

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

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

Date of Report (Date of earliest event reported): September 21, 2023

**SPORTSMAN'S WAREHOUSE HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-36401**  
(Commission  
File Number)

**39-1975614**  
(IRS Employer  
Identification No.)

**1475 West 9000 South, Suite A**  
**West Jordan, Utah**  
(Address of principal executive offices)

**84088**  
(Zip Code)

**Registrant's telephone number, including area code (801) 566-6681**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$.01 par value	SPWH	The Nasdaq Stock Market LLC

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

Emerging growth company

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

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

***Appointment of Paul Stone as Chief Executive Officer and President and Changes to the Board of Directors***

On September 21, 2023, the Board of Directors (the “**Board**”) of Sportsman’s Warehouse Holdings, Inc. (the “**Company**”) appointed Mr. Paul Stone as the Company’s Chief Executive Officer and President, effective November 1, 2023 (the “**Effective Date**”). The Board also appointed, effective as of the Effective Date, Mr. Stone to the Board as a Class III director, to serve until the Company’s 2026 annual meeting of stockholders and until his successor is duly elected and qualified. Mr. Stone will perform the functions of the Company’s principal executive officer.

Paul Stone, 58, previously served as President and Chief Operating Officer of Hertz Global Holdings, Inc. (“**Hertz Global**”) from October 2021 to September 2023 after previously serving as Interim President and Chief Executive Officer and as a director of Hertz Global between May 2020 and October 2021. From March 2018 to May 2020, he served as Executive Vice President and Chief Retail Operations Officer North America of Hertz Global. Prior to joining Hertz Global, Mr. Stone served as the Chief Retail Officer of Cabela’s Inc., an outdoor outfitter retail company, from November 2015 to December 2017. Prior to joining Cabela’s Inc., Mr. Stone spent 28 years with Sam’s Club, a retail warehouse subsidiary of Walmart Inc., in various leadership roles.

In connection with Mr. Stone’s appointment, Joseph P. Schneider, who has been serving as the Company’s Interim Chief Executive Officer and President, will resign on the Effective Date from his role as Interim Chief Executive Officer and President. Mr. Schneider will continue to serve as a Class I director and as Chair of the Board until December 31, 2023. On September 21, 2023, Mr. Schneider informed the Board that he intends to resign as a director and as Chair of the Board, effective December 31, 2023. On September 21, 2023, the Board selected Rich McBee to succeed Mr. Schneider as Chair of the Board, effective January 1, 2024. As a result of these events, the Board will increase the size of the Board from eight (8) members to nine (9) members from November 1, 2023 to December 31, 2023 and return the size of the Board to eight (8) members on January 1, 2024.

In connection with his service as a non-employee director from November 1, 2023 to December 31, 2023, Mr. Schneider will receive the Company’s standard non-employee director cash and equity compensation in the form of restricted stock units, each pro-rated for his time of service, under its Non-Employee Directors’ Compensation Policy, which is filed as Exhibit 10.1 to the Company’s Quarterly Report on Form 10-Q for the quarterly period ended July 29, 2023, as filed with the Securities and Exchange Commission (the “**SEC**”) on September 7, 2023.

***Employment Arrangements with New Chief Executive Officer and President***

On September 22, 2023, the Company entered into an employment agreement with Mr. Stone in connection with his appointment to the position of Chief Executive Officer and President (the “**Employment Agreement**”) that will become effective on the Effective Date. The Employment Agreement provides for an indefinite term subject to termination by either party. The Employment Agreement provides for an annual base salary of \$1,100,000 for Mr. Stone, subject to review and increases by the Company in its sole discretion. The Employment Agreement also provides for a target annual bonus opportunity of 150% of Mr. Stone’s base salary beginning with the Company’s fiscal year 2024, subject to review and adjustment by the Company in its reasonable discretion. Mr. Stone’s annual bonus for fiscal year 2023 will be guaranteed at the full target amount of 150% of his base salary, pro-rated based on the Effective Date. Mr. Stone will also receive a signing bonus in the amount of \$350,000, payable on the Effective Date, which signing bonus must be repaid if Mr. Stone resigns without “Good Reason” or is terminated by the Company for “Gross Misconduct” (as such terms are defined in the Employment Agreement) prior to the first anniversary of the Effective Date.

On the Effective Date, Mr. Stone will be granted an award of time-based restricted stock units (“**RSUs**”) with a value of \$1.7 million, based on the closing price of the Company’s common stock on the Effective Date, which will vest over three years in three equal installments on each of the first, second and third anniversary of the Effective Date, subject to Mr. Stone’s continued service to the Company. As a signing bonus, on the date occurring six months after the Effective Date, Mr. Stone will be granted time-based RSUs with a value of \$400,000, based on the closing price of the Company’s common stock on the date occurring six months after the Effective Date, which will vest over three years in three equal installments on each of the first, second and third anniversary of the grant date. As part of the annual equity awards granted to the Company’s executive officers in 2024, Mr. Stone will be granted (A) time-based RSUs with a value of \$1.25 million based on the closing price of the

Company's common stock on the grant date, which will vest over three years in three equal installments on each of the first, second and third anniversary of the grant date, and (B) performance-based RSUs with a grant date fair value of \$1.25 million, which will vest over a three-year period based on performance metrics to be determined at the time of grant. The awards granted on the Effective Date and on the date occurring six months after the Effective Date will be granted pursuant to the Sportsman's Warehouse Holdings, Inc. Inducement Plan (as described below). All other awards referenced above will be granted pursuant to the Sportsman's Warehouse Holdings, Inc. 2019 Performance Incentive Plan.

Pursuant to the Employment Agreement, Mr. Stone will also receive reimbursement up to \$90,000 for reasonable relocation expenses and legal fees related to the negotiation of the Employment Agreement, and be eligible to participate in the employee benefit plans available to other executives of the Company.

In the event Mr. Stone's employment is terminated by Company other than because of Mr. Stone's "Gross Misconduct" or by Mr. Stone for "Good Reason" (as such terms are defined in the Employment Agreement), Mr. Stone will be entitled to receive, subject to him providing a general release of claims in favor of the Company, (i) a lump sum payment equal to 18 months of his then-current base salary (or \$1,100,000 if Mr. Stone's then current Base Salary is less than \$1,100,000), (ii) payment of any annual bonus earned for the preceding year for which payment has not yet been received and payment of a pro-rated target annual bonus for the year in which the termination occurs, (iii) reimbursement of COBRA premiums for up to 18 months, and (iv) if such termination occurs on or following a Change in Control during the Change in Control Period (as such terms are defined in the Employment Agreement) of the Company, full acceleration of any outstanding time-based equity awards granted by the Company and any performance-based vesting conditions applicable to any equity awards shall be treated as provided in the applicable award agreement.

On September 22, 2023, Mr. Stone also entered into an Employee Confidential Information and Inventions Assignment Agreement (the "**CIIAA**") that contains certain restrictive covenants including a confidentiality and non-disclosure agreement, a twelve-month post-termination non-competition clause, a twelve-month post-termination non-solicitation of employees or independent contractors clause, and a non-disparagement clause.

The foregoing descriptions of the Employment Agreement and CIIAA are qualified in their entirety by reference to the full text of the Employment Agreement and CIIAA, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

On the Effective Date, Mr. Stone is expected to enter into an indemnification agreement with the Company in the form previously approved by the Board and filed with the SEC as Exhibit 10.2 to the Company's Current Report on Form 8-K on April 8, 2019.

There are no arrangements or understandings between Mr. Stone and any other persons pursuant to which he was selected as an officer or director of the Company. There are also no family relationships between Mr. Stone and any director or executive officer of the Company and Mr. Stone has no direct or indirect material interest in any related party transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

#### **Adoption of Inducement Plan**

On September 21, 2023, the Board adopted and approved the Sportsman's Warehouse Holdings, Inc. Inducement Plan (the "**Inducement Plan**") to reserve 1,000,000 shares of the Company's common stock to be used exclusively for grants of awards to individuals that were not previously employees or directors of the Company (or following a *bona fide* period of non-employment), as an inducement material to the individual's entry into employment with the Company, pursuant to Nasdaq Listing Rule 5635(c)(4). The Inducement Plan was adopted and approved without stockholder approval pursuant to Nasdaq Listing Rule 5635(c)(4) and will be administered by the Compensation Committee of the Board (the "**Compensation Committee**"). Awards under the Inducement Plan may only be granted by: (i) the Compensation Committee, provided such committee is comprised solely of "independent directors" (as defined by Nasdaq Listing Rule 5605(a)(2)) or (ii) a majority of the Company's "independent directors."

The Inducement Plan provides for the grant of options, stock appreciation rights, restricted stock, stock bonuses, stock units, restricted stock units, performance stock, deferred shares, phantom stock, dividend equivalent rights and other cash or share-based awards. In addition, forms of Restricted Stock Unit Award Agreement were adopted and approved for use with the Inducement Plan.

---

The foregoing description of the Inducement Plan is qualified in its entirety by reference to the full text of the Inducement Plan, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference.

#### **Item 7.01. Regulation FD Disclosure.**

On September 26, 2023, the Company issued a press release announcing, amongst other things, the appointment of Mr. Stone as Chief Executive Officer and President of the Company and as a member of the Board, effective the Effective Date, a copy of which is furnished hereto as Exhibit 99.1 and is incorporated herein by reference.

The information in this Item 7.01 and the related information in Exhibit 99.1 attached hereto shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section and shall not be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, regardless of any general incorporation language in such filing, except as shall be expressly set forth by specific reference in any such filing.

#### **Item 8.01. Other Events.**

The Description of Capital Stock set forth in Exhibit 99.2 is being filed for the purpose of providing an updated description of the capital stock of the Company.

The Description of Capital Stock set forth in Exhibit 99.2 is incorporated herein by reference, modifies and supersedes any prior description of the capital stock of the Company in any registration statement or report filed with the SEC and will be available for incorporation by reference into certain of the Company’s filings with the Commission pursuant to the Securities Act, the Exchange Act, and the rules and forms promulgated thereunder.

#### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
<a href="#">Exhibit 10.1</a>	<a href="#">Employment Agreement, dated September 22, 2023, between the Company and Paul Stone.</a>
<a href="#">Exhibit 10.2</a>	<a href="#">Employee Confidential Information and Inventions Assignment Agreement, dated September 22, 2023, between the Company and Paul Stone.</a>
<a href="#">Exhibit 10.3</a>	<a href="#">Sportsman’s Warehouse Holdings, Inc. Inducement Plan.</a>
<a href="#">Exhibit 99.1</a>	<a href="#">Press release dated September 26, 2023.</a>
<a href="#">Exhibit 99.2</a>	<a href="#">Description of Capital Stock.</a>
Exhibit 104	The Cover Page from this Current Report on Form 8-K formatted in Inline XBRL.

---

## SIGNATURES

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

### SPORTSMAN'S WAREHOUSE HOLDINGS, INC.

By: /s/ Jeff White  
Name: Jeff White  
Title: Secretary and Chief Financial Officer

Date: September 26, 2023

---

## EXECUTIVE EMPLOYMENT AGREEMENT

This EXECUTIVE EMPLOYMENT AGREEMENT (“*Agreement*”) is by and between Paul Stone (“*Executive*”) and Sportsman’s Warehouse Holdings, Inc. (the “*Company*”).

WHEREAS, the Company desires to employ Executive as Chief Executive Officer (“*CEO*”) and to provide Executive with certain compensation and benefits in return for Executive’s services, and Executive agrees to be employed by the Company in such capacity and to receive the compensation and benefits on the terms and conditions set forth herein; and

WHEREAS, the Company and Executive desire to enter into this Agreement to become effective on November 1, 2023, subject to Executive’s signature below (the “*Effective Date*”) in order to memorialize the terms and conditions of Executive’s employment by the Company upon and following the Effective Date.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree to the following:

**1. Employment by the Company.**

**1.1 Position; Start Date.** Subject to the terms set forth herein, the Company agrees to employ Executive in the position of CEO, and Executive hereby accepts such employment on the terms and conditions set forth in this Agreement. Executive shall commence employment effective November 1, 2023, or such other date as mutually agreed upon by the parties (the “*Start Date*”). Executive shall be appointed to the Company’s Board of Directors (the “*Board*”) upon the Start Date. In the event that Executive’s employment terminates for any reason, Executive hereby agrees that any other positions he holds within the Company shall be simultaneously terminated and Executive agrees to submit his resignation as a director to the Board concurrent with his termination.

**1.2 Duties.** As CEO, Executive will report to the Board, performing such duties as are normally associated with the position and such duties as are assigned from time to time, subject to the oversight and direction of the Board. During the term of Executive’s employment with the Company, Executive will work on a full-time basis for the Company and will devote Executive’s best efforts and substantially all of Executive’s business time and attention to the business of the Company. Executive shall perform Executive’s duties under this Agreement principally out of the Company’s offices in Salt Lake City, Utah. In addition, Executive shall make such business trips to such places as may be necessary or advisable for the efficient operations of the Company.

**1.3 Company Policies and Benefits.** The employment relationship between the parties shall also be subject to the Company’s personnel policies and procedures as they may be interpreted, adopted, revised or deleted from time to time in the Company’s sole discretion. Executive will be eligible to participate on the same basis as similarly situated employees in the Company’s benefit plans in effect from time to time during Executive’s employment. All matters of eligibility for coverage or benefits under any benefit plan shall be determined in accordance with the provisions of such plan. The Company reserves the right to change, alter, or terminate any

benefit plan in its sole discretion. Notwithstanding the foregoing, in the event that the terms of this Agreement differ from or are in conflict with the Company's general employment policies or practices, this Agreement shall control.

**1.4 Vacation.** While this Agreement is in effect, Executive shall also receive unlimited paid time off subject to the Company's vacation policies and procedures as in effect or amended from time to time.

**1.5 Indemnification.** Subject to applicable law, Executive will be provided indemnification to the maximum extent permitted by the Company's Certificate of Incorporation or Bylaws, all as amended, including, if applicable, any directors and officers insurance policies, with such indemnification to be on terms determined by the Board or any of its committees. Such indemnification shall be documented in an Indemnification Agreement provided after the Effective Date subject to approval by the Board.

## **2. Compensation.**

**2.1 Salary.** Executive shall receive for Executive's services to be rendered under this Agreement an initial annual base salary of \$1,100,000.00 for each of fiscal year 2023 and fiscal year 2024, subject to review and increases by the Company in its sole discretion, payable subject to standard federal and state payroll withholding requirements in accordance with the Company's standard payroll practices ("**Base Salary**").

**2.2 Signing Bonus.** Executive shall receive a signing bonus in the gross amount of \$350,000, subject to applicable taxes and deductions and the Company's ordinary payroll processes (the "**Signing Bonus**"). The Company will advance Executive the Signing Bonus on the Start Date prior to its being earned. Executive will earn the Signing Bonus if Executive remains continuously employed with the Company through the one-year anniversary of Executive's Start Date. If Executive voluntarily resigns without Good Reason or is terminated by the Company for Gross Misconduct prior to the one-year anniversary of the Start Date, Executive agrees to repay, within thirty (30) days of Executive's last day of employment with the Company, the gross amount of the entire Signing Bonus paid to Executive by the Company in advance of becoming earned.

**2.3 Annual Bonus.** For each of fiscal year 2023 and fiscal year 2024, Executive shall be eligible for a discretionary annual cash bonus of a target amount equal to 150% of Executive's Base Salary ("**Target Amount**"), subject to review and adjustment by the Company in its reasonable discretion, payable subject to standard federal and state payroll withholding requirements (the "**Annual Bonus**"). Whether or not Executive earns any bonus will be dependent upon (a) Executive's continuous performance of services to the Company through the date such Annual Bonus is paid, unless otherwise provided for in this Agreement; and (b) the actual achievement by Executive and the Company of the applicable performance targets and goals set by the Board or committee thereof. The annual period over which performance is measured for purposes of the Annual Bonus is the Company's fiscal year period. The Board or a committee thereof will determine in its reasonable discretion the extent to which Executive and the Company have achieved the performance goals upon which the Annual Bonus is based and the amount of the Annual Bonus, which could be above or below the Target Amount (and may be zero). The Annual Bonus, if awarded, will be paid no later than 90 days after the end of the fiscal year for

which the Annual Bonus is being measured. Executive's fiscal year 2023 Annual Bonus shall be guaranteed at the full Target Amount, pro-rated based on Executive's Start Date.

**2.4 Equity.** Subject to the approval of the Board or a committee thereof, and as a material inducement to entering into the employ of the Company, Executive shall be awarded the following equity awards:

(a) On the Start Date, Executive will be granted an award of the Company's time-based restricted stock units (the "**RSUs**") with a value of \$1.7 million, based on the closing price of the Company's common stock on the Start Date, with the awards to vest over three (3) years in three (3) equal installments on each of the first, second and third anniversary of the Start Date, subject to Executive's continued service to the Company. The RSUs will be granted under, and subject to the terms and conditions of, an equity plan of the Company and the applicable form of award agreement thereunder.

(b) As part of the annual equity awards granted to executives in 2024, Executive will be granted time-based RSUs with a value of \$1.25 million based on the closing price of the Company's common stock on the grant date, with the awards to vest over three (3) years in three (3) equal installments on each of the first, second and third anniversary of the grant date, and will be granted performance-based RSUs with a grant date fair value of \$1.25 million, with the awards to vest over a three-year period based on performance metrics to be determined at the time of grant.

(c) As a signing bonus, on the date occurring six (6) months after the Start Date, Executive will be granted time-based RSUs with a value of \$400,000, based on the closing price of the Company's common stock on the date occurring six (6) months after the Start Date, with the awards to vest over three (3) years in three (3) equal installments on each of the first, second and third anniversary of the grant date.

(d) Executive will also be eligible to receive other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Board or a committee thereof shall determine in its discretion whether Executive shall be granted any such equity awards and the terms of any such award in accordance with the terms of any applicable plan or arrangement that may be in effect from time to time.

For the avoidance of doubt, all grants of equity awards described in this Section 2.4 are subject to the approval of the Board or a committee thereof, Executive being employed by the Company on the date of the grant and, if required by law, a Form S-8 being filed and effective as of the date of grant.

**2.5 Relocation Benefit.** Subject to Executive's relocation to the Salt Lake City, Utah area by no later than sixty (60) days following the Effective Date, the Company shall reimburse Executive for all reasonably incurred relocation expenses in an amount not to exceed \$60,000 (the "**Relocation Expenses**"). All Relocation Expenses submitted for reimbursement must be supported by sufficient, itemized documentation identifying the nature of the Relocation Expense and proof of prior payment by Executive.

**2.6 Legal Fees Reimbursement.** The Company shall reimburse Executive for all reasonable legal fees incurred by Executive in connection with the preparation, negotiation and execution of this Agreement, in an amount not to exceed \$30,000, subject to Executive's submission to the Company of sufficient supporting documentation of any such fees incurred.

**2.7 Expense Reimbursement.** The Company will reimburse Executive for reasonable business expenses in accordance with the Company's standard expense reimbursement policy, as the same may be modified by the Company from time to time. Travel related costs incurred prior to Executive's relocation will be considered as standard business expenses. For the avoidance of doubt, to the extent that any reimbursements payable to Executive are subject to the provisions of Section 409A of the Code: (a) any such reimbursements will be paid no later than December 31 of the year following the year in which the expense was incurred, (b) the amount of expenses reimbursed in one year will not affect the amount eligible for reimbursement in any subsequent year, and (c) the right to reimbursement under this Agreement will not be subject to liquidation or exchange for another benefit. For purposes of this Agreement, the "**Code**" means the U.S. Internal Revenue Code of 1986 (as it has been and may be amended from time to time) and any regulations and guidance that has been promulgated or may be promulgated from time to time thereunder and any state law of similar effect.

