

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended July 29, 2023

OR

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

For the transition period from _____ to _____

Commission File Number: 001-36401

**SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
(Exact name of registrant as specified in its charter)**

Delaware
(State or other jurisdiction
of incorporation or organization)

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

39-1975614
(I.R.S. Employer
Identification No.)

84088
(Zip Code)

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

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

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

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

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

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

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

The number of shares of the registrant's common stock, \$0.01 par value per share, outstanding as of August 30, 2023 was 37,385,485.

SPORTSMAN’S WAREHOUSE HOLDINGS, INC.

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We operate on a fiscal calendar that, in a given fiscal year, consists of the 52- or 53-week period ending on the Saturday closest to January 31st. Our second fiscal quarters ended July 29, 2023 and July 30, 2022 both consisted of 13 weeks and are referred to herein as the second quarter of fiscal year 2023 and the second quarter of fiscal year 2022, respectively. Fiscal year 2023 contains 53 weeks of operations and will end on February 3, 2024. Fiscal year 2022 contained 52 weeks of operations and ended on January 28, 2023.

References throughout this document to “Sportsman’s Warehouse,” “we,” “us,” and “our” refer to Sportsman’s Warehouse Holdings, Inc. and its subsidiaries, and references to “Holdings” refer to Sportsman’s Warehouse Holdings, Inc. excluding its subsidiaries. References to (i) “fiscal year 2023” refer to our fiscal year ending February 3, 2024; (ii) “fiscal year 2022” refer to our fiscal year ended January 28, 2023; and (iii) “fiscal year 2021” refer to our fiscal year ended January 29, 2022.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this “10-Q”) contains statements that constitute forward-looking statements as that term is defined by the Private Securities Litigation Reform Act of 1995. These statements concern our business, operations and financial performance and condition as well as our plans, objectives and expectations for our business operations and financial performance and condition, which are subject to risks and uncertainties. All statements other than statements of historical fact included in this 10-Q are forward-looking statements. These statements may include words such as “aim,” “anticipate,” “assume,” “believe,” “can,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “likely,” “may,” “objective,” “plan,” “positioned,” “potential,” “predict,” “should,” “target,” “will,” “would” and other words and terms of similar meaning in connection with any discussion of the timing or nature of future operating or financial performance or other events or trends. For example, all statements we make relating to our plans and objectives for future operations, growth or initiatives and strategies are forward-looking statements.

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.

All of our forward-looking statements are subject to risks and uncertainties that may cause our actual results to differ materially from our expectations. Important factors that could cause actual results to differ materially from our expectations include, but are not limited to:

- current and future government regulations, in particular regulations relating to the sale of firearms and ammunition, which may impact the supply and demand for our products and our ability to conduct our business;
- our 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;
- our concentration of stores in the Western United States which makes us susceptible to adverse conditions in this region, and could affect our sales and cause our operating results to suffer;
- the highly fragmented and competitive industry in which we operate and the potential for increased competition;
- changes in consumer demands, including regional preferences, which we may not be able to identify and respond to in a timely manner;
- our entrance into new markets or operations in existing markets, including our plans to open additional stores in future periods, which may not be successful;
- our implementation of a plan to reduce expenses in response to adverse macroeconomic conditions, including an increased focus on financial discipline and rigor throughout our organization; and
- 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 our operations.

The above is not a complete list of factors or events that could cause actual results to differ from our expectations, and we cannot predict all of them. All written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by the cautionary statements disclosed under “Part I.,

Item 1A., Risk Factors,” appearing in our Annual Report on Form 10-K for the fiscal year ended January 28, 2023 (our “Fiscal 2022 Form 10-K”) and “Part I., Item 2., Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this 10-Q, as such disclosures may be amended, supplemented or superseded from time to time by other reports we file with the Securities and Exchange Commission (the “SEC”), including subsequent Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, and public communications. You should evaluate all forward-looking statements made in this 10-Q and otherwise in the context of these risks and uncertainties.

Potential investors and other readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on any forward-looking statements we make. These forward-looking statements speak only as of the date of this 10-Q and are not guarantees of future performance or developments and involve known and unknown risks, uncertainties and other factors that are in many cases beyond our control. Except as required by law, we undertake no obligation to update or revise any forward-looking statements publicly, whether as a result of new information, future developments or otherwise.

PART I. FINANCIAL INFORMATION**ITEM 1. FINANCIAL STATEMENTS**

SPORTSMAN'S WAREHOUSE HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
Amounts in Thousands, Except Par Value Data
(unaudited)

	July 29, 2023	January 28, 2023
Assets		
Current assets:		
Cash and cash equivalents	\$ 2,893	\$ 2,389
Accounts receivable, net	2,774	2,053
Income tax receivable	5,246	—
Merchandise inventories	457,160	399,128
Prepaid expenses and other	26,615	22,326
Total current assets	494,688	425,896
Operating lease right of use asset	302,002	268,593
Property and equipment, net	197,759	162,586
Goodwill	1,496	1,496
Definite lived intangibles, net	359	389
Total assets	<u>\$ 996,304</u>	<u>\$ 858,960</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 75,435	\$ 61,948
Accrued expenses	91,307	99,976
Income taxes payable	—	932
Operating lease liability, current	47,864	45,465
Revolving line of credit	203,059	87,503
Total current liabilities	417,665	295,824
Long-term liabilities:		
Deferred income taxes	7,151	9,544
Operating lease liability, noncurrent	298,774	260,479
Total long-term liabilities	305,925	270,023
Total liabilities	<u>723,590</u>	<u>565,847</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value; 20,000 shares authorized; 0 shares issued and outstanding	—	—
Common stock, \$.01 par value; 100,000 shares authorized; 37,381 and 37,541 shares issued and outstanding, respectively	374	375
Additional paid-in capital	79,887	79,743
Accumulated earnings	192,453	212,995
Total stockholders' equity	272,714	293,113
Total liabilities and stockholders' equity	<u>\$ 996,304</u>	<u>\$ 858,960</u>

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

SPORTSMAN'S WAREHOUSE HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
Amounts in Thousands, Except Per Share Data
(unaudited)

	<u>Thirteen Weeks Ended</u>		<u>Twenty-Six Weeks Ended</u>	
	<u>July 29, 2023</u>	<u>July 30, 2022</u>	<u>July 29, 2023</u>	<u>July 30, 2022</u>
Net sales	\$ 309,495	\$ 351,021	\$ 577,024	\$ 660,526
Cost of goods sold	208,678	233,482	396,163	443,896
Gross profit	<u>100,817</u>	<u>117,539</u>	<u>180,861</u>	<u>216,630</u>
Selling, general, and administrative expenses	102,334	97,023	201,337	193,108
(Loss) income from operations	(1,517)	20,516	(20,476)	23,522
Interest expense	3,527	767	5,574	1,334
(Loss) income before income taxes	(5,044)	19,749	(26,050)	22,188
Income tax (benefit) expense	(1,756)	5,135	(7,123)	5,576
Net (loss) income	<u>\$ (3,288)</u>	<u>\$ 14,614</u>	<u>\$ (18,927)</u>	<u>\$ 16,612</u>
(Loss) earnings per share:				
Basic	<u>\$ (0.09)</u>	<u>\$ 0.35</u>	<u>\$ (0.50)</u>	<u>\$ 0.39</u>
Diluted	<u>\$ (0.09)</u>	<u>\$ 0.35</u>	<u>\$ (0.50)</u>	<u>\$ 0.38</u>
Weighted average shares outstanding:				
Basic	<u>37,498</u>	<u>41,962</u>	<u>37,546</u>	<u>42,950</u>
Diluted	<u>37,498</u>	<u>42,194</u>	<u>37,546</u>	<u>43,180</u>

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

SPORTSMAN'S WAREHOUSE HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
Amounts in Thousands
(unaudited)

For the Thirteen Weeks Ended July 29, 2023 and July 30, 2022

	Common Stock		Restricted nonvoting Common Stock		Treasury Stock		Addition paid-in- capital Amount	Accumul ated (deficit) earnings Amount	Total stockhold ers' equity Amount
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at April 30, 2022	44,121	\$ 441	—	\$ —	—	\$ —	90,362	224,877	315,680
Repurchase of treasury stock	—	—	—	—	5,348	(52,057)	—	—	(52,057)
Vesting of restricted stock units	30	—	—	—	—	—	—	—	—
Payment of withholdings on restricted stock units	—	—	—	—	—	—	(2)	—	(2)
Issuance of common stock for cash per employee stock purchase plan	64	1	—	—	—	—	525	—	526
Stock-based compensation	—	—	—	—	—	—	1,091	—	1,091
Net income	—	—	—	—	—	—	—	14,614	14,614
Balance at July 30, 2022	44,215	\$ 442	—	\$ —	5,348	(52,057)	91,976	239,491	279,852
Balance at April 29, 2023	37,686	\$ 377	—	\$ —	—	\$ —	79,340	196,866	276,583
Repurchase of treasury stock	—	—	—	—	431	(2,052)	—	—	(2,052)
Retirement of treasury stock	(431)	(4)	—	—	(431)	2,052	(923)	(1,125)	—
Vesting of restricted stock units	53	—	—	—	—	—	—	—	—
Payment of withholdings on restricted stock units	—	—	—	—	—	—	(112)	—	(112)
Issuance of common stock for cash per employee stock purchase plan	73	1	—	—	—	—	456	—	457
Stock-based compensation	—	—	—	—	—	—	1,126	—	1,126
Net loss	—	—	—	—	—	—	—	(3,288)	(3,288)
Balance at July 29, 2023	37,381	\$ 374	—	\$ —	—	\$ —	79,887	192,453	272,714

For the Twenty-Six Weeks Ended July 29, 2023 and July 30, 2022

	Common Stock		Restricted nonvoting common stock		Treasury Stock		Additional paid-in-capital Amount	Accumulated (deficit) earnings Amount	Total stockholders equity Amount
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at January 29, 2022	43,880	\$ 439	—	\$ —	—	\$ —	90,851	222,879	314,169
Repurchase of treasury stock	—	—	—	—	5,348	(52,057)	—	—	(52,057)
Vesting of restricted stock units	271	2	—	—	—	—	(2)	—	—
Payment of withholdings on restricted stock units	—	—	—	—	—	—	(1,847)	—	(1,847)
Issuance of common stock for cash per employee stock purchase plan	64	1	—	—	—	—	525	—	526
Stock based compensation	—	—	—	—	—	—	2,449	—	2,449
Net income	—	—	—	—	—	—	—	16,612	16,612
Balance at July 30, 2022	44,215	\$ 442	—	\$ —	5,348	(52,057)	91,976	239,491	279,852
Balance at January 28, 2023	37,541	\$ 375	—	\$ —	—	\$ —	79,743	212,995	293,113
Repurchase of treasury stock	—	—	—	—	529	(2,748)	—	—	(2,748)
Retirement of treasury stock	(529)	(5)	—	—	(529)	2,748	(1,128)	(1,615)	—
Vesting of restricted stock units	296	3	—	—	—	—	(3)	—	—
Payment of withholdings on restricted stock units	—	—	—	—	—	—	(1,557)	—	(1,557)
Issuance of common stock for cash per employee stock purchase plan	73	1	—	—	—	—	456	—	457
Stock based compensation	—	—	—	—	—	—	2,376	—	2,376
Net income	—	—	—	—	—	—	—	(18,927)	(18,927)
Balance at July 29, 2023	37,381	\$ 374	—	\$ —	—	\$ —	79,887	192,453	272,714

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

SPORTSMAN'S WAREHOUSE HOLDINGS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
Amounts in Thousands
(unaudited)

	Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022
Cash flows from operating activities:		
Net (loss) income	\$ (18,927)	\$ 16,612
Adjustments to reconcile net income to net cash (used in) provided by operating activities:		
Depreciation of property and equipment	17,719	15,137
Amortization of deferred financing fees	76	108
Amortization of definite lived intangible	30	36
Noncash lease expense	12,615	16,027
Deferred income taxes	(2,393)	(770)
Stock-based compensation	2,376	2,449
Change in operating assets and liabilities, net of amounts acquired:		
Accounts receivable, net	(720)	26
Operating lease liabilities	(5,330)	(15,276)
Merchandise inventories	(58,032)	(50,822)
Prepaid expenses and other	(4,368)	1,500
Accounts payable	11,832	38,269
Accrued expenses	(7,028)	(10,681)
Income taxes payable and receivable	(6,178)	(4,648)
Net cash (used in) provided by operating activities	(58,328)	7,967
Cash flows from investing activities:		
Purchase of property and equipment, net of amounts acquired	(51,971)	(22,588)
Net cash used in investing activities	(51,971)	(22,588)
Cash flows from financing activities:		
Net borrowings on line of credit	115,556	24,726
Decrease in book overdraft	(904)	(7,221)
Proceeds from issuance of common stock per employee stock purchase plan	456	525
Payments to acquire treasury stock	(2,748)	(52,057)
Payment of withholdings on restricted stock units	(1,557)	(1,844)
Payment of deferred financing costs	—	(508)
Net cash provided by (used in) financing activities	110,803	(36,379)
Net change in cash and cash equivalents	504	(51,000)
Cash and cash equivalents at beginning of period	2,389	57,018
Cash and cash equivalents at end of period	\$ 2,893	\$ 6,018
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest, net of amounts capitalized	\$ 2,343	\$ 1,220
Income taxes, net of refunds	1,448	10,993
Supplemental schedule of noncash activities:		
Noncash change in operating lease right of use asset and operating lease liabilities from remeasurement of existing leases and addition of new leases	\$ 46,081	\$ 23,972
Purchases of property and equipment included in accounts payable and accrued expenses	\$ 9,601	\$ 5,409

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

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.

