

BUSINESS COMBINATION AGREEMENT

B E T W E E N

DUCKHORN VENTURES LTD.

and

2374154 ALBERTA LTD.

and

HELIUM EVOLUTION INCORPORATED

MADE AS OF SEPTEMBER 19, 2021

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BUSINESS COMBINATION AGREEMENT

THIS AGREEMENT is made as of September 19, 2021,

AMONG:

DUCKHORN VENTURES LTD., a corporation existing under the laws of the Province of British Columbia,

(hereinafter called "**Duckhorn**"),

- and -

2374154 ALBERTA LTD., a corporation incorporated under the laws of the Province of Alberta,

(hereinafter called "**Subco**"),

- and -

HELIUM EVOLUTION INCORPORATED a corporation incorporated under the laws of the Province of Alberta,

(hereinafter called "**HEI**"),

WHEREAS Duckhorn is a reporting issuer in the provinces of British Columbia and Alberta;

AND WHEREAS HEI is engaged in the HEI Business (as hereinafter defined);

AND WHEREAS Duckhorn desires to acquire all of the issued and outstanding shares in the capital of HEI by means of a three-cornered amalgamation among Duckhorn, HEI and Subco;

NOW THEREFORE in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 **INTERPRETATION**

1.01 **Defined Terms**

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

"**ABCA**" means the Business Corporations Act (Alberta), as amended;

"**Accredited Investor**" means an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the U.S. Securities Act;

“Affiliate” of any person means, at the time such determination is being made, any other person who has control or who is controlled by or under common control with such first person, where **“control”** means the possession, directly or indirectly, of the power to direct the management and policies of a person through the legal or beneficial ownership of voting securities, the right to appoint directors or management, by contract, voting trust, or otherwise; and the terms **“controlling”** and **“controlled”** have meanings correlative to the foregoing;

“Agreement” means this agreement, including its recitals and schedules, as amended from time to time;

“Amalco” has the meaning set forth in Section 2.01(e);

“Amalco Shares” means common shares in the capital of Amalco;

“Amalgamation” means the amalgamation of HEI and Subco pursuant to section 181 of the ABCA as contemplated by this Agreement;

“Amalgamation Agreement” means the amalgamation agreement in substantially the form attached hereto as Schedule A to be entered into between HEI and Subco pursuant to section 182 of the ABCA to effect the Amalgamation;

“Articles of Amalgamation” means the articles of Amalgamation to be filed with the Registrar, in the form agreed to between Duckhorn and HEI, each acting reasonably;

“Assets” means the assets, undertaking, property and rights of a party to this Agreement (the **“Applicable Party”**) and the Applicable Party’s Subsidiaries, of every kind and description and wheresoever situated, including the Contracts to which the Applicable Party or any of the Applicable Party’s Subsidiaries is a party or has rights or obligations under and all other assets and property that the Applicable Party and the Applicable Party’s Subsidiaries purport to own and all assets and property reflected as being owned by the Applicable Party and the Applicable Party’s Subsidiaries in their respective financial books and records and includes, in the case of HEI, the HEI Property;

“Authorization” means any order, permit, approval, consent, waiver, license, certificates, registrations or similar authorization of any Governmental Authority having jurisdiction;

“Axis Loan” means the \$50,000 loan made to Duckhorn by Axis Capital Ventures Corp. and evidenced by the Axis Promissory Note;

“Axis Promissory Note” means the promissory note evidencing the Axis Loan dated September 1, 2021;

“BCBCA” means the *Business Corporations Act* (British Columbia), as amended;

“Board Change” means the changes to the board of directors of the Resulting Issuer as set out in Section 6.09;

“Business Combination” means the business combination among Duckhorn, Subco and HEI pursuant to which HEI Shareholders will receive Duckhorn Shares on the basis of one Duckhorn Shares for each HEI Share held and Duckhorn will become the parent company of Amalco;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in Calgary, Alberta or Kelowna, British Columbia;

“Canadian Jurisdictions” means each of the provinces of British Columbia and Alberta;

“Canadian Securities Laws” means all applicable securities Laws in each of the Canadian Jurisdictions and the respective rules and regulations made thereunder, together with applicable published policy statements, instruments, orders and rulings of the securities regulatory authorities in such provinces having the force of law;

“Certificate of Continuance” means the certificate of continuance to be issued by the Registrar to Duckhorn pursuant to subsection 188(4) of the ABCA giving effect to the Continuance;

“Closing” has the meaning set forth in Section 8.01(e);

“Compelled Disclosure” has the meaning set forth in Section 6.03(d)(ii);

“Confidential Information” has the meaning set forth in Section 6.03(a);

“Constating Documents” means, in respect of a body corporate, the notice of articles, articles, by-laws, or other charter documents, together with any amendments thereto or replacements thereof;

“Contaminants” means any radioactive materials, asbestos materials, urea formaldehyde, hydrocarbon contaminants, underground or above-ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance, the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release into the environment of which is prohibited, controlled, or regulated under Environmental Laws;

“Continuance” means the continuance of Duckhorn from the BCBCA to the ABCA;

“Contract” means any agreement, contract, licence, undertaking, option, engagement, or commitment of any nature, written or oral, including any: (i) lease of personal property; (ii) unfilled purchase order; (iii) forward commitment for supplies or materials or other forward contract; (iv) derivative contract; and (v) restrictive agreement or negative covenant agreement;

“Disclosing Party” has the meaning set forth in Section 6.03(a);

“Dissent Rights” mean the rights of the HEI Dissenting Shareholders to dissent under section 191 of the ABCA with respect to the Amalgamation and the rights of Duckhorn Dissenting Shareholders to dissent under Division 2 of Part 8 of the BCBCA with respect to the Continuance, as applicable;

“Duckhorn” means Duckhorn Ventures Ltd., a corporation incorporated under the BCBCA;

“Duckhorn Alternative Transaction” has the meaning set forth in Section 6.08(b);

“Duckhorn Alternative Transaction Agreement” has the meaning set forth in Section 6.08(b);

“Duckhorn Business” means the management of an investment portfolio and the investigation and evaluation of business opportunities to either acquire or in which to participate;

“Duckhorn Disclosure Letter” means the disclosure letter dated and delivered to HEI on the date hereof;

“Duckhorn Dissent Procedures” means the dissent procedures provided to Duckhorn Shareholders pursuant to Division 2 of Part 8 of the BCBCA;

“Duckhorn Dissenting Shareholder” means a registered Duckhorn Shareholder who dissents in respect of the Continuance in strict compliance with the Duckhorn Dissent Procedures;

“Duckhorn Financial Statements” means the audited financial statements for the year ended December 31, 2020 together with the unaudited financial statements of Duckhorn for the six-month period ending June 30, 2021;

“Duckhorn Material Adverse Effect” means a material adverse effect on (i) the business, assets, liabilities, condition (financial or otherwise), management, results of operations or shareholders’ equity of Duckhorn, (ii) the ability of Subco to complete the Amalgamation, or (iii) the ability of Duckhorn to complete the Amalgamation and the Business Combination; provided, however, that this will not include any fact, circumstance, event, change, effect, or occurrence: (A) relating to the global economy or securities markets in general; (B) affecting the helium industry in general, including the promulgation of laws or regulations affecting businesses in the helium industry, and which does not have a materially disproportionate effect on Duckhorn; (C) changes in general economic conditions in Canada or any country or region in the world, or changes in conditions in the global economy generally (to the extent that such effect has not had a disproportionate effect on Duckhorn relative to other companies in the industries in which it carries on business); (D) changes in conditions in the financial markets, credit markets or capital markets in Canada or any other country or region in the world; (E) changes in political conditions in Canada or any other country or region in the world (to the extent that such effect has not had a disproportionate effect on Duckhorn relative to other companies in the industries in which it carries on business); (F) acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism) in Canada or any other country or region in the world (to the extent that such effect has not had a disproportionate effect on Duckhorn relative to other companies in the industries in which it carries on business); (G) pandemics or earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters or weather conditions in Canada or any other country or region in the world (to the extent that such effect has not had a disproportionate effect on Duckhorn relative to other companies in the industries in which it carries on business); (H) the announcement of this Agreement or the pendency of consummation of the transactions contemplated hereby; (I) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement or the failure to take any action prohibited by this Agreement; (J) any actions or failure to take action, in each case, to which HEI has in writing expressly approved, consented to or requested; or (K) changes in law or other legal or regulatory conditions (or the interpretation thereof) (to the extent that such effect has not had a

disproportionate effect on Duckhorn relative to other companies in the industries in which it carries on business);

“Duckhorn Material Contracts” means (i) every Contract to which Duckhorn is a party requiring payment by or to Duckhorn of an amount in any one year in excess of an aggregate of \$25,000; (ii) every Contract to which Duckhorn is a party that has or would reasonably be expected to have any material direct or indirect effect (by license, assignment or otherwise) on the Assets or the Duckhorn Business; and (iii) every Contract to which Duckhorn is a party with any directors, officers, shareholders, consultants or key employees of Duckhorn, but excluding employment Contracts;

“Duckhorn Meeting” means the annual and special meeting of the shareholders of Duckhorn to be held to approve, among other things, the Continuance and any and all adjournments or postponements of such meeting;

“Duckhorn Ordinary Course” means, with respect to any actions taken by Duckhorn, that such action is consistent in carrying out the Duckhorn Business;

“Duckhorn Owned Intellectual Property” has the meaning set forth in Section 4.18(c);

“Duckhorn Plan” means the stock option plan for the directors, officers, employees and consultants of Duckhorn in effect on the date hereof;

“Duckhorn Shareholder Approval” has the meaning set forth in Section 6.06(c);

“Duckhorn Shares” means common shares in the capital of Duckhorn;

“Duckhorn Supporting Shareholders” means, collectively, each of the directors and officers of Duckhorn and each shareholder of Duckhorn holding greater than 10% of the issued and outstanding Duckhorn Shares as of the date hereof;

“Duckhorn Termination” has the meaning set forth in Section 6.08(b);

“Duckhorn Voting Agreements” means the voting agreements (including all amendments thereto) between HEI and the Duckhorn Supporting Shareholders setting forth the terms and conditions upon which they have agreed, among other things, to vote their Duckhorn Shares in favour of the Continuance and the board nominees at the Duckhorn Meeting;

“Effective Date” means the effective date set forth in the certificate of amalgamation issued pursuant to the ABCA in respect of the Amalgamation;

“Effective Time” means the earliest moment on the Effective Date;

“Employee Plans” means, with respect to an Applicable Party, all employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, retirement, stock option, stock purchase, stock appreciation, stock award, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers, or employees of the Applicable Party and its Subsidiaries, maintained, funded or sponsored or required to be

contributed to by the Applicable Party or a Subsidiary thereof, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered, under which the Applicable Party or a Subsidiary thereof may have or would be reasonably expected to have any material Liability, contingent or otherwise, except for any statutory plans to which the Applicable Party or any of its Subsidiaries is obliged to contribute or comply with including the Canada/Québec Pension Plan, or plans administered pursuant to applicable federal or provincial health, worker's compensation or employment insurance legislation;

"Encumbrance" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that, in substance secures payment or performance of an obligation;

"Environmental Laws" means any federal, state, provincial, territorial or local law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the regulation, protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, control, storage, disposal, transportation, other handling or release or threatened release of Contaminants;

"Exchange Ratio" means one Duckhorn Share to be issued by Duckhorn in exchange for each HEI Share pursuant to the Amalgamation;

"Good Oil and Gas Practice" means, in relation to any decision or undertaking, the exercise of that degree of diligence, skill, care, prudence and oversight which is commonly observed or would be reasonably expected to be observed by skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances;

"Governmental Authority" means (i) any international, multinational, national, federal, provincial, state, municipal, local or other government or governmental or public ministry, department, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; (iii) any quasi-governmental body exercising any regulatory, expropriation or taxing authority; or (iv) any stock exchange or securities market;

"Governmental Charges" means all Taxes, customs, duties, rates, levies, assessments, reassessments and other charges, unemployment insurance contributions, pension plan contributions and any deductions or other amounts which it is required by Law or Contract to pay, deduct, withhold, collect or remit to any Governmental Authority or other entities entitled to receive payment of such amounts, together with all penalties, interest and fines with respect thereto, payable to any Governmental Authority;

"HEI" means Helium Evolution Incorporated, a corporation incorporated under the ABCA;

"HEI Alternative Transaction" has the meaning set forth in Section 6.07(b);

"HEI Alternative Transaction Agreement" has the meaning set forth in Section 6.07(b);

“HEI Business” means the business of identifying, acquiring and exploiting helium properties, conducted by HEI as of the date hereof;

“HEI Concurrent Financing” means the private placement financing of HEI Subscription Receipts at a minimum offering price of \$0.30 per subscription receipt;

“HEI Disclosure Letter” means the disclosure letter dated and delivered to Duckhorn on the date hereof;

“HEI Dissent Procedures” means the dissent procedures provided to HEI Shareholders pursuant to Section 191 of the ABCA;

“HEI Dissenting Shareholder” means a registered HEI Shareholder who dissents in respect of the Amalgamation in strict compliance with the HEI Dissent Procedures;

“HEI Financial Statements” means the draft financial statements of HEI for the period ended August 31, 2021;

“HEI Material Adverse Effect” means a material adverse effect on (i) the business, assets, liabilities, condition (financial or otherwise), management, results of operations or shareholders’ equity of HEI, or (ii) the ability of HEI to complete the Business Combination and the Amalgamation; provided, however, that this will not include any fact, circumstance, event, change, effect, or occurrence: (A) relating to the global economy or securities markets in general; (B) affecting the helium industry in general, including the promulgation of laws or regulations affecting businesses in the mining industry, and which does not have a materially disproportionate effect on HEI; (C) changes in general economic conditions in Canada or any country or region in the world, or changes in conditions in the global economy generally (to the extent that such effect has not had a disproportionate effect on HEI relative to other companies in the industries in which it carries on business); (D) changes in conditions in the financial markets, credit markets or capital markets in Canada or any other country or region in the world; (E) changes in political conditions in Canada or any other country or region in the world (to the extent that such effect has not had a disproportionate impact on HEI relative to other companies in the industries in which HEI carries on business); (F) acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism) in Canada or any other country or region in the world (to the extent such effect has not had a disproportionate impact on HEI relative to other companies in the industries in which HEI carries on business); (G) pandemics or earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters or weather conditions in Canada or any other country or region in the world (to the extent such effect has not had a disproportionate impact on HEI relative to other companies in the industries in which HEI carries on business); (H) the announcement of this Agreement or the pendency of consummation of the transactions contemplated hereby; (I) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement or the failure to take any action prohibited by this Agreement; (J) any actions or failure to take action, in each case, to which Duckhorn has in writing expressly approved, consented to or requested; or (K) changes in law or other legal or regulatory conditions (or the interpretation thereof) (to the extent such change has not had a disproportionate impact on HEI relative to other companies in the industries in which HEI carries on business);

"HEI Material Contracts" means (i) every Contract to which HEI is a party requiring payment by or to HEI of an amount in any one year in excess of an aggregate of \$100,000; (ii) every Contract to which HEI is a party that has or would reasonably be expected to have any material direct or indirect effect (by license, assignment or otherwise) on the Assets or the HEI Business; and (iii) every Contract to which HEI is a party with any directors, officers, shareholders, consultants or key employees of HEI, but excluding employment Contracts;

"HEI Meeting" means the annual and special meeting of the shareholders of HEI to be held to approve, among other things, the Amalgamation and any and all adjournments or postponements of such meeting;

"HEI Option" means an option to purchase a HEI Share;

"HEI Ordinary Course" means, with respect to any actions taken by HEI, that such action is consistent in carrying out the HEI Business;

"HEI Other Shares" means the Class "B" common shares, Class "C" common shares, Class "D" common shares, Class "E" common shares, Class "F" common shares, Class "G" common shares, Class "H" common shares, Class "I" common shares, Class "J" common shares, Class "K" common shares, Class "L" common shares, Class "M" common shares, Class "N" common shares, Class "O" common shares, Class "P" preferred shares, Class "Q" preferred shares, Class "R" preferred shares, Class "S" preferred shares, Class "T" preferred shares, Class "U" preferred shares, Class "V" preferred shares, Class "W" preferred shares, Class "X" preferred shares and Class "Y" preferred shares in the capital of HEI;

"HEI Plan" means the stock option plan for the directors, officers, employees and consultants of HEI in effect on the date hereof;

"HEI Property" means the permits described in Schedule 1.01 of the HEI Disclosure Letter;

"HEI Shareholder Approval" has the meaning set forth in Section 6.05(c);

"HEI Shares" means the Class "A" common shares in the capital of HEI;

"HEI Subscription Receipts" means the subscription receipts of HEI issued pursuant to the HEI Concurrent Financing;

"HEI Supporting Shareholders" means, collectively, each of the directors and officers of HEI and each shareholder of HEI holding greater than 10% of the issued and outstanding HEI Shares as of the date hereof;

"HEI Termination" has the meaning set forth in Section 6.07(b);

"HEI Voting Agreements" means the voting agreements (including all amendments thereto) between Duckhorn and the HEI Supporting Shareholders setting forth the terms and conditions upon which they have agreed, among other things, to vote their HEI Shares in favour of the Amalgamation at the HEI Meeting;

"HEI Warrant" means a warrant to acquire an HEI Share;

"IFRS" means International Financial Reporting Standards as issued by the International Accounting Standards Board and as adopted by the Canadian Institute of Chartered Accountants;

"Intellectual Property" has the meaning set forth in Section 3.17(a);