**3. Confidential Information and Invention Assignment Obligations.** As a condition of continued employment, Executive agrees to execute and abide by a Confidential Information and Invention Assignment Agreement attached as Exhibit A ("**Proprietary Information Agreement**"), which may be amended by the parties from time to time without regard to this Agreement. The Proprietary Information Agreement contains provisions that are intended by the parties to survive and do survive termination of this Agreement.

**4. Outside Activities during Employment.** Executive will work on a full-time basis for the Company and will devote Executive's best efforts and substantially all of Executive's business time and attention to the business of the Company. Except with the prior written consent of the Board, including consent given to Executive prior to the signing of this Agreement, Executive will not, while employed by the Company, undertake or engage in any other employment, occupation or business enterprise that would interfere with Executive's responsibilities and the performance of Executive's duties hereunder except for (i) reasonable time devoted to volunteer services for or on behalf of such religious, educational, non-profit and/or other charitable organization as Executive may wish to serve, (ii) reasonable time devoted to activities in the non-profit and business communities consistent with Executive's duties; and (iii) such other activities as may be specifically approved by the Board, and such approval shall not be unreasonably withheld. This restriction shall not, however, preclude Executive (x) from owning less than one percent (1%) of the total outstanding shares of a publicly traded company, or (y) from employment or service in any capacity with Affiliates of the Company. As used in this Agreement, "**Affiliates**" means an entity under common management or control with the Company.

**5. No Conflict with Existing Obligations.** Executive represents that Executive's performance of all the terms of this Agreement does not and will not breach any agreement or obligation of any kind made prior to Executive's employment by the Company, including agreements or obligations Executive may have with prior employers or entities for which Executive has provided services. Executive has not entered into, and Executive agrees that

Executive will not enter into, any agreement or obligation, either written or oral, in conflict herewith.

**6. Termination of Employment.** The parties acknowledge that Executive's employment relationship with the Company is at-will, meaning either the Company or Executive may terminate Executive's employment at any time, with or without cause or advance notice. The provisions in this Section govern the amount of compensation, if any, to be provided to Executive upon termination of employment and do not alter Executive's at-will status.

**6.1 Termination by Company Absent Gross Misconduct or by Executive for Good Reason.**

(a) The Company shall have the right to terminate Executive's employment with the Company pursuant to this **Section 6.1** at any time, in accordance with **Section 6.6**, absent "Gross Misconduct" (as defined in **Section 6.3(b)** below) by giving notice as described in **Section 7.1** of this Agreement. A termination pursuant to **Section 6.5** below is not a termination absent "Gross Misconduct" for purposes of receiving the benefits described in **Sections 6.1** or **Section 6.2**.

(b) If the Company terminates Executive's employment at any time absent Gross Misconduct or Executive terminates employment with the Company for Good Reason and *provided* that such termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a "**Separation from Service**"), then Executive shall be entitled to receive the Accrued Obligations (defined below). If Executive complies with the obligations in **Section 6.1(c)** below, Executive shall also be eligible to receive the following "**Severance Benefits**":

(i) The Company will pay Executive an amount equal to Executive's then current Base Salary (or \$1,100,000 if Executive's then current Base Salary is less than \$1,100,00), for eighteen (18) months, less all applicable withholdings and deductions, paid in a lump sum payment on the Severance Pay Commencement Date (as defined in **Section 6.1(c)** below).

(ii) If Executive timely elects continued coverage under COBRA for himself and his covered dependents under the Company's group health plans following such termination, then the Company shall pay the COBRA premiums necessary to continue Executive's and his covered dependents' health insurance coverage in effect for himself (and his covered dependents) on the termination date until the earliest of: (i) eighteen (18) months following the termination date (the "**COBRA Severance Period**"); (ii) the date when Executive becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment; or (iii) the date Executive ceases to be eligible for COBRA continuation coverage for any reason, including plan termination (such period from the termination date through the earlier of (i)-(iii), (the "**COBRA Payment Period**"). Notwithstanding the foregoing, if at any time the Company determines that its payment of COBRA premiums on Executive's behalf would result in a violation of applicable law (including, but not limited to, the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of paying COBRA premiums pursuant to this Section, the Company shall pay

Executive on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premium for such month, subject to applicable tax withholding (such amount, the “**Special Severance Payment**”), for the remainder of the COBRA Payment Period. Nothing in this Agreement shall deprive Executive of his rights under COBRA or ERISA for benefits under plans and policies arising under his employment by the Company.

(iii) To the extent Executive has earned an Annual Bonus for the calendar year immediately preceding the year in which Executive’s termination has occurred, but has not yet received payment of that Annual Bonus, any such Annual Bonus shall be paid to Executive in a single lump sum, less applicable withholdings and deductions, no later than the Severance Pay Commencement Date; and

(iv) The Company will pay to Executive a pro-rata portion of Executive’s Target Amount for the Annual Bonus for the year in which the termination occurs, less applicable withholdings and deductions, payable in a single lump sum at on the Severance Payment Commencement Date.

(c) Executive will be paid all of the Accrued Obligations on the Company’s first payroll date after Executive’s date of termination from employment or earlier if required by law. Executive shall receive the Severance Benefits pursuant to **Section 6.1(b)** or the Change in Control Severance Benefits (defined below) pursuant to **Section 6.2** of this Agreement, as applicable, if: (i) Executive executes and does not revoke a separation agreement in a form similar to Exhibit B (the “**Release**”) and the Release is enforceable and effective as provided in the Release on or before the date that is the sixtieth (60<sup>th</sup>) day following the effective date of termination (such 60<sup>th</sup> day, the “**Severance Pay Commencement Date**”); (ii) if Executive holds any other positions with the Company, Executive resigns such position(s) to be effective no later than the date of Executive’s termination date (or such other date as requested by the Board); (iii) Executive returns all Company property on or before the Severance Pay Commencement Date; (iv) Executive complies with Executive’s post-termination obligations under this Agreement and the Proprietary Information Agreement; and (v) Executive complies with the terms of the Release.

(d) For purposes of this Agreement, “**Accrued Obligations**” are (i) Executive’s accrued but unpaid salary and accrued but unused vacation (in the event the Company adopts an accrual vacation policy) through the date of termination, (ii) any unreimbursed business expenses incurred by Executive payable in accordance with the Company’s standard expense reimbursement policies, and (iii) benefits owed to Executive under any qualified retirement plan or health and welfare benefit plan in which Executive was a participant in accordance with applicable law and the provisions of such plan.

(e) The Severance Benefits provided to Executive pursuant to this **Section 6.1** are in lieu of, and not in addition to, any benefits to which Executive may otherwise be entitled under any Company severance plan, policy or program (for clarity, excluding under any Company equity plan or any equity award agreement pursuant to which an equity award is granted to Executive).

(f) For purposes of this Agreement, “**Good Reason**” shall mean the occurrence of any of the following events without Executive’s consent: (i) a significant and

material diminution in Executive's position, responsibilities, reporting responsibilities or title, or a material (at least 10%) reduction in Executive's Base Salary; or (b) if, on or after the date of a Change in Control, the Company moves Executive's principal office with the Company to a location more than fifty (50) miles outside of Salt Lake City, Utah; *provided, however*, that any such condition or conditions, as applicable, shall not constitute grounds for a termination for Good Reason unless both (x) Executive provides written notice to the Company of the condition claimed to constitute grounds for Good Reason within sixty (60) days of the initial existence of such condition(s), and (y) the Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof; and provided, further, that in all events the termination of Executive's employment with the Company shall not constitute a termination for Good Reason unless such termination occurs not more than one hundred and eighty (180) days following the initial existence of the condition claimed to constitute grounds for Good Reason.

**6.2 Termination by the Company Absent Gross Misconduct or for Good Reason Coincident with a Change in Control.** If Executive's employment by the Company is terminated by the Company or any successor entity absent "Gross Misconduct" (and not due to a termination pursuant to **Section 6.5**) or by Executive for Good Reason, in either case, within twelve (12) months following the effective date of a "**Change in Control**" (as defined in the Plan) (the "**Change in Control Period**"), and, in either case, provided that such termination constitutes a Separation from Service, without regard to any alternative definition thereunder, then in addition to paying or providing Executive with the Accrued Obligations, and subject to compliance with **Section 6.1(c)**, the following additional benefits shall be provided in lieu of, and not in addition to, the Severance Benefits provided for in **Section 6.1(b)** (the "**Change in Control Severance Benefits**"):

(a) The Severance Benefits; and

(b) If the termination date occurs during the Change in Control Period, any equity awards (i.e., restricted stock, restricted stock units or options) granted to the Executive by the Company that are outstanding and otherwise unvested immediately prior to the termination date shall, on the termination date, be treated as follows: (a) any time-based vesting conditions applicable to such awards shall be considered satisfied and fully vested; and (b) any performance-based vesting conditions applicable to such awards shall be treated as provided for in the applicable award agreement.

**6.3 Termination by the Company for Gross Misconduct.**

(a) The Company shall have the right to terminate Executive's employment with the Company at any time, in accordance with **Section 6.6**, for Gross Misconduct by giving notice as described in **Section 7.1** of this Agreement. In the event Executive's employment is terminated at any time for Gross Misconduct, Executive will not receive the Severance Benefits, Change in Control Severance Benefits, or any other severance compensation or benefits, except that, pursuant to the Company's standard payroll policies, the Company shall pay to Executive the Accrued Obligations.

(b) "**Gross Misconduct**" shall mean that the Company has determined in its sole discretion that Executive has engaged in any of the following: (i) Executive's commission of

any felony; (ii) Executive's actions or omissions intentionally causing the Company to violate any law, rule or regulation (other than technical violations that have no material adverse impact on the Company); (iii) Executive's willful or reckless act or omission that injures the Company's reputation or business in any material way or is otherwise demonstrably detrimental to the Company; (iv) Executive willfully fails or refuses to follow the legal and clear directives of the Board (unless the following of such directive would be a violation of applicable law); (v) Executive has been dishonest in connection with his employment activities or committed or engaged in an act of theft, embezzlement or fraud; or (vi) Executive has materially breached any provision of any agreement to which Executive is a party with the Company or any fiduciary duty Executive owes to the Company; provided that the Company provides written notice to Executive of the condition(s) claimed to constitute a material breach of such agreement or any fiduciary duty and Executive fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof.

#### **6.4 Resignation by Executive.**

(a) Executive may resign from Executive's employment with the Company at any time, in accordance with **Section 6.6**, by giving notice as described in **Section 7.1**.

(b) In the event Executive resigns from Executive's employment with the Company for any reason other than Good Reason in accordance with **Sections 6.1 or 6.2**, Executive will not receive the Severance Benefits, Change in Control Severance Benefits, or any other severance compensation or benefits, except that, pursuant to the Company's standard payroll policies, the Company shall pay to Executive the Accrued Obligations.

#### **6.5 Termination by Virtue of Death or Incapacity of Executive.**

(a) In the event of Executive's death while employed pursuant to this Agreement, all obligations of the parties hereunder shall terminate, in accordance with **Section 6.6**, and the Company shall, pursuant to the Company's standard payroll policies, pay to Executive's legal representatives all Accrued Obligations.

(b) Subject to applicable state and federal law, the Company shall at all times have the right, upon written notice to Executive, and in accordance with **Section 6.6**, to terminate Executive's employment based on Executive's Incapacity. Executive's "**Incapacity**" shall mean any mental or physical illness or disability that renders Executive incapable of performing Executive's duties, even with a reasonable accommodation, for more than twelve (12) consecutive weeks in any twelve (12) month period, unless a longer period is required by law. The date of Incapacity will be the date on which the Board declares the Incapacity on the grounds described above. In the event Executive's employment is terminated by the Company based on Executive's Incapacity or Executive voluntarily resigns due to such Incapacity, Executive will not receive the Severance Benefits, Change in Control Severance Benefits, or any other severance compensation or benefit, except that, pursuant to the Company's standard payroll policies, the Company shall pay to Executive the Accrued Obligations.

#### **6.6 Notice; Effective Date of Termination.**

(a) Termination of Executive's employment pursuant to this Agreement shall be effective on the earliest of:

(i) immediately after the Company gives notice to Executive of Executive's termination, with or absent Gross Misconduct, unless pursuant to **Section 6.3(b)(i)**, if curable, or **Section 6.3(b)(vi)**, in which case ten (10) days after notice if not cured or unless the Company specifies a later date, in which case, termination shall be effective as of such later date;

(ii) immediately upon the Executive's death;

(iii) ten (10) days after the Company gives notice to Executive of Executive's termination on account of Executive's Incapacity, unless the Company specifies a later date, in which case, termination shall be effective as of such later date, *provided* that Executive has not returned to the full-time performance of Executive's duties prior to such date;

(iv) ten (10) days after the Executive gives written notice to the Company of Executive's resignation, *provided* that the Company may set a termination date at any time between the date of notice and the date of resignation, in which case the Executive's resignation shall be effective as of such other date. Executive will receive compensation through any required notice period; or

(v) for a termination for Good Reason, immediately upon Executive's full satisfaction of the requirements of **Section 6.1(f)**.

(b) In the event of a termination for Gross Misconduct, written confirmation shall specify the subsection(s) of the definition of Gross Misconduct relied on to support the decision to terminate.

**6.7 Cooperation with Company after Termination of Employment.** Following termination of Executive's employment for any reason, Executive agrees to provide reasonable cooperation to the Company in connection with its actual or contemplated defense, prosecution, or investigation of any claims or demands by or against third parties, or other matters arising from events, acts, or failures to act that occurred during the period of Executive's employment by the Company. Such cooperation includes, without limitation, making Executive available to the Company upon reasonable notice, without subpoena, to provide complete, truthful and accurate information in witness interviews, depositions and trial testimony. The Company will reimburse Executive for reasonable out-of-pocket expenses Executive incurs in connection with any such cooperation (excluding forgone wages, salary, or other compensation) and will make reasonable efforts to accommodate Executive's scheduling needs and for more than de minimis service, the parties will agree on a mutually agreeable per diem rate. In addition, in the event Executive is receiving Severance Benefits or Change in Control Severance Benefits, for eighteen (18) months after Executive's employment with the Company ends for any reason, Executive agrees to reasonably cooperate with the Company in all matters relating to the transition of Executive's work and responsibilities on behalf of the Company, including, but not limited to, any present, prior or subsequent relationships and the orderly transfer of any such work and institutional knowledge to such other persons as may be designated by the Company. Such transition assistance described in the previous sentence shall not be subject to additional

compensation, and the Company will make reasonable efforts to accommodate Executive's scheduling needs.

**6.8 Application of Section 409A.** It is intended that all of the severance payments payable under this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect (collectively, "**Section 409A**") provided under Treasury Regulations Sections 1.409A-1(b)(4) and 1.409A-1(b)(9), and this Agreement will be construed in a manner that complies with Section 409A. If not so exempt, this Agreement (and any definitions hereunder) will be construed in a manner that complies with Section 409A and incorporates by reference all required definitions and payment terms. No severance payments will be made under this Agreement unless Executive's termination of employment constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h)). For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulations Section 1.409A-2(b)(2)(iii)), Executive's right to receive any installment payments under this Agreement (whether severance payments or otherwise) shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. If the Company determines that the severance benefits provided under this Agreement constitutes "deferred compensation" under Section 409A and if Executive is a "specified employee" of the Company, as such term is defined in Section 409A(a)(2)(B)(i) of the Code at the time of Executive's Separation from Service, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the severance benefits will be delayed as follows: on the earlier to occur of (a) the date that is six months and one day after Executive's Separation from Service, and (b) the date of Executive's death (such earlier date, the "**Delayed Initial Payment Date**"), the Company will (i) pay to Executive a lump sum amount equal to the sum of the severance benefits that Executive would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the severance benefits had not been delayed pursuant to this **Section 6.8** and (ii) commence paying the balance of the severance benefits in accordance with the applicable payment schedule set forth in **Section 6**. No interest shall be due on any amounts deferred pursuant to this **Section 6.8**. To the extent that any Severance Benefits or Change in Control Severance Benefits, as applicable, are deferred compensation under Section 409A of the Code, and are not otherwise exempt from the application of Section 409A, then, if the period during which Executive may consider and sign the Release spans two calendar years, the payment of any such Severance Benefit will not be made or begin until the later calendar year.

**6.9 Section 280G.** Notwithstanding any other provision of this Agreement to the contrary, if payments made or benefits provided pursuant to this Agreement or otherwise from the Company or any person or entity are considered "parachute payments" under Section 280G of the Code after the application of all exemptions available under Code Section 280G(b)(5)(A), then such parachute payments will be limited to the greatest amount that may be paid to Executive under Section 280G of the Code without causing any loss of deduction to the Company under such section, but only if, by reason of such reduction, the net after tax benefit to Executive will exceed the net after tax benefit if such reduction were not made. "**Net after tax benefit**" for purposes of this Agreement will mean the sum of (i) the total amounts payable to the Executive under this Agreement, plus (ii) all other payments and benefits which the Executive receives or then is entitled to receive from the Company or otherwise that would constitute a "parachute payment"

within the meaning of Section 280G of the Code, less (iii) the amount of federal, state and local taxes payable with respect to the foregoing calculated at the maximum marginal income tax rate for each year in which the foregoing will be paid to Executive (based upon the rate in effect for such year as set forth in the Code at the time of termination of Executive's employment), less (iv) the amount of excise taxes imposed with respect to the payments and benefits described in (i) and (ii) above by Section 4999 of the Code. The determination as to whether and to what extent payments are required to be reduced in accordance with this **Section 6.9** will be made at the Company's expense by a nationally recognized certified public accounting firm or other professional services firm, in either case, as may be designated by the Company prior to a change in control (the "**Firm**"). In the event of any mistaken underpayment or overpayment under this Agreement, as determined by the Firm, the amount of such underpayment or overpayment will forthwith be paid to Executive or refunded to the Company, as the case may be, with interest at one hundred twenty (120%) of the applicable Federal rate provided for in Section 7872(f)(2) of the Code. Any reduction in payments required by this **Section 6.9** will occur in the following order: (1) any cash severance, (2) cancellation of equity awards being taken into account at full value that were granted "contingent on a change in ownership or control" within the meaning of 280G of the Code in the reverse order of date of grant of the awards (that is, the most recently granted equity awards will be cancelled first); (3) any other cash amount payable to Executive, (4) any benefit valued as a "parachute payment," (5) the acceleration of vesting of any equity awards that are options, and (6) the acceleration of vesting of any other equity awards. Within any such category of payments and benefits, a reduction will occur first with respect to amounts that are not "deferred compensation" within the meaning of Section 409A and then with respect to amounts that are. In the event that acceleration of compensation from equity awards is to be reduced, such acceleration of vesting will be canceled, subject to the immediately preceding sentence, in the reverse order of the date of grant.

## **7. General Provisions.**

**7.1 Notices.** Any notices hereunder must be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by electronic mail if sent during normal business hours of the recipient, and if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after timely deposit for next-business-day delivery with a nationally recognized overnight courier, specifying next-business-day delivery, with written verification of receipt. All communications shall be sent to the Company at its primary office location, to the attention of the Chairperson of the Board of Directors, and to Executive at either Executive's address as listed on the Company payroll records, or Executive's Company-issued email address, or at such other address as the Company or Executive may designate by ten (10) days advance written notice to the other.

