwithstanding anything to the contrary in Section 12(g) of the Notes, the Deferred ABL Fees shall become due and payable in cash on June 30, 2023.

(b) The Holders agree and acknowledge that the payment of the November 2022 Excess ABL Payment constituted full payment and satisfaction of the November 2022 Excess ABL Fee.

(c) Notwithstanding anything to the contrary in Section 12(g) of the Notes, from and after January 1, 2023, the Holders and the Note Parties agree that any fee payable under Section 12(g) of the Notes shall be calculated using the amount by which the Indebtedness in favor of the ABL Lenders arising under the ABL Debt Documents exceeds the amount set forth in clause (n) of the definition of Permitted Indebtedness as of the last day of the applicable calendar month.

(d) Notwithstanding anything to the contrary in Section 2(b) of the Notes, (i) the applicable portion of the aggregate Principal Amounts included in the Foregone Amortization Payments shall remain part of the aggregate Principal Amount of the applicable Note outstanding and shall become due and owing in accordance with the terms of such Note and (ii) Interest shall continue to accrue on such Principal Amounts from the last Interest Payment Date without interruption. The Company and Holders hereby acknowledge and agree that (x) Amortization Payments shall resume on July 1, 2023 with the updated amortization schedule attached as Annex B hereto, and (y) the Conversion/PIK Schedule in respect of each Note is, as of the date hereof, true and accurate as set forth on Annex C hereto.

5. Acknowledgement of Side Letter Payments. Notwithstanding anything in the Limited Waiver Agreement to the contrary, the Company and each Holder acknowledge receipt of their applicable portion of each of the Repurchase Payments (as defined in the Limited Waiver Agreement) and the October Repurchase Payment, which together constitute full satisfaction of the Company's obligations under the Side Letter (as defined in the Limited Waiver Agreement) to repurchase the Purchase Option Notes (as defined in the Limited Waiver Agreement). The Company agrees that all shares of Common Stock issued in connection with the Repurchase Payments (as defined in the Limited Waiver Agreement) and the October Repurchase Payment shall constitute Registrable Securities as defined in and pursuant to the Registration Rights Agreement.

6. Releases.

(a) The Company, on behalf of itself and each of the Note Parties (and on behalf of each Affiliate thereof) and for itself and for its successors in title and assignees and, to the extent the same is claimed by right of, through or under any of the Note Parties, for its past, present and future employees, agents, representatives (other than legal representatives), officers, directors, shareholders, and trustees (each, a "**Releasing Party**" and collectively, the "**Releasing Parties**"), does hereby remise, release and discharge, and shall be deemed to have forever remised, released and discharged, the Agent, and each of the Holders in their respective capacities as such under the Note Documents, and the Agent's and each Holder's respective successors-in-title, legal representatives and assignees, past, present and future officers, directors, affiliates, shareholders, trustees, agents, employees, consultants, experts, advisors, attorneys and other professionals and all other persons and entities to whom the Agent and each of the Holders or any of their respective successors-in-title, legal representatives and assignees, past, present and future officers, directors, affiliates, shareholders, trustees, agents, employees, consultants, experts, advisors, attorneys and other professionals would be liable if such persons or entities were found to be liable to any Releasing Party or any of them (collectively, hereinafter the "**Releasees**"), from any and all manner of action and actions, cause and causes of action, claims, charges, demands, counterclaims, crossclaims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, rights of setoff and recoupment, controversies, damages, judgments, expenses, executions, liens, claims of liens, claims of costs, penalties, attorneys' fees, or any other compensation, recovery or relief on account of any liability, obligation, demand or cause of action of whatever nature, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, joint and/or several, secured or unsecured, due or not due, primary or secondary, liquidated or unliquidated, contractual or tortious, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Releasees, and which are, in each case, based on any act, fact, event or omission or other matter, cause or thing occurring at any time prior to or on the date hereof in any way, directly or indirectly arising out of, connected with or relating to the Notes or any other Note Document and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing (each, a "**Claim**" and collectively, the "**Claims**"); provided, that, no Releasing Party shall have any obligation with respect to Claims to the extent such Claims are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of any Releasee. Each Releasing Party further stipulates and agrees with respect to all Claims, that it hereby waives, to the fullest extent permitted by applicable law, any and all provisions, rights, and benefits conferred by any applicable U.S. federal or state law, or any principle of common law, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 6.