"Joint Information Circular" means the joint management information circular of Duckhorn and HEI to be provided to the Duckhorn Shareholders and HEI Shareholders in respect of the Amalgamation, the Continuance and the other matters to be considered at the Duckhorn Meeting and the HEI Meeting, as applicable;

"knowledge of Duckhorn" means the actual knowledge of the Chief Executive Officer or the Chief Financial Officer of Duckhorn, after reasonable inquiry;

"knowledge of HEI" means the actual knowledge of the Chief Executive Officer or the Chief Financial Officer of HEI, after reasonable inquiry;

"Laws" means all laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, instruments, policies, notices, directions and judgments or other requirements having the force of law of any Governmental Authority having jurisdiction over the matter and/or person then being referred to;

"Letter of Intent" means the letter of intent between Duckhorn and HEI with respect to, among other things, the Business Combination, dated August 24, 2021, as amended from time to time;

"Liability" of any person means (i) any right against such person to payment, whether or not such right is reduced to judgment, and whether or not the amount is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; (ii) any right against such person to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to any equitable remedy is reduced to judgment, and whether or not the amount is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured; and (iii) any obligation of such person for the performance of any covenant or agreement (whether for the payment of money or otherwise);

"Losses", in respect of any matter, means all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter;

"Minimum Offering" means aggregate gross proceeds of \$8,500,000 to be raised by HEI pursuant to the HEI Concurrent Financing;

"Name Change" means the change of Duckhorn's name to "Helium Evolution Incorporated", or such other name as is acceptable to HEI and Duckhorn;

"Offer" has the meaning set forth in Section 6.07(b);

"Outside Date" has the meaning set forth in Section 8.01(e);

"Owned Intellectual Property" has the meaning set forth in Section 3.17(c);

“Permitted Encumbrances” means (i) Encumbrances for Taxes not yet due and delinquent; (ii) inchoate or statutory Encumbrances of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others in respect of the construction, maintenance, repair or operation of the Assets, provided that such Encumbrances are related to obligations not due or delinquent and in respect of which adequate holdbacks are being maintained as required by Law; and (iii) the right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of the applicable entity, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition of their continuance;

“Person” means any (i) corporation, partnership, limited liability company or partnership, joint venture, trust, unincorporated association or organization, business, enterprise or other entity; (ii) any individual; and (iii) any Governmental Authority;

“Public Record” means all information filed or to be filed by or on behalf of Duckhorn prior to the earlier of the Effective Date or the termination of this Agreement with any securities commission or regulatory authority in compliance, or intended compliance, with the continuous disclosure obligations applicable to a reporting issuer under applicable Laws;

“Recipient” has the meaning set forth in Section 6.03(a);

“Registrar” means the Registrar appointed under the ABCA;

“Regulation D” means Regulation D adopted by the United States Securities and Exchange Commission under the U.S. Securities Act;

“Regulation S” means Regulation S adopted by the United States Securities and Exchange Commission under the U.S. Securities Act;

“Replacement Options” means the options to purchase Resulting Issuer Shares to be issued by the Resulting Issuer in exchange for the HEI Options issued and outstanding upon the completion of the Business Combination in accordance with this Agreement;

“Replacement Warrants” means the warrants to purchase Resulting Issuer Shares to be issued by the Resulting Issuer in exchange for the HEI Warrants issued and outstanding upon the completion of the Business Combination in accordance with this Agreement;

“Representatives” has the meaning set forth in Section 6.03(a);

“Resulting Issuer” means Duckhorn at the Effective Date, which, following completion of the Transactions, will be named “Helium Evolution Incorporated” or such other name as agreed upon by HEI and Duckhorn;

“Resulting Issuer Shares” means common shares in the capital of the Resulting Issuer;

“Subco” means 2374154 Alberta Ltd., a corporation incorporated under the ABCA and a wholly-owned subsidiary of Duckhorn;

“Subco Common Shares” means the common shares in the capital of Subco;

“Subsidiary” means, with respect to a specified body corporate, any body corporate of which the specified body corporate is entitled to elect a majority of the directors thereof or over which the specified body corporate holds more than 50% of the votes for the directors thereof and will include any body corporate, partnership, joint venture or other person (other than an individual) over which such specified body corporate exercises direction or control or which is in a like relation to such a body corporate;

“Tax” or “Taxes” means, in relation to any person, any and all taxes, whether or not referred to as taxes, (including any and all fines, interest and penalties in respect thereof) of any nature imposed, levied, withheld or assessed on or with respect to the income, profits, gross receipts, sales, capital, assets, real property, personal property, production, employees, payroll, benefit payments, purchases, payments, receipts or gains of such person (including, without limitation, any federal or state income, franchise or sales taxes, corporation capital tax, customs or excise duties or municipal license fees, withholding tax and any taxes and other deductions required to be paid or withheld from any payment made to any person) by Canada or any province thereof, the United States of America or any political subdivision or taxing authority thereof or therein, or by any other country or any political subdivision or taxing authority thereof or therein;

“Tax Act” means the *Income Tax Act* (Canada), as amended, and all regulations thereunder;

“Tax Returns” means all returns, declarations, reports, information returns and statements filed or required to be filed by any taxing authority relating to Taxes;

“TSXV” means the TSX Venture Exchange;

“Transactions” means the transactions contemplated by, or in relation to, this Agreement including the HEI Concurrent Financing, the Amalgamation, the Name Change, the Continuance, the Business Combination and the listing of the Resulting Issuer Shares on the TSXV;

“United States” means the United States of America, its territories and possessions, any state of the United States and the District of Columbia;

“U.S. Person” means a “U.S. person” as defined in Regulation S under the U.S. Securities Act; and

“U.S. Securities Act” means the United States Securities Act of 1933, as amended.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

1.03 **Extended Meanings**

In this Agreement, words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals,

corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term “including” means “including without limiting the generality of the foregoing”.

1.04 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 **Accounting Principles**

Wherever in this Agreement reference is made to a calculation to be made or an action to be taken in accordance with generally accepted accounting principles, such reference will be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation or action is made or taken or required to be made or taken.

1.06 **Currency**

All references to currency herein are to lawful money of Canada.

1.07 **Schedules**

The following are the Schedules to this Agreement:

Schedule A - Amalgamation Agreement

ARTICLE 2
BUSINESS COMBINATION

2.01 **Business Combination**

(a) Duckhorn and HEI agree to effect the combination of their respective businesses and assets by way of a “three-cornered amalgamation” among Duckhorn, Subco and HEI.

(b) As soon as reasonably practicable following the execution and delivery of this Agreement Duckhorn and HEI shall call and hold the Duckhorn Meeting and the HEI Meeting, respectively, for the purpose of, among other things, approving the Continuance and the Amalgamation, as applicable, and shall prepare and mail the Information Circular to the Duckhorn Shareholders and the HEI Shareholders.

(c) As soon as reasonably practicable following the approval of the Amalgamation by the HEI Shareholders at the HEI Meeting, Duckhorn shall pass a special resolution, as sole shareholder of Subco, approving the Amalgamation.

(d) Immediately prior to the Effective Time, Duckhorn shall complete and file Notice of Alteration, in the prescribed form, giving effect to the Name Change subject to the terms of this Agreement and shall, subject to TSXV approval, reserve the ticker symbol “HEVI”.

(e) Immediately prior to the Effective Time, Duckhorn shall complete the Continuance and shall use its best efforts to cause the Registrar to issue the Certificate of Continuance.

(f) Upon the approval of the Amalgamation by the HEI Shareholders, HEI and Subco will amalgamate, pursuant to the provisions of the ABCA, by jointly completing and filing Articles of Amalgamation with the Registrar, and shall continue as one corporation ("**Amalco**") effective at the Effective Time, giving effect to the Amalgamation subject to the terms of the Amalgamation Agreement, the form of which is set forth in Schedule A attached hereto.

(g) At the Effective Time and as a result of the Amalgamation:

- (i) each holder of HEI Shares (other than HEI Dissenting Shareholders described in Section 2.01(i)) shall receive one fully paid and non-assessable Duckhorn Share for each HEI Share held, following which all such HEI Shares shall be cancelled;
- (ii) Duckhorn shall receive one fully paid and non-assessable Amalco Share for each one Subco Share held by Duckhorn, following which all such Subco Shares shall be cancelled;
- (iii) in consideration of the issuance of Duckhorn Shares pursuant to paragraph 2.01(g)(i), Amalco shall issue to Duckhorn one Amalco Share for each Duckhorn Share so issued;
- (iv) Duckhorn shall add to the stated capital maintained in respect of the Duckhorn Shares an amount equal to the aggregate paid-up capital for purposes of the Tax Act of the HEI Shares immediately prior to the Effective Time (less the paid-up capital of any HEI Shares held by HEI Dissenting Shareholders who do not exchange their HEI Shares for Duckhorn Shares on the Amalgamation);
- (v) Amalco shall add to the stated capital maintained in respect of the Amalco Shares an amount such that the stated capital of the Amalco Shares shall be equal to the aggregate paid-up capital for purposes of the Tax Act of the Duckhorn Shares and HEI Shares immediately prior to the Effective Time;
- (vi) no fractional Duckhorn Shares shall be issued upon the exchange of HEI Shares; the number of Duckhorn Shares to be received by a holder of HEI Shares will be (A) rounded up to the nearest whole Duckhorn Share, in the event that the former holder of HEI Shares is entitled to receive a fractional share representing 0.5 or more of a Duckhorn Share, and (B) be rounded down to the nearest whole Duckhorn Share, in the event that the former holder of HEI Shares is entitled to receive a fractional share representing less than 0.5 of a Duckhorn Share;
- (vii) Duckhorn shall be entitled to deduct and withhold from any consideration otherwise payable pursuant to the transactions contemplated by this Agreement to any holder of HEI Shares such amounts as Duckhorn and HEI agree are required or permitted to be deducted and withheld with respect to such payment under the Tax Act or any provision of provincial, state, local or foreign tax law, in each case as amended; to the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder

of the HEI Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority; and

(viii) Amalco will become a wholly-owned subsidiary of Duckhorn.

(h) At the Effective Time:

(i) the registered holders of HEI Shares shall become the registered holders of the Duckhorn Shares to which they are entitled, calculated in accordance with the provisions hereof, and shall receive as soon as reasonably practicable following the Effective Time share certificates (or other evidence of ownership) representing the number of Duckhorn Shares to which they are so entitled; and

(ii) Duckhorn shall become the registered holder of the Amalco Shares to which it is entitled, calculated in accordance with the provisions hereof, and shall be entitled to receive a share certificate representing the number of Amalco Shares to which it is entitled, calculated in accordance with the provisions hereof.

(i) At the Effective Time, each HEI Share held by a HEI Dissenting Shareholder shall be deemed to be transferred by the holder thereof, without any further act or formality on its part, free and clear of any Encumbrance, to Amalco and Amalco shall thereupon be obliged to pay the amount therefor determined and payable in accordance with Section 2.03 hereof, the name of such holder shall be removed from the central securities register as a holder of HEI Shares and such HEI Dissenting Shareholder will cease to have any rights as a HEI Shareholder other than the right to be paid the fair value of its HEI Shares in accordance with Section 2.03.

(j) If a HEI Dissenting Shareholder fails to perfect or effectively withdraws its claim under section 191 of the ABCA or forfeits its right to make a claim under section 191 of the ABCA or if its rights as a HEI Shareholder are otherwise reinstated, such holder's HEI Shares shall thereupon be deemed to have been exchanged as of the Effective Time as prescribed by paragraph 2.01(h)(i).

(k) Duckhorn Shares will only be issued to U.S. Persons that are Accredited Investors and shall be "restricted securities" as defined in Rule 144(a)(3) of the U.S. Securities Act and shall bear a legend in customary form restricting re-sale and transfer without registration under the U.S. Securities Act unless pursuant to an available exemption from registration under the U.S. Securities Act.

2.02 Outstanding Options and Warrants

At the Effective Time:

(a) each HEI Option which is outstanding and has not been duly exercised prior to the Effective Date shall be exchanged for a Replacement Option to purchase from the Resulting Issuer the number of Resulting Issuer Shares equal to (i) the Exchange Ratio multiplied by (ii) the number of HEI Shares subject to such HEI Option immediately prior to the Effective Date. Such Replacement Option shall provide for an exercise price per Resulting Issuer Share (rounded up to the nearest whole cent) equal to (y) the exercise price per HEI Share otherwise purchasable pursuant to such HEI Option, subject to adjustment to meet the requirements of Subsection 7(1.4) of the Tax Act as provided

below divided by (z) the Exchange Ratio. If the foregoing calculation results in the total Replacement Options of a particular holder being exercisable for a number of Resulting Issuer Shares that includes a fractional Resulting Issuer Share, the total number of Resulting Issuer Shares subject to such holder's total Replacement Options shall be rounded down to the nearest whole number of Resulting Issuer Shares. All terms and conditions of a Replacement Option, including the term to expiry, conditions to and manner of exercising, will be the same as the HEI Option for which it was exchanged, and any certificate or option agreement previously evidencing the HEI Option shall thereafter evidence and be deemed to evidence such Replacement Option. Notwithstanding the foregoing, if required for purposes of meeting the requirements of paragraph 7(1.4)(c) of the Tax Act, the exercise price of each Replacement Option of any particular holder shall be, and shall be deemed to be, adjusted at the time of the exchange by the amount, and only to the extent, necessary to ensure that the aggregate fair market value of the Resulting Issuer Shares subject to the Replacement Option immediately after the exchange over the aggregate exercise price for such Resulting Issuer Shares pursuant to the Replacement Option does not exceed the excess of the aggregate fair market value of HEI Shares subject to the HEI Option immediately before the exchange over the aggregate exercise price for such HEI Shares under the HEI Option, and:

- (i) each holder of HEI Options shall cease to be the holder of HEI Options, or have any rights as a holder of such HEI Options (other than to receive Replacement Options in accordance with the Business Combination);
 - (ii) each name of a holder of HEI Options shall be removed from the register of HEI Options maintained by or on behalf of HEI;
 - (iii) all HEI Options exchanged pursuant to this Section 2.02(a) shall be cancelled;
 - (iv) Replacement Options will not be exercisable in the United States or by or on behalf of a U.S. Person unless an exemption from registration is available under the U.S. Securities Act and applicable state securities laws is available and Replacement Options issued to U.S. Persons, if any, shall bear a legend in customary form to such effect;
- (b) each HEI Warrant which is outstanding and has not been duly exercised prior to the Effective Date shall be exchanged for a Replacement Warrant to purchase from the Resulting Issuer the number of Resulting Issuer Shares equal to (i) the Exchange Ratio multiplied by (ii) the number of HEI Shares subject to such HEI Warrant immediately prior to the Effective Date. Such Replacement Warrant shall provide for an exercise price per Resulting Issuer Share (rounded up to the nearest whole cent) equal to (y) the exercise price per HEI Share otherwise purchasable pursuant to such HEI Warrant divided by (z) the Exchange Ratio and:
- (i) each holder of HEI Warrants shall cease to be the holder of HEI Warrants, or have any rights as a holder of such HEI Warrants (other than to receive Replacement Options in accordance with the Business Combination);
 - (ii) each name of a holder of HEI Warrants shall be removed from the register of HEI Warrants maintained by or on behalf of HEI;

- (iii) all HEI Warrants exchanged pursuant to this Section 2.02(b) shall be cancelled; and
- (iv) Replacement Warrants will not be exercisable in the United States or by or on behalf of a U.S. Person unless an exemption from registration is available under the U.S. Securities Act and applicable state securities laws is available and Replacement Warrants issued to U.S. Persons, if any, shall bear a legend in customary form to such effect.

2.03 **Dissent Rights**

Registered HEI Shareholders and registered Duckhorn Shareholders, as applicable, may exercise rights of dissent ("**Dissent Rights**") from, in the case of HEI Shareholders, the Amalgamation pursuant to and in the manner set forth under section 191 of the ABCA, and, in the case of Duckhorn Shareholders, from the Continuance, under Division 2 of Part 8 of the BCBCA, provided that holders who exercise such rights of dissent and who:

- (a) are ultimately entitled to be paid fair value for their HEI Shares or Duckhorn Shares, as applicable, which fair value shall be the fair value of such shares as at the close of business on the day prior to the HEI Meeting or Duckhorn Meeting, as applicable, shall be paid an amount equal to such fair value by Amalco, in the case of the HEI Shares, or the Resulting Issuer, in the case of the Duckhorn Shares; and
- (b) are ultimately not entitled, for any reason, to be paid fair value for their HEI Shares or Duckhorn Shares, as applicable, shall be deemed to have participated in the Amalgamation, with respect to the HEI Shares, or the Continuance, with respect to the Duckhorn Shares, as of the Effective Time, on the same basis as a non-dissenting holder of HEI Shares or Duckhorn Shares, as applicable, and shall be entitled to receive only the consideration contemplated by this Agreement that such holder would have received if such holder had not exercised Dissent Rights, if applicable;

but in no case shall Duckhorn, Subco or HEI or any other Person be required to recognize holders of HEI Shares or Duckhorn Shares who exercise Dissent Rights as holders of HEI Shares or Duckhorn Shares, as applicable, after the time that is immediately prior to the Effective Time, and the names of such holders of HEI Shares or Duckhorn Shares who exercise Dissent Rights shall be deleted from the register of HEI Shareholders or Duckhorn Shareholders, as applicable, at the Effective Time. In no circumstances shall Duckhorn, Subco, HEI or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is a registered holder of HEI Shares or Duckhorn Shares, as applicable, in respect of which such Dissent Rights are sought to be exercised. A registered holder of HEI Shares or Duckhorn Shares is not entitled to exercise Dissent Rights with respect to HEI Shares or Duckhorn Shares if such holder votes (or instructs, or is deemed, by submission of any incomplete proxy, to have instructed his, her or its proxyholder to vote) in favour of the resolution approving the Amalgamation at the HEI Meeting or the Continuance at the Duckhorn Meeting, as applicable.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF HEI

HEI represents and warrants to Duckhorn as follows and acknowledges and confirms that Duckhorn is relying on such representations and warranties in connection with its entering into this Agreement.