**7.2 Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

**7.3 Survival.** Provisions of this Agreement which by their terms must survive the termination of this Agreement in order to effectuate the intent of the parties will survive any such termination for such period as may be appropriate under the circumstances.

**7.4 Waiver.** If either party should waive any breach of any provisions of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

**7.5 Complete Agreement.** This Agreement constitutes the entire agreement between Executive and the Company with regard to the subject matter hereof. This Agreement is the complete, final, and exclusive embodiment of their agreement with regard to this subject matter and supersedes any prior oral discussions or written communications and agreements. This Agreement is entered into without reliance on any promise or representation other than those expressly contained herein, and it cannot be modified or amended except in writing signed by Executive and an authorized officer of the Company. The parties have entered into a separate Proprietary Information Agreement and have or may enter into separate agreements related to equity. These separate agreements govern other aspects of the relationship between the parties, have or may have provisions that survive termination of Executive's employment under this Agreement, may be amended or superseded by the parties without regard to this Agreement and are enforceable according to their terms without regard to the enforcement provision of this Agreement.

**7.6 Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement. The parties agree that facsimile and scanned image copies of signatures, including DocuSign, will suffice as original signatures.

**7.7 Withholding Taxes.** The Company will be entitled to withhold from any payment due to Executive hereunder any amounts required to be withheld by applicable tax laws or regulations.

**7.8 Headings.** The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

**7.9 Successors and Assigns.** The Company shall assign this Agreement and its rights and obligations hereunder in whole, but not in part, to any Company or other entity with or into which the Company may hereafter merge or consolidate or to which the Company may transfer all or substantially all of its assets, if in any such case said Company or other entity shall by operation of law or expressly in writing assume all obligations of the Company hereunder as fully as if it had been originally made a party hereto, but may not otherwise assign this Agreement or its rights and obligations hereunder. Executive may not assign or transfer this Agreement or any rights or obligations hereunder, other than to Executive's estate upon Executive's death.

**7.10 Choice of Law.** All questions concerning the construction, validity and interpretation of this Agreement will be governed by the laws of the State of Utah.

**7.11 Dispute Resolution.** The parties recognize that litigation in federal or state courts or before federal or state administrative agencies of disputes arising out of the Executive's

employment with the Company or out of this Agreement, or the Executive's termination of employment or termination of this Agreement, may not be in the best interests of either the Executive or the Company, and may result in unnecessary costs, delays, complexities, and uncertainty. Except where prohibited by law, the parties agree that any dispute between the parties arising out of or relating to the negotiation, execution, performance or termination of this Agreement or the Executive's employment, including, but not limited to, any claim arising out of this Agreement, claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, Section 1981 of the Civil Rights Act of 1966, as amended, the Family Medical Leave Act, the Executive Retirement Income Security Act, and any similar federal, state or local law, statute, regulation, or any common law doctrine, whether that dispute arises during or after employment, shall be settled by binding arbitration in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The location for the arbitration shall be in Salt Lake City, Utah. Any award made by such panel shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators' fees and expenses and all administrative fees and expenses associated with the filing of the arbitration shall be borne by the Company; *provided however*, that at the Executive's option, Executive may voluntarily pay up to one-half the costs and fees. The parties acknowledge and agree that their obligations to arbitrate under this Section survive the termination of this Agreement and continue after the termination of the employment relationship between Executive and the Company. The parties each further agree that the arbitration provisions of this Agreement shall provide each party with its **exclusive remedy**, and each party expressly waives any right it might have to seek redress in any other forum, except as otherwise expressly provided in this Agreement. By election arbitration as the means for final settlement of all claims, **the parties hereby waive their respective rights to, and agree not to, sue each other in any action in a Federal, State or local court with respect to such claims, but may seek to enforce in court an arbitration award rendered pursuant to this Agreement. The parties specifically agree to waive their respective rights to a trial by jury, and further agree that no demand, request or motion will be made for trial by jury.**

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of September 22, 2023.

**SPORTSMAN'S WAREHOUSE HOLDINGS, INC.**

By: /s/ Martha H. Bejar

Name: Martha H. Bejar

Title: Board of Directors

Nominating and Governance Committee Chair

**EXECUTIVE**

/s/ Paul Stone

Paul Stone

**Exhibit A**

**Confidential Information and Invention Assignment Agreement**

[See attached]  
Exhibit A – page 1

---

EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTIONS ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by **Sportsman's Warehouse Holdings, Inc.** ("**Employer**"), and its subsidiaries, parents, affiliates, successors and assigns (together with Employer, "**Company**"), the compensation paid to me now and during my employment with Company, and Company's agreement to provide me with access to its Confidential Information (as defined below), I enter into this Employee Confidential Information and Inventions Assignment Agreement with Employer (the "**Agreement**").

RECITALS

WHEREAS, during the course of my employment, I will have access to and knowledge of Company's trade secrets and Confidential Information; and

WHEREAS, it is of material benefit to restrict the disclosure of Company's trade secrets and Confidential Information with a nondisclosure, non-solicitation, and non-competition agreement, all of which are reasonable in terms of scope, geography and duration.

Accordingly, in consideration of the mutual promises and covenants contained herein, Employer (on behalf of itself and Company) and I agree as follows:

**1. Confidential Information Protections.**

**1.1 Recognition of Company's Rights; Nondisclosure.** My employment by Company creates a relationship of confidence and trust with respect to Confidential Information (as defined below) and Company has a protectable interest in the Confidential Information. At all times during and after my employment, I will hold in confidence and will not disclose, use, lecture upon, or publish any Confidential Information, except as required in connection with my work for Company or as approved by an officer of Company. I will obtain written approval by an officer of Company before I lecture on or submit for publication any material (written, oral, or otherwise) that discloses and/or incorporates any Confidential Information. I will take all reasonable precautions to prevent the disclosure of Confidential Information. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), I will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. I agree that Company information or documentation to which I have access during my employment, regardless of whether it contains Confidential Information, is the property of Company and cannot be downloaded or retained for my personal use or for any use that is outside the scope of my duties for Company.

**1.2 Confidential Information.** "**Confidential Information**" means any and all confidential knowledge or data of Company and includes any confidential knowledge or data that Company has received, or receives in the future, from third parties that Company has agreed to treat as confidential and to use for only certain limited purposes. By way of illustration but not

limitation, Confidential Information includes (a) trade secrets, inventions, ideas, processes, formulas, software in source or object code, data, technology, know-how, designs and techniques, and any other work product of any nature, and all Intellectual Property Rights (defined below) in all of the foregoing (collectively, "**Inventions**"), including all Company Inventions (defined in Section 2.1); (b) information regarding (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures and strategies, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, product roadmaps, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients, customer or client lists, and the preferences of, and negotiations with, customers and clients, (xiii) personnel information of other employees and independent contractors (including their compensation, unique skills, experience and expertise, and disciplinary matters), (xiv) other copyrightable works, (xv) all production methods, processes, technology and trade secrets, and (xvi) all similar and related information in whatever form. However, Company agrees that I am free to use information that I knew prior to my employment with Company or that is, at the time of use, generally known in the trade or industry through no breach of this Agreement by me. Company further agrees that this Agreement does not limit my right to discuss my employment or unlawful acts in the Company's workplace, including but not limited to sexual harassment or discrimination or any other conduct that I have reason to believe is unlawful, or report possible violations of law or regulation with any federal, state or local government agency, or to discuss the terms and conditions of my employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act, or to the extent that such disclosure is protected under the applicable provisions of law or regulation, including but not limited to "whistleblower" statutes or other similar provisions that protect such disclosure, to the extent any such rights are not permitted by applicable law to be the subject of nondisclosure obligations, or any other permitted activity applicable to me.

**1.3 Third Party Information.** I understand, in addition, that the Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data, or information ("**Third Party Information**") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. During my employment and thereafter, I will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

**1.4 Term of Nondisclosure Restrictions.** I will only use or disclose Confidential Information as provided in this Section 1 and I agree that the restrictions in Section 1.1 are intended to continue indefinitely, even after my employment by Company ends. However, if a time limitation on my obligation not to use or disclose Confidential Information is required under applicable law, and the Agreement or its restriction(s) cannot otherwise be enforced, Company and I agree that the two year period after the date my employment ends will be the time limitation relevant to the contested restriction; **provided, however**, that my obligation not to disclose or use trade secrets that are protected without time limitation under applicable law shall continue indefinitely.

**1.5No Improper Use of Information of Prior Employers and Others.** During my employment by Company, I will not improperly use or disclose confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto Company's premises any unpublished documents or property belonging to a former employer or any other person to whom I have an obligation of confidentiality unless that former employer or person has consented in writing.

**1.6Restricted Access Granted.** In exchange for my agreement not to disclose or use Confidential Information, except as required in performing my duties for the Company, and for the non-solicitation covenants, and the other promises provided herein, the Company agrees to grant me access to Confidential Information required to fulfill the duties of my position. I agree that the Company has no pre-existing obligation to reveal Confidential Information.

## **2. Assignments of Inventions.**

**2.1Definitions.** The term (a) "**Intellectual Property Rights**" means all past, present and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: trade secrets, Copyrights, trademark and trade name rights, mask work rights, patents and industrial property, and all proprietary rights in technology or works of authorship (including, in each case, any application for any such rights, all rights to priority, and any rights to apply for any such rights, as well as all rights to pursue remedies for infringement or violation of any such rights); (b) "**Copyright**" means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (for example, a literary, musical, or artistic work) recognized by the laws of any jurisdiction in the world; (c) "**Moral Rights**" means all paternity, integrity, disclosure, withdrawal, special and similar rights recognized by the laws of any jurisdiction in the world; and (d) "**Company Inventions**" means any and all Inventions (and all Intellectual Property Rights related to Inventions) that are made, conceived, developed, prepared, produced, authored, edited, amended, reduced to practice, or learned or set out in any tangible medium of expression or otherwise created, in whole or in part, by me, either alone or with others, during my employment by Company, and all printed, physical, and electronic copies, and other tangible embodiments of Inventions.

### **2.2Utah Limited Exclusion Notification.**

(a) I acknowledge that Utah Code §§ 34-39-1 to 34-39-3 provides that the foregoing Agreement between the Company and I shall not apply to an invention that is both (i) created by me on my own time, and (ii) not an Employment Invention (defined below) ("**Nonassignable Inventions**").

(b) To the extent a provision in the foregoing Agreement purports to require me to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of the State of Utah and is void and unenforceable. I acknowledge that I shall have the burden of establishing that any invention is excluded from assignment to Company by the preceding paragraph.

(c) An "**Employment Invention**" is defined as an invention or any part that is: conceived, developed or reduced to practice or created by you: within the scope of your

employment, on Employer's time, or with the aid, assistance, or use of any of Employer's property, equipment, facilities, supplies, resources or intellectual property; the result of any work, services, or duties performed by you for Employer; related to Employer's industry or trade; or related to Employer's current or demonstrably anticipated business, research, or development.

### **2.3 Prior Inventions.**

(a) On the signature page to this Agreement is a list describing any Inventions that (i) are owned by me or in which I have an interest and that were made or acquired by me prior to my date of first employment by Company, and (ii) may relate to Company's business or actual or demonstrably anticipated research or development, and (iii) are not to be assigned to Company ("**Prior Inventions**"). If no such list is attached, I represent and warrant that no Inventions that would be classified as Prior Inventions exist as of the date of this Agreement.

(b) I agree that if I use any Prior Inventions and/or Nonassignable Inventions in the scope of my employment, or if I include any Prior Inventions and/or Nonassignable Inventions in any product or service of Company, or if my rights in any Prior Inventions and/or any Nonassignable Inventions may block or interfere with, or may otherwise be required for, the exercise by Company of any rights assigned to Company under this Agreement (each, a "**License Event**"), (i) I will immediately notify Company in writing, and (ii) unless Company and I agree otherwise in writing, I hereby grant to Company a non-exclusive, perpetual, transferable, fully-paid, royalty-free, irrevocable, worldwide license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium (whether now known or later developed), make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Prior Inventions and/or Nonassignable Inventions. To the extent that any third parties have any rights in or to any Prior Inventions or any Nonassignable Inventions, I represent and warrant that such third party or parties have validly and irrevocably granted to me the right to grant the license stated above. For purposes of this paragraph, "**Prior Inventions**" includes any Inventions that would be classified as Prior Inventions, whether or not they are listed on the signature page to this Agreement.

**2.4 Assignment of Company Inventions.** I hereby assign to Employer all my right, title, and interest in and to any and all Company Inventions other than Nonassignable Inventions and agree that such assignment includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Employer and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Employer or related to Employer's customers, with respect to such rights. I further agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Company Inventions. Nothing contained in this Agreement may be construed to reduce or limit Company's rights, title, or interest in any Company Inventions so as to be less in any respect than that Company would have had in the absence of this Agreement.

**2.5 Obligation to Keep Company Informed.** During my employment by Company, I will promptly and fully disclose to Company in writing all Inventions that I author, conceive, or reduce to practice, either alone or jointly with others. At the time of each disclosure, I will advise Company in writing of any Inventions that I believe constitute Nonassignable Inventions; and I

will at that time provide to Company in writing all evidence necessary to substantiate my belief. Subject to Section 2.3(b), Company agrees to keep in confidence, not use for any purpose, and not disclose to third parties without my consent, any confidential information relating to Nonassignable Inventions that I disclose in writing to Company.

**2.6Government or Third Party.** I agree that, as directed by Company, I will assign to a third party, including without limitation the United States, all my right, title, and interest in and to any particular Company Invention.

**2.7Ownership of Work Product.** I acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of my employment and that are protectable by Copyright are “works made for hire,” pursuant to United States Copyright Act (17 U.S.C., Section 101).

**2.8Enforcement of Intellectual Property Rights and Assistance.** I will assist Company, in every way Company requests, including signing, verifying and delivering any documents and performing any other acts, to obtain and enforce United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in any jurisdictions in the world. My obligation to assist Company with respect to Intellectual Property Rights relating to Company Inventions will continue beyond the termination of my employment, but Company will compensate me at a reasonable rate after such termination for the time I actually spend on such assistance. If Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in this paragraph, I hereby irrevocably designate and appoint Employer and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and on my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Agreement with the same legal force and effect as if executed by me. I hereby waive and quitclaim to Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Intellectual Property Rights assigned to Employer under this Agreement.

**2.9Incorporation of Software Code.** I agree not to incorporate into any Inventions, including any Company software, or otherwise deliver to Company, any software code licensed under the GNU General Public License, Lesser General Public License, or any other license that, by its terms, requires or conditions the use or distribution of such code on the disclosure, licensing, or distribution of any source code owned or licensed by Company, **except** in strict compliance with Company’s policies regarding the use of such software or as directed by Company.

**3. Records.** I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that is required by Company) of all Confidential Information developed by me and all Company Inventions made by me during the period of my employment at Company, which records will be available to and remain the sole property of Employer at all times.

**4. Duty of Loyalty During Employment.** During my employment by Company, I will not, without Company’s written consent, directly or indirectly engage in any employment or business

activity that is directly or indirectly competitive with, or would otherwise conflict with, my employment by Company.

**5. No Solicitation of Employees, Consultants or Contractors.** I agree that during the period of my employment and for the one-year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of Company:

**5.1**solicit, induce, encourage, or participate in soliciting, inducing or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his, her or its relationship with Company, even if I did not initiate the discussion or seek out the contact;

**5.2**solicit, induce, encourage, or participate in soliciting, inducing, or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his, her or its relationship with Company to render services to me or any other person or entity that researches, develops, markets, sells, performs or provides or is preparing to develop, market, sell, perform or provide services to a Competing Business (as defined below);

**6. Non-Compete Provision.**

**6.1**I agree that during the period of my employment and for the one-year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company (except as prohibited by law), I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity solicit, perform, or provide, or attempt to perform or provide services to a Competing Business (as defined above) anywhere in the Restricted Territory (as defined below), nor will I assist another person to solicit, perform or provide or attempt to perform or provide services for a Competing Business anywhere in the Restricted Territory. Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a Competing Business which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

**6.2**The parties agree that, for the purposes of this Agreement, “**Competing Business**” means: (a) any entity any that directly or indirectly competes with the Company, whether on a retail or e-commerce basis, including, without limitation, any business that owns or operates, directly or indirectly, stores commonly referred to as Cabela’s, Bass Pro Shops, Scheels or Gander Outdoors. (b) any successor to any business identified in clause (a); and (c) any affiliate of a business identified in clause (a) or clause (b); provided, however, that a “Competing Business” shall not include a parent company or sister company of a business identified in clause (a) or clause (b) if both (x) such parent company is also engaged (directly or through other affiliates) in businesses that are not competitive with any business described in clause (a) or clause (b) (or, in the case of a sister company, such sister company is not engaged in any business that is competitive with any business described in clause (a) or clause (b)), and (y) the Executive’s position, services and responsibilities with such entity are limited to the distribution of merchandise that is not

competitive with any business described in clause (a) or clause (b) and the Executive does not participate in any way in any business identified in clause (a) or clause (b).

**6.3**The parties agree that, for purposes of this Agreement, “**Restricted Territory**” means (i) all counties in the state in which I primarily perform services for Company; (ii) all other states of the United States of America in which Company, with my involvement in some capacity, including, without limitation, my having knowledge of Confidential Information related thereto, provided goods or services, had customers, or otherwise conducted business at any time during the two-year period prior to the date of the termination of my relationship with Company; and (iii) any other countries from which Company provided goods or services, had customers, or otherwise conducted business, with my involvement in some capacity, including, without limitation, my having knowledge of Confidential Information related thereto, at any time during the two-year period prior to the date of the termination of my relationship with Company.

**7. Reasonableness of Restrictions.** I have read this entire Agreement and understand it. I acknowledge that (a) I have the right to consult with counsel prior to signing this Agreement, (b) I will derive significant value from Company’s agreement to provide me with Company Confidential Information to enable me to optimize the performance of my duties to Company, and (c) that my fulfillment of the obligations contained in this Agreement, including, but not limited to, my obligation neither to disclose nor to use Company Confidential Information other than for Company’s exclusive benefit and my obligations not to compete and not to solicit, are necessary to protect Company Confidential Information and, consequently, to preserve the value and goodwill of Company. I agree that (i) this Agreement does not prevent me from earning a living or pursuing my career, and (ii) the restrictions contained in this Agreement are reasonable, proper, and necessitated by Company’s legitimate business interests. I represent and agree that I am entering into this Agreement freely, with knowledge of its contents and the intent to be bound by its terms. If a court finds this Agreement, or any of its restrictions, are ambiguous, unenforceable, or invalid, Company and I agree that the court will read the Agreement as a whole and interpret such restriction(s) to be enforceable and valid to the maximum extent allowed by law. If the court declines to enforce this Agreement in the manner provided in this Section and/or Section 13.2, Company and I agree that this Agreement will be automatically modified to provide Company with the maximum protection of its business interests allowed by law, and I agree to be bound by this Agreement as modified.

**8. No Conflicting Agreement or Obligation.** I represent that my performance of all the terms of this Agreement and as an employee of Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by Company. I have not entered into, and I agree I will not enter into, any written or oral agreement in conflict with this Agreement.