AND SUBSIDIARIES

Notes to Condensed Consolidated Financial Statements Dollars in Thousands, except per share amounts (unaudited)

(1) Description of Business and Basis of Presentation

Description of Business

Sportsman's Warehouse Holdings, Inc., a Delaware corporation ("Holdings"), and its subsidiaries (collectively, the "Company") operate retail sporting goods stores. As of July 29, 2023, the Company operated 140 stores in 31 states. The Company also operates an e-commerce platform at www.sportsmans.com. The Company's stores and website are aggregated into one operating and reportable segment.

Basis of Presentation

The condensed consolidated financial statements included herein are unaudited and have been prepared by management of the Company pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") have been condensed or omitted pursuant to such rules and regulations. The Company's condensed consolidated balance sheet as of January 28, 2023 was derived from the Company's audited consolidated balance sheet as of that date. All other condensed consolidated financial statements contained herein are unaudited and reflect all adjustments that are, in the opinion of management, necessary to summarize fairly the Company's condensed consolidated financial statements for the periods presented. All of these adjustments are of a normal recurring nature. The results of the fiscal quarter ended July 29, 2023 are not necessarily indicative of the results to be obtained for the fiscal year ending February 3, 2024. These condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended January 28, 2023 filed with the SEC on April 13, 2023 (the "Fiscal 2022 Form 10-K").

(2) Summary of Significant Accounting Policies

The Company's significant accounting policies are described in Note 2 to the Fiscal 2022 Form 10-K. Except for the changes below, the Company has consistently applied the accounting policies to all periods presented in the condensed consolidated financial statements presented herein.

(3) Revenue Recognition

Revenue recognition accounting policy

The Company operates solely as an outdoor retailer, which includes both retail stores and an e-commerce platform, and offers a broad range of products in the United States and online. Generally, all revenues are recognized when control of the promised goods is transferred to customers, in an amount that reflects the consideration in exchange for those goods. Accordingly, the Company implicitly enters into a contract with customers to deliver merchandise inventory at the point of sale. Collectability is reasonably assured since the Company only extends credit for immaterial purchases to certain municipalities.

Substantially all of the Company's revenue is for single performance obligations for the following distinct items:

- Retail store sales
- E-commerce sales
- Gift cards and loyalty rewards program

For performance obligations related to retail store and e-commerce sales contracts, the Company typically transfers control, for retail stores, upon consummation of the sale when the product is paid for and taken by the customer and, for e-commerce sales, when the products are tendered for delivery to the common carrier.

The transaction price for each contract is the stated price on the product, reduced by any stated discounts at that point in time. The Company does not engage in sales of products that attach a future material right which could result in a separate performance obligation for the purchase of goods in the future at a material discount. The implicit point-of-sale contract with the customer, as reflected in the transaction receipt, states the final terms of the sale, including the description, quantity, and price of each product purchased. Payment for the Company's contracts is due in full upon delivery. The customer agrees to a stated price implicit in the contract that does not vary over the contract.

The transaction price relative to sales subject to a right of return reflects the amount of estimated consideration to which the Company expects to be entitled. This amount of variable consideration included in the transaction price, and measurement of net sales, is included in net sales only to the extent that it is probable that there will be no significant reversal in a future period. Actual amounts of consideration ultimately received may differ from the Company's estimates. The allowance for sales returns is estimated based upon historical experience and a provision for estimated returns is recorded as a reduction in sales in the relevant period. The estimated merchandise inventory cost related to the sales returns is recorded in prepaid expenses and other. The estimated refund liabilities are recorded in accrued expenses. If actual results in the future vary from the Company's estimates, the Company adjusts these estimates, which would affect net sales and earnings in the period such variances become known.

Contract liabilities are recognized primarily for gift card sales and the Company's loyalty reward program. Cash received from the sale of gift cards is recorded as a contract liability in accrued expenses, and the Company recognizes revenue upon the customer's redemption of the gift card. Gift card breakage is recognized as revenue in proportion to the pattern of customer redemptions by applying a historical breakage rate of 4.0% when no escheat liability to relevant jurisdictions exist. Based upon historical experience, gift cards are predominantly redeemed in the first two years following their issuance date. The Company does not sell or provide gift cards that carry expiration dates.

Accounting Standards Codification ("ASC") 606 requires the Company to allocate the transaction price between the goods and the loyalty reward points based on the relative standalone selling price. The Company recognizes revenue for the breakage of loyalty reward points as revenue in proportion to the pattern of customer redemption of the points by applying an estimated breakage rate of 35% using historical rates and future expectations.

As it relates to e-commerce sales, the Company accounts for shipping and handling as fulfillment activities, and not as a separate performance obligation. Accordingly, the Company recognizes revenue for only one performance obligation, the sale of the product, at the shipping point (when the customer gains control). The costs associated with fulfillment are recorded in costs of goods sold.

The Company offers promotional financing and credit cards issued by a third-party bank that manages and directly extends credit to the Company's customers. The Company provides a license to its brand and marketing services, and the Company facilitates credit applications in its stores and online. The banks are the sole owners of the accounts receivable generated under the program and, accordingly, the Company does not hold any customer receivables related to these programs and acts as an agent in the financing transactions with customers. The Company is eligible to receive a profit share from certain of its banking partners based on the annual performance of their corresponding portfolio, and the Company receives monthly payments based on forecasts of full-year performance. This is a form of variable consideration. The Company records such profit share as revenue over time using the most likely amount method, which reflects the amount earned each month when it is determined that the likelihood of a significant revenue reversal is not probable, which is typically monthly. Profit-share payments occur monthly, shortly after the end of each program month.

Taxes assessed by a governmental authority that are both imposed on and concurrent with a specific revenue-producing transaction, that are collected by the Company from a customer, are excluded from revenue.

Sales returns

The Company allows customers to return items purchased within 30 days provided the merchandise is in resaleable condition with original packaging and the original sales/gift receipt is presented. The Company estimates a reserve for sales returns and records the respective reserve amounts, including a right to return asset when a product is expected to be returned and resold. Historical experience of actual returns and customer return rights are the key factors used in determining the estimated sales returns.

Contract balances

The following table provides information about right of return assets, contract liabilities, and sales return liabilities with customers as of July 29, 2023 and January 28, 2023:

	July 29, 2023	January 28, 2023
Right of return assets, which are included in prepaid expenses and other	\$ 2,327	\$ 1,951
Estimated gift card contract liability, net of breakage	(25,447)	(29,174)
Estimated loyalty contract liability, net of breakage	(4,309)	(5,383)
Sales return liabilities, which are included in accrued expenses	(3,473)	(2,912)

During the 13 and 26 weeks ended July 29, 2023, the Company recognized approximately \$359 and \$799 in gift card breakage and approximately \$992 and \$1,930 in loyalty reward breakage. During the 13 and 26 weeks ended July 30, 2022, the Company recognized approximately \$351 and \$785 in gift card breakage and approximately \$991 and \$1,595 in loyalty reward breakage. During the 13 and 26 weeks ended July 29, 2023, the Company recognized revenue of \$4,157 and \$14,213 relating to contract liabilities that existed at January 28, 2023.

The current balance of the right of return assets is the expected amount of inventory to be returned that is expected to be resold. The current balance of the contract liabilities primarily relates to the gift card and loyalty reward program liabilities. The Company expects the revenue associated with these liabilities to be recognized in proportion to the pattern of customer redemptions over the next two years. The current balance of sales return liabilities is the expected amount of sales returns from sales that have occurred.

Disaggregation of revenue from contracts with customers

In the following table, revenue from contracts with customers is disaggregated by department. The percentage of net sales related to the Company's departments during the 13 and 26 weeks ended July 29, 2023 and July 30, 2022, was approximately:

Department	Product Offerings	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
		July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
Camping	Backpacks, camp essentials, canoes and kayaks, coolers, outdoor cooking equipment, sleeping bags, tents and tools	16.0%	16.9%	12.8%	14.0%
Apparel	Camouflage, jackets, hats, outerwear, sportswear, technical gear and work wear	6.8%	7.1%	6.9%	7.0%
Fishing	Bait, electronics, fishing rods, flotation items, fly fishing, lines, lures, reels, tackle and small boats	14.4%	13.4%	12.0%	12.0%
Footwear	Hiking boots, socks, sport sandals, technical footwear, trail shoes, casual shoes, waders and work boots	6.8%	6.7%	6.7%	6.5%
Hunting and Shooting	Ammunition, archery items, ATV accessories, blinds and tree stands, decoys, firearms, reloading equipment and shooting gear	49.9%	50.5%	56.1%	55.1%
Optics, Electronics, Accessories, and Other	Gift items, GPS devices, knives, lighting, optics, two-way radios, and other license revenue, net of revenue discounts	6.1%	5.4%	5.5%	5.4%
Total		100.0%	100.0%	100.0%	100.0%

(4) Property and Equipment

Property and equipment consisted of the following as of July 29, 2023 and January 28, 2023:

	July 29, 2023	January 28, 2023
Furniture, fixtures, and equipment	\$ 153,802	\$ 138,004
Leasehold improvements	184,507	170,494
Construction in progress	42,647	20,875
Total property and equipment, gross	380,956	329,373
Less accumulated depreciation and amortization	(183,197)	(166,787)
Total property and equipment, net	\$ 197,759	\$ 162,586

(5) Accrued Expenses

Accrued expenses consisted of the following as of July 29, 2023 and January 28, 2023:

	July 29, 2023	January 28, 2023
Book overdraft	\$ 15,348	\$ 20,723
Unearned revenue	33,407	41,203
Accrued payroll and related expenses	12,867	15,820
Sales and use tax payable	6,375	5,896
Accrued construction costs	735	1,469
Other	22,575	14,865
Total accrued expenses	<u>\$ 91,307</u>	<u>\$ 99,976</u>

(6) Leases

At the inception of the lease, the Company's operating leases have remaining certain lease terms of up to 15 years, which typically includes multiple options for the Company to extend the lease which are not reasonably certain.

The Company determines whether a contract is or contains a lease at contract inception. As the rate implicit in the lease is not readily determinable in most of the Company's leases, the Company uses its incremental borrowing rate based on the information available at commencement date to determine the present value of lease payments. The Company's incremental borrowing rate for a lease is the rate of interest it would have to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. The operating lease asset also includes any fixed lease payments made and includes lease incentives and incurred initial direct costs. Operating lease expense for fixed lease payments is recognized on a straight-line basis over the lease term. The Company's lease terms may include options to extend or terminate the lease. Additionally, the Company's leases do not contain any material residual guarantees or material restrictive covenants.

During the 13 and 26 weeks ended July 29, 2023, the Company recorded a non-cash increase of \$8,193 and \$46,081 to the right of use assets and operating lease liabilities resulting from lease remeasurements from the exercise of lease extension options, acquired leases, and new leases added.

The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

In accordance with ASC 842, total lease expense was comprised of the following for the periods presented:

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
Operating lease expense	\$ 16,129	\$ 14,550	\$ 31,717	\$ 28,945
Variable lease expense	5,735	4,760	11,228	9,062
Short-term lease expense	348	314	609	584
Total lease expense	<u>\$ 22,212</u>	<u>\$ 19,624</u>	<u>\$ 43,554</u>	<u>\$ 38,591</u>

In accordance with ASC 842, other information related to leases was as follows for the periods presented:

	Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022
Operating cash flows from operating leases	\$ (33,984)	\$ (31,351)

	As of July 29, 2023	As of July 30, 2022
Right-of-use assets obtained in exchange for new or remeasured operating lease liabilities	\$ 46,081	\$ 23,972
Terminated right-of-use assets and liabilities	—	—
Weighted-average remaining lease term - operating leases	5.83	5.75
Weighted-average discount rate - operating leases	7.78 %	8.16 %

In accordance with ASC 842, maturities of operating lease liabilities as of July 29, 2023 were as follows:

Year Ending:	Operating Leases
2023 (remainder)	\$ 36,017
2024	70,747
2025	64,184
2026	59,130
2027	51,585
Thereafter	177,399
Undiscounted cash flows	\$ 459,062
Reconciliation of lease liabilities:	
Present values	\$ 346,638
Lease liabilities - current	47,864
Lease liabilities - noncurrent	298,774
Lease liabilities - total	\$ 346,638
Difference between undiscounted and discounted cash flows	\$ 112,424

(7) Revolving Line of Credit

On May 27, 2022, Sportsman’s Warehouse, Inc. (“SWI”), a wholly owned subsidiary of Holdings, as lead borrower, Holdings and other subsidiaries of the Company, each as borrowers or guarantors, and Wells Fargo Bank, National Association (“Wells Fargo”), with a consortium of banks led by Wells Fargo, entered into an Amended and Restated Credit Agreement (as amended, restated, supplemented or otherwise modified, the “Credit Agreement”). The Credit Agreement governs the Company’s senior secured revolving credit facility (“Revolving Line of Credit”). The Revolving Line of Credit provides borrowing capacity of up to \$350,000, subject to a borrowing base calculation.

In conjunction with the Credit Agreement, the Company incurred \$508 of fees paid to various parties which were capitalized. Fees associated with the Revolving Line of Credit were recorded in prepaid expenses and other assets.

As of July 29, 2023 and January 28, 2023, the Company had \$217,308 and \$96,892, respectively, in outstanding revolving loans under the Revolving Line of Credit. Amounts outstanding are offset on the condensed consolidated balance sheets by amounts in depository accounts under lock-box type arrangements, which were \$14,248 and \$9,389 as of July 29, 2023 and January 28, 2023, respectively. As of July 29, 2023, the Company had \$95,725 available for borrowing, subject to certain borrowing base restrictions and stand-by commercial letters of credit of \$1,967 under the terms of the Revolving Line of Credit.

Borrowings under the Revolving Line of Credit bear interest based on either the base rate or Term SOFR (as defined in the Credit Agreement), at the Company’s option, in each case plus an applicable margin. The base rate is the greatest of (1) the floor rate (as defined in the Credit Agreement as a rate of interest equal to 0.0%) (2) Wells Fargo’s prime rate, (3) the federal funds rate (as defined in the Credit Agreement) plus 0.50% or (4) the one-month Term SOFR (as defined in the Credit Agreement) plus 1.00%. The applicable margin for loans under the Revolving Line of Credit, which varies based on the average daily availability, ranges from 0.25% to 0.50% per year for base rate loans and from 1.35% to 1.60% per year for Term SOFR loans. The Company is required to pay a commitment

fee for the unused portion of the Revolving Line of Credit, which will range from 0.20% to 0.225% per annum, depending on the average daily availability under the Revolving Line of Credit.