(b) The Company, on behalf of each Note Party, itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by any Note Party pursuant to Section 6(a) of this Waiver. If any Note Party or any of its successors, assigns or other legal representatives violates the foregoing covenant, the Note Parties, each for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

7. Conditions to Effectiveness. This Waiver shall not be effective until each of the following conditions precedent has been fulfilled to the satisfaction of the Agent (at the direction of all Holders):

(a) This Waiver shall have been duly executed and delivered by the Company, the Agent, and the Majority Holders, and the Agent shall have received evidence thereof.

(b) After giving effect to this Waiver, no Default or Event of Default (other than the Specified Events of Default and Specified ABL Events of Default) shall have occurred and be continuing.

(c) The Company shall have paid the outstanding fees and expenses of King & Spalding LLP, counsel to the Holders, and the fees and expenses of Agent through the date hereof.

(d) The Option Exercise and Amendment shall have been duly executed and delivered by the Company, the Holders and the Agent, and the issuance of the Purchased Third Option Notes (as defined therein) and the related shares of Common Stock specified therein shall have been completed.

8. Share Counts. All numbers expressed in shares of Common Stock in this Agreement do not give effect to the Company's 1-for-50 reverse stock split effective as of 12:01 a.m., Eastern time, on January 27, 2023.

9. Binding Effect. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

10. Reaffirmation of Obligations. The Company hereby ratifies the Note Documents and acknowledges and reaffirms (a) that it is bound by all terms of the Note Documents applicable to it and (b) that it is responsible for the observance and full performance of its respective Obligations.

11. Note Document. This Waiver shall constitute a Note Document under the terms of each Note.

12. Multiple Counterparts. This Waiver may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Waiver by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Waiver.

13. Governing Law. THIS WAIVER AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE BASED UPON, ARISING OUT OF OR RELATING TO THIS WAIVER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

14. Consent to Jurisdiction; Service of Process; Agreement of Jury Trial. The jurisdiction, service of process and waiver of jury trial provisions set forth in subsections 13(h) and 13(i) of the Notes are hereby incorporated by reference.

15. Agent Authorization. Each of the undersigned Holders hereby authorizes and directs Agent to execute and deliver this Waiver on its behalf and, by its execution below, each of the undersigned Holders agrees to be bound by the terms and conditions of this Waiver. In executing this Waiver, the Agent shall be entitled to all of the rights, benefits, protections, indemnities and immunities afforded to it pursuant to the Note Documents.

[Signature page follows]

IN WITNESS WHEREOF, this Limited Waiver and Deferral Agreement has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

DocuSigned by:
Thomas J Spisak
65FDE8B6168D4BE...

By: _____
Name: Thomas J Spisak
Title: Chief Financial Officer

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB,
solely in its capacity as the Holder Representative

By: _____
Name: _____
Title: _____

HOLDERS:

Whitebox Multi-Strategy Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB,
solely in its capacity as the Collateral Agent

By: _____
Name: _____
Title: _____

Whitebox Relative Value Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

[Signature Page to Limited Waiver and Deferral Agreement]

IN WITNESS WHEREOF, this Limited Waiver and Deferral Agreement has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: Thomas J Spisak
Title: Chief Financial Officer

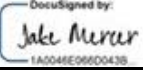
HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB,
solely in its capacity as the Holder Representative

By: _____
Name: _____
Title: _____

HOLDERS:

Whitebox Multi-Strategy Partners, LP

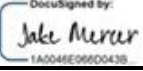
By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

COLLATERAL AGENT:

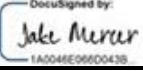
Wilmington Savings Fund Society, FSB,
solely in its capacity as the Collateral Agent

By: _____
Name: _____
Title: _____

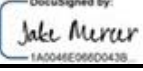
Whitebox Relative Value Partners, LP

By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

[Signature Page to Limited Waiver and Deferral Agreement]

IN WITNESS WHEREOF, this Limited Waiver and Deferral Agreement has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: Thomas J Spisak
Title: Chief Financial Officer