**9. Return of Company Property.** When I cease to be employed by Company, I will deliver to Company any and all materials, together with all copies thereof, containing or disclosing any Company Inventions, or Confidential Information. I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, I agree to provide Company with a computer-useable copy of all such information

and then permanently delete such information from those systems; and I agree to provide Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company's personnel at any time during my employment, with or without notice. Prior to leaving, I hereby agree to: provide Company any and all information needed to access any Company property or information returned or required to be returned pursuant to this paragraph, including without limitation any login, password, and account information; cooperate with Company in attending an exit interview; and complete and sign Company's termination statement if required to do so by Company.

#### **10. Legal and Equitable Remedies.**

**10.1**I agree that (a) it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms, (b) any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to Company, and (c) Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach or threatened breach of this Agreement.

**10.2**Except as prohibited by law, I agree that if the Company is successful in whole or in part in any legal or equitable action against me under this Agreement (including, but not limited to, a court partially or fully granting any application, motion, or petition by Company for injunctive relief, including, but not limited to, a temporary restraining order, preliminary injunction, or permanent injunction), whether against or commenced by me, the Company will be entitled to recover from me all costs, fees, or expenses it incurred at any time during the course of the dispute, including, but not limited to, reasonable attorney's fees. A final resolution of such dispute or a final judgment is not a prerequisite to Company's right to demand payment hereunder and such amounts must be paid by me to Company within 30 days after I receive written notice of such demand. In the event Company demands only a portion of such costs, fees, or expenses incurred, such demand shall be without prejudice to further demands for (i) the remainder of any outstanding costs, fees, or expenses incurred, or (ii) costs, fees, or expenses incurred after the prior demand. Notwithstanding anything to the contrary in this provision, Company and I shall equally share any fees charged by an arbitral body (e.g., JAMS).

**10.3**In the event the Company enforces this Agreement through a court order, I agree that the restrictions of Sections 5 and 6 will remain in effect for a period of 12 months from the effective date of the Order enforcing the Agreement.

**11. Notices.** Any notices required or permitted under this Agreement will be given to Company at its headquarters location at the time notice is given, labeled "Attention Chief Executive Officer," and to me at my address as listed on Company payroll, or at such other address as Company or I may designate by written notice to the other. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, notice will be considered to have been given five business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt.

**12. Publication of This Agreement to Subsequent Employer or Business Associates of Employee.** If I am offered employment, or the opportunity to enter into any business venture as owner, partner, consultant or other capacity, while the restrictions in Sections 5 and 6 of this Agreement are in effect, I agree to inform my potential employer, partner, co-owner and/or others involved in managing the business I have an opportunity to be associated with, of my obligations under this Agreement and to provide such person or persons with a copy of this Agreement. I agree to inform Company of all employment and business ventures which I enter into while the restrictions described in Sections 5 and 6 of this Agreement are in effect and I authorize Company to provide copies of this Agreement to my employer, partner, co-owner and/or others involved in managing the business I have an opportunity to be associated with and to make such persons aware of my obligations under this Agreement.

**13. General Provisions.**

**13.1Governing Law; Consent to Personal Jurisdiction.** This Agreement will be governed by and construed according to the laws of the state in which I primarily work for Company without regard to any conflict of laws principles that would require the application of the laws of a different jurisdiction. I expressly consent to the personal jurisdiction and venue of the state and federal courts located in the state in which I primarily work for Company and the state in which Company's headquarters is located for any lawsuit filed there against me by Company arising from or related to this Agreement (although I understand Company will not file a lawsuit in the state in which Company's headquarters is located if prohibited by applicable law).

**13.2Severability.** If any portion of this Agreement is, for any reason, held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, and this Agreement will be construed as if such provision had never been contained in this Agreement. If any portion of this Agreement is, for any reason, held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent allowed by the then applicable law.

**13.3Successors and Assigns.** This Agreement is for my benefit and the benefit of Company and its and their successors, assigns, parent corporations, subsidiaries, affiliates, and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

**13.4Survival.** This Agreement will survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

**13.5Employment At-Will.** I understand and agree that nothing in this Agreement will change my at-will employment status or confer any right with respect to continuation of employment by Company, nor will it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause or advance notice, except as prohibited by law.

**13.6Waiver.** No waiver by Company of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by Company of any right under this Agreement

will be construed as a waiver of any other right. Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

**13.7Export.** I agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

**13.8Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**13.9Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT WILL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION OF THIS AGREEMENT.**

**13.10Entire Agreement.** The obligations in Sections 1 and 2 (except Section 2.3 with respect to a consulting relationship) of this Agreement will apply to any time during which I was previously engaged, or am in the future engaged, by Company as a consultant, employee or other service provider if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement, together with any Exhibits herein and any executed offer letter between me and the Company, is the final, complete and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us, whether written or oral, **provided, however**, if, prior to execution of this Agreement, Company and I were parties to any agreement regarding the subject matter hereof, that agreement will be superseded by this Agreement prospectively only. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

*[Signatures to follow on next page]*

Exhibit A – page 11

---

This Agreement will be effective as of the date signed by the Employee below.

**EMPLOYER: Sportsman’s Warehouse Holdings, Inc.**

**EMPLOYEE:**

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

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

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date Signed)

---

**PRIOR INVENTIONS**

**1. Prior Inventions Disclosure.** Except as listed in Section 2 below, the following is a complete list of all Prior Inventions:

No Prior Inventions.

See below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional sheets attached.

**2.** Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to the Prior Inventions generally listed below, the intellectual property rights and duty of confidentiality with respect to which I owe to the following party(ies):

	<b>Excluded Invention</b>	<b>Party(ies)</b>	<b>Relationship</b>
<b>1.</b>	_____	_____	_____
<b>2.</b>	_____	_____	_____
<b>3.</b>	_____	_____	_____

Additional sheets attached.

**Exhibit B**

**Form of Separation Agreement**

*[The language in this Form of Separation Agreement may change based on local laws, legal developments and evolving best practices as determined by the Company.]*

[Date]

Paul Stone  
[Address]  
[Address]

Dear Paul:

This letter sets forth the terms of the separation agreement (the “**Agreement**”) that Sportsman’s Warehouse Holdings, Inc. (the “**Company**”) is offering you to aid in your employment transition.

**1. SEPARATION.** Your last day of work with the Company and your employment termination date will be [Date] (the “**Separation Date**”). You are hereby deemed to have resigned, effective as of the Separation Date, from all positions, titles, duties, authorities, and responsibilities at or with the Company and its affiliates, and you agree to execute all additional documents and take such further steps as the Company may require to effectuate such resignation.

**2. ACCRUED OBLIGATIONS.** Immediately following the Separation Date, you will be entitled to receive your accrued but unpaid salary through the Separation Date. You agree that, within ten (10) days after the Separation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for these expenses in accordance with the Company’s standard expense reimbursement policies. You shall also be entitled to vested benefits owed to you under any qualified retirement plan or health and welfare benefit plan in which you were a participant in accordance with applicable law and the provisions of such plan.

**3. SEVERANCE BENEFITS.** If you timely sign and return this Agreement to the Company, allow it to become effective, and comply fully with your obligations hereunder, then in full satisfaction of any obligations for the Company to provide you with severance benefits under your Executive Employment Agreement, dated [Date], 2023 (the “**Employment Agreement**”), the Company will provide you with the following severance benefits (the “**Severance Benefits**”):

*[To include relevant Severance Benefits or Change in Control Severance Benefits set forth in the Employment Agreement, as applicable]*

**4. EQUITY AWARDS.** Except as expressly set forth herein, treatment of your equity interests (if any), and all other rights and obligations (if any) with respect to any such equity interests, will be as set forth in your applicable award agreement(s) and the applicable equity plan(s).

**5. OTHER COMPENSATION OR BENEFITS.** By executing this Agreement, you acknowledge and agree that the Company's obligations to provide you with any severance benefits or any other payments are hereby extinguished (except for the benefits described in this Agreement). You further expressly acknowledge and agree that the Severance Benefits, and other benefits provided herein, are in full and complete satisfaction of the Company's obligations, if any, to pay you severance benefits or any other payments pursuant your Employment Agreement, or any other agreements, plans or policies, and that this Agreement hereby supersedes and extinguishes any severance benefits you are or could be eligible to receive under your Employment Agreement, or any other employment agreement, plan, policy or other agreement applicable to you. You also acknowledge that, except as expressly provided in this Agreement, you have not earned and will not receive from the Company any additional compensation, severance, or benefits on or after the Separation Date, with the exception of any vested right you may have under the express terms of a written ERISA-qualified benefit plan (e.g., 401(k) account). By way of example, you acknowledge that you have not earned and are not owed any bonus, vacation, incentive compensation, commissions, or equity.

**6. RELEASE OF CLAIMS.**

**(a) General Release of Claims.** In exchange for the consideration provided to you under this Agreement to which you would not otherwise be entitled, you hereby generally and completely release the Company, and its affiliated, related, parent and subsidiary entities, and its and their current and former directors, officers, employees, shareholders, partners, agents, attorneys, advisors, predecessors, successors, insurers, affiliates, and assigns (collectively, the "**Released Parties**") from any and all claims, liabilities, demands, causes of action, and obligations, both known and unknown, arising from or in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date you sign this Agreement.

**(b) Scope of Release.** This general release includes, but is not limited to: (i) all claims arising from or in any way related to your employment with the Company or the termination of that employment; (ii) all claims related to your compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership, equity, or profits interests in the Company; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (v) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act ("**ADEA**").

**(c) ADEA Release.** You acknowledge that you are knowingly and voluntarily waiving and releasing any rights you have under the ADEA, and that the consideration given for the waiver and releases you have given in this Agreement is in addition to anything of value to which you were already entitled. You further acknowledge that you have been advised, as required by the ADEA, that: (i) your waiver and release does not apply to any rights or claims arising after the date you sign this Agreement; (ii) you should consult with an attorney prior to signing this Agreement (although you may choose voluntarily not to do so); (iii) you have at least [twenty-one

(21) / forty five (45)] days to consider this Agreement (although you may choose voluntarily to sign it sooner); (iv) you have seven (7) days following the date you sign this Agreement to revoke this Agreement (in a written revocation sent to the Company); and (v) this Agreement will not be effective until the date upon which the revocation period has expired, which will be the eighth day after you sign this Agreement provided that you do not revoke it (the “**Effective Date**”).

**(d) Exceptions.** Notwithstanding the foregoing, you are not releasing the Company hereby from: (i) any obligation to indemnify you pursuant to the Articles and Bylaws of the Company, any valid fully executed indemnification agreement with the Company, applicable law, or applicable directors and officers liability insurance; (ii) any claims that cannot be waived by law; or (iii) any claims for breach of this Agreement. You further understand that nothing in this Agreement limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission (“**Government Agencies**”). You further understand this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. While this Agreement does not limit your right to receive an award for information provided to the Securities and Exchange Commission, you understand and agree that, to maximum extent permitted by law, you are otherwise waiving any and all rights you may have to individual relief based on any claims that you have released and any rights you have waived by signing this Agreement.

**7. RETURN OF COMPANY PROPERTY.** You agree that, on or before the Separation Date (or earlier if requested by the Company), you will return to the Company all Company documents (and all copies thereof) and other Company property in your possession or control, including, but not limited to, Company files, notes, drawings, records, plans, forecasts, reports, studies, analyses, proposals, agreements, drafts, financial and operational information, research and development information, sales and marketing information, customer lists, prospect information, pipeline reports, sales reports, personnel information, specifications, code, software, databases, computer-recorded information, tangible property and equipment (including, but not limited to, computing and electronic devices, mobile telephones, servers), credit cards, entry cards, identification badges and keys; and any materials of any kind which contain or embody any proprietary or confidential information of the Company (and all reproductions or embodiments thereof in whole or in part). You agree that you will make a diligent search to locate any such documents, property and information by the close of business on the Separation Date or as soon as possible thereafter. **Your timely compliance with this paragraph is a condition to your receipt of the severance benefits provided under this Agreement.**

**8. CONFIDENTIAL INFORMATION OBLIGATIONS.** You acknowledge and reaffirm your continuing obligations under your Confidential Information and Invention Assignment Agreement, a copy of which is attached hereto as **Attachment 1** and incorporated herein by reference.

**9. NO VOLUNTARY ADVERSE ACTION.** You agree that you will not voluntarily (except in response to legal compulsion or as permitted under Section 6(e) of this Agreement) assist any

person in bringing or pursuing any proposed or pending litigation, arbitration, administrative claim or other formal proceeding against the Released Parties.

**10.COOPERATION.** You agree to provide reasonable cooperation to the Company in connection with its actual or contemplated defense, prosecution, or investigation of any claims or demands by or against third parties, or other matters arising from events, acts, or failures to act that occurred during the period of your employment by the Company. Such cooperation includes, without limitation, making yourself available to the Company upon reasonable notice, without subpoena, to provide complete, truthful and accurate information in witness interviews, depositions, and trial testimony. The Company will reimburse you for reasonable out-of-pocket expenses you incur in connection with any such cooperation (excluding foregone wages, salary, or other compensation) and will make reasonable efforts to accommodate your scheduling needs and for more than de minimis service, you and the Company will agree on a mutually agreeable per diem rate. In addition, in the event you are receiving Severance Benefits, for twenty four (24) months after the Separation Date, you agree to reasonably cooperate with the Company in all matters relating to the transition of your work and responsibilities on behalf of the Company, including, but not limited to, any present, prior or subsequent relationships and the orderly transfer of any such work and institutional knowledge to such other persons as may be designated by the Company. Such transition assistance described in the previous sentence shall not be subject to additional compensation, and the Company will make reasonable efforts to accommodate your scheduling needs.

**11.No Admissions.** You understand and agree that the promises and payments in consideration of this Agreement shall not be construed to be an admission of any liability or obligation by the Company to you or to any other person, and that the Company makes no such admission.

**12.REPRESENTATIONS.** You hereby represent that you have: been paid all compensation owed and for all hours worked; received all leave and leave benefits and protections for which you are eligible pursuant to the Family and Medical Leave Act or otherwise; and not suffered any on-the-job injury for which you have not already filed a workers' compensation claim.

**13.CLAWBACK.** You acknowledge and agree that, notwithstanding any other provision of this Agreement, (i) in the event a condition existed prior to the Separation Date that, had the Company been fully aware of such condition, would have given the Company the right to terminate your employment for "Gross Misconduct" pursuant to the Employment Agreement or (ii) as otherwise would be required by applicable law or regulations, you will forfeit your right to receive the Severance Benefits to the extent not paid or provided to you, and, if already paid or provided, you agree that you will reimburse the Company, immediately, for the amount of such benefits on a pre-tax basis.

**14.DISPUTE RESOLUTION.** You and the Company recognize that litigation in federal or state courts or before federal or state administrative agencies of disputes arising out of your employment with the Company or out of this Agreement, or your termination of employment, may not be in the best interests of either you or the Company, and may result in unnecessary costs, delays, complexities, and uncertainty. Except where prohibited by law, the you and the Company agree that any dispute between the parties arising out of or relating to the negotiation, execution,

performance or termination of this Agreement or your employment, including, but not limited to, any claim arising out of this Agreement, claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, Section 1981 of the Civil Rights Act of 1966, as amended, the Family Medical Leave Act, the Executive Retirement Income Security Act, and any similar federal, state or local law, statute, regulation, or any common law doctrine, whether that dispute arises during or after employment, shall be settled by binding arbitration in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association. The location for the arbitration shall be in Salt Lake City, Utah. Any award made by such panel shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrators' fees and expenses and all administrative fees and expenses associated with the filing of the arbitration shall be borne by the Company; *provided however*, that at your option, you may voluntarily pay up to one-half the costs and fees. You and the Company acknowledge and agree that our obligations to arbitrate under this section survive the termination of this Agreement and continue after the termination of the employment relationship between you and the Company. You and the Company each further agree that the arbitration provisions of this Agreement shall provide each party with its **exclusive remedy**, and each party expressly waives any right it might have to seek redress in any other forum, except as otherwise expressly provided in this Agreement. By election arbitration as the means for final settlement of all claims, **you and the Company hereby waive their respective rights to, and agree not to, sue each other in any action in a Federal, State or local court with respect to such claims, but may seek to enforce in court an arbitration award rendered pursuant to this Agreement. You and the Company specifically agree to waive their respective rights to a trial by jury, and further agree that no demand, request or motion will be made for trial by jury.**

**15.MISCELLANEOUS.** Except where indicated herein, this Agreement, including its attachments and exhibits, constitutes the complete, final and exclusive embodiment of the entire agreement between you and the Company with regard to its subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified or amended except in a writing signed by both you and a duly authorized officer of the Company. This Agreement will bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question will be modified by the court so as to be rendered enforceable to the fullest extent permitted by law, consistent with the intent of the parties. This Agreement will be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of Utah without regard to conflict of laws principles. Any ambiguity in this Agreement shall not be construed against either party as the drafter. Any waiver of a breach of this Agreement shall be in writing and shall not be deemed to be a waiver of any successive breach. You further acknowledge and agree that you have been advised that you have the right to consult an attorney regarding this Agreement and that you were given a reasonable time period of not less than five business days in which to do so. This Agreement may be executed in counterparts and electronic or facsimile signatures will suffice as original signatures.

*(Signatures on following page)*

Exhibit B – page 6

---

If this Agreement is acceptable to you, please sign below and return the original to me within twenty-one (21) days, but no earlier than the Separation Date. The Company's offer contained herein will automatically expire if you do not sign and return it within that timeframe.

Sincerely,

By: \_\_\_\_\_  
[Name]  
[Title]

**Attachment(s):**

Attachment 1 - Confidential Information and Invention Assignment Agreement

**I HAVE READ, UNDERSTAND AND AGREE FULLY TO THE FOREGOING AGREEMENT:**

\_\_\_\_\_  
Paul Stone

\_\_\_\_\_  
Date

## SPORTSMAN'S WAREHOUSE HOLDINGS, INC.

## EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTIONS ASSIGNMENT AGREEMENT

In consideration of my employment or continued employment by **Sportsman's Warehouse Holdings, Inc.** ("**Employer**"), and its subsidiaries, parents, affiliates, successors and assigns (together with Employer, "**Company**"), the compensation paid to me now and during my employment with Company, and Company's agreement to provide me with access to its Confidential Information (as defined below), I enter into this Employee Confidential Information and Inventions Assignment Agreement with Employer (the "**Agreement**").

## RECITALS

WHEREAS, during the course of my employment, I will have access to and knowledge of Company's trade secrets and Confidential Information; and

WHEREAS, it is of material benefit to restrict the disclosure of Company's trade secrets and Confidential Information with a nondisclosure, non-solicitation, and non-competition agreement, all of which are reasonable in terms of scope, geography and duration.

Accordingly, in consideration of the mutual promises and covenants contained herein, Employer (on behalf of itself and Company) and I agree as follows:

**1. Confidential Information Protections.**

**1.1 Recognition of Company's Rights; Nondisclosure.** My employment by Company creates a relationship of confidence and trust with respect to Confidential Information (as defined below) and Company has a protectable interest in the Confidential Information. At all times during and after my employment, I will hold in confidence and will not disclose, use, lecture upon, or publish any Confidential Information, except as required in connection with my work for Company or as approved by an officer of Company. I will obtain written approval by an officer of Company before I lecture on or submit for publication any material (written, oral, or otherwise) that discloses and/or incorporates any Confidential Information. I will take all reasonable precautions to prevent the disclosure of Confidential Information. Notwithstanding the foregoing, pursuant to 18 U.S.C. Section 1833(b), I will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. I agree that Company information or documentation to which I have access during my employment, regardless of whether it contains Confidential Information, is the property of Company and cannot be downloaded or retained for my personal use or for any use that is outside the scope of my duties for Company.