3.01 Incorporation and Registration

HEI is a corporation duly existing under the Laws of Alberta and has all necessary corporate power, authority and capacity to own its property and assets and to carry on its business as currently conducted, except where the failure to have such power, authority and capacity would not reasonably be expected to have a HEI Material Adverse Effect. Neither the nature of its activities or the HEI Business nor the location or character of the Assets owned, operated or leased by HEI require HEI to be registered, licensed or otherwise qualified as a foreign corporation or to be in good standing in any jurisdiction other than the jurisdictions where it is so registered, licensed or qualified, except where the failure to be so registered, licensed or qualified or remain in good standing would not reasonably be expected to have a HEI Material Adverse Effect. No proceedings have been instituted or are pending for the dissolution or liquidation of HEI.

3.02 Subsidiaries

HEI does not have any subsidiaries and does not have any interest in any body corporate, partnership, joint ventures or other entity or person. HEI is not a party to any agreement, option or commitment to acquire any shares or securities of any body corporate, partnership, trust, joint venture or other entity or person other than in connection with the Business Combination.

3.03 Bankruptcy, etc.

No bankruptcy, insolvency or receivership proceedings have been instituted by HEI or, to the knowledge of HEI, are pending against HEI and HEI is, in the HEI Ordinary Course, able to pay its debts and other obligations.

3.04 Due Authorization, etc.

Subject to the requisite shareholder and regulatory approvals, (i) HEI has all necessary corporate power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement and to undertake the Business Combination, and (ii) this Agreement has been duly authorized, executed and delivered by HEI and constitutes a valid and binding obligation of HEI enforceable against it in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by Law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunctions are in the discretion of the court from which they are sought.

3.05 Absence of Conflict

The entering into, and the performance by HEI of the transactions contemplated in, this Agreement:

- (a) do not and will not require any consent, permit, approval, Authorization or order of any Governmental Authority, except that which may be required under applicable securities legislation or the rules of the TSXV and any approval or authorization under the ABCA for the Business Combination and the Amalgamation;
- (b) do not and will not contravene any applicable Laws or any rule or regulation of any Governmental Authority which is binding on HEI, where such contravention would reasonably be expected to have a HEI Material Adverse Effect; and
- (c) does not and will not violate, result in the breach of, or be in conflict with, or constitute a default under, or create a state of facts which, after notice or lapse of time, or both, would constitute a default under any term or provision of (i) the Constatng Documents of HEI, or any resolution of the directors or shareholders of HEI, or (ii) any Contract to which HEI is a party or by which the Assets or the HEI Business is bound or affected, or (iii) any judgment, decree or order or any term or provision thereof applicable to HEI or any of the Assets or the HEI Business, which breach, conflict or default would reasonably be expected to have a HEI Material Adverse Effect or to result in the creation of any Encumbrance upon any of the Assets.

3.06 **Share Capital**

The authorized share capital of HEI consists of an unlimited number HEI Shares and an unlimited number of HEI Other Shares, of which 34,000,000 HEI Shares and nil Other Shares are issued and outstanding as at the date hereof. All of the issued shares of HEI have been duly and validly issued in compliance with applicable Law and are outstanding as fully paid and non-assessable shares in the capital of HEI.

3.07 **Options and Other Convertible Securities**

Except as set forth in Schedule 3.07 of the HEI Disclosure Letter and except for the holders of 2,000,000 HEI Warrants, no person has or will have any right, agreement, warrant or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option, for the purchase from HEI of any interest in any of the outstanding shares or securities of HEI, or for the issue or allotment of any unissued shares in the capital of HEI or any other security directly or indirectly convertible into or exchangeable for such shares in the capital of HEI or for the issue of any other securities of any nature or kind of HEI.

3.08 **No Pre-Emptive Rights**

No holder of securities of HEI is entitled to any pre-emptive or similar right to subscribe for securities of HEI.

3.09 **Financial Statements**

The HEI Financial Statements have been prepared in accordance with IFRS applied on a basis consistent with that of preceding periods, and

- (a) the balance sheets included in such HEI Financial Statements fairly present, in all material respects, the financial condition of HEI on the respective dates thereof; and

(b) the statements of operations and deficit included in the HEI Financial Statements fairly present, in all material respects, the results of operations of HEI for the fiscal periods then ended.

3.10 **Absence of Changes**

Since August 31, 2021, there has not been any material adverse change in the HEI Business and the results of operations, financial condition, assets, properties, capital, liabilities (contingent or otherwise), cash flow or business operations of HEI considered on a consolidated basis that would reasonably be expected to have a HEI Material Adverse Effect.

3.11 **Internal Controls Over Financial Reporting**

To the knowledge of HEI, prior to the date of this Agreement there is no fraud, whether or not material, that involves management or other employees who have a significant role in HEI's internal control over financial reporting. HEI has received no (x) material complaints from any source regarding accounting, internal accounting controls or auditing matters or (y) expressions of concern from employees of HEI regarding questionable accounting or auditing matters.

3.12 **Ordinary Course**

Since August 31, 2021, except as disclosed in the HEI Financial Statements or the transactions contemplated by this Agreement, the HEI Business has been carried on in the HEI Ordinary Course.

3.13 **No Restrictions on Activities**

HEI is not a party to or bound or affected by any commitment, Contract or document containing any covenant which in any way expressly limits the freedom of HEI to compete in any line of business, or to use, transfer or move any of its Assets or operations, or which materially or adversely affects the business practices, operations or condition of HEI.

3.14 **Extent of Liabilities**

Other than expenses incurred in connection with the Business Combination and in the HEI Ordinary Course, HEI has no Liabilities (accrued, absolute, contingent or otherwise), except as disclosed in the HEI Financial Statements.

3.15 **Non-Arm's Length Transactions**

(a) Except as disclosed in Schedule 3.15 of the HEI Disclosure Letter, HEI has not engaged in any transaction with, made any payment or loan to, or borrowed any monies from or is otherwise indebted to, any director, officer, employee or shareholder of HEI or any other person with whom HEI is not dealing at arm's length (within the meaning of the Tax Act) or any affiliate of any of the foregoing, except for amounts due as normal compensation or reimbursement of ordinary business expenses; and

(b) Except as disclosed in Schedule 3.15 of the HEI Disclosure Letter, HEI is not a party to any contract or agreement with any director, officer, employee, or shareholder of HEI or any other person with whom HEI is not dealing at arm's length (within the meaning of the Tax Act) or any affiliate

of any of the foregoing, other than employment agreements entered into in the HEI Ordinary Course and agreements evidencing the HEI Options granted to date.

3.16 **No Guarantees**

HEI is not bound by any Contract, assurance, bond, undertaking or guarantee under or pursuant to which it has guaranteed or endorsed the debts, obligations or Liabilities of any other person.

3.17 **Intellectual Property**

- (a) HEI owns all rights in or has obtained valid and enforceable licenses or other rights to use, the patents, patent applications, inventions, copyrights, know how (including trade secrets and other proprietary or confidential information), trade-marks (both registered and unregistered), trade names or any other intellectual property (collectively, "**Intellectual Property**") necessary to carry on its businesses as currently carried on or proposed to be carried on, free and clear of all Encumbrances, except for Permitted Encumbrances.
- (b) To the knowledge of HEI, there are no third parties who have, or will be able to establish, rights (including any license) to any trade-mark applications, trade-mark registrations, patent applications or patents owned by HEI (or rights in the subject matter of such trade-mark applications, trade-mark registrations, patent applications or patents) in such a manner that would reasonably be expected to have a HEI Material Adverse Effect.
- (c) HEI has not received any written notice of (i) any infringement by third parties of any Intellectual Property owned by HEI ("**Owned Intellectual Property**"), (ii) any conflict with a third party whereby it is alleged that HEI infringes or otherwise violates any Intellectual Property of others, (iii) any conflict with a third party whereby HEI's rights in or to any Owned Intellectual Property or the validity or scope of any Owned Intellectual Property is challenged, which infringement or conflict (if the subject of any unfavourable decision, ruling or finding), would reasonably be expected to have a HEI Material Adverse Effect.
- (d) Except in respect of Owned Intellectual Property that is not material to the business of HEI as currently carried on or as proposed to be carried on, there is no application for registration of any Owned Intellectual Property with respect to which there has been a determination of unregistrability, and, to the knowledge of HEI, there are no facts which would form a reasonable basis for such determination.
- (e) To the knowledge of HEI, there is no Intellectual Property held by others that would prevent the development, manufacture, use, sale, lease, license and service of products now existing or under development by HEI, other than those sourced from third parties.

3.18 **Assets**

- (a) The HEI Business is the only business carried on by HEI. The Assets include all assets, rights, Authorizations and property necessary to conduct the HEI Business immediately after the Business Combination in the same manner it is currently conducted, except as would not reasonably be expected to have a HEI Material Adverse Effect.

- (b) HEI has good and marketable title to all of the Assets, free and clear of any and all claims and Encumbrances whatsoever other than Permitted Encumbrances.
- (c) No person or other entity has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from HEI of any of the Assets.

3.19 **HEI Business**

- (a) HEI has conducted and is conducting the HEI Business in accordance with Good Oil and Gas Practices and in compliance in all material respects with Laws, and, in particular, all applicable licensing and environmental legislation, regulations or by-laws or other lawful requirements of any Governmental Authority applicable to HEI of each jurisdiction in which it carries on business and holds all licences, registrations and qualifications material to the HEI Business and assets in all jurisdictions in which it carries on business or which are necessary or desirable to carry on the HEI Business, as now conducted, and none of such licences, registrations or qualifications contains any burdensome term, provision, condition or limitation which has or is likely to have any HEI Material Adverse Effect.
- (b) All environmental fees, contributions, duties, cannons, land or other fees and assessments imposed, levied or charged upon or against HEI have been filed and paid in full and are current.
- (c) HEI has not received a notice of the existence of condemnation, expropriation or similar proceedings affecting HEI's Assets.
- (d) HEI holds all permits required in order for them to own and operate HEI's Assets, and to carry on the HEI Business. Each such permit is valid, subsisting and in good standing, and HEI is not in material default or breach of any such permit and no notice of material breach or default or defect in respect of any of their terms has been received by HEI. No proceeding is in progress or pending, or to the knowledge of HEI, threatened, to revoke, amend, limit or refuse renewal of any such permit. No authorization, license, approval, consent, order or any other action of, or any registration, declaration, filing or notice with or to any Governmental Authority or any other Person is required under or in respect of any such permits in order to complete the transactions contemplated by the Agreement.
- (e) Neither HEI nor any of its directors or officers nor, to the knowledge of HEI, any representative acting on behalf of HEI, has (i) violated any anti-bribery or anti-corruption laws, including but not limited to *Corruption of Foreign Public Officials Act* (Canada), or (ii) offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, that goes beyond what is reasonable and customary: (A) to any government official, whether directly or through any other person, for the purpose of influencing any act or decision of a government official in his or her official capacity, inducing a government official to do or omit to do any act in violation of his or her lawful duties, securing any improper advantage, inducing a government official to influence or affect any act or decision of any governmental authority, or assisting any representative of HEI in obtaining or retaining business for or with, or directing business to, any person; or (B) to any person in a manner which would constitute or have the purpose or effect of public or commercial bribery, or

the acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage, and neither HEI nor to the knowledge of HEI, any director, officer, employee, consultant, representative or agent of foregoing, has (i) conducted or initiated any review, audit, or internal investigation that concluded HEI, or any director, officer, employee, consultant, representative or agent of the foregoing violated such laws or committed any material wrongdoing, or (ii) made a voluntary, directed, or involuntary disclosure to any governmental authority responsible for enforcing anti-bribery or anti-corruption laws, in each case with respect to any alleged act or omission arising under or relating to non-compliance with any such laws, or received any notice, request, or citation from any person alleging non-compliance with any such laws.

- (f) Except as set out in Schedule 3.19 of the HEI Disclosure Letter, no officer, director, employee or consultant of HEI, or any associate or affiliate of any such Person or any party not at arm's length to HEI owns, has or is entitled to any royalty, net profits interest, carried interest or other Encumbrances of any nature whatsoever which are based on production from HEI's Assets or any revenue or rights attributed thereto.
- (g) All of the technical data and information in respect of HEI and HEI's Assets provided or disclosed to Duckhorn or any of its officers, employees, agents or other representatives by or on behalf of HEI was and is accurate and correct in all material respects.

3.20 **HEI Material Contracts**

Schedule 3.20 of the HEI Disclosure Letter sets forth a true and complete list of all HEI Material Contracts. Each such HEI Material Contract is a valid and subsisting agreement, enforceable in accordance with the terms thereof, and can be fulfilled and performed in all material respects by HEI in the HEI Ordinary Course. Each such HEI Material Contract is unamended since being made available to Duckhorn, is in full force and effect, in good standing and no event of default has occurred and is continuing and no event has occurred which, with the giving of notice, the passing of time or both, would constitute an event of default by HEI under any HEI Material Contract. To the knowledge of HEI, no event has occurred which, with the giving of notice, the lapse of time or both, would constitute an event of default by any other party to any such HEI Material Contract, HEI is not alleged to be in default of any of the provisions of such HEI Material Contracts, and HEI is not aware of any disputes with respect thereto.

3.21 **Other Contracts**

Other than the HEI Material Contracts, HEI is not a party to any Contract, the termination, expiry or non-renewal of which would reasonably be expected to have a HEI Material Adverse Effect.

3.22 **Taxes and Governmental Charges**

- (a) As of the date of this Agreement, HEI has:
 - (i) duly and in a timely manner filed all Tax Returns and reports required by Law to have been filed by it (except for such Tax Returns and reports with respect to which the failure to timely file would not reasonably be expected to have a HEI Material Adverse Effect), and all such Tax returns and reports are true, correct, and complete in all material respects;

- (ii) duly kept all records which it is required to keep for Tax purposes or which would be needed to substantiate any claim made or position taken in relation to Tax by it, as applicable, and such records are available for inspection at the head office of HEI;
 - (iii) duly and correctly reported all income and other amounts required to be reported;
 - (iv) paid all Taxes to the extent that such Taxes have been assessed by the relevant taxation authority; and
 - (v) duly and in a timely manner paid, deducted, withheld, collected and remitted all Governmental Charges (other than Governmental Charges that are not yet due) and has made full provision for (including properly accruing and reflecting on its books and records) all Governmental Charges that are not yet due, that relate to periods (or portions thereof) ending prior to the date of this Agreement, except where the failure to pay any such Governmental Charges, or make any such remittance, deduction or contribution or other amount would not reasonably be expected to have a HEI Material Adverse Effect.
- (b) The HEI Financial Statements contain adequate provision for all Taxes, assessments and levies imposed on HEI, or its property or rights, arising out of operations on or before August 31, 2021, regardless of whether such amounts are payable before or after the Effective Date.
- (c) No deficiency in payment of any Taxes for any period has been asserted against HEI by any Governmental Authority and remains unsettled at the date hereof.
- (d) To the knowledge of HEI no Tax Return of HEI is being audited by the relevant taxing authority. There are no outstanding waivers, objections, extensions, or comparable consents regarding the application of the statute of limitations or period of reassessment with respect to any Taxes or Tax Returns that have been given or made by HEI (including the time for filing of Tax Returns or paying Taxes). To the knowledge of HEI there are no pending requests for any such waivers, extensions, or comparable consents. HEI has not received a ruling from any Governmental Authority or signed an agreement with any Governmental Authority that could reasonably be expected to have a HEI Material Adverse Effect.
- (e) There are no actions, suits, examinations, proceedings, investigations, audits or claims now pending or threatened or, to the knowledge of HEI, contemplated against HEI in respect of any Taxes and there are no matters under discussion with any Governmental Authority relating to any Taxes.
- (f) HEI has not been subject to or is currently subject to any investigation, audit or visit by any Governmental Authority relating to Tax which has been notified to HEI, and HEI is not aware of any such investigation, audit or visit planned for the next twelve months.

3.23 **Absence of Litigation, etc.**

There is not now in progress, pending or, to HEI's knowledge, threatened or contemplated against or affecting HEI, or any of its assets or properties, or any officer or director thereof in their capacity as an officer or director thereof, any litigation, action, suit, investigation, claim, complaint or other proceeding, including appeals and applications for review, by or before any Governmental Authority, which if determined adversely to HEI, individually or in the aggregate, would reasonably be expected to have a HEI Material Adverse Effect.

3.24 **Compliance with Laws**

The HEI Business has been, and is now being, conducted and all of HEI's Assets have been, and are now being, used in compliance with all applicable Laws other than such non-compliance which would not reasonably be expected to have a HEI Material Adverse Effect, and no written notices have been received by HEI that the HEI Business is not being conducted or that any of such Assets are not being used in compliance with all applicable Laws other than any non-compliance that would not reasonably be expected to have a HEI Material Adverse Effect.