The Company may be required to make mandatory prepayments under the Revolving Line of Credit in the event of a disposition of certain property or assets, in the event of receipt of certain insurance or condemnation proceeds, upon the issuance of certain debt or equity securities, upon the incurrence of certain indebtedness for borrowed money or upon the receipt of certain payments not received in the ordinary course of business.

The Credit Agreement contains customary affirmative and negative covenants, including covenants that limit the Company's ability to incur, create or assume certain indebtedness, to create, incur or assume certain liens, to make certain investments, to make sales, transfers and dispositions of certain property and to undergo certain fundamental changes, including certain mergers, liquidations and consolidations. The Credit Agreement also requires the Company to maintain a minimum availability at all times of not less than 10.0% of the gross borrowing base and contains customary events of default. The Revolving Line of Credit matures on May 27, 2027.

Each of the subsidiaries of Holdings is a borrower under the Revolving Line of Credit, and all obligations under the Revolving Line of Credit are guaranteed by Holdings. All of the obligations under the Revolving Line of Credit are secured by a lien on substantially all of Holdings' tangible and intangible working capital assets and the tangible and intangible working capital assets of all of Holdings' subsidiaries, including a pledge of all capital stock of each of Holdings' subsidiaries. The lien securing the obligations under the Revolving Line of Credit is a first priority lien as to certain liquid assets, including cash, accounts receivable, deposit accounts and inventory.

As of July 29, 2023 and January 28, 2023, the Credit Agreement had \$581 and \$657, respectively, in deferred financing fees. During the 13 and 26 weeks ended July 29, 2023, the Company recognized \$38 and \$76 of non-cash interest expense with respect to the amortization of deferred financing fees. During the 13 and 26 weeks ended July 30, 2022, the Company recognized \$46 and \$108 of non-cash interest expense with respect to the amortization of deferred financing fees.

During the 13 and 26 weeks ended July 29, 2023, gross borrowings under the Revolving Line of Credit were \$388,889 and \$746,235, respectively. During the 13 and 26 weeks ended July 30, 2022, gross borrowing under the Company's prior revolving line of credit were \$379,778 and \$752,494, respectively. During the 13 and 26 weeks ended July 29, 2023, gross paydowns under the Revolving Line of Credit were \$337,384 and \$631,182. During the 13 and 26 weeks ended July 30, 2022, gross paydowns under the Company's prior revolving line of credit were \$387,886 and \$725,525, respectively.

Restricted Net Assets

The provisions of the Revolving Line of Credit restrict all of the net assets of the Company's consolidated subsidiaries, which constitute all of the net assets on the Company's condensed consolidated balance sheet as of July 29, 2023, from being used to pay any dividends without prior written consent from the financial institutions party to the Revolving Line of Credit.

(8) Income Taxes

The Company recognized income tax benefit of \$1,756 and income tax expense of \$5,135, respectively, in the 13 weeks ended July 29, 2023 and July 30, 2022. The Company recognized income tax benefit of \$7,123 and income tax expense of \$5,576, respectively, in the 26 weeks ended July 29, 2023 and July 30, 2022. The Company's effective tax rate during the 26 weeks ended July 29, 2023 and July 30, 2022 was 27.3% and 25.1%, respectively. The Company's effective tax rate will generally differ from the U.S. Federal statutory rate of 21.0%, due to state taxes, permanent items, and discrete items relating to stock award deductions.

(9) Stockholders' Equity

Earnings per Share

Basic earnings per share is calculated by dividing net income by the weighted-average number of shares of common stock outstanding, reduced by the number of shares repurchased and held in treasury, during the period. Diluted earnings per share represents basic earnings per share adjusted to include the potentially dilutive effect of outstanding share option awards, nonvested share awards and nonvested share unit awards.

The following table sets forth the computation of basic and diluted earnings per share for the periods presented:

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
Net (loss) income	\$ (3,288)	\$ 14,614	\$ (18,927)	\$ 16,612
Weighted average shares of common stock outstanding:				
Basic	37,498	41,962	37,546	42,950
Dilutive effect of common stock equivalents	—	232	—	230
Diluted	37,498	42,194	37,546	43,180
Basic (loss) earnings per share	\$ (0.09)	\$ 0.35	\$ (0.50)	\$ 0.39
Diluted (loss) earnings per share	\$ (0.09)	\$ 0.35	\$ (0.50)	\$ 0.38
Restricted stock units considered anti-dilutive and excluded in the calculation	570	166	359	150

Repurchase Program

On March 24, 2022 the Company announced that its Board of Directors had authorized a share repurchase program (the "Repurchase Program") to allow for the repurchase of up to \$75.0 million of outstanding shares of the Company's common stock, \$0.01 par value per share, commencing on March 31, 2022. On March 15, 2023, the Company's Board of Directors extended the term of the Repurchase Program through March 31, 2024. During the 13 weeks ended July 29, 2023, the Company repurchased approximately 0.4 million shares of its common stock for \$2.1 million, utilizing cash on hand and available borrowings under its Revolving Line of Credit. During the 26 weeks ended July 29, 2023, the Company repurchased approximately 0.5 million shares of its common stock for \$2.7 million, utilizing cash on hand and available borrowings under its Revolving Line of Credit. The Company has retired all repurchased stock.

(10) Stock-Based Compensation

Stock-Based Compensation

During the 13 and 26 weeks ended July 29, 2023, the Company recognized total stock-based compensation expense of \$1,126 and \$2,376, respectively. During the 13 and 26 weeks ended July 30, 2022, the Company recognized total stock-based compensation expense of \$1,091 and \$2,449, respectively. Compensation expense related to the Company's stock-based payment awards is recognized in selling, general, and administrative expenses in the condensed consolidated statements of operations.

Employee Stock Plans

As of July 29, 2023, the number of shares available for awards under the 2019 Performance Incentive Plan (the "2019 Plan") was 1,388. As of July 29, 2023, there were 989 unvested stock awards outstanding under the 2019 Plan.

Employee Stock Purchase Plan

The Company also maintains an Employee Stock Purchase Plan (the “ESPP”) that was approved by the Company’s stockholders in fiscal year 2015, under which 800 shares of common stock were authorized. During the 13 weeks ended July 29, 2023, 73 shares were issued under the ESPP and, as of July 29, 2023, the number of shares available for issuance was 197.

Nonvested Performance-Based Stock Awards

During the 13 weeks ended July 29, 2023, the Company did not issue any nonvested performance-based stock awards to employees. During the 26 weeks ended July 29, 2023, the Company issued 36 nonvested performance-based stock awards to employees at a weighted average grant date fair value of \$8.40 per share. The nonvested performance-based stock awards issued to employees vest in full on the third anniversary of the grant date. The number of shares issued is contingent on management achieving fiscal year 2023, 2024, and 2025 performance targets for percentage of total return on invested capital and total operating income percentage. If minimum threshold performance targets are not achieved, no shares will vest. The maximum number of shares subject to the award is 72, and the “target” number of shares subject to the award is 36 as reported below. Following the end of the performance period (fiscal years 2023, 2024, and 2025), the number of shares eligible to vest, based on actual performance, will be fixed and vesting will then be subject to each employee’s continued employment over the remaining service period.

During the 13 weeks ended July 30, 2022, the Company issued 47 nonvested performance-based stock awards to employees at a weighted average grant date fair value of \$9.65 per share. During the 26 weeks ended July 30, 2022, the Company issued 188 nonvested performance-based stock awards to employees at a weighted average grant date fair value of \$10.88 per share. The nonvested performance-based stock awards issued to employees vest in full on the third anniversary of the grant date. The number of shares issued is contingent on management achieving fiscal year 2022, 2023, and 2024 performance targets for total revenue growth and adjusted earnings per share. If minimum threshold performance targets are not achieved, no shares will vest. The maximum number of shares subject to the award is 376, and the “target” number of shares subject to the award is 188 as reported below. Following the end of the performance period (fiscal years 2022, 2023, and 2024), the number of shares eligible to vest, based on actual performance, will be fixed and vesting will then be subject to each employee’s continued employment over the remaining service period.

The following table sets forth the rollforward of outstanding nonvested performance-based stock awards (per share amounts are not in thousands):

	Shares	Weighted average grant-date fair value
Balance at January 28, 2023	313	\$ 7.72
Grants	36	8.40
Forfeitures	(64)	11.28
Vested	(221)	6.20
Balance at July 29, 2023	<u>64</u>	<u>\$ 9.67</u>

	Shares	Weighted average grant-date fair value
Balance at January 29, 2022	487	\$ 5.13
Grants	188	10.88
Forfeitures	(89)	5.47
Vested	(168)	3.49
Balance at July 30, 2022	<u>418</u>	<u>\$ 8.31</u>

Nonvested Stock Unit Awards

During the 13 and 26 weeks ended July 29, 2023, the Company issued 153 and 675 nonvested stock units, respectively, to employees and directors of the Company at an average value of \$5.79 and \$7.64 per share, respectively. The shares issued to employees of the Company vest over a three-year period with one third of the shares vesting on each anniversary of the grant date. The shares issued to directors of the Company vest over a 12 month period with one twelfth of the shares vesting each month.

During the 13 and 26 weeks ended July 30, 2022, the Company issued 110 and 418 nonvested stock units, respectively, to employees and directors of the Company at an average value of \$9.51 and \$10.82 per share, respectively. The shares issued to employees of the Company vest over a three-year period with one third of the shares vesting on each anniversary of the grant date. The shares issued to directors of the Company vest over a 12 month period with one twelfth of the shares vesting each month.

The following table sets forth the rollforward of outstanding nonvested stock units (per share amounts are not in thousands):

	Shares	Weighted average grant-date fair value
Balance at January 28, 2023	721	\$ 12.16
Grants	675	7.64
Forfeitures	(231)	10.99
Vested	(240)	10.20
Balance at July 29, 2023	<u>925</u>	<u>\$ 9.66</u>

	Shares	Weighted average grant-date fair value
Balance at January 29, 2022	929	\$ 11.56
Grants	418	10.82
Forfeitures	(139)	11.41
Vested	(260)	8.19
Balance at July 30, 2022	<u>948</u>	<u>\$ 12.18</u>

(11) Commitments and Contingencies

Legal Matters

The Company is involved in various legal matters generally incidental to its business. After discussion with legal counsel, management is not aware of any matters for which the likelihood of a loss is probable and reasonably estimable and which could have a material impact on its consolidated financial condition, liquidity, or results of operations.

ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The discussion below contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those which are discussed in the “Risk Factors” section in Part I., Item 1A. of our Fiscal 2022 Form 10-K. Also see “Special Note Regarding Forward-Looking Statements” preceding Part I. of this 10-Q. Additionally, our historical results are not necessarily indicative of the results that may be expected or achieved for any future period.

The following discussion and analysis should be read in conjunction with, and is qualified in its entirety by reference to, the unaudited condensed consolidated financial statements and the notes thereto included in this 10-Q.

Overview

We are an outdoor sporting goods retailer focused on meeting the everyday needs of the seasoned outdoor veteran, the first-time participant and everyone in between. Our mission is to provide outstanding gear and exceptional service to inspire outdoor memories.

Our business was founded in 1986 as a single retail store in Midvale, Utah. Today, we operate 140 stores in 31 states, totaling approximately 5.2 million gross square feet. We also operate an e-commerce platform at www.sportsmans.com. We do not incorporate the information on or accessible through our website into this 10-Q, and you should not consider any information on or accessible through our website as part of this 10-Q.

Our stores and our e-commerce platform are aggregated into one operating and reportable segment.

Impact of Macroeconomic Conditions

Our financial results and operations have been, and will continue to be, impacted by events outside of our control.

During the COVID-19 pandemic we experienced increases in net sales compared to pre-pandemic levels, primarily driven by historically high sales in certain product categories, particularly firearms and ammunition. However, while our net sales and same store sales for fiscal year 2023 remain elevated as compared to pre-COVID periods, we have experienced steady decreases in net sales and same store sales during fiscal year 2023 from the COVID-driven peak levels in fiscal year 2021.

Global economic and business activities continue to face widespread macroeconomic uncertainties, including labor shortages, inflation and monetary supply shifts, liquidity concerns at, and failures of, banks and other financial institutions, rising interest rates, recession risks and potential disruptions from the Russia-Ukraine conflict. Starting in the second half of 2022 and continuing into the second quarter of 2023, our business was impacted by consumer inflationary pressures and recession concerns. As a result of our recent performance, we intend to take steps to reduce our total inventory, implement cost reduction measures to reflect current sales trends and reduce investments in future new store openings.

We continue to actively monitor the impact of these macroeconomic factors on our financial condition, liquidity, operations, suppliers, industry and workforce. The extent of the impact of these factors on our operational and financial performance, including our ability to execute our business strategies and initiatives in the expected timeframe, will depend on future developments, and the impact on our customers, partners and employees, all of which are uncertain and cannot be predicted; however, any continued or renewed disruption resulting from these factors could negatively impact our business.

How We Assess the Performance of Our Business

In assessing the performance of our business, we consider a variety of performance and financial measures. The key measures for determining how our business is performing are net sales, same store sales, gross margin, selling, general, and administrative expenses, income from operations and adjusted earnings before interest, taxes, depreciation and amortization (“Adjusted EBITDA”).