**1.2 Confidential Information.** "**Confidential Information**" means any and all confidential knowledge or data of Company and includes any confidential knowledge or data that Company has received, or receives in the future, from third parties that Company has agreed to treat as confidential and to use for only certain limited purposes. By way of illustration but not limitation, Confidential Information includes (a) trade secrets, inventions, ideas, processes, formulas, software in source or object code, data, technology, know-how, designs and techniques, and any other work product of any nature, and all Intellectual Property Rights (defined below) in all of the foregoing (collectively, "**Inventions**"), including all Company Inventions (defined in Section 2.1); (b) information regarding (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures and strategies, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, product roadmaps, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients, customer or client lists, and the preferences of, and negotiations with, customers and clients, (xiii) personnel information of other employees and independent contractors (including their compensation, unique skills, experience and expertise, and disciplinary matters), (xiv) other copyrightable works, (xv) all production methods,

processes, technology and trade secrets, and (xvi) all similar and related information in whatever form. However, Company agrees that I am free to use information that I knew prior to my employment with Company or that is, at the time of use, generally known in the trade or industry through no breach of this Agreement by me. Company further agrees that this Agreement does not limit my right to discuss my employment or unlawful acts in the Company's workplace, including but not limited to sexual harassment or discrimination or any other conduct that I have reason to believe is unlawful, or report possible violations of law or regulation with any federal, state or local government agency, or to discuss the terms and conditions of my employment with others to the extent expressly permitted by Section 7 of the National Labor Relations Act, or to the extent that such disclosure is protected under the applicable provisions of law or regulation, including but not limited to "whistleblower" statutes or other similar provisions that protect such disclosure, to the extent any such rights are not permitted by applicable law to be the subject of nondisclosure obligations, or any other permitted activity applicable to me.

**1.3 Third Party Information.** I understand, in addition, that the Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data, or information ("**Third Party Information**") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. During my employment and thereafter, I will hold Third Party Information in confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

**1.4 Term of Nondisclosure Restrictions.** I will only use or disclose Confidential Information as provided in this Section 1 and I agree that the restrictions in Section 1.1 are intended to continue indefinitely, even after my employment by Company ends. However, if a time limitation on my obligation not to use or disclose Confidential Information is required under applicable law, and the Agreement or its restriction(s) cannot otherwise be enforced, Company and I agree that the two year period after the date my employment ends will be the time limitation relevant to the contested restriction; **provided, however**, that my obligation not to disclose or use trade secrets that are protected without time limitation under applicable law shall continue indefinitely.

**1.5 No Improper Use of Information of Prior Employers and Others.** During my employment by Company, I will not improperly use or disclose confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto Company's premises any unpublished documents or property belonging to a former employer or any other person to whom I have an obligation of confidentiality unless that former employer or person has consented in writing.

**1.6 Restricted Access Granted.** In exchange for my agreement not to disclose or use Confidential Information, except as required in performing my duties for the Company, and for the non-solicitation covenants, and the other promises provided herein, the Company agrees to grant me access to Confidential Information required to fulfill the duties of my position. I agree that the Company has no pre-existing obligation to reveal Confidential Information.

## 2. Assignments of Inventions.

**2.1 Definitions.** The term (a) "**Intellectual Property Rights**" means all past, present and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: trade secrets, Copyrights, trademark and trade name rights, mask work rights, patents and industrial property, and all proprietary rights in technology or works of authorship (including, in each case, any application for any such rights, all rights to priority, and any rights to apply for any such rights, as well as all rights to pursue remedies for infringement or violation of any such rights); (b) "**Copyright**" means the exclusive legal right to reproduce, perform, display, distribute and make derivative works of a work of authorship (for example, a literary, musical, or artistic work) recognized by the laws of any jurisdiction in the world; (c) "**Moral Rights**" means all paternity, integrity, disclosure, withdrawal, special and similar rights recognized by the laws of any jurisdiction in the world; and (d) "**Company Inventions**" means any and all Inventions (and all Intellectual Property Rights related to Inventions) that are made, conceived, developed, prepared, produced, authored, edited, amended, reduced to practice, or learned or set out in any tangible medium of expression or otherwise created, in whole or in part, by me, either alone or with others, during my employment by Company, and all printed, physical, and electronic copies, and other tangible embodiments of Inventions.

## 2.2 Utah Limited Exclusion Notification.

(a) I acknowledge that Utah Code §§ 34-39-1 to 34-39-3 provides that the foregoing Agreement between the Company and I shall not apply to an invention that is both (i) created by me on my own time, and (ii) not an Employment Invention (defined below) (“**Nonassignable Inventions**”).

(b) To the extent a provision in the foregoing Agreement purports to require me to assign an invention otherwise excluded from the preceding paragraph, the provision is against the public policy of the State of Utah and is void and unenforceable. I acknowledge that I shall have the burden of establishing that any invention is excluded from assignment to Company by the preceding paragraph.

(c) An “**Employment Invention**” is defined as an invention or any part that is: conceived, developed or reduced to practice or created by you: within the scope of your employment, on Employer’s time, or with the aid, assistance, or use of any of Employer’s property, equipment, facilities, supplies, resources or intellectual property; the result of any work, services, or duties performed by you for Employer; related to Employer’s industry or trade; or related to Employer’s current or demonstrably anticipated business, research, or development.

## 2.3 Prior Inventions.

(a) On the signature page to this Agreement is a list describing any Inventions that (i) are owned by me or in which I have an interest and that were made or acquired by me prior to my date of first employment by Company, and (ii) may relate to Company’s business or actual or demonstrably anticipated research or development, and (iii) are not to be assigned to Company (“**Prior Inventions**”). If no such list is attached, I represent and warrant that no Inventions that would be classified as Prior Inventions exist as of the date of this Agreement.

(b) I agree that if I use any Prior Inventions and/or Nonassignable Inventions in the scope of my employment, or if I include any Prior Inventions and/or Nonassignable Inventions in any product or service of Company, or if my rights in any Prior Inventions and/or any Nonassignable Inventions may block or interfere with, or may otherwise be required for, the exercise by Company of any rights assigned to Company under this Agreement (each, a “**License Event**”), (i) I will immediately notify Company in writing, and (ii) unless Company and I agree otherwise in writing, I hereby grant to Company a non-exclusive, perpetual, transferable, fully-paid, royalty-free, irrevocable, worldwide license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make derivative works of, distribute, publicly perform, and publicly display in any form or medium (whether now known or later developed), make, have made, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Prior Inventions and/or Nonassignable Inventions. To the extent that any third parties have any rights in or to any Prior Inventions or any Nonassignable Inventions, I represent and warrant that such third party or parties have validly and irrevocably granted to me the right to grant the license stated above. For purposes of this paragraph, “**Prior Inventions**” includes any Inventions that would be classified as Prior Inventions, whether or not they are listed on the signature page to this Agreement.

**2.4 Assignment of Company Inventions.** I hereby assign to Employer all my right, title, and interest in and to any and all Company Inventions other than Nonassignable Inventions and agree that such assignment includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Employer and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Employer or related to Employer’s customers, with respect to such rights. I further agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Company Inventions. Nothing contained in this Agreement may be construed to reduce or limit Company’s rights, title, or interest in any Company Inventions so as to be less in any respect than that Company would have had in the absence of this Agreement.

**2.5 Obligation to Keep Company Informed.** During my employment by Company, I will promptly and fully disclose to Company in writing all Inventions that I author, conceive, or reduce to practice, either alone or jointly with others. At the time of each disclosure, I will advise Company in writing of any Inventions that I believe constitute Nonassignable Inventions; and I will at that time provide to Company in writing all evidence necessary to substantiate my belief. Subject to Section 2.3(b), Company agrees to keep in confidence, not use for any purpose, and not disclose

to third parties without my consent, any confidential information relating to Nonassignable Inventions that I disclose in writing to Company.

**2.6 Government or Third Party.** I agree that, as directed by Company, I will assign to a third party, including without limitation the United States, all my right, title, and interest in and to any particular Company Invention.

**2.7 Ownership of Work Product.** I acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of my employment and that are protectable by Copyright are “works made for hire,” pursuant to United States Copyright Act (17 U.S.C., Section 101).

**2.8 Enforcement of Intellectual Property Rights and Assistance.** I will assist Company, in every way Company requests, including signing, verifying and delivering any documents and performing any other acts, to obtain and enforce United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in any jurisdictions in the world. My obligation to assist Company with respect to Intellectual Property Rights relating to Company Inventions will continue beyond the termination of my employment, but Company will compensate me at a reasonable rate after such termination for the time I actually spend on such assistance. If Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in this paragraph, I hereby irrevocably designate and appoint Employer and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and on my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this Agreement with the same legal force and effect as if executed by me. I hereby waive and quitclaim to Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Intellectual Property Rights assigned to Employer under this Agreement.

**2.9 Incorporation of Software Code.** I agree not to incorporate into any Inventions, including any Company software, or otherwise deliver to Company, any software code licensed under the GNU General Public License, Lesser General Public License, or any other license that, by its terms, requires or conditions the use or distribution of such code on the disclosure, licensing, or distribution of any source code owned or licensed by Company, **except** in strict compliance with Company’s policies regarding the use of such software or as directed by Company.

**3. Records.** I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that is required by Company) of all Confidential Information developed by me and all Company Inventions made by me during the period of my employment at Company, which records will be available to and remain the sole property of Employer at all times.

**4. Duty of Loyalty During Employment.** During my employment by Company, I will not, without Company’s written consent, directly or indirectly engage in any employment or business activity that is directly or indirectly competitive with, or would otherwise conflict with, my employment by Company.

**5. No Solicitation of Employees, Consultants or Contractors.** I agree that during the period of my employment and for the one-year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of Company:

**5.1** solicit, induce, encourage, or participate in soliciting, inducing or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his, her or its relationship with Company, even if I did not initiate the discussion or seek out the contact;

**5.2** solicit, induce, encourage, or participate in soliciting, inducing, or encouraging any person known to me to be an employee, consultant, or independent contractor of Company to terminate his, her or its relationship with Company to render services to me or any other person or entity that researches, develops, markets, sells, performs or provides or is preparing to develop, market, sell, perform or provide services to a Competing Business (as defined below);

## 6. Non-Compete Provision.

**6.1** I agree that during the period of my employment and for the one-year period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by Company (except as prohibited by law), I will not, directly or indirectly, as an officer, director, employee, consultant, owner, partner, or in any other capacity solicit, perform, or provide, or attempt to perform or provide services to a Competing Business (as defined above) anywhere in the Restricted Territory (as defined below), nor will I assist another person to solicit, perform or provide or attempt to perform or provide services for a Competing Business anywhere in the Restricted Territory. Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a Competing Business which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

**6.2** The parties agree that, for the purposes of this Agreement, “**Competing Business**” means: (a) any entity any that directly or indirectly competes with the Company, whether on a retail or e-commerce basis, including, without limitation, any business that owns or operates, directly or indirectly, stores commonly referred to as Cabela’s, Bass Pro Shops, Scheels or Gander Outdoors. (b) any successor to any business identified in clause (a); and (c) any affiliate of a business identified in clause (a) or clause (b); provided, however, that a “Competing Business” shall not include a parent company or sister company of a business identified in clause (a) or clause (b) if both (x) such parent company is also engaged (directly or through other affiliates) in businesses that are not competitive with any business described in clause (a) or clause (b) (or, in the case of a sister company, such sister company is not engaged in any business that is competitive with any business described in clause (a) or clause (b)), and (y) the Executive’s position, services and responsibilities with such entity are limited to the distribution of merchandise that is not competitive with any business described in clause (a) or clause (b) and the Executive does not participate in any way in any business identified in clause (a) or clause (b).

**6.3** The parties agree that, for purposes of this Agreement, “**Restricted Territory**” means (i) all counties in the state in which I primarily perform services for Company; (ii) all other states of the United States of America in which Company, with my involvement in some capacity, including, without limitation, my having knowledge of Confidential Information related thereto, provided goods or services, had customers, or otherwise conducted business at any time during the two-year period prior to the date of the termination of my relationship with Company; and (iii) any other countries from which Company provided goods or services, had customers, or otherwise conducted business, with my involvement in some capacity, including, without limitation, my having knowledge of Confidential Information related thereto, at any time during the two-year period prior to the date of the termination of my relationship with Company.

**7. Reasonableness of Restrictions.** I have read this entire Agreement and understand it. I acknowledge that (a) I have the right to consult with counsel prior to signing this Agreement, (b) I will derive significant value from Company’s agreement to provide me with Company Confidential Information to enable me to optimize the performance of my duties to Company, and (c) that my fulfillment of the obligations contained in this Agreement, including, but not limited to, my obligation neither to disclose nor to use Company Confidential Information other than for Company’s exclusive benefit and my obligations not to compete and not to solicit, are necessary to protect Company Confidential Information and, consequently, to preserve the value and goodwill of Company. I agree that (i) this Agreement does not prevent me from earning a living or pursuing my career, and (ii) the restrictions contained in this Agreement are reasonable, proper, and necessitated by Company’s legitimate business interests. I represent and agree that I am entering into this Agreement freely, with knowledge of its contents and the intent to be bound by its terms. If a court finds this Agreement, or any of its restrictions, are ambiguous, unenforceable, or invalid, Company and I agree that the court will read the Agreement as a whole and interpret such restriction(s) to be enforceable and valid to the maximum extent allowed by law. If the court declines to enforce this Agreement in the manner provided in this Section and/or Section 13.2, Company and I agree that this Agreement will be automatically modified to provide Company with the maximum protection of its business interests allowed by law, and I agree to be bound by this Agreement as modified.

**8. No Conflicting Agreement or Obligation.** I represent that my performance of all the terms of this Agreement and as an employee of Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by Company. I have not entered into, and I agree I will not enter into, any written or oral agreement in conflict with this Agreement.

**9. Return of Company Property.** When I cease to be employed by Company, I will deliver to Company any and all materials, together with all copies thereof, containing or disclosing any Company Inventions, or Confidential Information. I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to, Confidential Information, I agree to provide Company with a computer-useable copy of all such information and then permanently delete such information from those systems; and I agree to provide Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company's personnel at any time during my employment, with or without notice. Prior to leaving, I hereby agree to: provide Company any and all information needed to access any Company property or information returned or required to be returned pursuant to this paragraph, including without limitation any login, password, and account information; cooperate with Company in attending an exit interview; and complete and sign Company's termination statement if required to do so by Company.

**10. Legal and Equitable Remedies.**

**10.1** I agree that (a) it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms, (b) any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to Company, and (c) Company will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach or threatened breach of this Agreement.

**10.2** Except as prohibited by law, I agree that if the Company is successful in whole or in part in any legal or equitable action against me under this Agreement (including, but not limited to, a court partially or fully granting any application, motion, or petition by Company for injunctive relief, including, but not limited to, a temporary restraining order, preliminary injunction, or permanent injunction), whether against or commenced by me, the Company will be entitled to recover from me all costs, fees, or expenses it incurred at any time during the course of the dispute, including, but not limited to, reasonable attorney's fees. A final resolution of such dispute or a final judgment is not a prerequisite to Company's right to demand payment hereunder and such amounts must be paid by me to Company within 30 days after I receive written notice of such demand. In the event Company demands only a portion of such costs, fees, or expenses incurred, such demand shall be without prejudice to further demands for (i) the remainder of any outstanding costs, fees, or expenses incurred, or (ii) costs, fees, or expenses incurred after the prior demand. Notwithstanding anything to the contrary in this provision, Company and I shall equally share any fees charged by an arbitral body (e.g., JAMS).

**10.3** In the event the Company enforces this Agreement through a court order, I agree that the restrictions of Sections 5 and 6 will remain in effect for a period of 12 months from the effective date of the Order enforcing the Agreement.

**11. Notices.** Any notices required or permitted under this Agreement will be given to Company at its headquarters location at the time notice is given, labeled "Attention Chief Executive Officer," and to me at my address as listed on Company payroll, or at such other address as Company or I may designate by written notice to the other. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, notice will be considered to have been given five business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, notice will be considered to have been given on the delivery date reflected by the courier or express mail service receipt.

**12. Publication of This Agreement to Subsequent Employer or Business Associates of Employee.** If I am offered employment, or the opportunity to enter into any business venture as owner, partner, consultant or other capacity, while the restrictions in Sections 5 and 6 of this Agreement are in effect, I agree to inform my potential employer, partner, co-owner and/or others involved in managing the business I have an opportunity to be associated with, of my obligations under this Agreement and to provide such person or persons with a copy of this Agreement. I agree to inform Company of all employment and business ventures which I enter into while the restrictions described in Sections 5 and 6 of this Agreement are in effect and I authorize Company to provide copies of this Agreement to

my employer, partner, co-owner and/or others involved in managing the business I have an opportunity to be associated with and to make such persons aware of my obligations under this Agreement.

### **13. General Provisions.**

**13.1Governing Law; Consent to Personal Jurisdiction.** This Agreement will be governed by and construed according to the laws of the state in which I primarily work for Company without regard to any conflict of laws principles that would require the application of the laws of a different jurisdiction. I expressly consent to the personal jurisdiction and venue of the state and federal courts located in the state in which I primarily work for Company and the state in which Company's headquarters is located for any lawsuit filed there against me by Company arising from or related to this Agreement (although I understand Company will not file a lawsuit in the state in which Company's headquarters is located if prohibited by applicable law).

**13.2Severability.** If any portion of this Agreement is, for any reason, held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, and this Agreement will be construed as if such provision had never been contained in this Agreement. If any portion of this Agreement is, for any reason, held to be excessively broad as to duration, geographical scope, activity or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent allowed by the then applicable law.

**13.3Successors and Assigns.** This Agreement is for my benefit and the benefit of Company and its and their successors, assigns, parent corporations, subsidiaries, affiliates, and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

**13.4Survival.** This Agreement will survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

**13.5Employment At-Will.** I understand and agree that nothing in this Agreement will change my at-will employment status or confer any right with respect to continuation of employment by Company, nor will it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause or advance notice, except as prohibited by law.

**13.6Waiver.** No waiver by Company of any breach of this Agreement will be a waiver of any preceding or succeeding breach. No waiver by Company of any right under this Agreement will be construed as a waiver of any other right. Company will not be required to give notice to enforce strict adherence to all terms of this Agreement.

**13.7Export.** I agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

**13.8Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**13.9Advice of Counsel.** **I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT WILL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION OF THIS AGREEMENT.**

**13.10Entire Agreement.** The obligations in Sections 1 and 2 (except Section 2.3 with respect to a consulting relationship) of this Agreement will apply to any time during which I was previously engaged, or am in the

future engaged, by Company as a consultant, employee or other service provider if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement, together with any Exhibits herein and any executed offer letter between me and the Company, is the final, complete and exclusive agreement of the parties with respect to the subject matter of this Agreement and supersedes and merges all prior discussions between us, whether written or oral, **provided, however**, if, prior to execution of this Agreement, Company and I were parties to any agreement regarding the subject matter hereof, that agreement will be superseded by this Agreement prospectively only. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

*[Signatures to follow on next page]*

This Agreement will be effective as of the date signed by the Employee below.