3.25 **Authorizations and Consents**

- (a) Except as contemplated by this Agreement, no Authorization or declaration or filing with any Governmental Authority on the part of HEI is required for the valid execution, delivery and performance of its obligations under this Agreement or the completion of the Business Combination pursuant to this Agreement.
- (b) No consent, approval or waiver is required pursuant to the terms of any HEI Material Contract for the valid execution, delivery and performance of its obligations under this Agreement or the completion of the Business Combination pursuant to this Agreement.

3.26 **Employment Matters and Employee Plans**

- (a) Except as disclosed in Schedule 3.26(a) of the HEI Disclosure Letter, there are no Contracts, written or oral, between HEI on one side, and any other party on the other side, relating to payment, remuneration or compensation for work performed or services provided or that would require any payment to be made as a result of the completion of the transactions contemplated in this Agreement.
- (b) Other than the HEI Plan, a copy of which has been provided to Duckhorn, and except for incentive bonuses set forth in employment agreements, HEI does not have any Employee Plans of any nature whatsoever, nor has HEI ever had any such plans.
- (c) HEI is not party to a collective bargaining agreement, and no union or labour organization holds representation or collective bargaining rights in respect of any employee of HEI. To the knowledge of HEI, no organization has attempted or threatened to attempt to organize or establish any trade union or employee association with respect to HEI, including any certification or other representation proceeding.
- (d) HEI has operated and is currently operating in compliance with all Laws relating to employees, including but not limited to employment standards, human rights,

occupational health and safety, all pay equity and employment equity legislation other than such non-compliance which would not reasonably be expected to have a HEI Material Adverse Effect and there have been no employment related complaints against HEI.

- (e) To the knowledge of HEI, there are no complaints, demands, actions, suits, claims, charges or proceedings of any kind, whether threatened, pending or reasonably anticipated, against HEI, relating to employees, pursuant to any applicable law, including but not limited to employment standards legislation, human rights legislation, health and safety legislation, workers' compensation legislation, payment equity legislation, labour relations legislation, privacy legislation, or any contract, statute or the common law, nor any occurrence which might lead to a complaint under any such applicable law.
- (f) There are no outstanding decisions or settlements or pending settlements under employment standards, human rights legislation, health and safety legislation, workers' compensation legislation, payment equity legislation, labour relations legislation or privacy legislation which place any obligation upon HEI to do or refrain from doing any act or place a material financial obligation on HEI.
- (g) To the knowledge of HEI, there are no actions, suits or claims pending, threatened or reasonably anticipated (other than routine claims for benefits) against any Employee Plan or its assets, and there are no audits, inquiries or proceedings pending or, to the knowledge of HEI, threatened by any Governmental Authority with respect to any Employee Plan, which in either case reasonably could be expected to result in material Liability to HEI.
- (h) To the knowledge of HEI, all Independent Contractors have been properly characterized as such in accordance with all applicable laws. HEI has not received notice of any kind from any governmental authority or any Independent Contractor questioning or disputing the classification of such Independent Contractors.
- (i) Neither the execution and delivery of this Agreement nor the performance of the obligations of HEI thereunder will entitle any current or former employee of HEI to any severance pay, bonus or other similar payment.

3.27 **Environmental Matters**

- (a) HEI has operated the HEI Business at all times and has received, handled, used, stored, treated, shipped and disposed of all Contaminants without violation of Environmental Laws.
- (b) There have been no spills, releases, deposits or discharges of hazardous or toxic substances, Contaminants or wastes which have not been rectified or are in the process of being rectified on any of the real property owned or leased by HEI or under its control.
- (c) There have been no releases, deposits or discharges, in violation of Environmental Laws, of any hazardous or toxic substances, Contaminants or wastes into the earth, air or into any body of water or any municipal or other sewer or drain water systems by HEI.

- (d) No orders, directions or notices have been issued and remain outstanding pursuant to any Environmental Laws relating to the HEI Business, HEI or HEI's Assets.
- (e) HEI has not failed to report to the proper Governmental Authority the occurrence of any event which is required to be so reported by any Environmental Laws.
- (f) HEI holds all licenses, permits and approvals required under any Environmental Laws in connection with the operation of its business and the ownership and use of its assets, all such licenses, permits and approvals are in full force and effect, and except for notifications and conditions of general application to assets of the type owned by HEI. HEI has not received any notification pursuant to any Environmental Laws that any work, repairs, construction or capital expenditures are required to be made by it as a condition of continued compliance with any Environmental Laws, or any licence, permit or approval issued pursuant thereto, or that any licence, permit or approval referred to above is about to be reviewed, made subject to limitation or conditions, revoked, withdrawn or terminated.

3.28 **No Powers of Attorney**

There are no outstanding powers of attorney or other authorizations granted by HEI to any third party to bind HEI to any Contract, Liability or obligation.

3.29 **Insurance**

HEI does not hold any insurance policies.

3.30 **Authorizations**

HEI has all Authorizations necessary to conduct the HEI Business as presently conducted or for the ownership and use of the Assets in compliance with applicable Laws, except for any Authorizations the lack of which would not reasonably be expected to have a HEI Material Adverse Effect. HEI is not in default under, nor have any of them received any notice of any claim or default with respect to, any such Authorization. No registrations, filings, applications, notices, transfers, consents, approvals, audits, qualifications, waivers or other action of any kind is required by virtue of the execution and delivery of this Agreement, or of the consummation of the transactions contemplated hereby: (a) to avoid the loss of any Authorization or any asset, property or right pursuant to the terms thereof, or the violation or breach of any Law applicable thereto, or (b) to enable HEI to hold and enjoy the same immediately after the Effective Date in the conduct of the HEI Business as conducted prior to the Effective Date.

3.31 **Fees and Commissions**

Except as disclosed in Schedule 3.31 of the HEI Disclosure Letter, HEI is not a party to or bound by any Contract to pay any royalty, license fee or management fee. Except as disclosed in Schedule 3.31 of the HEI Disclosure Letter, no broker, finder or similar intermediary has acted for or on behalf of or is entitled to any broker's, finder's or similar fee or other commission from HEI in connection with this Agreement or the transactions contemplated herein.

3.32 **Books and Records**

Complete and correct copies of the Constatting Documents, and of all amendments thereto, of HEI have been previously delivered to Duckhorn. The corporate records and minute books of HEI contain or, at or prior to the Business Combination will contain, in all material respects, complete and accurate minutes of all meetings of the directors and shareholders thereof, since the date of incorporation, together with the full text of all resolutions of directors and shareholders passed in lieu of such meetings duly signed. Except as reflected in such minute books, there are no minutes of meetings or consents in lieu of meetings of the board of directors (or its committees) or of the shareholders of HEI.

3.33 **Restrictions on Business Combination**

Except to the extent that HEI must comply with the policies of the TSXV and applicable Laws, HEI is not a party to or bound or affected by any commitment, agreement or document which would prohibit or restrict HEI from entering into and completing the Business Combination.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF DUCKHORN AND SUBCO

Duckhorn and Subco jointly and severally represent and warrant to HEI as follows and acknowledges and confirms that HEI is relying on such representations and warranties in connection with its entering into this Agreement:

4.01 **Incorporation and Registration**

Each of Duckhorn and Subco is a corporation validly existing under the Laws of its respective jurisdiction and each has all necessary corporate power, authority and capacity to own its property and assets and to carry on its business as currently conducted, except where the failure to have such power, authority and capacity would not reasonably be expected to have a Duckhorn Material Adverse Effect. Neither the nature of its activities or the Duckhorn Business nor the location or character of the Assets owned, operated or leased by Duckhorn or Subco require Duckhorn or Subco to be registered, licensed or otherwise qualified as a foreign corporation or to be in good standing in any jurisdiction other than the jurisdictions where it is so registered, licensed or qualified, except where the failure to be so registered, licensed or qualified or remain in good standing would not reasonably be expected to have a Duckhorn Material Adverse Effect. No proceedings have been instituted or are pending for the dissolution or liquidation of Duckhorn or Subco.

4.02 **Subsidiaries**

Except for its ownership of all of the outstanding shares of Subco, Duckhorn does not have any interest in any body corporate, partnership, joint ventures or other entity or person. Neither Duckhorn nor Subco is a party to any agreement, option or commitment to acquire any shares or securities of any body corporate, partnership, trust, joint venture or other entity or person other than in connection with the Business Combination. Duckhorn is the sole registered holder and beneficial owner of 100% of the issued and outstanding shares in the capital of Subco, free and clear of all Encumbrances, claims or demands of any kind whatsoever other than Permitted Encumbrances. All of such shares and securities have been fully authorized and validly issued and in the case of shares are outstanding as fully paid and non-assessable shares. No other securities of Subco are issued and outstanding.

4.03 **Bankruptcy, etc.**

No bankruptcy, insolvency or receivership proceedings have been instituted by Duckhorn or Subco or, to the knowledge of Duckhorn, are pending against Duckhorn or Subco and each of Duckhorn and Subco is, in the Duckhorn Ordinary Course, able to pay its debts and other obligations.

4.04 **Due Authorization, etc.**

Subject to the requisite director and shareholder approvals, (i) each of Duckhorn and Subco has all necessary corporate power, capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement and to undertake the Business Combination, and (ii) this Agreement has been duly authorized, executed and delivered by each of Duckhorn and Subco and constitutes a valid and binding obligation of each of Duckhorn and Subco enforceable against it in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by Law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunctions are in the discretion of the court from which they are sought.

4.05 **Absence of Conflict**

The entering into, and the performance by Duckhorn and Subco of the transactions contemplated in, this Agreement:

- (a) do not and will not require any consent, permit, approval, Authorization or order of any Governmental Authority, except that which may be required under applicable securities legislation or the rules of the TSXV and any approval or authorization under the ABCA or the BCBCA that may be required for the Name Change and the Business Combination;
- (b) do not and will not contravene any applicable Laws or any rule or regulation of any Governmental Authority which is binding on Duckhorn, where such contravention would reasonably be expected to have a Duckhorn Material Adverse Effect; and
- (c) does not and will not violate, result in the breach of, or be in conflict with, or constitute a default under, or create a state of facts which, after notice or lapse of time, or both, would constitute a default under any term or provision of (i) the Constatng Documents of Duckhorn or the Duckhorn Subsidiaries, or any resolution of the directors or shareholders of Duckhorn or the Duckhorn Subsidiaries, or (ii) any Contract to which Duckhorn or the Duckhorn Subsidiaries is a party or by which the Assets or the Duckhorn Business is bound or affected, or (iii) any judgment, decree or order or any term or provision thereof applicable to Duckhorn or Subco or any of the Assets or the Duckhorn Business, which breach, conflict or default would reasonably be expected to have a Duckhorn Material Adverse Effect or to result in the creation of any Encumbrance upon any of the Assets.

4.06 **Share Capital**

The authorized share capital of Duckhorn consists of an unlimited number of common shares without nominal or par value, of which 3,333,333 Duckhorn Shares are issued and outstanding as fully paid and non-assessable shares in the capital of Duckhorn.

4.07 **Options and Other Convertible Securities**

No person has or will have any right, agreement, warrant or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option, for the purchase from Duckhorn or Subco of any interest in any of the outstanding shares or securities of Duckhorn or Subco, or for the issue or allotment of any unissued shares in the capital of Duckhorn or Subco or any other security directly or indirectly convertible into or exchangeable for such shares in the capital of Duckhorn or Subco or for the issue of any other securities of any nature or kind of Duckhorn or Subco.

4.08 **No Pre-Emptive Rights**

No holder of securities of Duckhorn is entitled to any pre-emptive or similar right to subscribe for securities of Duckhorn.

4.09 **Voting Agreements**

Duckhorn is not a party to any agreement nor, to Duckhorn's knowledge, is there any agreement, which in any manner affects the voting control of any of the securities of Duckhorn.

4.10 **Financial Statements**

The Duckhorn Financial Statements have been prepared in accordance with IFRS applied on a basis consistent with that of preceding periods, and:

- (a) the statements of financial position included in such Duckhorn Financial Statements fairly present, in all material respects, the financial condition of Duckhorn on the respective dates thereof; and
- (b) the statements of loss and comprehensive loss and changes in shareholders' deficiencies and cash flows included in the Duckhorn Financial Statements, as applicable, fairly present, in all material respects, the results of operations of Duckhorn for the fiscal periods then ended.

4.11 **Absence of Changes**

Except as disclosed in the Public Record, since June 30, 2021, there has not been any material adverse change in the Duckhorn Business and the results of operations, financial condition, assets, properties, capital, liabilities (contingent or otherwise), cash flow or business operations of Duckhorn that would reasonably be expected to have a Duckhorn Material Adverse Effect.

4.12 **Internal Controls Over Financial Reporting**

To the knowledge of Duckhorn, prior to the date of this Agreement there is no fraud, whether or not material, that involves management or other employees who have a significant role in Duckhorn's, internal control over financial reporting. Since June 30, 2021, and prior to the date of this Agreement, Duckhorn has received no (x) material complaints from any source regarding accounting, internal accounting controls or auditing matters or (y) expressions of concern from employees of Duckhorn regarding questionable accounting or auditing matters.

4.13 **Ordinary Course**

Since June 30, 2021, and except for the transactions contemplated by this Agreement, the Duckhorn Business has been carried on in the Duckhorn Ordinary Course and Duckhorn has not carried on any business or entered into any Duckhorn Material Contract, commitment or agreement of any sort whatsoever other than as disclosed in the Public Record.

4.14 **No Restrictions on Activities**

Duckhorn is not a party to or bound or affected by any commitment, Contract or document containing any covenant which in any way expressly limits the freedom of Duckhorn to compete in any line of business, or to use, transfer or move any of its Assets or operations, or which materially or adversely affects the business practices, operations or condition of Duckhorn.

4.15 **Extent of Liabilities**

Other than the Axis Loan, expenses incurred in connection with the Business Combination and in the Duckhorn Ordinary Course, Duckhorn has no outstanding Liabilities (accrued, absolute, contingent or otherwise), except as disclosed in the Public Record or in the Duckhorn Financial Statements.

4.16 **Non-Arm's Length Transactions**

Except as disclosed in the Duckhorn Financial Statements:

- (a) Except for the Axis Loan, Duckhorn has not engaged in any transaction with, made any payment or loan to, or borrowed any monies from or is otherwise indebted to, any director, officer, employee or shareholder of Duckhorn or any other person with whom Duckhorn is not dealing at arm's length (within the meaning of the Tax Act) or any affiliate of any of the foregoing, except for amounts due as normal compensation or reimbursement of ordinary business expenses; and
- (b) Except as disclosed in Schedule 4.16(b) of the Duckhorn Disclosure Letter, Duckhorn is not a party to any contract or agreement with any director, officer, employee, or shareholder of Duckhorn or any other person with whom Duckhorn is not dealing at arm's length (within the meaning of the Tax Act) or any affiliate of any of the foregoing, other than employment agreements entered into in the Duckhorn Ordinary Course.

4.17 **No Guarantees**

Duckhorn is not bound by any Contract, assurance, bond, undertaking or guarantee under or pursuant to which it has guaranteed or endorsed the debts, obligations or Liabilities of any other person, except as disclosed in the Duckhorn Financial Statements.

4.18 **Intellectual Property**

- (a) Duckhorn owns all rights in or has obtained valid and enforceable licenses or other rights to use the Intellectual Property necessary to carry on its businesses as currently carried

on or proposed to be carried on, free and clear of all Encumbrances, except for Permitted Encumbrances.

- (b) To the knowledge Duckhorn, there are no third parties who have, or will be able to establish, rights (including any license) to any trade-mark applications, trade-mark registrations, patent applications or patents owned by Duckhorn (or rights in the subject matter of such trade-mark applications, trade-mark registrations, patent applications or patents) in such a manner that would reasonably be expected to have a Duckhorn Material Adverse Effect.
- (c) Duckhorn has not received any written notice of (i) any infringement by third parties of any Intellectual Property owned by Duckhorn (“**Duckhorn Owned Intellectual Property**”), (ii) any conflict with a third party whereby it is alleged that Duckhorn infringes or otherwise violates any Intellectual Property of others, (iii) any conflict with a third party whereby Duckhorn’s rights in or to any Duckhorn Owned Intellectual Property or the validity or scope of any Duckhorn Owned Intellectual Property is challenged, which infringement or conflict (if the subject of any unfavourable decision, ruling or finding), would reasonably be expected to have a Duckhorn Material Adverse Effect.
- (d) Except in respect of Duckhorn Owned Intellectual Property that is not material to the Duckhorn Business as currently carried on or as proposed to be carried on, there is no application for registration of any Duckhorn Owned Intellectual Property with respect to which there has been a determination of unregistrability, and, to the knowledge of Duckhorn, there are no facts which would form a reasonable basis for such determination.
- (e) To the knowledge of Duckhorn, there is no Intellectual Property held by others that would prevent the development, manufacture, use, sale, lease, license and service of products now existing or under development by Duckhorn, other than those sourced from third parties.

4.19 **Assets**

- (a) The Duckhorn Business is the only business carried on by Duckhorn. The Assets include all assets, rights, Authorizations and property necessary to conduct the Duckhorn Business immediately after the Business Combination in the same manner it is currently conducted, except as would not reasonably be expected to have a Duckhorn Material Adverse Effect.
- (b) Duckhorn has good and marketable title to all of the Assets, free and clear of any and all claims and Encumbrances whatsoever other than Permitted Encumbrances.
- (c) No person or other entity has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from Duckhorn of any of the Assets.