Net Sales and Same Store Sales

Our net sales are primarily received from revenue generated in our stores and also include sales generated through our e-commerce platform. When measuring revenue generated from our stores, we review our same store sales as well as the performance of our stores that have not operated for a sufficient amount of time and include each in same store sales. We include net sales from a store in same store sales on the first day of the 13th full fiscal month following the store’s grand opening or acquisition by us. We exclude sales from stores that were closed during the period from our same store sales calculation. We include net sales from e-commerce in our calculation of same store sales. For fiscal years consisting of 53 weeks, we exclude net sales during the 53rd week from our calculation of same store sales. Some of our competitors and other retailers may calculate same store sales differently than we do. As a result, data regarding our same store sales may not be comparable to similar data made available by other retailers.

Measuring the change in year-over-year same store sales allows us to evaluate how our retail store base is performing. Various factors affect same store sales, including:

- macroeconomic factors, such as the ongoing impact of the COVID-19 pandemic, political trends, social unrest, inflationary pressures, recessionary trends, labor shortages, monetary supply shifts, rising interest rates, tightening of credit markets, liquidity concerns at, and failures of, banks and other financial institutions and potential disruptions from the ongoing Russia-Ukraine conflict;
- consumer preferences, buying trends and overall economic trends;
- changes or anticipated changes to laws and government regulations related to some of the products we sell, in particular regulations relating to the sale of firearms and ammunition;
- our ability to identify and respond effectively to local and regional trends and customer preferences;
- our ability to provide quality customer service that will increase our conversion of shoppers into paying customers;
- the success of our omni-channel strategy and our e-commerce platform;
- competition in the regional market of a store;
- atypical weather;
- new product introductions and changes in our product mix; and
- changes in pricing and average ticket sales.

We operate in a complex regulatory and legal environment that could negatively impact the demand for our products, which could significantly affect our operations and financial results. State, local and federal laws and regulations relating to products that we sell may change, sometimes significantly, as a result of political, economic or social events. For instance, in November 2022, the State of Oregon passed legislation that will, among other things, impose complex permitting and training requirements for the purchases of firearms. As a result, sales of firearms in Oregon may be halted or substantially diminished until such permitting and training programs are developed by the state, which may take a significant amount of time. If that were to occur, it could result in a substantial decline in our sales of firearms and related products and reduce traffic to our stores in Oregon, which could have a substantial impact on our sales and gross margin. On December 6, 2022 a state court judge in Oregon temporarily blocked the enforcement of such legislation. We currently operate eight stores in the State of Oregon.

Opening new stores and acquiring store locations is also an important part of our growth strategy. During fiscal year 2022, we opened nine stores and we currently plan to open 15 new stores in fiscal year 2023, of which we had opened 9 stores as of July 29, 2023. We may deviate from this target if attractive opportunities are presented to open stores or acquire new store locations outside of our target growth rate.

We also have been scaling our e-commerce platform and increasing sales through our website, www.sportsmans.com.

We believe the key drivers to increasing our total net sales include:

- increasing and improving same store sales in our existing markets;
- increasing our total gross square footage by opening new stores and through strategic acquisitions;
- increasing customer visits to our stores and improving our conversion rate through focused marketing efforts and continually high standards of customer service;
- expanding our omni-channel capabilities through larger assortment and inventory, expanded content and expertise and better user experience; and
- growing our loyalty and credit card programs.

Gross Margin

Gross profit consists of our net sales less cost of goods sold. Gross margin measures our gross profit as a percentage of net sales. Our cost of goods sold primarily consists of merchandise acquisition costs, including freight-in costs, shipping costs, payment term discounts received from the vendor and vendor allowances and rebates associated directly with merchandise and shipping costs related to e-commerce sales.

We believe the key drivers to improving our gross margin are increasing the product mix to higher margin products, particularly apparel and footwear, increasing foot traffic within our stores and traffic to our website, improving buying opportunities with our vendor partners and coordinating pricing strategies among our stores and our merchandise group. Our ability to properly manage our inventory can also impact our gross margin. Successful inventory management ensures we have sufficient high margin products in stock at all times to meet customer demand, while overstocking of items could lead to markdowns in order to help a product sell. We believe that the overall growth of our business can also help improve our gross margins, because increased merchandise volumes will enable us to maintain our strong relationships with our vendors. If we see significant declines in sales or increases in overstocked inventory, we may experience a decline in gross margins as we use promotions to drive traffic and reduce inventory. In the back half of 2023 we expect continued pressure on our gross margins driven by reduced traffic in our stores and our efforts to reduce inventory.

Selling, General, and Administrative Expenses

We closely manage our selling, general, and administrative expenses. Our selling, general, and administrative expenses are comprised of payroll, rent and occupancy, depreciation and amortization, acquisition expenses, pre-opening expenses and other operating expenses, including stock-based compensation expense. Pre-opening expenses include expenses incurred in the preparation and opening of a new store location, such as payroll, travel and supplies, but do not include the cost of the initial inventory or capital expenditures required to open a location.

Our selling, general, and administrative expenses are primarily influenced by the volume of net sales of our locations, except for our corporate payroll, rent and occupancy and depreciation and amortization, which are generally fixed in nature. We control our selling, general, and administrative expenses through a budgeting and reporting process that allows our personnel to adjust our expenses as trends in net sales activity are identified.

We expect that our selling, general, and administrative expenses will increase in future periods due to our continuing growth. In addition, we have experienced increased salaries and wages due to increased minimum wages, a competitive labor market and inflation. We have experienced increased salaries and wages in fiscal year 2023. In response to persistent consumer inflationary pressures and adverse weather conditions in the Western United States during the first half of fiscal year 2023, we have implemented a company-wide plan to reduce expenses, with increased focus on financial discipline and rigor throughout the organization. We expect this plan may result in up to \$25 million in annualized cost savings.

Income from Operations

Income from operations is gross profit less selling, general, and administrative expenses. We use income from operations as an indicator of the productivity of our business and our ability to manage selling, general, and administrative expenses.

Adjusted EBITDA

We define Adjusted EBITDA as net income plus interest expense, income tax expense, depreciation and amortization, stock-based compensation expense, pre-opening expenses, and other gains, losses and expenses that we do not believe are indicative of our ongoing expenses. We define Adjusted EBITDA margin as Adjusted EBITDA divided by net sales. In evaluating our business, we use Adjusted EBITDA and Adjusted EBITDA margin as additional measurement tools for purposes of business decision-making, including evaluating store performance, developing budgets and managing expenditures. See “—Non-GAAP Financial Measures.”

Results of Operations

The following table summarizes key components of our results of operations as a percentage of net sales during the periods presented:

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
Percentage of net sales:				
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of goods sold	67.4	66.5	68.7	67.2
Gross profit	32.6	33.5	31.3	32.8
Selling, general, and administrative expenses	33.1	27.6	34.9	29.2
(Loss) income from operations	(0.5)	5.9	(3.6)	3.6
Interest expense	1.1	0.2	1.0	0.2
(Loss) income before income taxes	(1.6)	5.7	(4.6)	3.4
Income tax (benefit) expense	(0.6)	1.5	(1.3)	0.8
Net (loss) income	(1.0) %	4.2 %	(3.3) %	2.5 %
Adjusted EBITDA	4.2 %	8.7 %	1.3 %	6.6 %

The following table shows our percentage of net sales by department during the periods presented:

Department	Product Offerings	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
		July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
Camping	Backpacks, camp essentials, canoes and kayaks, coolers, outdoor cooking equipment, sleeping bags, tents and tools	16.0%	16.9%	12.8%	14.0%
Apparel	Camouflage, jackets, hats, outerwear, sportswear, technical gear and work wear	6.8%	7.1%	6.9%	7.0%
Fishing	Bait, electronics, fishing rods, flotation items, fly fishing, lines, lures, reels, tackle and small boats	14.4%	13.4%	12.0%	12.0%
Footwear	Hiking boots, socks, sport sandals, technical footwear, trail shoes, casual shoes, waders and work boots	6.8%	6.7%	6.7%	6.5%
Hunting and Shooting	Ammunition, archery items, ATV accessories, blinds and tree stands, decoys, firearms, reloading equipment and shooting gear	49.9%	50.5%	56.1%	55.1%
Optics, Electronics, Accessories, and Other	Gift items, GPS devices, knives, lighting, optics, two-way radios, and other license revenue, net of revenue discounts	6.1%	5.4%	5.5%	5.4%
Total		100.0%	100.0%	100.0%	100.0%

Thirteen Weeks Ended July 29, 2023 Compared to Thirteen Weeks Ended July 30, 2022

Net Sales and Same Store Sales. Net sales decreased by \$41.5 million, or 11.8%, to \$309.5 million during the 13 weeks ended July 29, 2023 compared to \$351.0 million in the corresponding period of fiscal year 2022. Our net sales decreased primarily due to the continued impact of consumer inflationary pressures and recessionary concerns on discretionary spending, resulting in a decline in store traffic and lower demand across all product categories. This decrease was partially offset by our opening of 14 new stores since July 30, 2022. Stores that have been open for less than 12 months and were, therefore, not included in our same store sales, contributed \$16.6 million to net sales. E-commerce driven sales comprised more than 15% of total sales for the 13 weeks ended July 29, 2023. Same store sales decreased by 16.1% during the 13 weeks ended July 29, 2023 compared to the corresponding 13-week period of fiscal year 2022, primarily as a result of the factors discussed above that impacted net sales.

Our Hunting and Shooting, Camping, Apparel, Fishing, Footwear, and Optics, Electronics and Accessories departments saw net sales decreases of \$22.9 million, \$9.6 million, \$4.0 million, \$2.4 million, \$2.3 million and \$2.2 million, respectively, in the second quarter of fiscal year 2023 compared to the corresponding period of fiscal year 2022. Within our Hunting and Shooting department, our firearm and ammunition categories saw decreases of \$3.8 million and \$15.9 million or 5.4% and 26.6%, respectively, in the second quarter of fiscal year 2023 compared to the corresponding period of fiscal year 2022. The decrease in our firearm category was due to a softening in demand related to the impact of consumer inflationary pressures. However, when compared to the adjusted NICS data, a key indicator of firearm sales, we continue to outperform this industry measure. We believe this demonstrates that although sales decreased year over year, we are gaining market share from our competitors in the firearm category.

The decrease in our ammunition category was primarily driven by the continued normalization of sales during the second quarter of fiscal year 2023 compared to the pull forward of ammunition sales that occurred during the second quarter of fiscal year 2022 as we returned to normal in-stocks for ammunition during that period. This was partially offset by our opening of 14 new stores since July 30, 2022.

With respect to same store sales, during the 13 weeks ended July 29, 2023, our Apparel, Camping, Hunting and Shooting, Optics, Electronics and Accessories, Footwear and Fishing departments saw decreases of 20.7%, 19.4%, 17.5%, 14.5%, 13.8% and 11.1%, respectively, compared to the corresponding period of fiscal year 2022, as a result of a decline in store traffic and the continued impact of consumer inflationary pressures and recessionary concerns on discretionary spending. As of July 29, 2023, 126 stores were included in our same store sales calculation.

Gross Profit. Gross profit decreased by \$16.7 million, or 14.2%, to \$100.8 million during the 13 weeks ended July 29, 2023 compared to \$117.5 million for the corresponding period of fiscal year 2022. As a percentage of net sales, gross profit decreased to 32.6% during the 13 weeks ended July 29, 2023, compared to 33.5% for the corresponding period of fiscal year 2022, primarily driven by reduced product margins in our ammunition category within our Hunting and Shooting department and in our Camping and Apparel departments, as the margins from ammunition sales begin to normalize and as we increase promotional efforts to drive customer participation.

Selling, General, and Administrative Expenses. Selling, general, and administrative expenses increased by \$5.3 million, or 5.5%, to \$102.3 million during the 13 weeks ended July 29, 2023, compared to \$97.0 million for the corresponding period of fiscal year 2022. This increase was primarily the result of increases in rent, depreciation and new store pre-opening expenses of \$2.6 million, \$1.2 million, and \$1.6 million, respectively, during the 13 weeks ended July 29, 2023 primarily related to the opening of 14 new stores since July 30, 2022. We incurred \$0.8 million in expenses for employee retention bonuses after the retirement of our Chief Executive Officer in April 2023, professional fees for the engagement of a search firm to identify director candidates and candidates for a new Chief Executive Officer and fees for a communications firm related to our recent board and management changes. Additionally, we incurred \$0.9 million of severance expenses related to the implementation of our cost reduction plan and \$0.7 million related to a one-time legal settlement and related fees and expenses. These increases were partially offset by a \$1.8 million decrease in payroll expenses. While we have experienced increased salaries and wages due to increased minimum wages, a competitive labor market and inflation, our total payroll expenses decreased due to increased operational efficiencies across our retail stores. On a per store basis, our payroll and other operating expenses were down approximately 11% and 8%, respectively, compared to the corresponding period of fiscal year 2022. As a percentage of net sales, selling, general, and administrative expenses increased to 33.1% of net sales in the second quarter of fiscal year 2023, compared to 27.6% of net sales in the second quarter of fiscal year 2022, as a result of the factors discussed above.

Interest Expense. Interest expense increased by \$2.8 million, or 350.0%, to \$3.5 million during the 13 weeks ended July 29, 2023, compared to \$0.8 million for the corresponding period of fiscal year 2022. Interest expense increased primarily because of increased borrowings on our revolving credit facility and higher interest rates during the second quarter of fiscal year 2023 compared to the corresponding period of fiscal year 2022.

Income Taxes. We recognized an income tax benefit of \$1.8 million during the 13 weeks ended July 29, 2023 compared to an income tax expense of \$5.1 million during the corresponding period of fiscal year 2022. Our effective tax rates during the 13 weeks ended July 29, 2023 and July 30, 2022 were 34.8% and 26.0%, respectively. Our effective tax rate will generally differ from the U.S. Federal statutory rate of 21.0%, due to state taxes, permanent items, and discrete items relating to stock award deductions.