**EMPLOYER: Sportsman’s Warehouse Holdings, Inc.**

**EMPLOYEE:**

/s/ Martha Helena Bejar  
\_\_\_\_\_  
(Signature)

/s/ Paul Stone  
\_\_\_\_\_  
(Signature)

Martha Helena Bejar  
\_\_\_\_\_  
(Printed Name)

Paul Stone  
\_\_\_\_\_  
(Printed Name)

Independent Directors / Board of Directors  
\_\_\_\_\_  
(Title)

9 – 22 – 23  
\_\_\_\_\_  
(Date Signed)

---

**PRIOR INVENTIONS**

**1. Prior Inventions Disclosure.** Except as listed in Section 2 below, the following is a complete list of all Prior Inventions:

No Prior Inventions.

See below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional sheets attached.

**2.** Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to the Prior Inventions generally listed below, the intellectual property rights and duty of confidentiality with respect to which I owe to the following party(ies):

	<b>Excluded Invention</b>	<b>Party(ies)</b>	<b>Relationship</b>
<b>1.</b>	_____	_____	_____
<b>2.</b>	_____	_____	_____
<b>3.</b>	_____	_____	_____

Additional sheets attached.

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.  
INDUCEMENT PLAN**1. ELIGIBLE PERSONS; PURPOSE OF PLAN**

The only persons eligible to receive grants of awards under this Sportsman's Warehouse Holdings, Inc. Inducement Plan (this "**Plan**") of Sportsman's Warehouse Holdings, Inc., a Delaware corporation (the "**Corporation**") are individuals who satisfy the standards for inducement grants under NASDAQ Marketplace Rule 5635(c)(4) or 5635(c)(3), if applicable, and the related guidance under NASDAQ IM 5635-1. Persons eligible to receive grants of awards under this Plan are referred to in this Plan as "**Eligible Persons**." These awards must be approved by either a majority of the Corporation's "**Independent Directors**" (as such term is defined in NASDAQ Marketplace Rule 5605(a)(2)) or the Board's compensation committee, provided such committee is comprised solely of Independent Directors (the "**Independent Compensation Committee**") in order to comply with the exemption from the stockholder approval requirement for "inducement grants" provided under Rule 5635(c)(4) of the NASDAQ Marketplace Rules. NASDAQ Marketplace Rule 5635(c)(4) and the related guidance under NASDAQ IM 5635-1 (and any analogous rules or guidance effective after the date hereof) are referred to in this Plan as the "**Inducement Award Rules**."

This Plan, through the granting of awards, is intended to provide (i) a material inducement to award recipients to become employees of the Corporation within the meaning of Rule 5635(c)(4) of the NASDAQ Marketplace Rules, (ii) incentives for such persons to exert maximum efforts for the success of the Corporation and any Subsidiary and (iii) a means by which Eligible Persons may be given an opportunity to benefit from increases in value of the Common Stock through the granting of awards.

**2. CERTAIN DEFINITIONS**

As used herein, "**Subsidiary**" means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Corporation; and "**Board**" means the Board of Directors of the Corporation.

**3. PLAN ADMINISTRATION**

**3.1 The Administrator.** This Plan shall be administered by the Administrator. The "**Administrator**" means the Board or one or more committees (or subcommittees, as the case may be) appointed by the Board or another committee (within its delegated authority) to administer all or certain aspects of this Plan. Any such committee shall be comprised solely of one or more directors or such number of directors as may be required under applicable law. A committee may delegate some or all of its authority to another committee so constituted. The Board or a committee comprised solely of directors may also delegate, to the extent permitted by applicable law, to one or more officers of the Corporation, its authority under this Plan. The Board or another committee (within its delegated authority) may delegate different levels of authority to different committees or persons with administrative and grant authority under this Plan. Unless otherwise provided in the Bylaws of the Corporation or the applicable charter of any Administrator: (a) a majority of the members of the acting Administrator shall constitute a quorum, and (b) the vote of a majority of the members present assuming the presence of a quorum or the unanimous written consent of the members of the Administrator shall constitute action by the acting Administrator. Notwithstanding the foregoing, the administration of the Plan shall be subject to the Inducement Award Rules, and awards may only be granted by either (i) a majority of the Corporation's Independent Directors or (ii) the Independent Compensation Committee.

**3.2 Powers of the Administrator.** Subject to the express provisions of this Plan, the Administrator is authorized and empowered to do all things necessary or desirable in connection with the authorization of awards and the administration of this Plan (in the case of a committee or delegation to one or more officers, within any express limits on the authority delegated to that committee or person(s)), subject to the Inducement Award Rules, including, without limitation, the authority to:

---

- (a) determine eligibility and, from among those persons determined to be eligible, determine the particular Eligible Persons who will receive an award under this Plan;
- (b) grant awards to Eligible Persons, determine the price (if any) at which securities will be offered or awarded and the number of securities to be offered or awarded to any of such persons (in the case of securities-based awards), determine the other specific terms and conditions of awards consistent with the express limits of this Plan, establish the installment(s) (if any) in which such awards shall become exercisable or shall vest (which may include, without limitation, performance and/or time-based schedules), or determine that no delayed exercisability or vesting is required, establish any applicable performance-based exercisability or vesting requirements, determine the circumstances in which any performance-based goals (or the applicable measure of performance) will be adjusted and the nature and impact of any such adjustment, determine the extent (if any) to which any applicable exercise and vesting requirements have been satisfied, establish the events (if any) on which exercisability or vesting may accelerate (which may include, without limitation, retirement and other specified terminations of employment or services, or other circumstances), and establish the events (if any) of termination, expiration or reversion of such awards provided, however, that awards may only be granted by either (i) a majority of the Corporation's Independent Directors or (ii) the Independent Compensation Committee;
- (c) approve the forms of any award agreements (which need not be identical either as to type of award or among participants);
- (d) construe and interpret this Plan and any agreements defining the rights and obligations of the Corporation, its Subsidiaries, and participants under this Plan, make any and all determinations under this Plan and any such agreements, further define the terms used in this Plan, and prescribe, amend and rescind rules and regulations relating to the administration of this Plan or the awards granted under this Plan;
- (e) cancel, modify, or waive the Corporation's rights with respect to, or modify, discontinue, suspend, or terminate any or all outstanding awards, subject to any required consent under Section 8.6.4;
- (f) accelerate, waive or extend the vesting or exercisability, or modify or extend the term of, any or all such outstanding awards (in the case of options or stock appreciation rights, within the maximum term of such awards) in such circumstances as the Administrator may deem appropriate (including, without limitation, in connection with a retirement or other termination of employment or services, or other circumstances) subject to any required consent under Section 8.6.4;
- (g) adjust the number of shares of Common Stock subject to any award, adjust the price of any or all outstanding awards or otherwise waive or change previously imposed terms and conditions, in such circumstances as the Administrator may deem appropriate, in each case subject to Sections 4 and 8.6 (and subject to the no repricing provision below);
- (h) determine the date of grant of an award, which may be a designated date after but not before the date of the Administrator's action to approve the award (unless otherwise designated by the Administrator, the date of grant of an award shall be the date upon which the Administrator took the action approving the award);
- (i) determine whether, and the extent to which, adjustments are required pursuant to Section 7.1 hereof and take any other actions contemplated by Section 7 in connection with the occurrence of an event of the type described in Section 7;
- (j) acquire or settle (subject to Sections 7 and 8.6) rights under awards in cash, stock of equivalent value, or other consideration (subject to the no repricing provision below); and

(k) determine the fair market value of the Common Stock or awards under this Plan from time to time and/or the manner in which such value will be determined.

**3.3** **Prohibition on Repricing.** Notwithstanding anything to the contrary in Section 3.2 and except for an adjustment pursuant to Section 7.1 or a repricing approved by stockholders, in no case may the Administrator (1) amend an outstanding stock option or SAR to reduce the exercise price or base price of the award, (2) cancel, exchange, or surrender an outstanding stock option or SAR in exchange for cash or other awards for the purpose of repricing the award, or (3) cancel, exchange, or surrender an outstanding stock option or SAR in exchange for an option or SAR with an exercise or base price that is less than the exercise or base price of the original award.

**3.4** **Binding Determinations.** Any determination or other action taken by, or inaction of, the Corporation, any Subsidiary, or the Administrator relating or pursuant to this Plan (or any award made under this Plan) and within its authority hereunder or under applicable law shall be within the absolute discretion of that entity or body and shall be conclusive and binding upon all persons. Neither the Board nor any other Administrator, nor any member thereof or person acting at the direction thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with this Plan (or any award made under this Plan), and all such persons shall be entitled to indemnification and reimbursement by the Corporation in respect of any claim, loss, damage or expense (including, without limitation, attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors and officers liability insurance coverage that may be in effect from time to time. Neither the Board nor any other Administrator, nor any member thereof or person acting at the direction thereof, nor the Corporation or any of its Subsidiaries, shall be liable for any damages of a participant, should any other award(s) fail to qualify for any intended tax treatment, should any award grant or other action with respect thereto not satisfy Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended, or otherwise for any tax or other liability imposed on a participant with respect to an award.

**3.5** **Reliance on Experts.** In making any determination or in taking or not taking any action under this Plan, the Administrator may obtain and may rely upon the advice of experts, including employees and professional advisors to the Corporation. No director, officer or agent of the Corporation or any of its Subsidiaries shall be liable for any such action or determination taken or made or omitted in good faith.

**3.6** **Delegation.** The Administrator may delegate ministerial, non-discretionary functions to individuals who are officers or employees of the Corporation or any of its Subsidiaries or to third parties.

#### **4. SHARES OF COMMON STOCK SUBJECT TO THE PLAN; SHARE LIMITS**

**4.1** **Shares Available.** Subject to the provisions of Section 7.1, the capital stock that may be delivered under this Plan shall be shares of the Corporation's authorized but unissued Common Stock and any shares of its Common Stock held as treasury shares. For purposes of this Plan, "**Common Stock**" shall mean the common stock of the Corporation and such other securities or property as may become the subject of awards under this Plan, or may become subject to such awards, pursuant to an adjustment made under Section 7.1.

**4.2** **Aggregate Share Limit.** The maximum number of shares of Common Stock that may be delivered pursuant to awards granted to Eligible Persons under this Plan (the "**Share Limit**") is equal to 1,000,000.

**4.3** **Share-Limit Counting Rules.** The Share Limit shall be subject to the following provisions of this Section 4.3:

- (a) Shares that are subject to or underlie awards granted under this Plan which expire or for any reason are cancelled or terminated, are forfeited, fail to vest, or for any other reason are not paid or delivered under this Plan shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.
- (b) Except as provided below, to the extent that shares of Common Stock are delivered pursuant to the exercise of a stock appreciation right granted under this Plan, the number of underlying shares which are actually issued in payment of the award shall be counted against the Share Limit. (For purposes of clarity, if a stock appreciation right relates to 100,000 shares and is exercised in full at a time when the payment due to the participant is 15,000 shares, 15,000 shares shall be counted against the Share Limit with respect to such exercise and the 85,000 shares not issued shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.)
- (c) Shares that are exchanged by a participant or withheld by the Corporation as full or partial payment in connection with any award granted under this Plan, as well as any shares exchanged by a participant or withheld by the Corporation or one of its Subsidiaries to satisfy the tax withholding obligations related to any award granted under this Plan, shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.
- (d) To the extent that an award granted under this Plan is settled in cash or a form other than shares of Common Stock, the shares that would have been delivered had there been no such cash or other settlement shall not be counted against the Share Limit and shall be available for subsequent awards under this Plan.
- (e) In the event that shares of Common Stock are delivered in respect of a dividend equivalent right granted under this Plan, the number of shares delivered with respect to the award shall be counted against the Share Limit. (For purposes of clarity, if 1,000 dividend equivalent rights are granted and outstanding when the Corporation pays a dividend, and 50 shares are delivered in payment of those rights with respect to that dividend, 50 shares shall be counted against the Share Limit). Except as otherwise provided by the Administrator, shares delivered in respect of dividend equivalent rights shall not count against any individual award limit under this Plan other than the aggregate Share Limit.
- (f) The Corporation may not increase the Share Limit by repurchasing shares of Common Stock on the market (by using cash received through the exercise of stock options or otherwise).

Refer to Section 8.10 for application of the share limits of this Plan, including the limits in Sections 4.2, with respect to assumed awards. Each of the numerical limits and references in Section 4.2 and in this Section 4.3, is subject to adjustment as contemplated by Section 7 and Section 8.10.

**4.4** *No Fractional Shares; Minimum Issue.* Unless otherwise expressly provided by the Administrator, no fractional shares shall be delivered under this Plan. The Administrator may pay cash in lieu of any fractional shares in settlements of awards under this Plan. The Administrator may from time to time impose a limit (of not greater than 100 shares) on the minimum number of shares that may be purchased or exercised as to awards (or any particular award) granted under this Plan unless (as to any particular award) the total number purchased or exercised is the total number at the time available for purchase or exercise under the award.

## 5. AWARDS

**5.1** *Type and Form of Awards.* The Administrator shall determine the type or types of award(s) to be made to each selected Eligible Person. Awards may be granted singly, in combination or in

tandem. Awards also may be made in combination or in tandem with, in replacement of, as alternatives to, or as the payment form for grants or rights under any other employee or compensation plan of the Corporation or one of its Subsidiaries. The types of awards that may be granted under this Plan are:

**5.1.1 Stock Options.** A stock option is the grant of a right to purchase a specified number of shares of Common Stock during a specified period as determined by the Administrator. No stock option granted under the plan will be an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (an “ISO”) and all stock options shall instead be a nonqualified stock option (an option not intended to be an ISO). The maximum term of each option shall be ten (10) years. The per share exercise price for each option shall be not less than 100% of the fair market value of a share of Common Stock on the date of grant of the option. When an option is exercised, the exercise price for the shares to be purchased shall be paid in full in cash or such other method permitted by the Administrator consistent with Section 5.4.

**5.1.2 Stock Appreciation Rights.** A stock appreciation right or “SAR” is a right to receive a payment, in cash and/or Common Stock, equal to the excess of the fair market value of a specified number of shares of Common Stock on the date the SAR is exercised over the “base price” of the award, which base price shall be set forth in the applicable award agreement and shall be not less than 100% of the fair market value of a share of Common Stock on the date of grant of the SAR. The maximum term of a SAR shall be ten (10) years.

**5.1.3 Other Awards; Dividend Equivalent Rights.** The other types of awards that may be granted under this Plan include: (a) stock bonuses, restricted stock, performance stock, stock units, restricted stock units, deferred shares, phantom stock or similar rights to purchase or acquire shares, whether at a fixed or variable price (or no price) or fixed or variable ratio related to the Common Stock, and any of which may (but need not) be fully vested at grant or vest upon the passage of time, the occurrence of one or more events, the satisfaction of performance criteria or other conditions, or any combination thereof; or (b) cash awards. The types of cash awards that may be granted under this Plan include the opportunity to receive a payment for the achievement of one or more goals established by the Administrator, on such terms as the Administrator may provide, as well as discretionary cash awards. Dividend equivalent rights may be granted as a separate award or in connection with another award under this Plan; provided, however, that dividend equivalent rights may not be granted as to a stock option or SAR granted under this Plan. In addition, any dividends and/or dividend equivalents as to the portion of an award that is subject to unsatisfied vesting requirements will be subject to termination and forfeiture to the same extent as the corresponding portion of the award to which they relate in the event the applicable vesting requirements are not satisfied.

**5.2 Award Agreements.** Each award shall be evidenced by either (1) a written award agreement in a form approved by the Administrator and executed by the Corporation by an officer duly authorized to act on its behalf, or (2) an electronic notice of award grant in a form approved by the Administrator and recorded by the Corporation (or its designee) in an electronic recordkeeping system used for the purpose of tracking award grants under this Plan generally (in each case, an “award agreement”), as the Administrator may provide and, in each case and if required by the Administrator, executed or otherwise electronically accepted by the recipient of the award in such form and manner as the Administrator may require. The Administrator may authorize any officer of the Corporation (other than the particular award recipient) to execute any or all award agreements on behalf of the Corporation. The award agreement shall set forth the material terms and conditions of the award as established by the Administrator consistent with the express limitations of this Plan.

**5.3 Deferrals and Settlements.** Payment of awards may be in the form of cash, Common Stock, other awards or combinations thereof as the Administrator shall determine, and with such restrictions (if any) as it may impose. The Administrator may also require or permit participants to elect to defer the issuance of shares or the settlement of awards in cash under such rules and procedures as it may establish under this Plan. The Administrator may also provide that deferred settlements

include the payment or crediting of interest or other earnings on the deferral amounts, or the payment or crediting of dividend equivalents where the deferred amounts are denominated in shares.

**5.4** **Consideration for Common Stock or Awards.** The purchase price (if any) for any award granted under this Plan or the Common Stock to be delivered pursuant to an award, as applicable, may be paid by means of any lawful consideration as determined by the Administrator, including, without limitation, one or a combination of the following methods:

- services rendered by the recipient of such award;
- cash, check payable to the order of the Corporation, or electronic funds transfer;
- notice and third party payment in such manner as may be authorized by the Administrator;
- the delivery of previously owned shares of Common Stock;
- by a reduction in the number of shares otherwise deliverable pursuant to the award; or
- subject to such procedures as the Administrator may adopt, pursuant to a “cashless exercise” with a third party who provides financing for the purposes of (or who otherwise facilitates) the purchase or exercise of awards.

In no event shall any shares newly-issued by the Corporation be issued for less than the minimum lawful consideration for such shares or for consideration other than consideration permitted by applicable state law. Shares of Common Stock used to satisfy the exercise price of an option shall be valued at their fair market value. The Corporation will not be obligated to deliver any shares unless and until it receives full payment of the exercise or purchase price therefor and any related withholding obligations under Section 8.5 and any other conditions to exercise or purchase have been satisfied. Unless otherwise expressly provided in the applicable award agreement, the Administrator may at any time eliminate or limit a participant’s ability to pay any purchase or exercise price of any award or shares by any method other than cash payment to the Corporation.

**5.5** **Definition of Fair Market Value.** For purposes of this Plan, “fair market value” shall mean, unless otherwise determined or provided by the Administrator in the circumstances, the closing price (in regular trading) for a share of Common Stock on the NASDAQ Stock Market (the “**Market**”) for the date in question or, if no sales of Common Stock were reported on the Market on that date, the closing price (in regular trading) for a share of Common Stock on the Market for the next preceding day on which sales of Common Stock were reported on the Market. The Administrator may, however, provide with respect to one or more awards that the fair market value shall equal the closing price (in regular trading) for a share of Common Stock on the Market on the last trading day preceding the date in question or the average of the high and low trading prices of a share of Common Stock on the Market for the date in question or the most recent trading day. If the Common Stock is no longer listed or is no longer actively traded on the Market as of the applicable date, the fair market value of the Common Stock shall be the value as reasonably determined by the Administrator for purposes of the award in the circumstances. The Administrator also may adopt a different methodology for determining fair market value with respect to one or more awards if a different methodology is necessary or advisable to secure any intended favorable tax, legal or other treatment for the particular award(s) (for example, and without limitation, the Administrator may provide that fair market value for purposes of one or more awards will be based on an average of closing prices (or the average of high and low daily trading prices) for a specified period preceding the relevant date).

## **5.6 Transfer Restrictions.**

**5.6.1 Limitations on Exercise and Transfer.** Unless otherwise expressly provided in (or pursuant to) this Section 5.6 or required by applicable law: (a) all awards are non-transferable and

shall not be subject in any manner to sale, transfer, anticipation, alienation, assignment, pledge, encumbrance or charge; (b) awards shall be exercised only by the participant; and (c) amounts payable or shares issuable pursuant to any award shall be delivered only to (or for the account of) the participant.