4.20 **Duckhorn Material Contracts**

Schedule 4.20 of the Duckhorn Disclosure Letter sets forth a true and complete list of all Duckhorn Material Contracts. Each such Duckhorn Material Contract is a valid and subsisting agreement,

enforceable in accordance with the terms thereof and can be fulfilled and performed in all material respects by Duckhorn in the Duckhorn Ordinary Course. Each such Duckhorn Material Contract is unamended since being made available to HEI, is in full force and effect, in good standing and no event of default has occurred and is continuing and no event has occurred which, with the giving of notice, the lapse of time or both, would constitute an event of default by Duckhorn under any such Duckhorn Material Contract. To the knowledge of Duckhorn, no event has occurred which, with the giving of notice, the passing of time or both, would constitute an event of default by any other party to any such Duckhorn Material Contract, Duckhorn is not alleged to be in default of any of the provisions of such Duckhorn Material Contract, and Duckhorn is not aware of any disputes with respect thereto.

4.21 **Other Contracts**

Other than the Duckhorn Material Contracts, Duckhorn is not a party to any Contract, the termination, expiry or non-renewal of which would reasonably be expected to have a Duckhorn Material Adverse Effect.

4.22 **Taxes and Governmental Charges**

- (a) As of the date of this Agreement, Duckhorn has:
- (i) duly and in a timely manner filed all Tax Returns and reports required by Law to have been filed by it (except for such Tax Returns and reports with respect to which the failure to timely file would not reasonably be expected to have a Duckhorn Material Adverse Effect), and all such Tax Returns and reports are true, correct, and complete in all material respects;
 - (ii) duly kept all records which it is required to keep for Tax purposes or which would be needed to substantiate any claim made or position taken in relation to Tax by it, as applicable, and such records available for inspection at the head office of Duckhorn;
 - (iii) duly and correctly reported all income and other amounts required to be reported;
 - (iv) paid all Taxes to the extent that such Taxes have been assessed by the relevant taxation authority; and
 - (v) duly and in a timely manner paid, deducted, withheld, collected and remitted all Governmental Charges (other than Governmental Charges that are not yet due) and has made full provision for (including properly accruing and reflecting on its books and records) all Governmental Charges that are not yet due, that relate to periods (or portions thereof) ending prior to the date of this Agreement, except where the failure to pay any such Governmental Charges, or make any such remittance, deduction or contribution or other amount would not reasonably be expected to have a Duckhorn Material Adverse Effect.
- (b) The Duckhorn Financial Statements contain adequate provision for all Taxes, assessments and levies imposed on Duckhorn, or its property or rights, arising out of operations on or

before June 30, 2021, regardless of whether such amounts are payable before or after the Effective Date.

- (c) No deficiency in payment of any Taxes for any period has been asserted against Duckhorn by any Governmental Authority and remains unsettled at the date hereof.
- (d) To the knowledge of Duckhorn, no Tax Return of Duckhorn is being audited by the relevant taxing authority. There are no outstanding waivers, objections, extensions, or comparable consents regarding the application of the statute of limitations or period of reassessment with respect to any Taxes or Tax Returns that have been given or made by Duckhorn (including the time for filing of Tax Returns or paying Taxes). To the knowledge of Duckhorn there are no pending requests for any such waivers, extensions, or comparable consents. Duckhorn has not received a ruling from any Governmental Authority or signed an agreement with any Governmental Authority that could reasonably be expected to have a Duckhorn Material Adverse Effect.
- (e) There are no actions, suits, examinations, proceedings, investigations, audits or claims now pending or threatened or, to the knowledge of Duckhorn, contemplated against Duckhorn in respect of any Taxes and there are no matters under discussion with any Governmental Authority relating to any Taxes.
- (f) Duckhorn has not been subject to or is currently subject to any investigation, audit or visit by any Governmental Authority relating to Tax which has been notified to Duckhorn, and Duckhorn is not aware of any such investigation, audit or visit planned for the next twelve months.

4.23 **Absence of Litigation, etc.**

There is not now in progress, pending or, to Duckhorn's knowledge, threatened or contemplated against or affecting Duckhorn, or any of its Assets or properties, or any officer or director thereof in their capacity as an officer or director thereof, any litigation, action, suit, investigation, claim, complaint or other proceeding, including appeals and applications for review, by or before any Governmental Authority, which if determined adversely to Duckhorn, individually or in the aggregate, would reasonably be expected to have a Duckhorn Material Adverse Effect.

4.24 **Compliance with Laws**

- (a) The Duckhorn Business has been, and is now being, conducted and all of its Assets have been, and are now being, used in compliance with all applicable Laws, other than such non-compliance which would not reasonably be expected to have a Duckhorn Material Adverse Effect.
- (b) No written notices have been received by Duckhorn, including notices from any Governmental Authority, alleging or asserting that the Duckhorn Business is not being conducted or that any of such Assets, are not being used in compliance with all applicable Laws other than any non-compliance that would not reasonably be expected to have a Duckhorn Material Adverse Effect.

4.25 **Authorizations and Consents**

- (a) Except for the approval of the TSXV contemplated in Section 7.01(h) and the certificate of amalgamation to be issued by the Registrar in respect of the Amalgamation, no Authorization or declaration or filing with any Governmental Authority on the part of Duckhorn or Subco is required for the valid execution, delivery and performance of its obligations under this Agreement or the completion of the Business Combination pursuant to this Agreement.
- (b) No consent, approval or waiver is required pursuant to the terms of any Contract to which Duckhorn or Subco is a party for the valid execution, delivery and performance of its obligations under this Agreement or the completion of the Business Combination pursuant to this Agreement.
- (c) Duckhorn has not received notice that any Governmental Authority has taken, is taking, or intends to take action to limit, suspend, modify or revoke any Authorizations, and has no knowledge or reason to believe that any such Governmental Authority is considering taking or would have reasonable grounds to take such action.

4.26 **Employment Matters and Employee Plans**

- (a) There are no Contracts, written or oral, between Duckhorn on one side and any other party on the other side, relating to payment, remuneration or compensation for work performed or services provided (other than professional advisors engaged by Duckhorn to provide services in connection with the Business Combination) that would require any payment to be made as a result of the completion of the transactions contemplated in this Agreement.
- (b) Except for the Duckhorn Plan, a copy of which has been provided to HEI, and incentive bonuses set forth in employment agreements or other agreements, Duckhorn does not have any Employee Plans of any nature whatsoever, nor has Duckhorn ever had any such plans.
- (c) Duckhorn is not a party to a collective bargaining agreement, and no union or labour organization holds representation or collective bargaining rights in respect of any employee of Duckhorn. To the knowledge of Duckhorn, no organization has attempted or threatened to attempt to organize or establish any trade union or employee association with respect to Duckhorn, including any certification or other representation proceeding.
- (d) Duckhorn has operated and is operating in full compliance with all Laws relating to employees, including but not limited to employment standards, human rights, occupational health and safety, all pay equity and employment equity legislation other than such non-compliance which would not reasonably be expected to have a Duckhorn Material Adverse Effect and there have been no employment-related complaints against Duckhorn.
- (e) To the knowledge of Duckhorn, there are no complaints, demands, actions, suits, claims, charges or proceedings of any kind, whether threatened, pending or reasonably anticipated, against Duckhorn, relating to employees, pursuant to any applicable law,

including but not limited to employment standards legislation, human rights legislation, health and safety legislation, workers' compensation legislation, payment equity legislation, labour relations legislation, privacy legislation, or any contract, statute or the common law, nor any occurrence which might lead to a complaint under any such applicable law.

- (f) To the knowledge of Duckhorn, there are no outstanding decisions or settlements or pending settlements under employment standards, human rights legislation, health and safety legislation, workers' compensation legislation, payment equity legislation or labour relations legislation or privacy legislation which place any obligation upon Duckhorn to do or refrain from doing any act or place a material financial obligation on Duckhorn.
- (g) To the knowledge of Duckhorn, there are no actions, suits or claims pending, threatened or reasonably anticipated (other than routine claims for benefits) against any Employee Plan or its assets, and there are no audits, inquiries or proceedings pending or, to the knowledge of Duckhorn, threatened by any Governmental Authority with respect to any Employee Plan, which in either case reasonably could be expected to result in material Liability to Duckhorn.
- (h) To the knowledge of Duckhorn, all Independent Contractors have been properly characterized as such in accordance with all applicable laws. Duckhorn has not received notice of any kind from any governmental authority or any Independent Contractor questioning or disputing the classification of such Independent Contractors.
- (i) Neither the execution and delivery of this Agreement nor the performance of the obligations of Duckhorn thereunder will entitle any current or former employee of Duckhorn to any severance pay, bonus or other similar payment.

4.27 **No Powers of Attorney**

There are no outstanding powers of attorney or other authorizations granted by Duckhorn to any third party to bind Duckhorn to any Contract, Liability or obligation.

4.28 **Insurance**

Duckhorn does not hold any insurance policies.

4.29 **Authorizations**

Duckhorn has all Authorizations necessary to conduct the Duckhorn Business as presently conducted or for the ownership and use of the Assets in compliance with applicable Laws, except for any Authorizations the lack of which would not reasonably be expected to have a Duckhorn Material Adverse Effect. Duckhorn is not in default under, nor has it received any notice of any claim or default with respect to, any such Authorization. No registrations, filings, applications, notices, transfers, consents, approvals, audits, qualifications, waivers or other action of any kind is required by virtue of the execution and delivery of this Agreement, or of the consummation of the transactions contemplated hereby: (a) to avoid the loss of any Authorization or any asset, property or right pursuant to the terms thereof, or the violation or breach of any Law applicable thereto, or (b) to enable Duckhorn to hold and enjoy the same immediately after the Effective Date in the conduct of the Duckhorn Business as conducted prior to the Effective Date.

4.30 **Fees and Commissions**

Duckhorn is not a party to or bound by any Contract to pay any royalty, license fee or management fee. No broker, finder or similar intermediary has acted for or on behalf of or is entitled to any broker's, finder's or similar fee or other commission from Duckhorn in connection with this Agreement.

4.31 **Books and Records**

Complete and correct copies of the Constatting Documents, and of all amendments thereto, of Duckhorn and Subco have been previously delivered to HEI. The corporate records and minute books of Duckhorn and Subco contain or, at or prior to the Business Combination will contain, in all material respects, complete and accurate minutes of all meetings of the directors and shareholders thereof since the date of incorporation, together with the full text of all resolutions of directors and shareholders passed in lieu of such meetings, duly signed. Except as reflected in such minute books, there are no minutes of meetings or consents in lieu of meetings of the board of directors (or its committees) or of the shareholders of Duckhorn.

4.32 **Restrictions on Business Combination**

Except to the extent that Duckhorn must comply with the policies of the TSXV and applicable Laws, Duckhorn is not a party to or bound or affected by any commitment, agreement or document which would prohibit or restrict Duckhorn from entering into and completing the Business Combination.

4.33 **Reporting Issuer Status**

Duckhorn is a "reporting issuer" in each of the Canadian Jurisdictions within the meaning of the Canadian Securities Laws and is in material compliance with its obligations as a reporting issuer, and none of the British Columbia Securities Commission, the Alberta Securities Commission or other Governmental Authority has issued any order preventing the Business Combination or the trading of any securities of Duckhorn.

4.34 **Share Issuance**

Subject to applicable Canadian Securities Laws and the rules and policies of the TSXV, at the Effective Time, Duckhorn will have the full and lawful right and authority to issue Duckhorn Shares to the HEI Shareholders, in connection with the Business Combination, and upon issuance such shares will be validly issued as fully paid and non-assessable common shares in the capital of Duckhorn free and clear of all Encumbrances.

ARTICLE 5
SURVIVAL OF COVENANTS, REPRESENTATIONS AND WARRANTIES

5.01 **Survival of Covenants, Representations and Warranties**

No investigation by or on behalf of any party prior to the execution of this Agreement will mitigate, diminish or affect the representations and warranties made by the other parties. The representations and warranties of the parties contained in this Agreement will not survive the completion

of the Business Combination and will expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms. This Section 5.01 will not limit any covenant or agreement of any of the parties, which, by its terms, contemplates performance after the Effective Time or the date on which this Agreement is terminated, as the case may be.

ARTICLE 6 **COVENANTS**

6.01 Access to HEI

HEI will forthwith make available to Duckhorn and its authorized representatives and, if requested by Duckhorn, provide a copy to Duckhorn of, all title documents, Contracts, financial statements, Constatting Documents, minute books, share certificate books, share registers, plans, reports, licences, orders, permits, books of account, accounting records and all other documents, information or data relating to HEI and the HEI Business. HEI will afford Duckhorn and its authorized representatives every reasonable opportunity to have access during normal business hours to the HEI Business and the property, assets, undertaking, records and documents of HEI. At the request of Duckhorn, HEI will execute or cause to be executed such consents, authorizations and directions as may be necessary to permit any inspection of the HEI Business and any property of HEI or to enable Duckhorn or its authorized representatives to obtain full access to all files and records relating to HEI and any of the Assets of HEI maintained by Governmental Authorities. At Duckhorn's request, HEI will co-operate with Duckhorn in arranging any such meetings as Duckhorn should reasonably request with:

- (a) employees, directors and officers of HEI;
- (b) persons who have or have had a business relationship with HEI; and
- (c) auditors, solicitors or any other persons engaged or previously engaged to provide services to HEI who have knowledge of matters relating to HEI and the HEI Business.

6.02 Access to Duckhorn

Duckhorn will forthwith make available to HEI and its authorized representatives and, if requested by HEI, provide a copy to HEI of, all title documents, Contracts, financial statements, Constatting Documents, minute books, share certificate books, share registers, plans, reports, licences, orders, permits, books of account, accounting records and all other documents, information or data relating to Duckhorn, Subco and the Duckhorn Business. Duckhorn will afford HEI and its authorized representatives every reasonable opportunity to have access, during normal business hours, to the Duckhorn Business and the property, assets, undertaking, records and documents of Duckhorn or Subco. At the request of HEI, Duckhorn will execute or cause to be executed such consents, authorizations and directions as may be necessary to permit any inspection of the Duckhorn Business and any property of Duckhorn or Subco or to enable HEI or its authorized representatives to obtain full access to all files and records relating to Duckhorn or Subco and any of the assets of Duckhorn or Subco maintained by Governmental Authorities. At HEI's request, Duckhorn will co-operate with HEI in arranging any such meetings as HEI should reasonably request with:

- (a) employees of Duckhorn, directors and officers of Duckhorn;

- (b) persons who have or have had a business relationship with Duckhorn; and
- (c) auditors, solicitors or any other persons engaged or previously engaged to provide services to Duckhorn or Subco who have knowledge of matters relating to Duckhorn or Subco and the Duckhorn Business.

6.03 **Confidentiality**

- (a) Each party hereto agrees that it shall keep strictly confidential and shall not disclose, copy, reproduce or distribute, or cause or permit to be disclosed, copied, reproduced or distributed any information concerning another party hereto (the “**Disclosing Party**”), its business, operations, assets and liabilities, that was obtained from another party hereto (or such party’s Representatives) including pursuant to Sections 6.01 and 6.02 hereof, respectively (the “**Confidential Information**”) to anyone except (i) the receiving party’s (the “**Recipient**”) directors, officers, employees, affiliates and advisors (the “**Representatives**”) to whom disclosure is reasonably necessary for the purposes of or in connection with the transactions contemplated herein, and who have agreed to be bound by the terms of this Agreement, or (ii) as otherwise consented to in writing by Disclosing Party. Each Recipient shall use its best efforts to ensure that the Confidential Information remains strictly confidential and is not disclosed to or seen, used or obtained by any person or entity except in accordance with the terms of this Agreement.
- (b) Prior to the Effective Date, each Recipient and its Representatives shall not use or cause to be used any Confidential Information for any purpose other than in connection with evaluating, negotiating or advising in connection with the transactions contemplated herein, and at no time shall a Recipient or its Representatives otherwise use or cause to be used any Confidential Information for the benefit of itself or any other third party or in any manner adverse to, or to the detriment of, the Disclosing Party or its shareholders.
- (c) Each Recipient shall instruct its Representatives to whom it makes disclosure that the disclosure is made in confidence and shall be kept in confidence and used only in accordance with this Agreement. The Recipient is liable for any breach of the obligations under this Agreement committed by its Representatives.
- (d) Notwithstanding the foregoing,
 - (i) the obligations of the Recipient under this section 6.03 shall not apply to any information that (A) is publicly available or becomes publicly available through no action or fault of the Recipient, (B) was already in the Recipient’s possession or known to Recipient prior to being disclosed or provided to the Recipient by or on behalf of the Disclosing Party, provided that the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect thereto, (C) is obtained by the Recipient from a third party, provided, that, such third party has the lawful right to disclose the Confidential Information, or (D) is independently developed by the Recipient without reference to the Confidential Information; and

- (ii) a Recipient may disclose Confidential Information if and to the extent legally required or compelled to do so by applicable law or in any governmental, administrative or judicial process (the “**Compelled Disclosure**”). The Recipient shall provide the Disclosing Party with prompt written notice of any request or requirement for Compelled Disclosure and shall cooperate with the Disclosing Party as the latter may reasonably and lawfully request with respect to the form, timing and nature of any Compelled Disclosure or seeking a protective order or other appropriate remedy. The Recipient may disclose only such Confidential Information as is specifically required or compelled to be disclosed and shall continue to use his, her or its best efforts to preserve the confidentiality of the Confidential Information.
- (e) Upon the termination or rescission of this Agreement, each Recipient will promptly, if requested to do so by the Disclosing Party, return to the Disclosing Party or destroy all Confidential Information and all copies thereof and retain none for its files. The requirements of confidentiality set forth herein shall survive the return or destruction of such Confidential Information.
- (f) Each Recipient hereby agrees that its failure or threat of failure to perform any obligation or duty which it has agreed to perform under this Agreement may cause irreparable harm to the Disclosing Party, which harm cannot be adequately compensated for by monetary damages. It is further agreed by each Recipient that an order of specific performance, injunctive relief or other equitable relief (or any combination thereof) against the Recipient in the event of a breach or default, or the threat of a breach or default, under the terms of this Agreement would be equitable and would not work a hardship on the Recipient and accordingly, in such event the Disclosing Party, without any bond or other security being required and in addition to whatever other remedies are or might be available at law or in equity, shall be entitled to compel specific performance by, or to obtain injunctive relief or other equitable relief (or any combination thereof) against, the Recipient, with respect to any such event.
- (g) Each Recipient acknowledges that the Recipient is aware, and shall advise his, her or its Representatives, that Canadian Securities Laws prohibit any person who has received material non-public information regarding a reporting issuer from purchasing or selling securities of such issuer or from communicating such information to any other person.