Twenty-Six Weeks Ended July 29, 2023 Compared to Twenty-Six Weeks Ended July 30, 2022

Net Sales and Same Store Sales. Net sales decreased by \$83.5 million, or 12.6%, to \$577.0 million during the 26 weeks ended July 29, 2023 compared to \$660.5 million in the corresponding period of fiscal year 2022. Our net sales decreased primarily due to extended winter conditions in the Western United States, leading to decreased outdoor participation. Additionally, net sales declined from the continued impact of consumer inflationary pressures and recessionary concerns on discretionary spending, resulting in a decline in store traffic and lower demand across

all product categories. This decrease was partially offset by our opening of 14 new stores since July 30, 2022. Stores that have been open for less than 12 months and were, therefore, not included in our same store sales, contributed \$32.1 million to net sales. E-commerce driven sales comprised more than 15% of total sales for the 26 weeks ended July 29, 2023. Same store sales decreased by 16.9% during the 26 weeks ended July 29, 2023 compared to the corresponding 26-week period ended July 30, 2022, primarily as a result of the factors discussed above that impacted net sales.

Our Hunting and Shooting, Camping, Fishing, Apparel, Optics, Electronics and Accessories and Footwear departments saw net sales decreases of \$40.5 million, \$19.2 million, \$10.1 million, \$6.6 million, \$4.9 million and \$4.0 million, respectively, in the 26 weeks ended July 29, 2023 compared to the corresponding period of fiscal year 2022. Within our Hunting and Shooting department, our firearm and ammunition categories saw decreases of \$5.4 million and \$32.8 million or 3.6% and 26.8%, respectively, in the 26 weeks ended July 29, 2023 compared to the corresponding period of fiscal year 2022. The decrease in our firearm category was due to a softening in demand related to the impact of consumer inflationary pressures. However, when compared to the adjusted NICS data, a key indicator of firearm sales, we continued to outperform this industry measure. We believe this demonstrates that although sales decreased year over year, we are gaining market share from our competitors in the firearm category. The decrease in our ammunition category was primarily driven by the continued normalization of sales during the 26 weeks ended July 29, 2023 compared to the pull forward of ammunition sales that occurred during the 26-week period ended July 30, 2022 as we returned to normal in-stocks for ammunition during that period. This was partially offset by our opening of 14 new stores since July 30, 2022.

With respect to same store sales, during the 26 weeks ended July 29, 2023, our Camping, Apparel, Fishing, Optics, Electronics and Accessories, Hunting and Shooting and Footwear departments saw decreases of 23.8%, 18.7%, 18.3%, 17.3%, 15.6% and 13.1%, respectively, compared to the corresponding period of fiscal year 2022, as a result of a decline in store traffic and the continued impact of consumer inflationary pressures and recessionary concerns on discretionary spending. As of July 29, 2023, 126 stores were included in our same store sales calculation.

Gross Profit. Gross profit decreased by \$35.8 million, or 16.5%, to \$180.9 million during the 26 weeks ended July 29, 2023 compared to \$216.6 million for the corresponding period of fiscal year 2022. As a percentage of net sales, gross profit decreased to 31.3% during the 26 weeks ended July 29, 2023, compared to 32.8% for the corresponding period of fiscal year 2022, primarily driven by a shift in sales mix into more product categories with lower margin, such as our firearm products, and reduced sales from product categories with higher margins, such as products in our Camping and Fishing departments. During the 26 weeks ended July 29, 2023, we experienced a general reduction in margin in many of our product categories due to increased promotional efforts to drive customer participation. Also, our ammunition margins have begun to normalize to pre-pandemic levels, placing further pressure on margins within that product category.

Selling, General, and Administrative Expenses. Selling, general, and administrative expenses increased by \$8.2 million, or 4.3%, to \$201.3 million during the 26 weeks ended July 29, 2023, compared to \$193.1 million for the corresponding period of fiscal year 2022. This increase was primarily the result of increases in rent, depreciation and new store pre-opening expenses of \$5.0 million, \$2.6 million, and \$2.9 million, respectively, during the 26 weeks ended July 29, 2023 primarily related to the opening of 14 new stores since July 30, 2022. We incurred \$1.9 million in expenses for employee retention bonuses after the retirement of our Chief Executive Officer in April 2023, professional fees for the engagement of a search firm to identify director candidates and candidates for a new Chief Executive Officer and fees for a communications firm related to our recent board and management changes. Additionally, we incurred \$0.9 million of severance expenses related to the implementation of our cost reduction plan and \$0.7 million related to a one-time legal settlement and related fees and expenses. These increases were partially offset by a \$3.3 million decrease in payroll expenses driven by increased operational efficiencies across our retail stores. On a per store basis, our payroll and other operating expenses were down approximately 11% and 5%, respectively, compared to the corresponding period of fiscal year 2022. As a percentage of net sales, selling, general, and administrative expenses increased to 34.9% of net sales in the 26 weeks ended July 29, 2023 compared to 29.2% of net sales in the corresponding period of fiscal year 2022, as a result of the factors discussed above.

Interest Expense. Interest expense increased by \$4.2 million, or 323.1%, to \$5.6 million during the 26 weeks ended July 29, 2023, compared to \$1.3 million for the corresponding period of fiscal year 2022. Interest expense increased primarily as a result of increased borrowings on our revolving credit facility and higher interest rates during the 26 weeks ended July 29, 2023 compared to the corresponding period of fiscal year 2022.

Income Taxes. We recognized an income tax benefit of \$7.1 million during the 26 weeks ended July 29, 2023 compared to an income tax expense of \$5.6 million during the comparable 26-week period ended July 30, 2022. Our effective tax rates during the 26 weeks ended July 29, 2023 and July 30, 2022 were 27.3% and 25.1%, respectively. Our effective tax rate will generally differ from the U.S. Federal statutory rate of 21.0%, due to state taxes, permanent items, and discrete items relating to stock award deductions.

Seasonality

Due to the openings of hunting season across the country and consumer holiday buying patterns, net sales are typically higher in our third and fourth fiscal quarters than in our first and second fiscal quarters. We also incur additional expenses in our third and fourth fiscal quarters due to higher sales volume and increased staffing in our stores. We anticipate our net sales will continue to reflect this seasonal pattern.

The timing of our new retail store openings also may have an impact on our quarterly results. First, we incur certain non-recurring expenses related to opening each new retail store, which are expensed as they are incurred. Second, most store expenses generally vary proportionately with net sales, but there is also a fixed cost component, which includes occupancy costs. These fixed costs typically result in lower store profitability during the initial period after a new retail store opens. Due to both of these factors, new retail store openings may result in a temporary decline in operating profit, in dollars and/or as a percentage of net sales.

Weather conditions affect outdoor activities and the demand for related apparel and equipment. Customers' demand for our products, and, therefore, our net sales, can be significantly impacted by weather patterns on a local, regional and national basis. For example, weather conditions have been a significant headwind for us in the first half of fiscal year 2023, especially in the western half of the United States. A combination of unusually high amounts of rain and snow influenced the timing of the spring fishing and camping seasons, pushing them to later than normal.

Liquidity and Capital Resources

Overview; Uses and Sources of Cash

As of July 29, 2023, we had cash and cash equivalents of \$2.9 million and working capital, consisting of current assets less current liabilities, of \$77.0 million. As of January 28, 2023, we had cash and cash equivalents of \$2.4 million and working capital, consisting of current assets less current liabilities, of \$130.1 million.

Our primary cash requirements are for seasonal working capital needs and capital expenditures related to opening and acquiring new store locations. For both the short-term and the long-term, our primary sources of cash are borrowings under our \$350.0 million senior secured revolving credit facility, operating cash flows and short and long-term debt financings from other banks and financial institutions. We believe that our cash on hand, cash generated by operating activities and funds available under our revolving credit facility will be sufficient to finance our operating activities and meet our cash requirements for at least the next twelve months and beyond.

Material Cash Requirements

Our material cash requirements from known contractual and other obligations are primarily for opening and acquiring new store locations, along with our general operating expenses and other expenses discussed below.

Purchase Obligations. In the ordinary course of business, we enter into arrangements with vendors to purchase merchandise in advance of expected delivery. We or the vendor can generally terminate the purchase orders at any time.

These purchase orders do not contain any termination payments or other penalties if cancelled. During fiscal year 2021, we used cash to increase our inventory levels after the increased demand during the pandemic reduced our inventory. We returned to more historical levels of inventory purchases during fiscal 2022 and, to date our inventory purchases have continued to stabilize in fiscal 2023.

Operating Lease Obligations. Operating lease commitments consist principally of leases for our retail stores, corporate office and distribution center. Our leases often include options which allow us to extend the terms beyond the initial lease term. Our expected operating lease payments for the remainder of fiscal year 2023 are \$36.0 million and our total committed lease payments are \$459.0 million as of July 29, 2023. Other operating lease obligations consist of distribution center equipment. See Note 6, “Leases” to our unaudited condensed consolidated financial statements included in this 10-Q.

Capital Expenditures. For the 26 weeks ended July 29, 2023, we incurred approximately \$44.1 million in capital expenditures, net of \$7.9 million in tenant allowances, primarily related to the construction of new stores and the refurbishment of existing stores during the period. We expect capital expenditures, net of tenant allowances, between \$48 million and \$56 million for fiscal year 2023 (inclusive of amounts spent during the 26 weeks ended July 29, 2023) primarily to refurbish some of our existing stores and to open 15 new stores in fiscal year 2023. We intend to fund these capital expenditures with our operating cash flows, cash on hand and funds available under our revolving credit facility. Other investment opportunities, such as potential strategic acquisitions or store expansion rates in excess of those presently planned, may require additional funding.

Principal and Interest Payments. We maintain a \$350.0 million revolving credit facility. As of July 29, 2023, \$217.3 million was outstanding under the revolving credit facility. Assuming no additional repayments or borrowings on our revolving credit facility after July 29, 2023 our interest payments would be approximately \$7.2 million for the remainder of fiscal year 2023 based on the interest rate as of July 29, 2023. See below under “Indebtedness” for additional information regarding our revolving credit facility, including the interest rate applicable to any borrowing under such facility.

Share Repurchase Authorization. Our board of directors authorized a share repurchase program to provide for the repurchase of up to \$75.0 million of outstanding shares of our common stock during the period from March 31, 2022 to March 31, 2023. On March 15, 2023, our board of directors extended the term of the share repurchase program through March 31, 2024. We may repurchase shares of our common stock at any time or from time to time, without prior notice, subject to market conditions and other considerations. Our repurchases may be made through Rule 10b5-1 plans, accelerated share repurchase transactions, open market purchases, privately negotiated transactions, tender offers, block purchases or other transactions. We intend to fund repurchases under the repurchase program using cash on hand or available borrowings under our revolving credit facility. We have no obligation to repurchase any shares of our common stock under the share repurchase program and we may modify, suspend or discontinue it at any time. As of July 29, 2023, we had repurchased 7,326,507 shares of our common stock for \$67.5 million, utilizing cash on hand and available borrowings under our revolving credit facility. As of July 29, 2023, \$7.5 million remained available to us for repurchases of outstanding shares of our common stock pursuant to the share repurchase program.

Cash Flows

Cash flows provided by (used in) operating, investing and financing activities are shown in the following table:

	Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022
	(in thousands)	
Cash flows (used in) provided by operating activities	\$ (58,328)	\$ 7,967
Cash flows used in investing activities	(51,971)	(22,588)
Cash provided by (used in) financing activities	110,803	(36,379)
Cash at end of period	2,893	6,018

Net cash used in operating activities was \$58.3 million for the 26 weeks ended July 29, 2023, compared to net cash provided by operating activities of \$8.0 million for the corresponding period of fiscal year 2022, a change of approximately \$66.3 million. The increase in our cash flows used in operating activities was primarily driven by a net loss of \$19.0 million in the 26 weeks ended July 29, 2023 compared to net income of \$16.6 million for the corresponding period of fiscal year 2022 and increased inventory levels due to our addition of 14 new stores since July 30, 2022.

Net cash used in investing activities was \$52.0 million for the 26 weeks ended July 29, 2023, compared to \$22.6 million for the corresponding period of fiscal year 2022, an increase of approximately \$29.4 million, which was primarily driven by capital expenditures related to the construction of new stores and the refurbishment of existing stores incurred during the 26 weeks ended July 29, 2023. As of the fiscal period ended July 29, 2023, net cash used by capital expenditures related to the construction of new stores represents approximately 85% of estimated fiscal year 2023 net cash use for new store construction.

Net cash provided by financing activities was \$110.8 million for the 26 weeks ended July 29, 2023, compared to net cash used in financing activities of \$36.4 million for the corresponding period of fiscal year 2022, a change of approximately \$147.2 million. The increase in cash provided by financing activities was primarily the result of increased borrowings under our revolving credit facility.

Indebtedness

We maintain our \$350.0 million revolving credit facility, with \$217.3 million outstanding as of July 29, 2023. Borrowings under our revolving credit facility are subject to a borrowing base calculation. Our revolving credit facility is governed by an amended and restated credit agreement with a consortium of banks led by Wells Fargo Bank, National Association (“Wells Fargo”). As of July 29, 2023, we had \$95.7 million available for borrowing, subject to certain borrowing base restrictions, and \$2.0 million in stand-by commercial letters of credit.

Borrowings under the revolving credit facility bear interest based on either the base rate or Term SOFR (as defined by the credit agreement governing the revolving credit facility), at our option, in each case plus an applicable margin. The base rate is the greatest of (1) the floor rate (as defined in the credit agreement as a rate of interest equal to 0.0%) (2) Wells Fargo’s prime rate, (3) the federal funds rate (as defined in the credit agreement) plus 0.50% or (4) the one-month Term SOFR (as defined in the credit agreement) plus 1.00%. The applicable margin for loans under the revolving credit facility, which varies based on the average daily availability, ranges from 0.25% to 0.50% per year for base rate loans and from 1.35% to 1.60% per year for Term SOFR loans. We are required to pay a commitment fee for the unused portion of the revolving credit facility, which will range from 0.20% to 0.225% per annum, depending on the average daily availability under the revolving credit facility.