HOLDERS:

Whitebox Multi-Strategy Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox Relative Value Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB,
solely in its capacity as the Holder Representative

By: 
Name: Raye Goldsborough
Title: Vice President

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB,
solely in its capacity as the Collateral Agent

By: 
Name: Raye Goldsborough
Title: Vice President

Specified Events of Default

1. The Company's failure to comply with Section 7(w) of the Notes on or prior to June 30, 2023 by maintaining, as required under clause (n) of the definition of Permitted Indebtedness in the Notes, Indebtedness in favor of the ABL Lenders arising under the ABL Debt Documents less than the sum of (i) \$6,000,000 plus (ii) the aggregate principal amount of Notes voluntarily converted into Conversion Consideration pursuant to Section 4 of each applicable Note, in each case subject to the terms of the Intercreditor Agreement.

Specified ABL Events of Default

1. The Company's failure to (a) comply, as of November 30, 2022, December 31, 2022 and January 31, 2023, with Section 7(w) of the Notes by maintaining, as required under clause (n) of the definition of Permitted Indebtedness in the Notes, Indebtedness in favor of the ABL Lenders arising under the ABL Debt Documents less than the sum of (i) \$6,000,000 plus (ii) the aggregate principal amount of Notes voluntarily converted into Conversion Consideration pursuant to Section 4 of each applicable Note, in each case subject to the terms of the Intercreditor Agreement, and (b) timely pay the November 2022 Excess ABL Fee, December 2022 Excess ABL Fee and January 2023 Excess ABL Fee as required under Section 12(g) of the Notes.
-

LIMITED WAIVER

THIS LIMITED WAIVER (this “**Waiver**”) is dated and effective as of April 11, 2023 between REED’S, INC., a Delaware corporation (the “**Company**”), the Holders party hereto, and WILMINGTON SAVINGS FUND SOCIETY, FSB, as Holder Representative and Collateral Agent (the “**Agent**”).

WHEREAS, on February 10, 2023, the Company, the Holders and the Agent entered into a Limited Waiver and Deferral Agreement (the “**Limited Waiver Agreement**”), pursuant to which the parties agreed to waive certain provisions of the Notes upon the occurrence of certain Fundamental Changes on or prior to April 1, 2023.

WHEREAS, on February 16, 2023, a Fundamental Change constituting a Make-Whole Fundamental Change occurred as a result of the delisting of the Common Stock (the “**Delisting**”).

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto, intending to be legally bound hereby, agree as follows:

1. Incorporation of Terms. All capitalized terms not otherwise defined herein shall have the same meaning as in the 10% Secured Convertible Notes dated May 9, 2022, as amended (each, a “**Note**”, and collectively, the “**Notes**”), issued by the Company pursuant to that certain Note Purchase Agreement, dated as of May 9, 2022, as amended (the “**Note Purchase Agreement**”), between the Company, the Holder Representative and each purchaser on the schedule of purchasers thereto.

2. Representations and Warranties. The Company hereby represents and warrants that after giving effect to this Waiver, all representations and warranties contained in the Notes are true and correct, in all material respects, on and as of the date hereof, except (a) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (b) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects.

3. Waivers.

(a) Subject to the satisfaction of the conditions precedent set forth in Section 5 of this Waiver, Agent (as directed by all Holders below) and the Holders party hereto hereby temporarily waive the Specified Events of Default (as listed on Annex A hereto) through and including the date hereof.

(b) Subject to the satisfaction of the conditions precedent set forth in Section 5 of this Waiver, Agent (as directed by all Holders below) and the Holders party hereto hereby waive any requirement pursuant to Section 6 of the Notes that the Company conduct a repurchase of Notes as a result of the Delisting prior to May 1, 2023, provided, that, for all purposes under the Notes, the Company shall treat the Delisting, and the resulting Fundamental Change and Make-Whole Fundamental Change, as if they occurred and became effective on and as of May 1, 2023.