6.04 **Filings**

- (a) Duckhorn and HEI shall prepare and file, or cause to be filed, any filings required under any applicable Laws, or the rules and policies of the TSXV or other Governmental Authorities relating to the Business Combination and the Amalgamation, and shall provide on a timely basis such information to each other as is necessary to complete such filings.
- (b) Duckhorn covenants and agrees to take, in a timely manner, all commercially reasonable actions and steps necessary in order that effective as at the Effective Date: (i) the Duckhorn Shares, including for greater certainty, the Duckhorn Shares issuable pursuant to the Business Combination, be listed and posted for trading on the TSXV; and (ii) if

received, Duckhorn shall provide HEI with copies of the approval of the TSXV respecting the Business Combination and the listing and posting for trading of the additional Duckhorn Shares to be issued pursuant to the Business Combination.

6.05 **Conduct of HEI Prior to Closing**

Without in any way limiting any other obligations of HEI hereunder, during the period from the date hereof until the earlier of the Effective Date or the date this Agreement is terminated in accordance with its terms, HEI will use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable (i) to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, (ii) to comply with all provisions of this Agreement, and (iii) to cooperate with Duckhorn in connection with the foregoing, including, without limitation, the following actions:

- (a) *Conduct Business in the Ordinary Course.* HEI will conduct the HEI Business and its operations and affairs only in the HEI Ordinary Course, and HEI will not, without the prior written consent of Duckhorn, take any action or enter into any transaction that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of HEI contained herein, or which may interfere with or be inconsistent with the successful completion of the transactions contemplated herein;
- (b) *Material Adverse Effects.* HEI shall notify Duckhorn of any HEI Material Adverse Effect;
- (c) *Corporate Action.* HEI will use its commercially reasonable efforts to take all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution, delivery and performance of this Agreement and the other agreements and documents contemplated hereby and to complete the Business Combination and the transactions contemplated hereby, and to cause all necessary meetings of directors and shareholders of HEI to be held for such purpose. In particular, HEI will use its commercially reasonable efforts to obtain the approval of its shareholders for the Amalgamation, in accordance with the ABCA (the “**HEI Shareholder Approval**”) on or before the Outside Date. HEI will not, in connection with the HEI Shareholder Approval, mail or otherwise transmit any information circular or form of proxy or other solicitation material to any person in the United States except to HEI Shareholders resident in the United States as at the record date of the meeting of HEI Shareholders where HEI Shareholder Approval will be sought;
- (d) *HEI Concurrent Financing.* HEI will use its commercially reasonable efforts to complete the HEI Concurrent Financing prior to the completion of the Business Combination;
- (e) *HEI Voting Agreements.* HEI shall use its commercially reasonable efforts to obtain signed copies of the HEI Voting Agreements from the HEI Supporting Shareholders concurrently with the execution of this Agreement, and following such execution until the date of the HEI Meeting;
- (f) *Restrictive Covenants.* HEI shall not, directly or indirectly (other than with the prior written consent of Duckhorn):

- (i) amend its Constatng Documents except as necessary to carry out the Amalgamation;
- (ii) split, combine or reclassify any of its securities or declare, pay or make any dividend or other distribution on its shares, or distribute any of its properties or assets to any person;
- (iii) enter into or amend any employment contracts with any director, officer or key employee, create or amend any Employee Plan, make any increases in the base compensation, bonuses, paid vacation time allowed or benefits for its directors, officers, employees or consultants except for the adoption of the HEI Plan;
- (iv) hire or dismiss any employees whose total annual compensation exceeds \$100,000 in the aggregate;
- (v) acquire or agree to acquire (by tender offer, exchange offer, merger, amalgamation, acquisition of shares or assets or otherwise) any person, partnership, joint venture or other business organization or division or acquire or agree to acquire any material assets outside of the HEI Ordinary Course;
- (vi) create any stock option or bonus plan, pay any bonuses, deferred or otherwise, or defer any compensation to any of its directors, officers or employees;
- (vii) make any material change in accounting procedures or practices;
- (viii) mortgage, pledge or hypothecate any of its assets, or subject them to any Encumbrance, other than a Permitted Encumbrance;
- (ix) enter into any Contract or arrangement granting any rights to purchase or lease any of its assets or requiring the consent of any person to the transfer, assign or lease of any of its assets outside of the HEI Ordinary Course;
- (x) sell, lease, sublease, assign or transfer (by tender offer, exchange offer, merger, amalgamation, sale of shares or assets or otherwise) any of its assets;
- (xi) cancel, waive or compromise any debts or claims, including accounts payable to and receivable from affiliates;
- (xii) settle any outstanding claim, dispute, litigation matter, or tax dispute;
- (xiii) enter into any other material transaction or any amendment of any Contract or Authorization which is material to the HEI Business settle any outstanding claim, dispute, litigation matter, or tax dispute;
- (xiv) enter into any material Contract regarding its business operations, including any joint venture, partnership or other arrangement outside of the HEI Ordinary Course;

- (xv) transfer any assets to any of its shareholders or any of their subsidiaries or affiliates or assume any indebtedness or Liability from a shareholder or any of their subsidiaries or affiliates or enter into any other related party transactions;
 - (xvi) fail to pay or satisfy when due any Liability where the failure to do so would have a HEI Material Adverse Effect; or
 - (xvii) enter into any agreement or understanding to do any of the foregoing;
- (g) *Regulatory Consents.* HEI will use its commercially reasonable efforts to obtain, prior to the completion of the Business Combination, from all appropriate Governmental Authorities, all Authorizations required as a condition of the lawful consummation of the transactions contemplated by this Agreement, including assisting Duckhorn in obtaining the approval of the TSXV, and will effect all necessary registrations and other filings and submissions of information requested by Governmental Authorities in connection with the same;
- (h) *Contractual Consents.* HEI will give all notices and use its commercially reasonable efforts to obtain all waivers, consents and approvals required under any Contract to which HEI is a party or by which it is bound to consummate the transactions contemplated in this Agreement; and
- (i) *Contracts.* HEI will not, without the prior written consent of Duckhorn (such consent not to be unreasonably withheld or delayed), except in the HEI Ordinary Course, enter into any new material Contract or amend the terms of any existing material Contract to which it is a party for the material Contracts necessary to carry out the transactions contemplated in this Agreement.

6.06 **Conduct of Duckhorn Prior to Closing**

Without in any way limiting any other obligations of Duckhorn hereunder, during the period from the date hereof until the earlier of the Effective Date or the date this Agreement is terminated in accordance with its terms, Duckhorn will use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable (i) to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, (ii) to comply with all provisions of this Agreement, and (iii) to cooperate with HEI in connection with the foregoing, including, without limitation, the following actions:

- (a) *Conduct Business in the Ordinary Course.* Duckhorn will, and will cause Subco to, conduct the Duckhorn Business and its operations and affairs only in the Duckhorn Ordinary Course, and Duckhorn will not, and will cause Subco to not, without the prior written consent of HEI, take any action or enter into any transaction that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of Duckhorn contained herein, or which may interfere with or be inconsistent with the successful completion of the transactions contemplated herein;
- (b) *Material Adverse Effects.* Duckhorn shall notify HEI of any Duckhorn Material Adverse Effect;

- (c) *Corporate Action.* Duckhorn will use its commercially reasonable efforts to take all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution, delivery and performance of this Agreement and the other agreements and documents contemplated hereby and to complete the Business Combination and to cause all necessary meetings of directors and shareholders of Duckhorn and Subco to be held for such purpose. In particular, Duckhorn will use its commercially reasonable efforts to obtain the approval of its shareholders for the Continuance, in accordance with the BCBCA (the “**Duckhorn Shareholder Approval**”) on or before the Outside Date. Duckhorn will not, in connection with the Duckhorn Shareholder Approval, mail or otherwise transmit any information circular or form of proxy or other solicitation material to any person in the United States except to Duckhorn Shareholders resident in the United States as at the record date of the meeting of Duckhorn Shareholders where Duckhorn Shareholder Approval will be sought;
- (d) *Name Change.* Duckhorn will use its commercially reasonable efforts to complete the Name Change concurrently with the Effective Date;
- (e) *Continuance.* Duckhorn will use its commercially reasonable efforts to complete the Continuance concurrently with the Effective Date;
- (f) *HEI Voting Agreements.* Duckhorn shall use its commercially reasonable efforts to obtain signed copies of the Duckhorn Voting Agreements from the Duckhorn Supporting Shareholders concurrently with the execution of this Agreement, and following such execution until the date of the Duckhorn Meeting;
- (g) *Restrictive Covenants.* Duckhorn shall not, directly or indirectly (other than with the prior written consent of HEI):
 - (i) amend its Constatng Documents except as necessary to carry out the Name Change or Continuance;
 - (ii) issue any Duckhorn Shares or securities or other instruments convertible into Duckhorn Shares;
 - (iii) split, combine or reclassify any of its securities or declare, pay or make any dividend or other distribution on its shares, or distribute any of its properties or assets to any person;
 - (iv) enter into or amend any employment contracts with any director, officer or key employee, create or amend any Employee Plan, make any increases in the base compensation, bonuses, paid vacation time allowed or benefits for its directors, officers, employees or consultants except for the adoption of the Duckhorn Plan;
 - (v) hire any employees;
 - (vi) acquire or agree to acquire (by tender offer, exchange offer, merger, amalgamation, acquisition of shares or assets or otherwise) any person, partnership, joint venture or other business organization or division or acquire or agree to acquire any material assets outside of the Duckhorn Ordinary Course;

- (vii) create any stock option or bonus plan, pay any bonuses, deferred or otherwise, or defer any compensation to any of its directors, officers or employees;
 - (viii) make any material change in accounting procedures or practices;
 - (ix) mortgage, pledge or hypothecate any of its assets, or subject them to any Encumbrance, other than a Permitted Encumbrance;
 - (x) enter into any Contract or arrangement granting any rights to purchase or lease any of its assets or requiring the consent of any person to the transfer, assignment or lease of any of its assets;
 - (xi) sell, lease, sublease, assign or transfer (by tender offer, exchange offer, merger, amalgamation, sale of shares or assets or otherwise) any of its assets;
 - (xii) cancel, waive or compromise any debts or claims, including accounts payable to and receivable from affiliates;
 - (xiii) enter into any other material transaction or any amendment of any Contract or Authorization which is material to the Duckhorn Business;
 - (xiv) settle any outstanding claim, dispute, litigation matter, or tax dispute;
 - (xv) transfer any assets to any of its shareholders or any of their subsidiaries or affiliates or assume any indebtedness or Liability from a shareholder or any of their subsidiaries or affiliates or enter into any other related party transactions;
 - (xvi) enter into any material Contract regarding its business operations, including any joint venture, partnership or other arrangement outside of the Duckhorn Ordinary Course;
 - (xvii) fail to pay or satisfy when due any Liability where the failure to do so would have a Duckhorn Material Adverse Effect; or
 - (xviii) enter into any agreement or understanding to do any of the foregoing.
- (h) *Regulatory Consents.* Duckhorn will use its commercially reasonable efforts to obtain, prior to the completion of the Business Combination, from all appropriate Governmental Authorities, all Authorizations required as a condition of the lawful consummation of the transactions contemplated by this Agreement including the approval of the TSXV, and will effect all necessary registrations and other filings and submissions of information requested by Governmental Authorities in connection with the same;
- (i) *Contractual Consents.* Duckhorn will give all notices and use its commercially reasonable efforts to obtain all waivers, consents and approvals required under any Contract to which Duckhorn or any Duckhorn Subsidiary is a party or by which it is bound to consummate the transactions contemplated hereby; and

- (j) *Contracts.* Duckhorn will not, without the prior written consent of HEI (such consent not to be unreasonably withheld or delayed), enter into any new Contract or amend the terms of any existing Contract to which it is a party except for the Contracts necessary to carry out the transactions contemplated in this Agreement.

6.07

Standstill of HEI

- (a) Unless and until this Agreement is terminated pursuant to the terms hereof, HEI hereby agrees:
 - (i) not to initiate, propose, assist or participate in any activities or solicitations in opposition to or in competition with the Business Combination and, without limiting the generality of the foregoing, not to induce or attempt to induce any other person to initiate any shareholder proposal, acquisition of shares in the capital of HEI (other than pursuant to the HEI Concurrent Financing) or any other form of transaction (unless the parties have mutually agreed otherwise), inconsistent with completion of the Business Combination and not to take actions of any kind which may reduce the likelihood of success of the Business Combination;
 - (ii) not to issue any debt, equity or other securities, without the prior written consent of Duckhorn (such consent not to be unreasonably withheld or delayed), other than: (A) in connection with the HEI Concurrent Financing; (B) the grant or exercise of stock options and other similar issuances pursuant to any stock option plan or similar share compensation arrangements in place prior to the date hereof; (C) the issuance of HEI Shares upon the exercise of convertible securities, warrants, options, or any other commitment or agreement outstanding prior to the date hereof; (D) any arm's length property acquisition transaction or other corporate acquisitions by HEI; or (E) as contemplated herein;
 - (iii) not to take any action that would prevent the Business Combination from being consummated on substantially the same terms contemplated by this Agreement; and
 - (iv) to cooperate fully with Duckhorn and to use its commercially reasonable efforts to complete the Business Combination.
- (b) In the event that HEI receives a bona fide offer, whether written or oral, (an "**Offer**") from a third party to acquire the assets or shares of HEI or to enter into an arrangement or agreement which would materially interfere with the Business Combination which HEI wishes to pursue at the instruction of its board of directors or a committee thereof, including without in any way limiting the generality of the foregoing, any such arrangement or agreement resulting from an unsolicited offer or proposal from a third party (a "**HEI Alternative Transaction**"), then HEI shall provide forthwith (and in any event within one business day following receipt thereof) a copy of the Offer to Duckhorn or, if made orally, a written summary of the Offer, and HEI may, upon written notice to Duckhorn and payment of the amount set forth in Section 8.02(c), terminate this Agreement upon written notice to Duckhorn. Upon termination of this Agreement by HEI by written notice to Duckhorn (the "**HEI Termination**") or upon HEI entering into an

agreement, including a letter of intent (the “**HEI Alternative Transaction Agreement**”) prior to the termination of this Agreement, with respect to the HEI Alternative Transaction, HEI shall forthwith provide Duckhorn with a copy of the HEI Alternative Transaction Agreement.

6.08

Standstill of Duckhorn

- (a) Unless and until this Agreement is terminated pursuant to the terms hereof, Duckhorn hereby agrees:
- (i) not to initiate, propose, assist or participate in any activities or solicitations in opposition to or in competition with the Business Combination and, without limiting the generality of the foregoing, not to induce or attempt to induce any other person to initiate any shareholder proposal, acquisition of shares in the capital of Duckhorn or any other form of transaction (unless the parties have mutually agreed otherwise), inconsistent with completion of the Business Combination and not to take actions of any kind which may reduce the likelihood of success of the Business Combination;
 - (ii) not to issue any debt, equity or other securities without the prior written consent of HEI;
 - (iii) not to take any action that would prevent the Business Combination from being consummated on substantially the same terms contemplated by this Agreement; and
 - (iv) to cooperate fully with HEI and to use its commercially reasonable efforts to complete the Business Combination.
- (b) In the event that Duckhorn receives an Offer from a third party to acquire the assets or shares of Duckhorn or to enter into an arrangement or agreement which would materially interfere with the Business Combination which Duckhorn wishes to pursue at the instruction of its board of directors or a committee thereof, including without in any way limiting the generality of the foregoing, any such arrangement or agreement resulting from an unsolicited offer or proposal from a third party (a “**Duckhorn Alternative Transaction**”), then Duckhorn shall provide forthwith (and in any event within one business day following receipt thereof) a copy of the Offer to HEI or, if made orally, a written summary of the Offer, and Duckhorn may, upon written notice to HEI and payment of the amount set forth in Section 8.02(d), terminate this Agreement. Upon termination of this Agreement by Duckhorn by written notice to HEI (the “**Duckhorn Termination**”) or upon Duckhorn entering into an agreement, including a letter of intent (the “**Duckhorn Alternative Transaction Agreement**”) prior to the termination of this Agreement, with respect to the Duckhorn Alternative Transaction, Duckhorn shall forthwith provide HEI with a copy of the Duckhorn Alternative Transaction Agreement.

6.09

Change to Directors and Officers of Duckhorn

Upon the completion of the Business Combination:

- (a) Anthony Alvaro and Mike Castanho will resign as directors of Resulting Issuer and James Baker, Greg Robb, Brad Wall, Michael Graham and Philip Hughes will be appointed in their place as directors of the Resulting Issuer; and
- (b) Jeff Barber will resign as the Chief Executive Officer and Chief Financial Officer of the Resulting Issuer and will be replaced by appointees of the newly constituted board of directors as set forth in 6.09(a).