Each of the subsidiaries of Holdings is a borrower under the revolving credit facility, and all obligations under the revolving credit facility are guaranteed by Holdings. All of the obligations under the revolving credit facility are secured by a lien on substantially all of Holdings’ tangible and intangible working capital assets and the tangible and intangible working capital assets of all of Holdings’ subsidiaries, including a pledge of all capital stock of each of Holdings’ subsidiaries. The lien securing the obligations under the revolving credit facility is a first priority lien as to certain liquid assets, including cash, accounts receivable, deposit accounts and inventory.

We may be required to make mandatory prepayments under the revolving credit facility in the event of a disposition of certain property or assets, in the event of receipt of certain insurance or condemnation proceeds, upon the issuance of certain debt or equity securities, upon the incurrence of certain indebtedness for borrowed money or upon the receipt of certain payments not received in the ordinary course of business.

Our revolving credit facility requires us to maintain a minimum availability at all times of not less than 10% of the gross borrowing base. In addition, the credit agreement governing our revolving credit facility contains customary affirmative and negative covenants, including covenants that limit our ability to incur, create or assume certain indebtedness, to create, incur or assume certain liens, to make certain investments, to make sales, transfers and dispositions of certain property and to undergo certain fundamental changes, including certain mergers, liquidations

and consolidations. The credit agreement also contains customary events of default. As of July 29, 2023, we were in compliance with all covenants under the credit agreement governing our revolving credit facility.

Critical Accounting Estimates

Our financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). In connection with the preparation of the financial statements, we are required to make assumptions, make estimates and apply judgment that affect the reported amounts of assets, liabilities, revenue, expenses and the related disclosures. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that we believe to be relevant at the time the condensed consolidated financial statements are prepared. On a regular basis, we review the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

There have been no significant changes to our critical accounting estimates as described in “Part II., Item 7., Management’s Discussion and Analysis of Financial Condition and Results of Operations” of our Fiscal 2022 Form 10-K.

Off Balance Sheet Arrangements

We are not party to any off balance sheet arrangements.

Non-GAAP Financial Measures

In evaluating our business, we use Adjusted EBITDA and Adjusted EBITDA margin as supplemental measures of our operating performance. We define Adjusted EBITDA as net (loss) income plus interest expense, income tax (benefit) expense, depreciation and amortization, stock-based compensation expense, pre-opening expenses, director and officer transition costs, cost related to the implementation of our cost reduction plan and a one-time legal settlement and related fees and expenses. Net (loss) income is the most comparable GAAP financial measure to Adjusted EBITDA. Adjusted EBITDA excludes pre-opening expenses because we do not believe these expenses are indicative of the underlying operating performance of our stores. The amount and timing of pre-opening expenses are dependent on, among other things, the size of new stores opened and the number of new stores opened during any given period. We define Adjusted EBITDA margin as, for any period, the Adjusted EBITDA for that period divided by the net sales for that period. We consider Adjusted EBITDA and Adjusted EBITDA margin important supplemental measures of our operating performance and believe they are frequently used by analysts, investors and other interested parties in the evaluation of companies in our industry. Other companies in our industry, however, may calculate Adjusted EBITDA and Adjusted EBITDA margin differently than we do. Management also uses Adjusted EBITDA and Adjusted EBITDA margin as additional measurement tools for purposes of business decision-making, including evaluating store performance, developing budgets and managing expenditures. Management believes Adjusted EBITDA and Adjusted EBITDA margin allow investors to evaluate our operating performance and compare our results of operations from period to period on a consistent basis by excluding items that management does not believe are indicative of our core operating performance.

Adjusted EBITDA is not defined under GAAP and is not a measure of operating income, operating performance or liquidity presented in accordance with GAAP. Adjusted EBITDA has limitations as an analytical tool, and when assessing our operating performance, you should not consider Adjusted EBITDA in isolation or as a substitute for net income or other condensed consolidated statement of operations data prepared in accordance with GAAP. Some of these limitations include, but are not limited to:

- Adjusted EBITDA does not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;

- Adjusted EBITDA may be defined differently by other companies, and, therefore, it may not be directly comparable to the results of other companies in our industry;
- Adjusted EBITDA does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on our debt; and
- Adjusted EBITDA does not reflect income taxes or the cash requirements for any tax payments.

A reconciliation of net income, to Adjusted EBITDA and a calculation of Adjusted EBITDA margin is set forth below for the periods presented (amounts in thousands):

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	July 29, 2023	July 30, 2022	July 29, 2023	July 30, 2022
	(dollars in thousands)			
Net (loss) income	\$ (3,288)	\$ 14,614	\$ (18,927)	\$ 16,612
Interest expense	3,527	767	5,574	1,334
Income tax (benefit) expense	(1,756)	5,135	(7,123)	5,576
Depreciation and amortization	8,967	7,762	17,749	15,173
Stock-based compensation expense (1)	1,126	1,091	2,376	2,449
Pre-opening expenses (2)	2,188	553	4,444	1,504
Director and officer transition costs (3)	773	704	1,887	925
Cost reduction plan (4)	865	—	865	—
Legal settlement (5)	687	—	687	—
Adjusted EBITDA	\$ 13,089	\$ 30,626	\$ 7,532	\$ 43,573
Net sales	\$ 309,495	\$ 351,021	\$ 577,024	\$ 660,526
Net (loss) income margin	(1.0)%	4.2%	(3.3)%	2.5%
Adjusted EBITDA margin (4)	4.2%	8.7%	1.3%	6.6%

- (1) Stock-based compensation expense represents non-cash expenses related to equity instruments granted to employees under the Sportsman's Warehouse Holdings, Inc. 2019 Performance Incentive Plan and the Sportsman's Warehouse Holdings, Inc. Employee Stock Purchase Plan.
- (2) Pre-opening expenses include expenses incurred in the preparation and opening of a new store location, such as payroll, travel and supplies, but do not include the cost of the initial inventory or capital expenditures required to open a location.
- (3) Expenses incurred relating to departure of directors and officers and the recruitment of directors and key members of our senior management team. For the 26 weeks ended July 29, 2023, we incurred \$1.9 million in expenses for employee retention bonuses after the retirement of our Chief Executive Officer in April 2023, professional fees for the engagement of a search firm to identify director candidates and candidates for Chief Executive Officer and fees for a communications firm related to our recent board and management changes.
- (4) Severance expenses paid as part of our cost reduction plan implemented during the 13 weeks ended July 29, 2023.
- (5) Represents a one-time legal settlement and related fees and expenses.
- (6) We calculate net income margin as net income divided by net sales and we define Adjusted EBITDA margin as Adjusted EBITDA divided by net sales.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our principal exposure to market risk relates to changes in interest rates. Borrowings under our revolving credit facility carry a floating interest rate tied to Term SOFR, the federal funds rate and the prime rate, and, therefore, our income and cash flows will be exposed to changes in interest rates to the extent that we do not have effective hedging arrangements in place. We historically have not used interest rate swap agreements to hedge the variable cash flows associated with the interest on our credit facilities. Based on a sensitivity analysis at July 29, 2023, assuming the amount outstanding under our revolving credit facility would be outstanding for a full year, a 100 basis point increase in interest rates would have increased our interest expense by \$2.2 million. We do not use derivative financial instruments for speculative or trading purposes. However, this does not preclude our adoption of specific hedging strategies in the future.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms and to ensure that information required to be disclosed is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosures. Our management has evaluated, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this 10-Q. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of July 29, 2023.

Inherent Limitations in Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures, or our internal controls, will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple error or mistake or fraud. Additionally, controls can be circumvented by individuals or groups of persons or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements in our public reports due to error or fraud may occur and not be detected.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(d) and 15d-15(d) under the Exchange Act) during the 13 weeks ended July 29, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we may be involved in legal proceedings arising in the ordinary course of business. We believe there is no pending or threatened litigation that could have, individually or in the aggregate, a material adverse effect on our financial position, results of operations or cash flows.

ITEM 1A. RISK FACTORS

Our business faces significant risks and uncertainties. Certain important factors may have a material adverse effect on our business prospects, financial condition and results of operations, and you should carefully consider them. There have been no material changes in our risk factors from those set forth in our Fiscal 2022 Form 10-K.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Unregistered Sales of Equity Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

On March 24, 2022, we announced that our board of directors authorized a share repurchase program to allow for our repurchase of up to \$75.0 million of outstanding shares of our common stock during the period from March 31, 2022 to March 31, 2023. On March 15, 2023, our board of directors extended the term of the share repurchase program through March 31, 2024. During the 13 weeks ended July 29, 2023, we repurchased a total of 431,300 shares of our common stock for \$2.1 million, utilizing cash on hand and borrowings under our senior secured revolving credit facility.

The following table sets forth certain information relating to the purchases of our common stock by us and any affiliated purchasers within the meaning of Rule 10b-18(a)(3) under the Exchange Act during the 13 weeks ended July 29, 2023 (in thousands, except share and per share data):

Period	Total # of Shares Purchased	Average Price Paid per Share	Total # of Shares Purchased as Part of a Publicly Announced Program	Maximum Dollar Value of Shares that May yet Be Purchased Under the Program
April 30, 2023 to May 29, 2023	—	\$ —	—	\$ 9,557
May 30, 2023 to June 28, 2023	431,300	\$ 4.76	431,300	\$ 7,504
June 29, 2023 to July 29, 2023	—	\$ —	—	\$ 7,504
Total	431,300	\$ 4.76	431,300	\$ 7,504

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

On September 1, 2023, our board of directors approved, effective immediately, an amendment and restatement of our Second Amended and Restated Bylaws (as so amended and restated, the “Third Amended and Restated Bylaws”) to make certain clarifying changes, including that (i) only the board of directors may call a special meeting of the stockholders and (ii) stockholders may continue to nominate director candidates for a certain period of time if the number of directors to be elected at an annual meeting is increased after the time period for which nominations would otherwise be due and there is no public announcement made at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with our bylaws.

The foregoing description is a summary of the changes effected by the adoption of the Third Amended and Restated Bylaws and is qualified in its entirety by reference to the Third Amended and Restated Bylaws filed as Exhibit 3.2 hereto.

ITEM 6. EXHIBITS

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation of Sportsman’s Warehouse Holdings, Inc. (incorporated by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K, filed with the SEC on June 8, 2023).
3.2*	Third Amended and Restated Bylaws of Sportsman’s Warehouse Holdings, Inc.
10.1*	Sportsman's Warehouse Holdings, Inc. Non-Employee Directors’ Compensation Policy (as amended August 23, 2023, effective August 23, 2023).
10.2*	Form of Director Restricted Stock Unit Award Agreement (Deferred Settlement).
31.1*	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

** Furnished herewith.

THIRD AMENDED AND RESTATED
BYLAWS
OF
SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
A Delaware Corporation
Effective September 1, 2023

290285924 v4

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THIRD AMENDED AND RESTATED BYLAWS

OF

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.

(a Delaware corporation)

ARTICLE I

OFFICES

1.1 Registered Office. The registered office of Sportsman's Warehouse Holdings, Inc. (the "Corporation") shall be as set forth in the Corporation's Amended and Restated Certificate of Incorporation (as may be amended, restated, modified or supplemented from time to time, the "Certificate of Incorporation").

1.2 Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors of the Corporation (the "Board") may from time to time determine.

ARTICLE II

STOCKHOLDERS' MEETINGS

2.1 Place of Meetings. Meetings of stockholders shall be held at such place, if any, either within or without the State of Delaware, as shall be designated from time to time by the Board and specified in the notice of the meeting. In the absence of such designation, stockholders' meetings shall be held at the principal executive office of the Corporation. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL") or any successor provision.

2.2 Notice. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Third Amended and Restated Bylaws (as may be further amended, restated, modified or supplemented from time to time, these "Bylaws"), notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of such meeting. Such notice shall specify the date, time, and place, if any, the record date for determining stockholders entitled to vote at the meeting, if such record date is different from the record date for determining stockholders entitled to notice of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting and, in the case of special meetings, the purpose or purposes of the meeting.

2.3 Adjournments. Any meeting of stockholders, annual or special, whether or not a quorum is present, may be adjourned from time to time for any reason by either the chair of the meeting, or by the stockholders by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, present in person, by remote communication, if applicable, or represented by proxy. Notwithstanding the provisions in Section 2.2 hereof, notice need not be given of any such adjourned meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time, place, if any, and date of the meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting are (a) announced at the meeting at which the adjournment is taken, (b) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholder and proxy holders to participate in the meeting by means of remote communication, (c) set forth in the notice of meeting given in accordance with these Bylaws or (d) provided in any other manner permitted by the DGCL; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally called, notice of the adjourned meeting shall be given in conformity with Section 2.2. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date so fixed for notice of such adjourned meeting. At such adjourned meeting, any business may be transacted that might have been transacted at the original meeting if such meeting had been held as originally called.

2.4 Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereat, present in person, by remote communication, if applicable, or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. When a specified item of business requires a separate vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority in voting power of the outstanding shares of such class or series entitled to vote thereon, present in person, by remote communication, if applicable, or represented by proxy, shall constitute a quorum (as to such class or series) for the transaction of such item of business, unless or except to the extent that the presence of a larger number may be required by the DGCL, the Certificate of Incorporation, these Bylaws or the rules of any stock exchange upon which the Corporation's securities are listed. If a quorum is not present or represented at any meeting of stockholders, then the person presiding over the meeting or the holders of a majority in voting power of the outstanding shares of capital stock entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time in accordance with Section 2.3. If a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment may be transacted.

2.5 Voting.

(a) Unless otherwise required by law or the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one (1) vote for each share of stock held by such stockholder which has voting power on all matters submitted to a vote of stockholders of the Corporation.

(b) Unless otherwise required by law, the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any regulation applicable to the Corporation or its securities, at all meetings of stockholders at which a quorum is present, (i) any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote on such question, voting as a single class, and (ii) directors shall be elected as provided in Section 3.3 of these Bylaws. Notwithstanding the foregoing, two or more classes or series of stock shall only vote together as a single class if and to the extent the holders thereof are entitled to vote together as a single class at a meeting. Where a separate vote by class is required, the vote of the holders of a majority in voting power of each class of Corporation's outstanding capital stock present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote on such question shall be the act of such class, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws and, with respect to the election of directors, except as provided in Section 3.3 of these Bylaws. The Board, in its discretion, or the Chair of the Board, or the presiding officer of a meeting of the stockholders, in such person's discretion, may require that any votes cast (including election of directors) at such meeting shall be cast by written ballot.