**5.6.2 Exceptions.** The Administrator may permit awards to be exercised by and paid to, or otherwise transferred to, other persons or entities pursuant to such conditions and procedures, including limitations on subsequent transfers, as the Administrator may, in its sole discretion, establish in writing. Any permitted transfer shall be subject to compliance with applicable federal and state securities laws and shall not be for value (other than nominal consideration, settlement of marital property rights, or for interests in an entity in which more than 50% of the voting interests are held by the Eligible Person or by the Eligible Person's family members).

**5.6.3 Further Exceptions to Limits on Transfer.** The exercise and transfer restrictions in Section 5.6.1 shall not apply to:

- (a) transfers to the Corporation (for example, in connection with the expiration or termination of the award),
- (b) the designation of a beneficiary to receive benefits in the event of the participant's death or, if the participant has died, transfers to or exercise by the participant's beneficiary, or, in the absence of a validly designated beneficiary, transfers by will or the laws of descent and distribution,
- (c) transfers to a family member (or former family member) pursuant to a domestic relations order if received by the Administrator,
- (d) if the participant has suffered a disability, permitted transfers or exercises on behalf of the participant by his or her legal representative, or
- (e) the authorization by the Administrator of "cashless exercise" procedures with third parties who provide financing for the purpose of (or who otherwise facilitate) the exercise of awards consistent with applicable laws and any limitations imposed by the Administrator.

**5.7 International Awards.** One or more awards may be granted to Eligible Persons who provide services to the Corporation or one of its Subsidiaries outside of the United States. Any awards granted to such persons may be granted pursuant to the terms and conditions of any applicable sub-plans, if any, appended to this Plan and approved by the Administrator from time to time. The awards so granted need not comply with other specific terms of this Plan, provided that stockholder approval of any deviation from the specific terms of this Plan is not required by applicable law or any applicable listing agency.

## **6. EFFECT OF TERMINATION OF EMPLOYMENT OR SERVICE ON AWARDS**

**6.1 General.** The Administrator shall establish the effect (if any) of a termination of employment or service on the rights and benefits under each award under this Plan and in so doing may make distinctions based upon, inter alia, the cause of termination and type of award. If the participant is not an employee of the Corporation or one of its Subsidiaries, is not a member of the Board and provides other services to the Corporation or one of its Subsidiaries, the Administrator shall be the sole judge for purposes of this Plan (unless a contract or the award otherwise provides) of whether the participant continues to render services to the Corporation or one of its Subsidiaries and the date, if any, upon which such services shall be deemed to have terminated.

**6.2 Events Not Deemed Terminations of Employment.** Unless the express policy of the Corporation or one of its Subsidiaries, or the Administrator, otherwise provides, or except as otherwise required by applicable law, the employment relationship shall not be considered terminated in the

case of (a) sick leave, (b) military leave, or (c) any other leave of absence authorized by the Corporation or one of its Subsidiaries, or the Administrator; provided that, unless reemployment upon the expiration of such leave is guaranteed by contract or law or the Administrator otherwise provides, such leave is for a period of not more than three months. In the case of any employee of the Corporation or one of its Subsidiaries on an approved leave of absence, continued vesting of the award while on leave from the employ of the Corporation or one of its Subsidiaries may be suspended until the employee returns to service, unless the Administrator otherwise provides or applicable law otherwise requires. In no event shall an award be exercised after the expiration of any applicable maximum term of the award.

- 6.3** *Effect of Change of Subsidiary Status.* For purposes of this Plan and any award, if an entity ceases to be a Subsidiary of the Corporation a termination of employment or service shall be deemed to have occurred with respect to each Eligible Person in respect of such Subsidiary who does not continue as an Eligible Person in respect of the Corporation or another Subsidiary that continues as such after giving effect to the transaction or other event giving rise to the change in status unless the Subsidiary that is sold, spun-off or otherwise divested (or its successor or a direct or indirect parent of such Subsidiary or successor) assumes the Eligible Person's award(s) in connection with such transaction.

## **7. ADJUSTMENTS; ACCELERATION**

### **7.1 Adjustments.**

- (a) Subject to Section 7.2, upon (or, as may be necessary to effect the adjustment, immediately prior to): any reclassification, recapitalization, stock split (including a stock split in the form of a stock dividend) or reverse stock split; any merger, combination, consolidation, conversion or other reorganization; any spin-off, split-up, or similar extraordinary dividend distribution in respect of the Common Stock; or any exchange of Common Stock or other securities of the Corporation, or any similar, unusual or extraordinary corporate transaction in respect of the Common Stock; then the Administrator shall equitably and proportionately adjust: (1) the number and type of shares of Common Stock (or other securities) that thereafter may be made the subject of awards (including the specific share limits, maximums and numbers of shares set forth elsewhere in this Plan); (2) the number, amount and type of shares of Common Stock (or other securities or property) subject to any outstanding awards; (3) the grant, purchase, or exercise price (which term includes the base price of any SAR or similar right) of any outstanding awards; and/or (4) the securities, cash or other property deliverable upon exercise or payment of any outstanding awards, in each case to the extent necessary to preserve (but not increase) the level of incentives intended by this Plan and the then-outstanding awards.
- (b) Without limiting the generality of Section 3.4, any good faith determination by the Administrator as to whether an adjustment is required in the circumstances pursuant to this Section 7.1, and the extent and nature of any such adjustment, shall be conclusive and binding on all persons.

### **7.2 Corporate Transactions - Assumption and Termination of Awards.**

- (a) Upon any event in which the Corporation does not survive, or does not survive as a public company in respect of its Common Stock (including, without limitation, a dissolution, merger, combination, consolidation, conversion, exchange of securities, or other reorganization, or a sale of all or substantially all of the business, stock or assets of the Corporation, in any case in connection with which the Corporation does not survive or does not survive as a public company in respect of its Common Stock), then the Administrator may make provision for a cash payment in settlement of, or for the termination, assumption, substitution or exchange of any or all outstanding awards or the cash, securities or property deliverable to the holder of any or all outstanding awards, based upon, to the extent relevant under the circumstances, the distribution or consideration payable to holders of the Common Stock upon or in respect of such event. Upon the occurrence of any event described in the preceding sentence in connection with which the Administrator has made provision for the award to be terminated (and the Administrator has not

made a provision for the substitution, assumption, exchange or other continuation or settlement of the award): (1) unless otherwise provided in the applicable award agreement, each then-outstanding option and SAR shall become fully vested, all shares of restricted stock then outstanding shall fully vest free of restrictions, and each other award granted under this Plan that is then outstanding shall become payable to the holder of such award (with any performance goals applicable to the award in each case being deemed met, unless otherwise provided in the award agreement, at the “target” performance level); and (2) each award (including any award or portion thereof that, by its terms, does not accelerate and vest in the circumstances) shall terminate upon the related event; provided that the holder of an option or SAR shall be given reasonable advance notice of the impending termination and a reasonable opportunity to exercise his or her outstanding vested options and SARs (after giving effect to any accelerated vesting required in the circumstances) in accordance with their terms before the termination of such awards (except that in no case shall more than ten days’ notice of the impending termination be required and any acceleration of vesting and any exercise of any portion of an award that is so accelerated may be made contingent upon the actual occurrence of the event).

- (b) Without limiting the preceding paragraph, in connection with any event referred to in the preceding paragraph or any change in control event defined in any applicable award agreement, the Administrator may, in its discretion, provide for the accelerated vesting of any award or awards as and to the extent determined by the Administrator in the circumstances.
- (c) For purposes of this Section 7.2, an award shall be deemed to have been “assumed” if (without limiting other circumstances in which an award is assumed) the award continues after an event referred to above in this Section 7.2, and/or is assumed and continued by the surviving entity following such event (including, without limitation, an entity that, as a result of such event, owns the Corporation or all or substantially all of the Corporation’s assets directly or through one or more subsidiaries (a “**Parent**”)), and confers the right to purchase or receive, as applicable and subject to vesting and the other terms and conditions of the award, for each share of Common Stock subject to the award immediately prior to the event, the consideration (whether cash, shares, or other securities or property) received in the event by the stockholders of the Corporation for each share of Common Stock sold or exchanged in such event (or the consideration received by a majority of the stockholders participating in such event if the stockholders were offered a choice of consideration); provided, however, that if the consideration offered for a share of Common Stock in the event is not solely the ordinary common stock of a successor corporation or a Parent, the Administrator may provide for the consideration to be received upon exercise or payment of the award, for each share subject to the award, to be solely ordinary common stock of the successor corporation or a Parent equal in fair market value to the per share consideration received by the stockholders participating in the event.
- (d) The Administrator may adopt such valuation methodologies for outstanding awards as it deems reasonable in the event of a cash or property settlement and, in the case of options, SARs or similar rights, but without limitation on other methodologies, may base such settlement solely upon the excess if any of the per share amount payable upon or in respect of such event over the exercise or base price of the award. In the case of an option, SAR or similar right as to which the per share amount payable upon or in respect of such event is less than or equal to the exercise or base price of the award, the Administrator may terminate such award in connection with an event referred to in this Section 7.2 without any payment in respect of such award.
- (e) In any of the events referred to in this Section 7.2, the Administrator may take such action contemplated by this Section 7.2 prior to such event (as opposed to on the occurrence of such event) to the extent that the Administrator deems the action necessary to permit the participant to realize the benefits intended to be conveyed with respect to the underlying shares. Without limiting the generality of the foregoing, the Administrator may deem an acceleration and/or termination to occur immediately prior to the applicable event and, in such circumstances, will reinstate the original terms of the award if an event giving rise to an acceleration and/or termination does not occur.

- (f) Without limiting the generality of Section 3.4, any good faith determination by the Administrator pursuant to its authority under this Section 7.2 shall be conclusive and binding on all persons.
- (g) The Administrator may override the provisions of this Section 7.2 by express provision in the award agreement and may accord any Eligible Person a right to refuse any acceleration, whether pursuant to the award agreement or otherwise, in such circumstances as the Administrator may approve.

## 8. OTHER PROVISIONS

- 8.1** **Compliance with Laws.** This Plan, the granting and vesting of awards under this Plan, the offer, issuance and delivery of shares of Common Stock, and/or the payment of money under this Plan or under awards are subject to compliance with all applicable federal, state, local and foreign laws, rules and regulations (including but not limited to state and federal securities law and federal margin requirements) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Corporation, be necessary or advisable in connection therewith. The person acquiring any securities under this Plan will, if requested by the Corporation or one of its Subsidiaries, provide such assurances and representations to the Corporation or one of its Subsidiaries as the Administrator may deem necessary or desirable to assure compliance with all applicable legal and accounting requirements.
- 8.2** **No Rights to Award.** No person shall have any claim or rights to be granted an award (or additional awards, as the case may be) under this Plan, subject to any express contractual rights (set forth in a document other than this Plan) to the contrary.
- 8.3** **No Employment/Service Contract.** Nothing contained in this Plan (or in any other documents under this Plan or in any award) shall confer upon any Eligible Person or other participant any right to continue in the employ or other service of the Corporation or one of its Subsidiaries, constitute any contract or agreement of employment or other service or affect an employee's status as an employee at will, nor shall interfere in any way with the right of the Corporation or one of its Subsidiaries to change a person's compensation or other benefits, or to terminate his or her employment or other service, with or without cause. Nothing in this Section 8.3, however, is intended to adversely affect any express independent right of such person under a separate employment or service contract other than an award agreement.
- 8.4** **Plan Not Funded.** Awards payable under this Plan shall be payable in shares or from the general assets of the Corporation, and no special or separate reserve, fund or deposit shall be made to assure payment of such awards. No participant, beneficiary or other person shall have any right, title or interest in any fund or in any specific asset (including shares of Common Stock, except as expressly otherwise provided) of the Corporation or one of its Subsidiaries by reason of any award hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan shall create, or be construed to create, a trust of any kind or a fiduciary relationship between the Corporation or one of its Subsidiaries and any participant, beneficiary or other person. To the extent that a participant, beneficiary or other person acquires a right to receive payment pursuant to any award hereunder, such right shall be no greater than the right of any unsecured general creditor of the Corporation.
- 8.5** **Tax Withholding.** Upon any exercise, vesting, or payment of any award, or upon any other tax withholding event with respect to any award, arrangements satisfactory to the Corporation shall be made to provide for any taxes the Corporation or any of its Subsidiaries may be required or permitted to withhold with respect to such award event or payment. Such arrangements may include (but are not limited to) any one of (or a combination of) the following:
  - (a) The Corporation or one of its Subsidiaries shall have the right to require the participant (or the participant's personal representative or beneficiary, as the case may be) to pay or provide for payment of the amount of any taxes which the Corporation or

one of its Subsidiaries may be required or permitted to withhold with respect to such award event or payment.

- (b) The Corporation or one of its Subsidiaries shall have the right to deduct from any amount otherwise payable in cash (whether related to the award or otherwise) to the participant (or the participant's personal representative or beneficiary, as the case may be) the amount of any taxes which the Corporation or one of its Subsidiaries may be required or permitted to withhold with respect to such award event or payment.
- (c) In any case where a tax is required to be withheld in connection with the delivery of shares of Common Stock under this Plan, the Administrator may in its sole discretion (subject to Section 8.1) require or grant (either at the time of the award or thereafter) to the participant the right to elect, pursuant to such rules and subject to such conditions as the Administrator may establish, that the Corporation reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of shares, valued in a consistent manner at their fair market value or at the sales price in accordance with authorized procedures for cashless exercises, necessary to satisfy any applicable withholding obligation on exercise, vesting or payment.

## **8.6 Effective Date, Termination and Suspension, Amendments.**

**8.6.1 Effective Date.** This Plan is effective as of September 21, 2023, the date of its approval by the Board (the “**Effective Date**”). Unless earlier terminated by the Board, this Plan shall terminate at the close of business on the day before the tenth anniversary of the Effective Date. After the termination of this Plan either upon such stated termination date or its earlier termination by the Board, no additional awards may be granted under this Plan, but previously granted awards (and the authority of the Administrator with respect thereto, including the authority to amend such awards) shall remain outstanding in accordance with their applicable terms and conditions and the terms and conditions of this Plan.

**8.6.2 Board Authorization.** The Board may, at any time, terminate or, from time to time, amend, modify or suspend this Plan, in whole or in part. No awards may be granted during any period that the Board suspends this Plan.

**8.6.3 Amendments to Awards.** Without limiting any other express authority of the Administrator under (but subject to) the express limits of this Plan, the Administrator by agreement or resolution may waive conditions of or limitations on awards to participants that the Administrator in the prior exercise of its discretion has imposed, without the consent of a participant, and (subject to the requirements of Sections 3.2 and 8.6.4) may make other changes to the terms and conditions of awards. Any amendment or other action that would constitute a repricing of an award is subject to the no-repricing provision of Section 3.3.

**8.6.4 Limitations on Amendments to Plan and Awards.** No amendment, suspension or termination of this Plan or amendment of any outstanding award agreement shall, without written consent of the participant, affect in any manner materially adverse to the participant any rights or benefits of the participant or obligations of the Corporation under any award granted under this Plan prior to the effective date of such change. Changes, settlements and other actions contemplated by Section 7 shall not be deemed to constitute changes or amendments for purposes of this Section 8.6.

- 8.7 Privileges of Stock Ownership.** Except as otherwise expressly authorized by the Administrator, a participant shall not be entitled to any privilege of stock ownership as to any shares of Common Stock not actually delivered to and held of record by the participant. Except as expressly required by Section 7.1 or otherwise expressly provided by the Administrator, no adjustment will be made for dividends or other rights as a stockholder for which a record date is prior to such date of delivery.

## **8.8 Governing Law; Severability.**

**8.8.1 Choice of Law.** This Plan, the awards, all documents evidencing awards and all other related documents shall be governed by, and construed in accordance with the laws of the State of Delaware, notwithstanding any Delaware or other conflict of law provision to the contrary.

**8.8.2 Severability.** If a court of competent jurisdiction holds any provision invalid and unenforceable, the remaining provisions of this Plan shall continue in effect.

- 8.9 Captions.** Captions and headings are given to the sections and subsections of this Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this Plan or any provision thereof.
- 8.10 Stock-Based Awards in Substitution for Stock Options or Awards Granted by Other Corporation.** Awards may be granted to Eligible Persons in substitution for or in connection with an assumption of employee stock options, SARs, restricted stock or other stock-based awards granted by other entities to persons who are or who will become Eligible Persons in respect of the Corporation or one of its Subsidiaries, in connection with a distribution, merger or other reorganization by or with the granting entity or an affiliated entity, or the acquisition by the Corporation or one of its Subsidiaries, directly or indirectly, of all or a substantial part of the stock or assets of the employing entity. The awards so granted need not comply with other specific terms of this Plan, provided the awards reflect adjustments giving effect to the assumption or substitution consistent with any conversion applicable to the common stock (or the securities otherwise subject to the award) in the transaction and any change in the issuer of the security. Any shares that are delivered and any awards that are granted by, or become obligations of, the Corporation, as a result of the assumption by the Corporation of, or in substitution for, outstanding awards previously granted or assumed by an acquired company (or previously granted or assumed by a predecessor employer (or direct or indirect parent thereof) in the case of persons that become employed by the Corporation or one of its Subsidiaries in connection with a business or asset acquisition or similar transaction) shall not be counted against the Share Limit or other limits on the number of shares available for issuance under this Plan.
- 8.11 Non-Exclusivity of Plan.** Nothing in this Plan shall limit or be deemed to limit the authority of the Board or the Administrator to grant awards or authorize any other compensation, with or without reference to the Common Stock, under any other plan or authority.
- 8.12 No Corporate Action Restriction.** The existence of this Plan, the award agreements and the awards granted hereunder shall not limit, affect or restrict in any way the right or power of the Corporation or any Subsidiary (or any of their respective shareholders, boards of directors or committees thereof (or any subcommittees), as the case may be) to make or authorize: (a) any adjustment, recapitalization, reorganization or other change in the capital structure or business of the Corporation or any Subsidiary, (b) any merger, amalgamation, consolidation or change in the ownership of the Corporation or any Subsidiary, (c) any issue of bonds, debentures, capital, preferred or prior preference stock ahead of or affecting the capital stock (or the rights thereof) of the Corporation or any Subsidiary, (d) any dissolution or liquidation of the Corporation or any Subsidiary, (e) any sale or transfer of all or any part of the assets or business of the Corporation or any Subsidiary, (f) any other award, grant, or payment of incentives or other compensation under any other plan or authority (or any other action with respect to any benefit, incentive or compensation), or (g) any other corporate act or proceeding by the Corporation or any Subsidiary. No participant, beneficiary or any other person shall have any claim under any award or award agreement against any member of the Board or the Administrator, or the Corporation or any employees, officers or agents of the Corporation or any Subsidiary, as a result of any such action. Awards need not be structured so as to be deductible for tax purposes.
- 8.13 Other Company Benefit and Compensation Programs.** Payments and other benefits received by a participant under an award made pursuant to this Plan shall not be deemed a part of a participant's compensation for purposes of the determination of benefits under any other employee

welfare or benefit plans or arrangements, if any, provided by the Corporation or any Subsidiary, except where the Administrator expressly otherwise provides or authorizes in writing. Awards under this Plan may be made in addition to, in combination with, as alternatives to or in payment of grants, awards or commitments under any other plans, arrangements or authority of the Corporation or its Subsidiaries.