ARTICLE 7
CONDITIONS OF CLOSING

7.01 Conditions in Favour of Duckhorn

The consummation of the Business Combination is subject to the following terms and conditions for the exclusive benefit of Duckhorn, to be fulfilled or performed at or prior to the Effective Time:

- (a) *Personal Information Forms.* As required by the TSXV, each proposed director and officer of the Resulting Issuer and such other persons as may be required by the TSXV shall have completed and delivered to the TSXV a duly completed Form 2A Personal Information Form or, if applicable, Form 2C Declaration and provided a copy thereof to Duckhorn.
- (b) *TSXV Listing.* The TSXV shall have conditionally approved, or not disallowed, as applicable, the listing of the common shares of the Resulting Issuer, including the shares which are issuable upon the exercise of the Replacement Options, Replacement Warrants and other convertible securities, subject to compliance with the usual requirements of the TSXV, and the resale of such shares not being subject to any Canadian hold or restricted period (except for a sale that would constitute a “control distribution” as defined in National Instrument 45-102 – *Resale of Securities*, and except for any other hold or escrow periods as may be required by the TSXV). The parties hereto shall have also entered into such agreements as may be required by the TSXV.
- (c) *Required Approvals.* HEI shall have obtained the approval of its board of directors, and, if required or permitted by the ABCA, its shareholders, in accordance with the ABCA, for this Agreement and the Transactions contemplated hereby.
- (d) *Proof of Corporate Action.* Duckhorn shall have received from HEI a copy, certified by a duly authorized officer thereof to be true and complete as of the Effective Date, of the records of all corporate action taken to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby.
- (e) *Representations and Warranties.* The representations and warranties of HEI contained in this Agreement will be true and correct at the Effective Time, with the same force and effect as if such representations and warranties were made at and as of such date (except to the extent such representations and warranties speak as of an earlier date, in which event they will be true as of such earlier date, or except as affected by transactions specifically permitted or contemplated by this Agreement, or except for any failures or breaches of representations and warranties which, individually or in the aggregate, would

not reasonably be expected to result in a HEI Material Adverse Effect or prevent or delay the completion of the Business Combination or other Transactions contemplated herein), and certificates of the Chief Executive Officer and the Chief Financial Officer of HEI dated the Effective Date will have been delivered to Duckhorn confirming the foregoing.

- (f) *Covenants.* All of the terms, covenants and conditions of this Agreement to be complied with or performed by HEI at or before the Effective Time will have been complied with or performed (except to the extent that the failure to comply with or perform such covenants has not resulted in or would not result in, individually or in the aggregate, a HEI Material Adverse Effect or prevent or delay the completion of the Business Combination or the other Transactions contemplated herein) and certificates of the Chief Executive Officer and the Chief Financial Officer of HEI dated the Effective Date will have been delivered to Duckhorn confirming the foregoing.
- (g) *Minimum Offering.* HEI will have completed the Minimum Offering in accordance with Laws, including Canadian Securities Laws.
- (h) *Regulatory Consents.* There will have been obtained, from all relevant Governmental Authorities, such Authorizations as are required to be obtained by HEI and Duckhorn to consummate the Business Combination, including the approval of the TSXV for the Business Combination and for the listing on the TSXV of the Resulting Issuer Shares issuable pursuant to the Business Combination (including the exercise of the Replacement Options and Replacement Warrants issued in replacement for or in lieu of the HEI Options and HEI Warrants, respectively, pursuant to the terms of this Agreement).
- (i) *Contractual Consents.* HEI will have given or obtained the notices, consents and approvals referred to in subsection 6.05(f), as applicable, in each case in form and substance satisfactory to Duckhorn, acting reasonably.
- (j) *No Action or Proceeding.* No *bona fide* legal or regulatory action or proceeding will be pending or threatened by any person to enjoin, restrict or prohibit the Business Combination or any other of the transactions contemplated hereby, or the right of Duckhorn, Subco or HEI to conduct, expand, and develop their business.
- (k) *Release by Directors and Officers.* Each of the directors and officers of Duckhorn that resigns as contemplated in Section 6.09 will have received releases from each of Duckhorn and HEI in favour of such directors and officer in form and substance satisfactory to Duckhorn, acting reasonably
- (l) *HEI Material Adverse Effect.* There will have been no HEI Material Adverse Effect since the date hereof and a certificate of the Chief Executive Officer and the Chief Financial Officer of HEI dated the Effective Date to that effect will have been delivered to Duckhorn.
- (m) *Dissent Rights.* Dissent Rights will not have been exercised in respect of a total number of HEI Shares exceeding 10% of the HEI Shares outstanding as of the date hereof and Dissent Rights will not have been exercised in respect of a total number of Duckhorn Shares exceeding 10% of the Duckhorn Shares outstanding as of the date hereof.

If any of the conditions contained in this Section 7.01 have not been performed or fulfilled at or prior to the Effective Time to the satisfaction of Duckhorn, acting reasonably, Duckhorn may, by notice to HEI, terminate this Agreement and the obligations of HEI and Duckhorn under this Agreement. Any such condition may be waived in whole or in part by Duckhorn without prejudice to any claims it may have for breach of covenant, representation or warranty or otherwise.

7.02 **Conditions in Favour of HEI**

The consummation of the Business Combination is subject to the following terms and conditions for the exclusive benefit of HEI, to be fulfilled or performed at or prior to the Effective Time:

- (a) *Personal Information Forms.* As required by the TSXV, each proposed director and officer of the Resulting Issuer and such other persons as may be required by the TSXV shall have completed and delivered to the TSXV a duly completed Form 2A Personal Information Form or, if applicable, Form 2C Declaration and provided a copy thereof to HEI.
- (b) *TSXV Listing.* The TSXV shall have conditionally approved, or not disallowed, as applicable, the listing of the common shares of the Resulting Issuer, including the shares which are issuable upon the exercise of the Replacement Options and Replacement Warrants, subject to compliance with the usual requirements of the TSXV, and the resale of such shares not being subject to any Canadian hold or restricted period (except for a sale that would constitute a “control distribution” as defined in National Instrument 45-102 – *Resale of Securities*, and except for any other hold or escrow periods as may be required by the TSXV). The parties hereto shall have also entered into such agreements as may be required by the TSXV.
- (c) *Required Approvals.* Each of Duckhorn and Subco shall have obtained the approval of its board of directors and, if applicable, shareholders, for this Agreement and the transactions contemplated hereby.
- (d) *Proof of Corporate Action.* HEI shall have received from each of Duckhorn and Subco a copy, certified by a duly authorized officer thereof to be true and complete as of the Effective Date, of the records of all corporate action taken to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby.
- (e) *Name Change.* The Name Change will have been completed.
- (f) *Continuance.* The Continuance will have been completed.
- (g) *Representations and Warranties.* The representations and warranties of Duckhorn and Subco contained in this Agreement will be true and correct at the Effective Time, with the same force and effect as if such representations and warranties were made at and as of such date (except to the extent such representations and warranties speak as of an earlier date, in which event they will be true as of such earlier date, or except as affected by transactions specifically permitted or contemplated by this Agreement, or except for any failures or breaches of representations and warranties which, individually or in the aggregate, would not reasonably be expected to result in a Duckhorn Material Adverse Effect or prevent or delay the completion of the Business Combination or other Transactions contemplated herein), and a certificate of the Chief Executive Officer and

the Chief Financial Officer of Duckhorn or Subco, as applicable, dated the Effective Date will have been delivered to HEI confirming the foregoing.

- (h) *Covenants.* All of the terms, covenants and conditions of this Agreement to be complied with or performed by Duckhorn or Subco at or before the Effective Time will have been complied with or performed (except to the extent that the failure to comply with such covenants has not resulted in or would not result in, individually or in the aggregate, a Duckhorn Material Adverse Effect or prevent or delay the completion of the Business Combination or the other Transactions contemplated herein), and a certificate of the Chief Executive Officer and the Chief Financial Officer of Duckhorn or Subco, as applicable, dated the Effective Date will have been delivered to HEI confirming the foregoing.
- (i) *Regulatory Consents.* There will have been obtained, from all relevant Governmental Authorities, such Authorizations as are required to be obtained by HEI and Duckhorn to consummate the Business Combination, including the approval of the TSXV for the Business Combination and for the listing on the TSXV of the Resulting Issuer Shares issuable pursuant to the Business Combination (including the exercise of the Replacement Options and Replacement Warrants issued in replacement for or in lieu of the HEI Options or HEI Warrants, as applicable, pursuant to the terms of this Agreement), in each case in form and substance satisfactory to HEI, acting reasonably.
- (j) *Contractual Consents.* Duckhorn will have given or obtained the notices, consents and approvals referred to in subsection 6.06(i), in each case in form and substance satisfactory to Duckhorn, acting reasonably.
- (k) *Axis Loan.* The Axis Loan and all obligations under the Axis Promissory Note shall have been extinguished by Duckhorn.
- (l) *No Action or Proceeding.* No *bona fide* legal or regulatory action or proceeding will be pending or threatened by any person to enjoin, restrict or prohibit the Business Combination or any other of the transactions contemplated hereby, or the right of Duckhorn, Subco, or HEI to conduct, expand, and develop their business.
- (m) *Duckhorn Material Adverse Effect.* There will have been no Duckhorn Material Adverse Effect and a certificate of the Chief Executive Officer and the Chief Financial Officer of Duckhorn dated the Effective Date to that effect will have been delivered to HEI.
- (n) *Release by Directors and Officers.* Each of the directors and officers of Duckhorn that resigns as contemplated in Section 6.09 will have executed and delivered releases in favour of Duckhorn in form and substance satisfactory to HEI, acting reasonably.
- (o) *Dissent Rights.* Dissent Rights will not have been exercised in respect of a total number of HEI Shares exceeding 10% of the HEI Shares outstanding as of the date hereof and Dissent Rights will not have been exercised in respect of a total number of Duckhorn Shares exceeding 10% of the Duckhorn Shares outstanding as of the date hereof.
- (p) *Duckhorn Shares.* The Duckhorn Shares to be issued to the former holders of HEI Shares in connection with the Business Combination and, after giving effect to the Business Combination, issuable upon the exercise of the options and warrants of Duckhorn in

accordance with the respective terms thereof, shall be issued as fully paid and non-assessable shares in the capital of Duckhorn, free and clear of all encumbrances, liens, charges, demands of whatsoever nature under Canadian law, except those imposed pursuant to statutory “control block hold periods” and escrow restrictions of the TSXV, if any.

If any of the conditions contained in this Section 7.02 have not been performed or fulfilled at or prior to the Effective Time to the satisfaction of HEI, acting reasonably, HEI may, by notice to Duckhorn, terminate this Agreement and the obligations of HEI and Duckhorn under this Agreement. Any such condition may be waived in whole or in part by HEI without prejudice to any claims it may have for breach of covenant, representation or warranty or otherwise.

7.03 **Filing Articles**

HEI, Duckhorn and Subco will jointly file with the Registrar, Articles of Amalgamation and such other documents as may be required to complete the Business Combination as soon as practical and in any event within one Business Day after all conditions set out in Sections 7.01 and 7.02 have been satisfied or waived.

7.04 **Further Assurances**

Each party to this Agreement covenants and agrees that, from time to time prior to and subsequent to the Business Combination, it will execute and deliver all such documents, including all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party hereto, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

ARTICLE 8
TERMINATION

8.01 **Termination**

This Agreement may be terminated at any time before the Effective Time:

- (a) by the mutual agreement of Duckhorn and HEI;
- (b) by either of Duckhorn or HEI by notice to the other if there has been a misrepresentation, breach or non-performance by the breaching party of any representation, warranty, covenant or obligation contained in this Agreement, which could reasonably be expected to have a HEI Material Adverse Effect or Duckhorn Material Adverse Effect on the terminating party, as applicable, or the ability of either party to complete the Business Combination in accordance with the terms of this Agreement, provided the breaching party has been given notice of and 10 days to cure any such misrepresentation, breach or non-performance;

- (c) by Duckhorn pursuant to Section 6.08 (having first made the payment referred to in Section 8.02(d)) or Section 7.01;
- (d) by HEI pursuant to Section 6.07 (having first made the payment referred to in Section 8.02(c)) or Section 7.02;
- (e) by either HEI or Duckhorn, if the Transactions have not been completed (the "**Closing**") on or before December 15, 2021 (as may be extended pursuant to this Section 8.01(e), the "**Outside Date**"); provided, that if the Closing shall not have occurred at least five Business Days prior to such date and all of the conditions to Closing have been satisfied or shall be capable of then being satisfied, other than the conditions set forth in Section 7.01(b), Section 7.01(h), Section 7.02(b), Section 7.02(e), Section 7.02(f) or Section 7.02(i), the parties hereto shall each have the right to extend the Outside Date for successive periods of up to 30 days by providing notice to the other Party; and provided, further that such extensions shall not, in any event, extend beyond February 15, 2022; or
- (f) by either HEI or Duckhorn, if the HEI Concurrent Financing has not been completed on or before September 30, 2021, or such later date as may be agreed to by HEI and Duckhorn,

provided that the right to terminate this Agreement pursuant to Section 8.01(b) or (e) above is not available to a party if it is in material breach of any representation, warranty or covenant hereof.

8.02 Effect of Termination

If this Agreement is terminated in accordance with Section 8.01:

- (a) this Agreement shall forthwith have no further force or effect and there shall be no obligation on the part of the parties hereunder except with respect to (i) Section 6.03 and Section 9.02, which will survive such termination, and (ii) a breach arising from the fraud or wilful misconduct of any party; and
- (b) neither Duckhorn nor HEI will have any further liability to the other party except as expressly contemplated hereby, provided that the termination of this Agreement (i) will not relieve either Duckhorn or HEI from any liability for breach by it of this Agreement prior to such termination or (ii) preclude a party from seeking injunctive relief to restrain any breach or threatened breach of this Agreement or otherwise to obtain specific performance of any provision of this Agreement.

Notwithstanding anything to the contrary herein, in the event of termination of this Agreement:

- (c) by HEI pursuant to Section 6.07(b), HEI shall pay to Duckhorn \$500,000 as liquidated damages in immediately available funds, to an account designated by Duckhorn, immediately upon such termination, and after such termination but prior to the payment of such amount, HEI shall be deemed to hold such funds in trust for Duckhorn; or
- (d) by Duckhorn pursuant to Section 6.08(b), Duckhorn shall pay to HEI \$500,000 as liquidated damages in immediately available funds, to an account designated by HEI,

immediately upon such termination, and after such termination but prior to the payment of such amount, Duckhorn shall be deemed to hold such funds in trust for HEI.

8.03 **Waivers and Extensions**

At any time prior to the earlier of the Effective Time or the termination of this Agreement in accordance with the provisions thereof, each of the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of another party hereto; (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto; or (c) waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party to be bound thereby.

ARTICLE 9
MISCELLANEOUS

9.01 **Further Assurances**

Each of the parties hereto will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party hereto may, either before or after the Business Combination, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

9.02 **Transaction Costs**

- (a) Subject to Section 9.02(b), each party hereto will pay its respective costs and expenses (including but not limited to its legal and accounting costs) incurred in connection with the preparation, execution, delivery and performance of this Agreement and all documents and instruments executed pursuant to this Agreement and all transactions contemplated by this Agreement, and any other costs and expenses whatsoever and howsoever incurred.
- (b) Notwithstanding Section 9.02(a), HEI shall be responsible for paying all filing and listing fees payable to the TSXV and the Canadian securities regulatory authorities, as applicable, in connection with the Business Combination and matters ancillary thereto, including for greater certainty the listing of the Resulting Issuer Shares on the TSXV.

9.03 **Time of the Essence**

Time is of the essence of this Agreement.

9.04 **Public Announcements**

The parties hereto shall not make any public announcement or press release concerning this Agreement or the matters contemplated herein, their discussions or any other memoranda, letters or agreements between the parties relating to the matters contemplated herein without the prior consent of each other, which consent shall not be unreasonably withheld, provided that no party shall be prevented from making any disclosure which is required to be made by Law or any rules of a stock exchange or similar organization by which it is bound.

9.05 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

9.06 **Entire Agreement**

- (a) Subject to Section 9.06(b), this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto, including for greater certainty the Letter of Intent. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties with respect to the subject matter hereof other than as expressly set forth in this Agreement.
- (b) Notwithstanding Section 9.06(a), the parties acknowledge and agree that the understandings and agreements between the parties set forth in the Letter of Intent which do not relate specifically to the Business Combination are not superseded hereby and shall remain in full force and effect.

9.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by HEI, Subco and Duckhorn. No waiver of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific provision waived.

9.08 **Assignment**

This Agreement may not be assigned by a party hereto without the written consent of the other parties hereto, such consent not to be unreasonably withheld or delayed.