2.6 Participation at Stockholder Meetings by Remote Communications. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, (a) participate in a meeting of stockholders, and (b) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by remote communication, provided that (x) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (y) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (z) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

2.7 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

2.8 Stockholder Action by Written Consent.

(a) Any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders in lieu of a meeting of stockholders.

(b) Notwithstanding the foregoing, any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock.

2.9 Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a record date for determining the stockholders entitled to notice of any meeting of stockholders, such date shall also be the record date for determining the stockholders entitled to vote at such meeting, unless the Board determines, at the time it fixes the record date for determining the stockholders entitled to notice of such meeting, that a later date on or before the date of the meeting shall be the record date for determining the stockholders entitled to vote at such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determining the stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determining the stockholders entitled to vote in accordance with the provisions of this Section 2.9(a).

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating to such action.

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to consent to a corporate action in writing without a meeting pursuant to Section 2.8, the Board may fix a date, which date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted. If no such record date is fixed and no prior action by the Board is required by Delaware law, the record date for determining the stockholders entitled to consent to corporate action in writing without a meeting pursuant to Section 2.8 shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law. If no such record date is fixed and prior action by the Board is required by Delaware law, the record date for determining the stockholders entitled to consent to corporate action in writing without a meeting pursuant to Section 2.8 shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

2.10 Stockholders' List. The Corporation shall prepare, no later than the tenth day before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (or, if the record date for determining the stockholders entitled to vote is less than ten days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order and showing the address of each such stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.10 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of ten days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting,

or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.10 or to vote in person or by proxy at any meeting of stockholders.

2.11 Conduct of Meetings.

(a) The meetings of the stockholders shall be presided over by the Chair of the Board, or if he or she is not present, by the by the Lead Independent Director (as defined below), if any, or if he or she is not present, by the Chief Executive Officer, or if he or she is not present, by a chair elected at the meeting by the stockholders by the affirmative vote of a majority in voting power of the outstanding shares of capital stock of the Corporation present in person, by remote communication, if applicable, or represented by proxy and entitled to vote thereon. The Secretary or, if he or she is unavailable, an Assistant Secretary or, if he or she is unavailable, a person whom the chair of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The Board shall be entitled to make such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chair of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chair of the meeting, may include, without limitation, the following: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at, or participation in, the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants. The chair of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted. The chair shall have the power to convene and (for any reason or for no reason) to recess or adjourn the meeting to another place, if any, date and time.

(c) The chair at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such chair of the meeting should so determine, such chair shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. The chair of the meeting shall conduct each such meeting in a businesslike and fair manner, but shall not be obligated to follow any technical, formal or parliamentary rules or principles of procedure, unless and to the extent determined otherwise by the Board.

2.12 Inspectors of Election. The Corporation may and shall, if required by applicable law, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspectors shall: (a) ascertain the number of shares outstanding and the voting power of each; (b) determine the shares represented at a meeting and the validity of proxies and ballots; (c) count all votes and ballots; (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Sections 211(e) or 212(c)(2) of the DGCL, or any information provided pursuant to Sections 211(a)(2)b.(i) or (iii) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time

they make their certification pursuant to Section 231(b)(5) of the DGCL shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

2.13 Annual Meetings of Stockholders.

(a) The annual meeting of the stockholders of the Corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and time as may be determined from time to time by the Board. Any annual meeting of stockholders previously scheduled by the Board may be postponed, rescheduled or cancelled by the Board or any director or officer of the Corporation to whom the Board delegates such authority, at any time before or after notice of such meeting has been given to stockholders. Nominations of persons for election to the Board and proposals of other business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the Corporation's notice of meeting of stockholders (or any supplement thereto); (ii) by or at the direction of the Board or a duly authorized committee thereof; or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 2.13(b) of these Bylaws and who is a stockholder of record at the time of the annual meeting of stockholders, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 2.13. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) before an annual meeting of stockholders.

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

(1) For nominations for the election to the Board to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.13(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the Corporation on a timely basis as set forth in Section 2.13(b)(3) and must update and supplement the information contained in such written notice on a timely basis as set forth in Section 2.13(c). Such stockholder's notice shall include:

(A) as to each nominee such stockholder proposes to nominate at the meeting:

- (1) the name, age, business address and residence address of such nominee,
- (2) the principal occupation or employment of such nominee (present and for the past five years),
- (3) the class or series and number of shares of each class or series of capital stock of the Corporation that are owned of record and beneficially by such nominee and list of any pledge of or encumbrances on such shares,
- (4) the date or dates on which such shares were acquired and the investment intent of such acquisition,
- (5) such person's written consent to be named in a proxy statement, accompanying proxy card and other filings as a nominee and to serve as a director if elected,
- (6) the questionnaire, representation and agreement required by Section 2.13(d), completed and signed by such nominee,
- (7) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings (whether written or oral) during the past three years, and any other material relationships, between or among (x) the stockholder, the beneficial owner, if any, on whose

behalf the nomination is being made and the respective affiliates and associates of, or others acting in concert with, such stockholder and such beneficial owner, on the one hand, and (y) each proposed nominee, and his or her respective affiliates and associates, on the other hand, including all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Act of 1933, as amended (the “Securities Act”) if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made or any affiliate or associate thereof were the “registrant” for purposes of such Item and the proposed nominee were a director or executive officer of such registrant and

(8) all other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved and whether or not proxies are being or will be solicited), or that is otherwise required to be disclosed or provided to the Corporation pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and

(B) all of the information required by Section 2.13(b)(4).

The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence (as such term is used in any applicable stock exchange listing requirements or applicable law) of such proposed nominee or to determine the eligibility of such proposed nominee to serve on any committee or sub-committee of the Board under any applicable stock exchange listing requirements or applicable law, or that the Board determines, in its sole discretion, could be material to a reasonable stockholder’s understanding of the background, qualifications, experience, or independence, or lack thereof, of such proposed nominee and such proposed nominee shall provide such additional information within ten (10) days after it has been requested by the Board. The Board may require any proposed nominee to submit to interviews with the Board or any committee thereof, and such proposed candidate shall make himself or herself available for any such interviews within ten (10) business days after such interviews have been requested by the Board or any committee thereof. The number of nominees a stockholder may nominate for election at an annual meeting on its own behalf (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at an annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. A stockholder may not designate any substitute nominees unless the stockholder provides timely notice of such substitute nominee(s) in accordance with this Section 2.13, in the case of an annual meeting, or Section 2.14, in the case of a special meeting (and such notice contains all of the information, representations, questionnaires and certifications with respect to such substitute nominee(s) that are required by these Bylaws with respect to nominees for director).

(2) Other than proposals sought to be included in the Corporation’s proxy materials pursuant to Rule 14a-8 under the Exchange Act, for business other than nominations for the election to the Board to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.13(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the Corporation on a timely basis as set forth in Section 2.13(b)(3), and must update and supplement the information contained in such written notice on a timely basis as set forth in Section 2.13(c). Such stockholder’s notice shall include: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the Corporation’s capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) all of the information required by Section 2.13(b)(4).

(3) To be timely, the written notice required by Section 2.13(b)(1) or Section 2.13(b)(2) must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day, nor earlier than the one hundred twentieth (120th) day, prior to the first anniversary of the immediately preceding year’s annual meeting; provided, however, that, subject to the last sentence of this Section 2.13(b)(3), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than seventy (70) days after the anniversary of the preceding year’s annual meeting, or if no annual meeting

was held (or deemed to have been held), notice by the stockholder to be timely must be so received not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the later of the close of business on (i) the ninetieth (90th) day prior to such annual meeting or (ii) the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall an adjournment or postponement of an annual meeting (or the public announcement thereof) for which notice has been given, or for which a public announcement of the date of the meeting has been made by the Corporation, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Notwithstanding anything in this Section 2.13(b)(3) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 2.13(b)(3) and there is no public announcement by the Corporation naming all of the nominees for director or, if no appointment was made, disclosing the vacancy at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with this Section 2.13, a stockholder's notice required by this Section 2.13(b)(3) that complies with the requirements in Section 2.13(b)(1), other than the timing requirements in this Section 2.13(b)(3), shall also be considered timely, but only with respect to nominees for the new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

(4) The written notice required by Section 2.13(b)(1) or Section 2.13(b)(2) shall also include, as of the date of the notice and as to the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made and any affiliate who controls either of the foregoing stockholder or beneficial owner, directly or indirectly (each, a "Proponent" and collectively, the "Proponents"):

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

(B) the class, series and number of shares of each class or series of the capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the Exchange Act) by each Proponent (provided, that for purposes of this Section 2.13(b)(4), such Proponent shall in all events be deemed to beneficially own all shares of any class or series of capital stock of the Corporation as to which such Proponent or any of its affiliates or associates has a right to acquire beneficial ownership at any time in the future);

(C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal (and/or the voting of shares of any class or series of capital stock of the Corporation) between or among any Proponent and any of its affiliates or associates, and/or any other persons (including their names) (each of the foregoing, a "Stockholder Associated Person", including, in the case of a nominee, the nominee), including without limitation, any agreements, arrangements or understandings required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D, regardless of whether the requirement to file a Schedule 13D is applicable and any agreements, arrangements or understandings (whether oral or in writing) relating to any compensation or payments to be paid to any proposed nominees(s);

(D) a representation that the stockholder is a holder of record of shares of the Corporation at the time of giving notice, will be entitled to vote at the meeting, and that such stockholder (or a qualified representative thereof) intends to appear at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 2.13(b)(1)) or to propose the business that is specified in the notice (with respect to a notice under Section 2.13(b)(2));

(E) a representation whether any Proponent or any other participant (as defined in Item 4 of Schedule 14A under the Exchange Act) will engage in a solicitation with respect to such nomination or proposal and, if so, the name of each participant in such solicitation and the amount of the cost of solicitation that has been and will be borne, directly or indirectly, by each participant in such solicitation, and a representation as to whether the Proponents intend, or are part of a group which intends, (x) to solicit proxies or votes in support of any proposed nominee in accordance with and as required by Rule 14a-19 promulgated under the Exchange Act (with respect to a notice under Section 2.13(b)(1)), (y) to deliver, or make available, a proxy statement and form of proxy to such number of the Corporation's voting shares that would be sufficient to carry such proposal or otherwise solicit proxies or votes from stockholders in support of such proposal (with respect to a notice under Section 2.13(b)(2)) and or (z) to otherwise solicit proxies or votes from stockholders in support of such proposal or nomination;

(F) a description of any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the Exchange Act), agreement, arrangement, understanding or relationship pursuant to which such stockholder or beneficial owner has or shares a right, directly or indirectly, to vote any shares of any class or series of capital stock of the Corporation;

(G) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice;

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

(I) a description of any material pending or threatened legal proceeding in which a Proponent is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation;

(J) a description of any other material relationship between a Proponent, on the one hand, and the Corporation, or an affiliate of the Corporation, on the other hand, including any direct or indirect material interest in any material contract or agreement;

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

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

(M) a representation that such Proponent will comply with the requirements of Section 2.13(c).

(c) A stockholder, beneficial owner, or nominee providing the written notice or information required by Section 2.13(b)(1) or (2) shall update and supplement the information contained in such notice (other than the representation required by Section 2.13(b)(4)(E)) in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct as of (i) the record date for the determination of stockholders entitled to notice of the meeting and (ii) the date that is five (5) Business Days (as defined below) prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) Business Days prior to such adjourned or postponed meeting; provided, that no such update or supplement shall cure or affect the accuracy (or inaccuracy) of any representations made by any Proponent, any Stockholder Associated Person, or a nominee or the validity (or invalidity) of any nomination or proposal that failed to comply with this Section 2.13 or is rendered invalid as a result of any inaccuracy therein. In the case of an update and supplement pursuant to clause (i) of this Section 2.13(c), such update and supplement must be received by the Secretary at the principal executive offices of the Corporation not later than five (5) Business Days after the later of the record date for the determination of stockholders entitled to notice of the meeting or the public announcement of such record date. In the case of an update and supplement pursuant to clause (ii) of this Section 2.13(c), such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than two (2) Business Days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) Business Days prior to such adjourned or postponed meeting.

(d) To be eligible to be a nominee for election or re-election as a director of the Corporation pursuant to a nomination under clause (iii) of Section 2.13(a) or clause (ii) of Section 2.14(c), each Proponent must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.13(b)(1), Section 2.13(b)(3) or 2.14(c), as applicable) to the Secretary at the principal executive offices of the Corporation a written questionnaire (in the form provided by the Secretary within 10 days following a written request therefor by a stockholder of record) signed by the proposed nominee with respect to the background, qualifications, stock ownership and independence of such proposed nominee and a written representation and agreement (in the form provided by the Secretary within 10 days following a written request therefor by a stockholder of record) that the proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the

Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation in the questionnaire or (B) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation or a nominee that has not been disclosed in such questionnaire; (iii) would be in compliance, if elected as a director of the Corporation, and will comply with, all applicable rules of the exchanges upon which the securities of the Corporation are listed and all applicable publicly disclosed corporate governance, code of conduct and ethics, conflict of interest, confidentiality, corporate opportunities, stock ownership and trading and any other policies and guidelines of the Corporation applicable to directors and (iv) if elected as a director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election.