**8.14** *Clawback Policy.* The awards granted under this Plan are subject to the terms of the Corporation's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of awards or any shares of Common Stock or other cash or property received with respect to the awards (including any value received from a disposition of the shares acquired upon payment of the awards).



## **Sportsman's Warehouse Appoints Paul Stone as Chief Executive Officer and Announces Chair Transition**

*Stone Brings More Than 30 Years of Retail Leadership Experience, Including in the Outdoor Specialty Space*

*Chair Joseph Schneider to Retire from Board at the End of the Year*

*Board Designates Rich McBee as Next Independent Chair*

WEST JORDAN, Utah, September 26, 2023 – Sportsman's Warehouse Holdings, Inc. ("Sportsman's Warehouse" or the "Company") (Nasdaq: SPWH) announced today that its Board of Directors (the "Board") has appointed Paul Stone as the Chief Executive Officer and President of the Company and as a member of the Board, effective November 1, 2023. Mr. Stone's appointment follows an extensive search and selection process that considered both internal and external candidates. This process was led by the Board and conducted with the assistance of a leading independent executive search firm.

Mr. Stone will succeed Joseph P. Schneider, who has served as Interim Chief Executive Officer and President since April 2023. Mr. Schneider will continue to serve as Independent Chair of the Board until the end of 2023, when he will retire from the Board and director Rich McBee will succeed him as Independent Chair.

Mr. Stone is a seasoned executive with direct experience in the outdoor specialty retail space, having served as the Chief Retail Officer of Cabela's Inc., where he transformed the customer experience and led the modernization of the company's digitization strategy. Most recently, he served as President and Chief Operating Officer of Hertz Global Holdings, Inc., where he oversaw more than 11,000 locations globally with a strong focus on operations and customer service excellence. He also served as Interim Chief Executive Officer and on the Board of Directors of Hertz from May 2020 to October 2021, and in that role helped drive the company's successful emergence from bankruptcy.

"After carefully considering a wide range of candidates, the Board believes that Paul is the ideal choice to lead Sportsman's Warehouse through its next chapter of growth," said Joseph Schneider. "Not only does Paul share the Company's passion for the outdoors, but he is also an experienced leader who has helped drive significant positive transformation in the retail sector. Paul's prior retail leadership roles make him especially qualified to execute the Company's plan to catalyze growth, enhance the focus on our e-commerce platforms and private-label products, and improve our overall customer experience. We are very pleased to welcome him to Sportsman's Warehouse and believe it is a testament to the strength of our brand that we were able to attract a candidate as highly qualified as Paul."

"As a lifelong outdoorsman, I am thrilled to be joining Sportsman's Warehouse at such a pivotal time for the Company," said Mr. Stone. "Sportsman's Warehouse has taken significant steps over the past several months to enhance shareholder value, including reducing its expense structure and managing inventory,

---

and I am excited to begin working with the rest of the talented management team and the Board to build on these actions and set the Company's strategic pathway."

Martha Bejar, Lead Independent Director of the Board, said, "On behalf of the entire Sportsman's Warehouse team, I want to express our gratitude to Joe for his many contributions to the Board, first as a director, then as Chair, and finally over the past several months as Interim Chief Executive Officer and President. His continued presence on the Board and in the Chair role until the end of 2023 will help ensure a smooth transition process."

Ms. Bejar added, "Rich is ideally qualified to step into the role of Chair for Sportsman's Warehouse. His diverse business experience and extensive technology background – as well as his passion for the outdoors – have made him a valuable asset on our Board since he joined in 2018. We are confident he will bring the right perspectives and oversight as we execute our strategy moving forward. Further, after these changes take effect, our Board will be comprised of eight highly qualified members with diverse skillsets and experiences, over fifty percent of whom have joined since August 2022."

#### **About Paul Stone**

Mr. Stone is a highly experienced executive with more than 30 years of leadership experience in the retail space. Prior to joining Sportsman's Warehouse, he served as President and Chief Operating Officer of Hertz Global Holdings, Inc. (Nasdaq: HTZ) from October 2021 to September 2023 after previously serving as Interim Chief Executive Officer and on the Board of Directors from May 2020 and October 2021. He previously served as Hertz's Executive Vice President and Chief Retail Operations Officer for North America from March 2018 to May 2020. Prior to joining Hertz, Mr. Stone served as the Chief Retail Officer of Cabela's Inc., an outdoor outfitter retail company from November 2015 to December 2017. Prior to joining Cabela's, Mr. Stone spent 28 years with Sam's Club, a retail warehouse subsidiary of Walmart Inc., in various leadership roles, where he ultimately oversaw a P&L of approximately \$18 billion and 30,000 employees.

#### **About Rich McBee**

Richard McBee has served as a member of the Sportsman's Warehouse Board since November 2018. He is currently President and Chief Executive Officer of CLEAResult Consulting, Inc., a position he has held since July 2021. Prior to that, he served as President and Chief Executive Officer of Riverbed Technology from October 2019 to June 2021. Previously, he was President and Chief Executive Officer of Mitel Networks Corporation (Nasdaq: MITL) from January 2011 to October 2019, where he led Mitel's global strategy, business performance, and global execution, and also served on the company's Board of Directors. He served as President of the Communications and Enterprise Group of Danaher Corporation from 2007 to 2011. He joined Danaher in 2007 as President, Tektronix Communications, following the acquisition by Danaher of Tektronix. Prior to that, Mr. McBee spent 15 years with Tektronix and held a variety of positions of increasing responsibility, including Senior Vice President and General Manager, Communications Business Unit; Senior Vice President of Worldwide Sales, Service, and Marketing; and Vice President of Marketing and Strategic Initiatives.

#### **About Sportsman's Warehouse Holdings, Inc.**

Sportsman's Warehouse Holdings, Inc. is an outdoor specialty retailer focused on meeting the needs of the seasoned outdoor veteran, the first-time participant, and everyone in between. We provide outstanding gear and exceptional service to inspire outdoor memories.

For press releases and certain additional information about the Company, visit the Investor Relations section of the Company's website at [www.sportsmans.com](http://www.sportsmans.com).

---

## Forward-Looking Statements

This press release includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 as contained in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements in this press release include, but are not limited to, statements regarding the appointment of Mr. Stone as the Company's next Chief Executive Officer and President and member of the Board, effective November 1, 2023. Investors can identify these statements by the fact that they use words such as "aim," "anticipate," "assume," "believe," "can have," "could," "due," "estimate," "expect," "goal," "intend," "likely," "may," "objective," "plan," "positioned," "potential," "predict," "should," "target," "will," "would" and similar terms and phrases. These forward-looking statements are based on current expectations, estimates, forecasts, and projections about our business and the industry in which we operate, and our management's beliefs and assumptions. We derive many of our forward-looking statements from our own operating budgets and forecasts, which are based upon many detailed assumptions. While we believe that our assumptions are reasonable, we caution that predicting the impact of known factors is very difficult, and we cannot anticipate all factors that could affect our actual results. The Company cannot assure investors that future developments affecting the Company will be those that it has anticipated. Actual results may differ materially from these expectations due to many factors including, but not limited to: the impact of the announcement of Mr. Stone's appointment on the Company's stock and its employees, suppliers and customers; current and future government regulations relating to the sale of firearms and ammunition, which may impact the supply and demand for the Company's products and ability to conduct its business; the Company's retail-based business model, which is impacted by general economic and market conditions and economic, market and financial uncertainties that may cause a decline in consumer spending; the impact of general macroeconomic conditions, such as labor shortages, inflation, rising interest rates, economic slowdowns, recessions or market corrections, liquidity concerns at, and failures of, banks and other financial institutions, and tightening credit markets on the Company's operations; the Company's concentration of stores in the Western United States and related weather conditions; competition in the outdoor activities and specialty retail market and the potential for increased competition; changes in consumer demands; the Company's expansion into new markets and planned growth; and other factors that are set forth in the Company's filings with the Securities and Exchange Commission (the "SEC"), including under the caption "Risk Factors" in the Company's Form 10-K for the fiscal year ended January 28, 2023, which was filed with the SEC on April 13, 2023, and the Company's other public filings made with the SEC and available at [www.sec.gov](http://www.sec.gov). If one or more of these risks or uncertainties materialize, or if any of the Company's assumptions prove incorrect, the Company's actual results may vary in material respects from those projected in these forward-looking statements. Any forward-looking statement made by the Company in this press release speaks only as of the date on which the Company makes it. The Company undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by any applicable securities laws.

### Investor Contact:

Riley Timmer  
Vice President, Investor Relations  
Sportsman's Warehouse  
(801) 304-2816  
[investors@sportsmans.com](mailto:investors@sportsmans.com)

---

## DESCRIPTION OF CAPITAL STOCK OF SPORTSMAN’S WAREHOUSE HOLDINGS, INC.

*References to “we,” “us” and “our” in this section refer to Sportsman’s Warehouse Holdings, Inc.*

The following description of our capital stock and provisions of our amended and restated certificate of incorporation (our “certificate of incorporation”) and our third amended and restated bylaws (our “bylaws”) is a summary only and does not purport to be complete. For more detailed information, please see our certificate of incorporation and bylaws, which are filed as exhibits to reports we file with the Securities and Exchange Commission (“SEC”), and the Delaware General Corporation Law.

### **Authorized Capitalization**

Our authorized capital stock consists of 100,000,000 shares of common stock, par value of \$0.01 per share, and 20,000,000 shares of preferred stock, par value \$0.01 per share. As of August 30, 2023, there were 37,385,485 shares of common stock outstanding and no shares of preferred stock outstanding.

### **Common Stock**

#### *Voting Rights*

General. Each holder of our common stock is entitled to one vote for each outstanding share of common stock held by such holder on all matters submitted to a vote of stockholders, including the election or removal of directors. All matters to be voted on by stockholders, other than the election of directors which is discussed below, must be approved by a majority in voting power of our outstanding shares of capital stock present in person, by remote communication, if applicable, or represented by proxy at the meeting of stockholders and entitled to vote on such question, voting as a single class, subject to any voting rights granted to holders of any preferred stock.

Election of Directors. There are no cumulative voting rights for the election of directors. Instead, our bylaws require that, in uncontested elections, each director is elected by a majority of the votes cast with respect to that director’s election. This means that the number of shares voted “for” a director must exceed the number of shares affirmatively voted “against” such director in order for that director to be elected (with “abstentions” and “broker non-votes” not counted as a vote cast either “for” or “against” that director’s election). If an incumbent director fails to receive a majority of the votes cast in an uncontested election, such incumbent director shall promptly tender his or her resignation to our secretary for consideration by the nominating and governance committee (or other committee designated by our board of directors). The nominating and governance committee will then promptly consider any such tendered resignation and will make a recommendation to our board of directors as to whether such tendered resignation should be accepted, rejected, or whether other action should be taken. Our board of directors, within 90 days after the date on which certification of the stockholder vote on the election of directors is made, will publicly disclose its decision and rationale regarding whether to accept, reject or take other action with respect to the tendered resignation in a press release and will also file the appropriate disclosure with the SEC. The nominating and governance committee and our board of directors may consider any factors and other information they deem relevant in deciding whether to accept, reject or take other action with respect to any such tendered resignation. A plurality voting standard will apply in the event of a Contested Election (as defined in our bylaws).

#### *Dividends*

Subject to the rights of holders of any then-outstanding shares of our preferred stock, holders of our common stock are entitled to receive ratably any dividends that may be declared by our board of directors out of funds legally available therefor.

#### *Liquidation*

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

---

## *Other Rights*

Holders of our common stock do not have preemptive rights to purchase shares of our capital stock. The shares of our common stock are not subject to any redemption provisions and are not convertible into any other shares of our capital stock. The rights, preferences and privileges of holders of our common stock will be subject to those of the holders of any shares of our preferred stock we may issue in the future.

## **Blank Check Preferred Stock**

Under the terms of our certificate of incorporation, our board of directors has the authority, without further action by our stockholders, to issue up to 20,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could make it more difficult for a third party to acquire, or could adversely affect the rights of our common stockholders by restricting dividends on the common stock, diluting the voting power of the common stock, impairing the liquidation rights of the common stock or delaying or preventing a change in control without further action by the stockholders. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our common stock.

As of August 30, 2023, no shares of preferred stock were issued and outstanding. All shares of preferred stock will, when issued, be fully paid and non-assessable and, unless otherwise stated in connection with any offering of a series of preferred stock, will not have any preemptive or similar rights. If we offer any class or series of preferred stock, we will set forth the specific terms of any such class or series, including the price at which the preferred stock may be purchased, the number of shares of preferred stock offered, and the terms, if any, on which the preferred stock may be convertible into common stock or exchangeable for other securities.

## **Anti-Takeover Effects of Certain Provisions of Delaware Law, the Certificate of Incorporation and the Bylaws**

Set forth below is a summary of the relevant provisions of our certificate of incorporation and bylaws and certain applicable sections of the Delaware General Corporation Law. For additional information we refer you to the provisions of our certificate of incorporation, our bylaws and such sections of the Delaware General Corporation Law.

Our certificate of incorporation and bylaws contain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and that could make it more difficult to acquire control of our company by means of a tender offer, open market purchases, a proxy contest or otherwise. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor. A description of these provisions is set forth below.

### *Classified Board (to be phased out by our 2026 annual meeting)*

Prior to June 7, 2023, our certificate of incorporation provided that our board of directors, other than those directors elected by the holders of any series of preferred stock, would be divided into three classes. On June 7, 2023, we filed an amendment to our certificate of incorporation to declassify our board of directors over a three-year period commencing with our 2024 annual meeting of stockholders. Pursuant to that amendment, directors (other than those directors elected by the holders of any series of preferred stock) will be elected as follows: (i) directors elected at the 2024 annual meeting of stockholders to succeed those whose term expires at that meeting shall hold office for a term expiring at the annual meeting of stockholders to be held in 2025; (ii) directors elected at the 2025 annual meeting of stockholders to succeed those whose term expires at such meeting shall hold office for a term expiring at the annual meeting of stockholders to be held in 2026; and (iii) beginning with the 2026 annual meeting of stockholders, all

---

directors elected at an annual meeting of stockholders to succeed those whose term expires at such meeting shall hold office for a term expiring at the next annual meeting of stockholders.

#### *Removal of Directors Only for Cause*

Our certificate of incorporation and bylaws provide that prior to the 2026 annual meeting of stockholders, except for any director elected by the holders of any series of preferred stock, directors can be removed only for cause by the affirmative vote of at least two-thirds of the total voting power of the outstanding shares of capital stock entitled to vote in the election of directors, voting together as a single class. After the 2026 annual meeting of stockholders, except for any director elected by the holders of any series of preferred stock, directors may be removed with or without cause by the affirmative vote of at least two-thirds of the total voting power of the outstanding shares of capital stock entitled to vote in the election of directors, voting together as a single class.

#### *Special Meetings of Stockholders*

Our bylaws provide that special meetings of our stockholders may be called only by the board of directors. Stockholders are not permitted to call a special meeting or require our board of directors to call a special meeting.

#### *Supermajority Vote to Amend Certificate of Incorporation and Bylaws*

Our certificate of incorporation provides that the approval of at least two-thirds of the outstanding shares of our common stock is required to amend certain provisions of our certificate of incorporation. Our certificate of incorporation and bylaws provide that the approval of holders of at least two-thirds of the outstanding shares of our common stock is required to amend our bylaws. Our bylaws may also be amended by a majority of our board of directors.

#### *No Written Consent of Stockholders*

Our certificate of incorporation and bylaws provide that all stockholder actions, other than those actions required or permitted to be taken by holders of any then-outstanding series of preferred stock, are required to be taken by a vote of the stockholders at an annual or special meeting, and that stockholders may not take any action by written consent in lieu of a meeting.

#### *Advance Notice Procedure*

Our bylaws provide that only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders. Our bylaws also limit the business that may be conducted at an annual meeting of stockholders to those matters properly brought before the meeting.

Our bylaws establish an advance notice procedure for stockholders to make nominations of candidates for election as directors or to bring other business before an annual or special meeting of the stockholders. This notice procedure provides that only persons who are nominated by, or at the direction of, our board of directors or any duly authorized committee of the board of directors, or by a stockholder who is entitled to vote at the meeting and who has given timely written notice to us prior to the meeting at which directors are to be elected, will be eligible for election as directors. Further, our bylaws provide that the number of nominees a stockholder may nominate for election at an annual or special meeting of stockholders pursuant to the advance notice procedure shall not exceed the number of directors to be elected at such meeting. The procedure also requires that, in order to raise matters at an annual or special meeting, those matters must be raised before the meeting pursuant to the notice of meeting the company delivers or by, or at the direction of, our board of directors or any duly authorized committee of the board of directors, or by a stockholder who is entitled to vote at the meeting and who has given timely written notice to us of his, her or its intention to raise those matters at the annual or special meeting. If the officer presiding at a meeting determines that a person was not nominated, or other business was not brought before the meeting, in accordance with the notice procedure, that person is not be eligible for election as a director, or that business will not be conducted at the meeting, as applicable.

---

### *Blank Check Preferred Stock*

As discussed above, the issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could make it more difficult for a third party to acquire, or could adversely affect the rights of our common stockholders by restricting dividends on the common stock, diluting the voting power of the common stock, impairing the liquidation rights of the common stock or delaying or preventing a change in control without further action by the stockholders.

### *Authorized but Unissued Shares*

Under Delaware law, our authorized but unissued shares of common stock are available for future issuance without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

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

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

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

### *Choice of Forum*

Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be, to the fullest extent permitted by law, the exclusive forum for (a) any derivative action or proceeding brought on our behalf, (b) any action asserting a breach of fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, (c) any action asserting a claim against us arising pursuant to the Delaware General Corporation Law or (d) or any action asserting a claim against us that is governed by the internal affairs doctrine. This exclusive forum provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Securities Exchange Act of 1934, as amended or the Securities Act of 1933, as amended (the “Securities Act”), or any other claim for which the federal courts have exclusive jurisdiction. The exclusive forum provision in our certificate of incorporation will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

---

Our bylaws provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by applicable law, the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

These exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees and agents, which may discourage such lawsuits against us and our directors, officers, employees and agents.

#### **Limitation on Liability of Directors and Officers**

Our certificate of incorporation limits the liability of directors to the fullest extent permitted by Delaware law. The effect of these provisions is to eliminate the rights of us and our stockholders, through stockholders' derivative suits on behalf of us, to recover monetary damages from a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior. However, exculpation does not apply to any director if the director has acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions or derived an improper benefit from his or her actions as a director.

In addition, our certificate of incorporation allows and our bylaws require that we indemnify our directors and officers to the fullest extent permitted by Delaware law. We also expect to continue to maintain directors' and officers' liability insurance. We believe that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive officers.

The limitation of liability and indemnification provisions in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders.

In addition to the indemnification in our certificate of incorporation and bylaws, we have entered into indemnification agreements with each of our current directors and officers. These agreements provide for the indemnification of our directors and officers for all reasonable expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were our agents. We believe that these certificate of incorporation and bylaw provisions and indemnification agreements, as well as our maintaining directors' and officers' liability insurance, help to attract and retain qualified persons as directors and officers.

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

The transfer agent and registrar for our common stock is Equiniti Group PLC.

#### **Exchange Listing**

Our common stock is listed on the Nasdaq Global Select Market under the symbol "SPWH."

---