9.09 **Notices**

Any demand, notice or communication to be made or given under or pursuant to this Agreement is to be in writing, except as otherwise expressly permitted or required under this Agreement, and may be made or given by personal delivery, by registered mail or by transmittal by electronic mail addressed to the respective parties as follows:

- (a) If to Duckhorn or Subco, then to the following address:

[REDACTED] **[Personal Information Redacted]**

Attention: Jeff Barber, Chief Executive Officer and Chief Financial Officer

Email: [REDACTED] **[Personal Information Redacted]**

with a copy (which shall not constitute notice) to:

Pushor Mitchell LLP
301, 1665 Ellis Street
Kelowna, British Columbia V1Y 2B3

Attention: Keith Inman
Email: inman@pushormitchell.com

(b) If to HEI, then to the following address:

 [Personal Information Redacted]

Attention: Greg Robb, Chief Executive Officer
Email: grobbs@heliumrevolution.ca

with a copy (which shall not constitute notice) to:

Socium Law
1900, 700 – 2nd Street S.W.
Calgary, Alberta
T2P 2W2

Attention: William Van Horne
Email: william.vanhorne@sociumlaw.com

or to such other mailing or electronic mail address as any party may from time to time notify the others of in accordance with this paragraph. Any demand, notice or communication made or given by personal delivery is conclusively deemed to have been given on the day of actual delivery thereof, or, if made or given by registered mail, on the fifth business day following the deposit thereof in the mail or, if made or given by electronic mail, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party making or giving such demand, notice or communication knows, or ought reasonably to know, of difficulties with the postal system which might affect the delivery of mail, any such demand, notice or communication is not to be mailed but is to be made or given by personal delivery or by electronic mail transmission.

9.10 **Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.11 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

9.12 **Attornment**

For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in the Province of Alberta and the courts of the Province of Alberta will have jurisdiction to entertain any action arising under this Agreement. Each party hereto hereby attorns to the non-exclusive jurisdiction of the courts of the Province of British Columbia.

9.13 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

9.14 **Electronic Execution**

Delivery of an executed signature page to this Agreement by either party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party. The parties agree to accept electronic signatures generated using DocuSign, or a similar online signature tool, as original signatures.

[The remainder of this page has been left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

DUCKHORN VENTURES LTD.

By: “Jeff Barber” /s/
Name: Jeff Barber
Title: Chief Executive Officer

2374154 ALBERTA LTD.

By: “Jeff Barber” /s/
Name: Jeff Barber
Title: President

HELIUM EVOLUTION INCORPORATED

By: “Greg Robb” /s/
Name: Greg Robb
Title: Chief Executive Officer

SCHEDULE A
AMALGAMATION AGREEMENT

THIS AGREEMENT made as of the ___ day of _____, 2021.

B E T W E E N:

2374154 ALBERTA LTD.

existing under the *Business Corporations Act* (Alberta)

(hereinafter referred to as “**Subco**”)

- and -

HELIUM EVOLUTION INCORPORATED

existing under the *Business Corporations Act* (Alberta)

(hereinafter referred to as “**HEI**”)

WHEREAS:

1. The parties hereto have entered into a business combination agreement with Duckhorn Ventures Ltd. (“**Duckhorn**”) dated as of September 19, 2021 pursuant to which the parties thereto have agreed that the business and assets of HEI will be combined with those of Subco (the “**Business Combination Agreement**”).
2. Capitalized terms used herein but not otherwise defined herein have the meanings ascribed thereto in the Business Combination Agreement.
3. The authorized capital of Subco consists of an unlimited number of common shares of which [•] are issued and outstanding as fully paid and non-assessable.
4. The authorized capital of HEI consists of an unlimited number of HEI Shares and HEI Other Shares, of which 34,000,000 HEI Shares and nil HEI Other Shares are issued and outstanding as fully paid and non-assessable as at the date hereof.
5. Subco and HEI have agreed to amalgamate under the ABCA (as hereinafter defined) upon the terms and conditions hereinafter set out;
6. Effective upon the Amalgamation (as herein after defined), Duckhorn shall issue to each HEI Shareholder (as hereinafter defined) one Duckhorn Share for each HEI Share (as hereinafter defined);

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto do hereby agree as follows:

1. Interpretation

In this Agreement including the recitals:

“**ABCA**” means the *Business Corporations Act* (Alberta), as amended from time to time;

“**Agreement**” means this amalgamation agreement, at it may be amended or supplemented at any time and from time to time after the date hereof;

“**Amalco**” means the corporation resulting from the amalgamation of Subco and HEI pursuant to the Amalgamation;

“**Amalco Shares**” means the common shares in the capital of Amalco;

“**Amalgamating Corporation**” means each of Subco and HEI and “**Amalgamating Corporations**” means both of them;

“**Amalgamation**” means the amalgamation of the Amalgamating Corporations under Section 181 of the ABCA on the terms and subject to the conditions set out in this Agreement;

“**Business Combination**” means the business combination among Duckhorn, Subco and HEI pursuant to which HEI Shareholders will receive Duckhorn Shares on the basis of one Duckhorn Share for each HEI Share held, and Duckhorn will become the parent company of Amalco;

“**Business Combination Agreement**” has the meaning ascribed to it in the preamble to this Agreement;

“**Certificate of Amalgamation**” means the certificate of amalgamation to be issued by the Registrar in respect of the Amalgamation;

“**Duckhorn Shares**” means common shares in the capital of Duckhorn;

“**Effective Date**” means the date shown on the Certificate of Amalgamation;

“**Effective Time**” has the meaning ascribed to it in Section 9;

“**Exchange Ratio**” has the meaning ascribed to it in Section 4(b);

“**Governmental Authority**” means (i) any international, multinational, national, federal, provincial, state, municipal, local or other government or governmental or public ministry, department, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; (iii) any quasi-governmental body exercising any regulatory, expropriation or taxing authority; or (iv) any stock exchange or securities market;

“**ITA**” means the *Income Tax Act* (Canada), as amended, and all regulations thereunder;

“**HEI Shareholder**” means a registered holder of HEI Shares, from time to time, and “**HEI Shareholders**” means all of such holders;

“**Parties**” means Subco and HEI;

“**Person**” means any (i) corporation, partnership, limited liability company or partnership, joint venture, trust, unincorporated association or organization, business, enterprise or other entity; (ii) any individual; and (iii) any Governmental Authority;

“**Registrar**” means Registrar appointed under the ABCA;

“**Subco Shares**” means common shares in the capital of Subco;

“**Transfer Agent**” means, [•], the registrar and transfer agent of Duckhorn; and

“**TSXV**” means the TSX Venture Exchange.

2. Paramountcy

In the event of any conflict between the provisions of this Agreement and the provisions of the Business Combination Agreement, the provisions of the Business Combination Agreement shall prevail.

3. Agreement to Amalgamate

Each of the Parties hereby agrees to the Amalgamation. The Amalgamating Corporations shall amalgamate to create Amalco on the terms and conditions set out in this Agreement.

4. Amalgamation

The Parties shall cause the Articles of Amalgamation to be filed pursuant to the ABCA to effect the Amalgamation. Under the Amalgamation, at the Effective Time:

- (a) Subco and HEI will amalgamate and continue as Amalco;
- (b) each holder of HEI Shares (other than HEI Dissenting Shareholders who do not cancel their HEI Shares in consideration for obtaining Duckhorn Shares on the Amalgamation) shall receive one fully paid and non-assessable Duckhorn Share for each HEI Share held (the “**Exchange Ratio**”), following which all such HEI Shares shall be cancelled;
- (c) each option to purchase an HEI Share (“**HEI Option**”) which is outstanding and has not been duly exercised prior to the Effective Date shall be exchanged for an option to purchase (each, a “**Replacement Option**”) from Duckhorn such number of Duckhorn Shares equal to (i) the Exchange Ratio multiplied by (ii) the number of HEI Shares subject to such HEI Option immediately prior to the Effective Date. Such Replacement Option shall provide for an exercise price per Duckhorn Share (rounded up to the nearest whole cent) equal to (y) the exercise price per HEI Share otherwise purchasable pursuant to such HEI Option, subject to adjustment to meet the requirements of Subsection 7(1.4) of the ITA as provided below divided by (z) the Exchange Ratio. If the foregoing calculation results in the total Replacement Options of a particular holder being exercisable for a

number of Duckhorn Shares that includes a fractional Duckhorn Share, the total number of Duckhorn Shares subject to such holder's total Replacement Options shall be rounded down to the nearest whole number of Duckhorn Shares. All terms and conditions of a Replacement Option, including the term to expiry, conditions to and manner of exercising, will be the same as the HEI Option for which it was exchanged, and any certificate or option agreement previously evidencing the HEI Option shall thereafter evidence and be deemed to evidence such Replacement Option. Notwithstanding the foregoing, if required for purposes of meeting the requirements of paragraph 7(1.4)(c) of the ITA, the exercise price of each Replacement Option of any particular holder shall be, and shall be deemed to be, adjusted at the time of the exchange by the amount, and only to the extent, necessary to ensure that the aggregate fair market value of the Duckhorn Shares subject to the Replacement Option immediately after the exchange over the aggregate exercise price for such Duckhorn Shares pursuant to the Replacement Option does not exceed the excess of the aggregate fair market value of HEI Shares subject to the HEI Option immediately before the exchange over the aggregate exercise price for such HEI Shares under the HEI Option, and:

- (i) each holder of HEI Options shall cease to be the holder of HEI Options, or have any rights as a holder of such HEI Options (other than to receive Replacement Options in accordance with the Business Combination);
 - (ii) each name of a holder of HEI Options shall be removed from the register of HEI Options maintained by or on behalf of HEI; and
 - (iii) all HEI Options exchanged pursuant to this Section 41.1(c) shall be cancelled;
- (d) each HEI Warrant which is outstanding and has not been duly exercised prior to the Effective Date shall be exchanged for a Replacement Warrant to purchase from the Resulting Issuer the number of Resulting Issuer Shares equal to (i) the Exchange Ratio multiplied by (ii) the number of HEI Shares subject to such HEI Warrant immediately prior to the Effective Date. Such Replacement Warrant shall provide for an exercise price per Resulting Issuer Share (rounded up to the nearest whole cent) equal to (y) the exercise price per HEI Share otherwise purchasable pursuant to such HEI Warrant divided by (z) the Exchange Ratio and:
 - (i) each holder of HEI Warrants shall cease to be the holder of HEI Warrants, or have any rights as a holder of such HEI Warrants (other than to receive Replacement Options in accordance with the Business Combination);
 - (ii) each name of a holder of HEI Warrants shall be removed from the register of HEI Warrants maintained by or on behalf of HEI; and
 - (iii) all HEI Warrants exchanged pursuant to this Section 4(d) shall be cancelled;
- (e) Duckhorn shall receive one fully paid and non-assessable Amalco Share for each one Subco Share held by Duckhorn, following which all such Subco Shares shall be cancelled;
- (f) in consideration of the issuance of Duckhorn Shares in Section 4(b), Amalco shall issue to Duckhorn one Amalco Share for each Duckhorn Share issued;

- (g) the Duckhorn Shares shall be issued fully paid in consideration of the cancellation of the HEI Shares immediately prior to the Effective Time, excluding any HEI Shares held by HEI Dissenting Shareholders who do not cancel their HEI Shares in consideration of obtaining Duckhorn Shares in the Amalgamation;
- (h) Amalco shall add to the stated capital maintained in respect of the Amalco Shares an amount such that the stated capital of the Amalco Shares shall be equal to the aggregate paid-up capital for purposes of the ITA of the Subco Shares and HEI Shares immediately prior to the Effective Time;
- (i) Duckhorn shall be entitled to deduct and withhold from any consideration otherwise payable pursuant to the transactions contemplated by this Agreement to any holder of HEI Shares such amounts as Duckhorn and HEI agree are required or permitted to be deducted and withheld with respect to such payment under the Tax Act or any provision of provincial, state, local or foreign tax law, in each case as amended; to the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the HEI Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority; and
- (j) Amalco will become a wholly-owned subsidiary of Duckhorn.

5. Delivery of Securities Following Amalgamation

In accordance with normal commercial practice, as soon as practicable following the Effective Date, Duckhorn, directly or through the Transfer Agent, shall issue Direct Registration Advices or certificates representing the appropriate number of Duckhorn Shares to the former holders of HEI Shares.

6. Effect of Amalgamation

- (a) The Amalgamating Corporations shall be amalgamated and continue as one corporation under the terms and conditions prescribed in this Agreement.
- (b) The Amalgamating Corporations shall cease to exist as entities separate from Amalco.
- (c) Amalco shall possess all the property, rights, privileges and franchises and shall be subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of each of the Amalgamating Corporations.
- (d) A conviction against, or ruling, order or judgment in favour or against an Amalgamating Corporation may be enforced by or against Amalco.
- (e) The articles of amalgamation shall be deemed to be the articles of incorporation of Amalco.
- (f) Amalco shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against an Amalgamating Corporation before the Amalgamation has become effective.

7. Fractional Shares

No fractional Duckhorn Shares shall be issued to holders of HEI Shares; in lieu of any fractional entitlement, the number of Duckhorn Shares issued to each former holder of HEI Shares shall be rounded up to the nearest whole Duckhorn Share in the event that the former holder of HEI Shares is entitled to receive a fractional share representing 0.5 or more of a Duckhorn Share, or be rounded down to the nearest whole Duckhorn Share in the event that the former holder of HEI Shares is entitled to receive a fractional share representing less than 0.5 of a Duckhorn Share.

8. Filing of Articles of Amalgamation

If this Agreement is adopted by each of the Amalgamating Corporations as required by the ABCA, the Amalgamating Corporations agree that they will, jointly and together, file with the Registrar, agreed upon Articles of Amalgamation in the form prescribed under the ABCA.

9. Effective Time

The Amalgamation shall take effect and go into operation at 12:01 a.m. on the Effective Date, if this Agreement has been adopted as required by law and all necessary filings have been made with the Director before that time, or at such later time, or time and date, as may be determined by the directors or by special resolutions of the Amalgamating Corporations when this Agreement shall have been adopted as required by law; provided, however, that if this Agreement is terminated under Section 19, the Amalgamation shall not take place notwithstanding the fact that this Agreement may have been adopted by the shareholders of the Amalgamating Corporations.

10. Registered Office

The registered office of Amalco shall be in the City of Calgary in the Province of Alberta. The address of the first registered office of Amalco shall be: Socium Law, 1900, 700 – 2nd Street S.W., Calgary, Alberta T2P 2W2.

11. Amalco Name

The name of Amalco shall be a numbered company, as determined by the Registrar, or such other name as the parties may agree.

12. By-Laws

The by-laws of Amalco shall be the by-laws of Subco.

13. Activities

There will be no limitations on the activities of Amalco. The directors of Amalco shall be authorized to borrow money on the credit of Amalco.

14. Authorized Capital

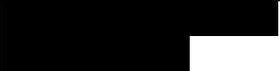
The authorized capital of Amalco shall consist of an unlimited number of common shares without nominal or par value and an unlimited number of preferred shares issuable in series.

15. Number of Directors

The board of directors of Amalco shall consist of not less than one and not more than 10 directors, the exact number of which shall be determined by the directors from time to time.

16. Initial Directors

The first directors of Amalco shall be the person(s) whose names and residential addresses appear below:

<u>Name</u>	<u>Prescribed Address</u>
Greg Robb	 [Personal Information Redacted]

The above directors will hold office from the Effective Date until the first annual meeting of shareholders of Amalco or until their successors are elected or appointed.

17. Transfer of Shares

The right to transfer of shares in the capital of Amalco shall be restricted in that no shareholder shall be entitled to transfer any share or shares unless its transfer complies with the restriction on the transfer of securities set out in section 18(b) hereof.

18. Special Provisions

Subject to the provisions of the ABCA, the following provisions shall apply to Amalco:

- (a) Without in any way restricting the powers conferred upon Amalco or its board of directors by the ABCA, as now enacted or as the same may from time to time be amended, re-enacted or replaced, the board of directors may from time to time, without authorization of the shareholders, in such amounts and on such terms as it deems expedient:
 - (i) borrow money upon the credit of Amalco;
 - (ii) issue, re-issue, sell or pledge debt obligations of Amalco;
 - (iii) subject to the provisions of the ABCA, as now enacted or as the same may from time to time be amended, re-enacted or replaced, give a guarantee on behalf of Amalco to secure performance of an obligation of any person; and
 - (iv) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of Amalco owned or subsequently acquired, to secure any obligation of Amalco.

The board of directors may from time to time delegate to a director, a committee of directors or an officer of Amalco any or all of the powers conferred on the board as set out above, to such extent and in such manner as the board shall determine at the time of such delegation.

(b) No securities of Amalco, other than non-convertible debt securities, shall be transferred without either:

(i) the approval of the directors of Amalco expressed by a resolution passed at a meeting of the board of directors or by a resolution in writing signed by all of the directors entitled to vote on that resolution at a meeting of directors; or

(ii) the approval of the holders of shares of Amalco carrying at least a majority of the votes entitled to be cast at a meeting of shareholders, expressed by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holders of a majority of such shares.

19. Termination

This Agreement may be terminated by the board of directors of each of the Amalgamating Corporations, notwithstanding the approval of this Agreement by the shareholders of the Amalgamating Corporations, at any time prior to the issuance of the Certificate of Amalgamation and following the termination of the Business Combination Agreement, without, except as provided in the Business Combination Agreement, any recourse by any Party hereto or any of their shareholders or other Persons.

20. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each Party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta in respect of all matters arising under or in relation to this Agreement.

21. Further Assurances

Each of the Parties agrees to execute and deliver such further instruments and to do such further reasonable acts and things as may be necessary or appropriate to carry out the intent of this Agreement.

22. Time of the Essence

Time shall be of the essence of this Agreement.

23. Amendments

This Agreement may only be amended or otherwise modified by written agreement executed by the Parties.

24. Counterparts

This Agreement may be signed in counterparts (including counterparts by facsimile), and all such signed counterparts, when taken together, shall constitute one and the same agreement, effective on this date.

[The remainder of this page has been left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

2374154 ALBERTA LTD.

By: _____
Name: Jeff Barber
Title: President

HELIUM EVOLUTION INCORPORATED

By: _____
Name: Greg Robb
Title: Chief Executive Officer