(c) This Section 3 shall be effective only to the extent specifically set forth herein and shall not be construed as a consent to or waiver of any breach or Default other than as specifically waived herein and shall not (i) affect the right of Agent or any of the Holders to demand strict compliance by Company with all terms and conditions of the Notes, except as specifically consented to, modified or waived by the terms hereof, (ii) be deemed a consent to or waiver of any future transaction or action on the part of any Note Party requiring the Holders’ or the Majority Holders’ consent or approval under the Notes, or (iii) diminish, prejudice or waive any of Agent’s or any Holders’ rights and remedies under the Notes or applicable law, whether arising as a consequence of any Event of Default which may now exist or otherwise, and Agent and each of the Holders hereby reserve all of such rights and remedies. For the avoidance of doubt and notwithstanding anything herein to the contrary, to the extent any provision of the Notes is qualified by, or requires the absence of, any Default or Event of Default, a Default or Event of Default shall be deemed to **not** have occurred for purposes of such provisions.

4. Releases.

(a) The Company, on behalf of itself and each of the Note Parties (and on behalf of each Affiliate thereof) and for itself and for its successors in title and assignees and, to the extent the same is claimed by right of, through or under any of the Note Parties, for its past, present and future employees, agents, representatives (other than legal representatives), officers, directors, shareholders, and trustees (each, a “**Releasing Party**” and collectively, the “**Releasing Parties**”), does hereby remise, release and discharge, and shall be deemed to have forever remised, released and discharged, the Agent, and each of the Holders in their respective capacities as such under the Note Documents, and the Agent’s and each Holder’s respective successors-in-title, legal representatives and assignees, past, present and future officers, directors, affiliates, shareholders, trustees, agents, employees, consultants, experts, advisors, attorneys and other professionals and all other persons and entities to whom the Agent and each of the Holders or any of their respective successors-in-title, legal representatives and assignees, past, present and future officers, directors, affiliates, shareholders, trustees, agents, employees, consultants, experts, advisors, attorneys and other professionals would be liable if such persons or entities were found to be liable to any Releasing Party or any of them (collectively, hereinafter the “**Releasees**”), from any and all manner of action and actions, cause and causes of action, claims, charges, demands, counterclaims, crossclaims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, rights of setoff and recoupment, controversies, damages, judgments, expenses, executions, liens, claims of liens, claims of costs, penalties, attorneys’ fees, or any other compensation, recovery or relief on account of any liability, obligation, demand or cause of action of whatever nature, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, joint and/or several, secured or unsecured, due or not due, primary or secondary, liquidated or unliquidated, contractual or tortious, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Releasees, and which are, in each case, based on any act, fact, event or omission or other matter, cause or thing occurring at any time prior to or on the date hereof in any way, directly or indirectly arising out of, connected with or relating to the Notes or any other Note Document and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing (each, a “**Claim**” and collectively, the “**Claims**”); provided, that, no Releasing Party shall have any obligation with respect to Claims to the extent such Claims are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of any Releasee. Each Releasing Party further stipulates and agrees with respect to all Claims, that it hereby waives, to the fullest extent permitted by applicable law, any and all provisions, rights, and benefits conferred by any applicable U.S. federal or state law, or any principle of common law, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 6.

(b) The Company, on behalf of each Note Party, itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by any Note Party pursuant to Section 6(a) of this Waiver. If any Note Party or any of its successors, assigns or other legal representatives violates the foregoing covenant, the Note Parties, each for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys’ fees and costs incurred by any Releasee as a result of such violation.

5. Conditions to Effectiveness. This Waiver shall not be effective until each of the following conditions precedent has been fulfilled to the satisfaction of the Agent (at the direction of all Holders):

(a) This Waiver shall have been duly executed and delivered by the Company, the Agent, and the Majority Holders, and the Agent shall have received evidence thereof.

(b) After giving effect to this Waiver, no Default or Event of Default shall have occurred and be continuing.

(c) The Company shall have paid the outstanding fees and expenses of King & Spalding LLP, counsel to the Holders, and the fees and expenses of Agent through the date hereof.

6. Binding Effect. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, representatives, successors and assigns.

7. Reaffirmation of Obligations. The Company hereby ratifies the Note Documents and acknowledges and reaffirms (a) that it is bound by all terms of the Note Documents applicable to it and (b) that it is responsible for the observance and full performance of its respective Obligations.

8. Note Document. This Waiver shall constitute a Note Document under the terms of each Note.

9. Multiple Counterparts. This Waiver may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Waiver by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Waiver.

10. Governing Law. THIS WAIVER AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE BASED UPON, ARISING OUT OF OR RELATING TO THIS WAIVER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

11. Consent to Jurisdiction; Service of Process; Agreement of Jury Trial. The jurisdiction, service of process and waiver of jury trial provisions set forth in subsections 13(h) and 13(i) of the Notes are hereby incorporated by reference.

12. Agent Authorization. Each of the undersigned Holders hereby authorizes and directs Agent to execute and deliver this Waiver on its behalf and, by its execution below, each of the undersigned Holders agrees to be bound by the terms and conditions of this Waiver. In executing this Waiver, the Agent shall be entitled to all of the rights, benefits, protections, indemnities and immunities afforded to it pursuant to the Note Documents.

[Signature page follows]

IN WITNESS WHEREOF, this Limited Waiver has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

DocuSigned by:
Norman E. Snyder, Jr.
8193D3889B2143B

By: _____
Name: Norman E. Snyder, Jr.
Title: CEO

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Holder Representative

By: _____
Name: _____
Title: _____

HOLDERS:

Whitebox Multi-Strategy Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox Relative Value Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Collateral Agent

By: _____
Name: _____
Title: _____

[Signature Page to Limited Waiver]

IN WITNESS WHEREOF, this Limited Waiver has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: _____
Title: _____

HOLDERS:

Whitebox Multi-Strategy Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox Relative Value Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By: _____
Name: Jacob Mercer
Title: Authorized Signatory

HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Holder Representative

By: 
Name: Raye Goldsborough
Title: Vice President

COLLATERAL AGENT:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Collateral Agent

By: 
Name: Raye Goldsborough
Title: Vice President

[Signature Page to Limited Waiver]

IN WITNESS WHEREOF, this Limited Waiver has been duly executed and delivered by each of the parties hereto as of the date first above written.

COMPANY:

Reed's, Inc.

By: _____
Name: _____
Title: _____


HOLDER REPRESENTATIVE:

Wilmington Savings Fund Society, FSB, solely in its capacity as the Holder Representative

By: _____
Name: _____
Title: _____

HOLDERS:

Whitebox Multi-Strategy Partners, LP


By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

COLLATERAL AGENT:


Wilmington Savings Fund Society, FSB, solely in its capacity as the Collateral Agent

By: _____
Name: _____
Title: _____


Whitebox Relative Value Partners, LP

By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

Pandora Select Partners, LP

By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

Whitebox GT Fund, LP

By:  _____
Name: Jacob Mercer
Title: Authorized Signatory

[Signature Page to Limited Waiver]

Specified Events of Default

1. The Company's failure to comply with Section 4(f) of the Notes on or prior to the date hereof.
-

Subsidiaries of Reed's, Inc.

None.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 pertaining to Reed's, Inc. 2020 Equity Incentive Plan, as amended December 30, 2021, of our report dated May 15, 2023, relating to the financial statements of Reed's, Inc. as of December 31, 2022 and 2021, (which report includes an explanatory paragraph regarding the Company's ability to continue as a going concern), which appear in Reed's, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission on May 15, 2023

/s/Weinberg & Company, P.A.
Los Angeles, California
May 15, 2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Norman E. Snyder, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of Reed's, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2023

/s/ Norman E. Snyder, Jr.

Norman E. Snyder, Jr.
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Joann Tinnelly, certify that:

1. I have reviewed this Annual Report on Form 10-K of Reed's, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2023

/s/ Joann Tinnelly

Joann Tinnelly
Interim Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Reed's, Inc., a Delaware corporation (the "Company") for the year ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Norman E. Snyder, Jr., Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

REED'S, INC.

Date: May 15, 2023

By: Norman E. Snyder, Jr.
Norman E. Snyder, Jr.
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Reed's, Inc., a Delaware corporation (the "Company") for the year ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Joann Tinnelly, Interim Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of her knowledge and belief:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

REED'S, INC.

Date: May 15, 2023

By: */s/ Joann Tinnelly*

Joann Tinnelly
Interim Chief Financial Officer
(Principal Financial Officer)