(e) A person shall not be eligible for election or re-election as a director unless the person is nominated, in the case of an annual meeting, in accordance with clause (ii) or (iii) Section 2.13(a) and in accordance with the procedures set forth in Section 2.13(b), Section 2.13(c), Section 2.13(d) and this Section 2.13(e), as applicable, or in the case of a special meeting, in accordance with Section 2.14(c) and the requirements thereof. Only such business shall be conducted at any annual meeting of the stockholders of the Corporation as shall have been brought before the meeting in accordance with Section 2.13(a) and in accordance with the procedures set forth in Section 2.13(b), Section 2.13(c) and this Section 2.13(e), as applicable. Notwithstanding anything to the contrary in these Bylaws, unless otherwise required by applicable law, in the event that any Proponent or Stockholder Associated Person (i) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act with respect to one or more proposed nominees and (ii) subsequently (x) fails to comply with the requirements of Rule 14a-19 promulgated under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such Proponent has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the next sentence) or (y) fails to inform the Corporation that they no longer plan to solicit proxies in accordance with Rule 14a-19 under the Exchange Act by delivering written notice to the Secretary at the principal executive offices of the Corporation within two (2) Business Days after the occurrence of such change, then the nomination of each such proposed nominee shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that such nomination is set forth in (as applicable) the Corporation’s proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). If any Proponent or Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Proponent or Stockholder Associated Person shall deliver to the Corporation, no later than five (5) Business Days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act. Notwithstanding anything to the contrary set forth herein, and for the avoidance of doubt, the nomination of any person whose name is included (as applicable) as a nominee in the Corporation’s proxy statement, notice of meeting or other proxy materials for any stockholder meeting (or any supplement thereto) as a result of any notice provided by any Proponent pursuant to Rule 14a-19(b) promulgated under the Exchange Act with respect to such proposed nominee and whose nomination is not made by or at the direction of the Board or any authorized committee thereof shall not be deemed (for purposes of clause (i) of Section 2.13(a) or otherwise) to have been made pursuant to the Corporation’s notice of meeting (or any supplement thereto) and any such nominee may only be nominated by a Proponent pursuant to clause (iii) of Section 2.13(a) and, in the case of a special meeting of stockholders, pursuant to and to the extent permitted under Section 2.14(c) of these Bylaws. Except as otherwise required by applicable law, the person presiding over the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures and requirements set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws (including, without limitation, compliance with Rule 14a-19), or the Proponent does not act in accordance with the representations required in this Section 2.13, to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and such nominee disqualified from standing for election or re-election), or that such business shall not be transacted, notwithstanding that such proposal or nomination is set forth in (as applicable) the Corporation’s proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such nomination or such business may have been solicited or received. Notwithstanding the foregoing provisions of this Section 2.13, unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present a nomination or proposed business,

such nomination shall be disregarded (and such nominee disqualified from standing for election or re-election) and such proposed business shall not be transacted, notwithstanding that such nomination or business is set forth in (as applicable) the Corporation's proxy statement, notice of meeting or other proxy materials and notwithstanding that proxies or votes in respect of such vote may have been received by the Corporation. For purposes of this Section 2.13, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager, trustee or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, shall be provided to the Secretary of the Corporation at least five (5) Business Days prior the meeting of stockholders.

(f) Certain Definitions.

(1) "affiliates" and "associates" shall have the meanings set forth in Rule 405 under the Securities Act;

(2) "Business Day" means any day other than Saturday, Sunday or a day on which banks are closed in New York City, New York;

(3) "close of business" means 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a Business Day;

(4) "Derivative Transaction" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial: (A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the Corporation; (B) that otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the Corporation; (C) the effect or intent of which is to mitigate loss, manage risk or benefit from changes in value or price with respect to any securities of the Corporation; or (D) that provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, directly or indirectly, with respect to any securities of the Corporation, which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation or similar right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the Corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member; and

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

(g) Notwithstanding the foregoing provisions of this Section 2.13, a stockholder must also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.13; provided, however, that, to the fullest extent not prohibited by applicable law, any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 2.14(c). Nothing in these Bylaws shall be deemed to (i) affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, (ii) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation's proxy statement, or (iii) affect any rights of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

2.14 Special Meetings of Stockholders.

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

(b) The Board or the Chair of the Board shall determine the date and time of such special meeting. Upon determination of the date, time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 2.4.

(c) Only such business (including the election of specific individuals to fill vacancies or newly created directorships on the Board) shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board or a duly authorized committee thereof or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving notice provided for in this paragraph and who is a stockholder of record at the time of the special meeting, who is entitled to vote at the meeting and who complies with Section 2.13(b)(1), Section 2.13(b)(3), Section 2.13(b)(4), Section 2.13(c), and Section 2.13(d). The number of nominees a stockholder may nominate for election at a special meeting on its own behalf (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at a special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In the event the Corporation calls a special meeting of stockholders for the purpose of submitting a proposal to stockholders for the election of one or more directors, any such stockholder of record entitled to vote in such election of directors may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if written notice setting forth the information required by Section 2.13(b)(1) and Section 2.13(b)(4) shall be received by the Secretary at the principal executive offices of the Corporation not earlier than the 120th day prior to such special meeting and not later than the later of the close of business on (i) the 90th day prior to such meeting or (ii) the tenth day following the day on which the Corporation first makes a public announcement of the date of the special meeting at which directors are to be elected. The stockholder shall also update and supplement such information as required under Section 2.13(c) and comply with the requirements of Section 2.13(b)(1) and Section 2.13(d). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) A person shall not be eligible for election or re-election as a director at the special meeting unless the person is nominated either in accordance with clause (i) or clause (ii) of Section 2.14(c). Except as otherwise required by applicable law, the person presiding over the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures and requirements set forth in these Bylaws and, if any proposed nomination is not in compliance with these Bylaws (including, without limitation, compliance with Rule 14a-19 under the Exchange Act), or if the Proponent does not act in accordance with the representations required in Section 2.13, to declare that such nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that the nomination is set forth in (as applicable) Corporation's proxy statement, notice of meeting, or other proxy materials and notwithstanding that proxies or votes in respect of such nomination may have been solicited or received. Notwithstanding the foregoing provisions of this Section 2.14, unless otherwise required by applicable law, if the stockholder (or a qualified representative of the stockholder (meeting the requirements specified in Section 2.13(e)) does not appear at the special meeting of stockholders of the Corporation to present a nomination, such nomination shall be disregarded (and such nominee disqualified from standing for election or re-election), notwithstanding that the nomination is set forth in (as applicable) the Corporation's proxy statement, notice of meeting, or other proxy materials and notwithstanding that proxies or votes in respect of such nomination may have been solicited or received by the Corporation.

(e) Notwithstanding the foregoing provisions of this Section 2.14, a stockholder must also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.14 and any failure to comply with such requirements shall be deemed a failure to comply with Section 2.13 or 2.14, as applicable; provided, however, that, to the fullest extent not prohibited by applicable law, any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 2.14(c). Nothing in these Bylaws shall be deemed to (i) affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, (ii) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation's proxy statement, or (iii) affect any rights of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

2.15 Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one votes, his or her act binds all; (b) if more than one votes, the act of the majority so voting binds all; (c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in Section 217(b) of the DGCL. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

2.16 Delivery to the Corporation. Whenever Section 2.13 or Section 2.14 of this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered to the principal offices of the Corporation exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by Section 2.13 or Section 2.14 of this Article II.

ARTICLE III

DIRECTORS

3.1 Powers and Duties. Subject to the provisions of the DGCL and to any limitations in the Certificate of Incorporation relating to action required to be approved by the stockholders, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction and control of the Board. The Board may delegate the management of the day-to-day operation of the business of the Corporation, provided that the business and affairs of the Corporation shall remain under the ultimate direction and control of the Board.

3.2 Number and Qualifications. Subject to the rights of the holders of any series of preferred stock, par value \$0.01 per share, of the Corporation (the "Preferred Stock") provided for or fixed pursuant to the provisions of Article IV of the Certificate of Incorporation, the Board shall consist of one or more members, the exact number of which shall be fixed from time to time by resolution of the Board. Unless otherwise required by law or by the Certificate of Incorporation, directors need not be stockholders of the Corporation or residents of Delaware. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Classes and Election of Board of Directors.

(a) Until the 2026 annual meeting of stockholders, the directors of the Corporation (other than those directors elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV of the Certificate of Incorporation (the "Preferred Stock Directors")) shall be divided into three classes. Commencing with the 2024 annual meeting of stockholders, directors of the Corporation (other than any Preferred Stock Director) shall be elected as follows: (i) directors elected at the 2024 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 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.

(b) Except as provided in Section 3.5 of these Bylaws, each director shall be elected by the vote of a majority of the votes cast with respect to that director's election at any annual or special meeting of stockholders for the election of directors at which a quorum is present; provided, however, that if the election is a Contested Election (as defined below), the directors shall be elected by the vote of a plurality of the votes cast by stockholders at such meeting (meaning the nominees receiving the greatest number of votes of the shares represented in person or by proxy at the meeting and entitled to vote on the election of directors, up to the number of directors to be elected, shall be elected

as directors). An election will be a “Contested Election” if the Secretary of the Corporation has received one or more notices that a stockholder or stockholders intend to nominate a person or persons for election to the Board, which notice(s) purport to be in compliance with Sections 2.13 or 2.14, as applicable, of these Bylaws and all such nominations have not been withdrawn by the proposing stockholder(s) on or prior to the 10th day preceding the date the Corporation first mails its notice of meeting for such meeting to its stockholders (regardless of whether all such nominations are subsequently withdrawn and regardless of whether the Board determines that any such notice is not in compliance with Section 2.13 of these Bylaws). For purposes of this Section 3.3(b), a “majority of the votes cast” means that the number of shares cast “for” a nominee’s election exceeds the number of votes cast “against” that nominee’s election (with “abstentions” and “broker non-votes” not counted as a vote cast either “for” or “against” that director’s election).

(c) An incumbent director who stands for election to the Board but who fails to receive a majority of the votes cast in an election that is not a Contested Election shall tender his or her resignation to the Secretary of the Corporation promptly following certification of the election results. The Nominating and Governance Committee (or other committee designated by the Board) shall consider the facts and circumstances relating to the election and the resignation of such incumbent director and make a recommendation to the Board as to whether to accept or reject the resignation of such incumbent director, or whether other action should be taken. The Board shall act on the resignation, taking into account the Nominating and Governance Committee’s recommendation, and the Corporation shall publicly disclose (by a press release and filing an appropriate disclosure with the Securities and Exchange Commission) the Board’s decision regarding the resignation and, if such resignation is rejected, the rationale behind the decision within 90 days following certification of the election results. The Nominating and Governance Committee in making its recommendation and the Board in making its decision each may consider any factors and other information that they consider appropriate and relevant.

(d) Any director who tenders his or her resignation pursuant to this provision shall not participate in the recommendation of the Nominating and Governance Committee (or other committee designated by the Board) or in the decision of the Board regarding whether to accept the resignation offer. If a majority of the members of the Nominating and Governance Committee (or other committee designated by the Board) fails to receive the required vote in favor of their election, then such committee shall create a subcommittee consisting of such other directors to consider the resignation offers and recommend to the Board whether to accept them.

3.4 Resignations and Removals of Directors. Any director of the Corporation may resign from the Board or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chair of the Board or the Secretary of the Corporation and, in the case of a committee, to the chair of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately. Unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by law or the Certificate of Incorporation and except for any Preferred Stock Director, any director or the entire Board or any individual director may be removed from office only in the manner specified in the Certificate of Incorporation. Any director serving on a committee of the Board may be removed from such committee at any time by the Board.

3.5 Vacancies. Except as otherwise required by law or the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV of the Certificate of Incorporation, any vacancy on the Board, by reason of death, resignation, retirement, disqualification or removal or otherwise, and any newly created directorship that results from an increase in the number of directors, shall be filled only by a majority of the Board then in office, even if less than a quorum, or by a sole remaining director.

3.6 Regular Meetings. Regular meetings of the Board shall be held at such place or places, if any, on such date or dates and at such time or times, as shall have been established by the Board and publicized among all directors, either orally or in writing, by telephone, including voice-messaging system or other system designed to record and communicate messages, facsimile or by electronic mail or other electronic means. A notice of each regular meeting shall not be required.

3.7 Special Meetings. Special meetings of the Board for any purpose or purposes may be called at any time by the Chair of the Board, the Lead Independent Director, if any, the Chief Executive Officer, if any, the President or any two directors then in office. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least three (3) days before the day on which such meeting is to be held, or shall be sent to such director at such place by facsimile, electronic mail or other electronic

transmissions, or be delivered personally or by telephone, in each case at least twenty-four (24) hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

3.8 Organization. Meetings of the Board shall be presided over by the Chair of the Board, or in his or her absence by the Lead Independent Director, if any, or in his or her absence by the Chief Executive Officer, if any, if such person is a member of the Board, or in the absence of any such person, by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

3.9 Meetings by Means of Conference Telephone. Members of the Board, or any committee thereof, may participate in a meeting of the Board or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting through the use of such equipment shall constitute presence in person at such meeting.

3.10 Quorum and Voting. Except as otherwise required by law, these Bylaws or the Certificate of Incorporation, at all meetings of the Board or any committee thereof, a majority of the entire Board or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board or such committee, as applicable. If a quorum shall not be present at any meeting of the Board or any committee thereof, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

3.11 Action of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all of the members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board or such committee in the same paper or electronic form as the minutes are maintained.

3.12 Expense Reimbursement and Compensation. Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the Board. This Section 3.12 shall not be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

3.13 Chair of the Board; Lead Independent Director. The Corporation shall have a Chair of the Board (the "Chair of the Board"). Any such Chair of the Board of the Board may be an officer of this Corporation as determined by the Board pursuant to Section 4.1. The Chair of the Board shall preside at all meetings of the stockholders and of the Board and shall exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board or as may be prescribed by these Bylaws. The Chair of the Board, or if the Chair is not an independent director, one of the independent directors, may be designated by the Board as lead independent director to serve until replaced by the Board ("Lead Independent Director"). The Lead Independent Director will preside over meetings of the independent directors and perform such other duties as may be established or delegated by the Board or the Chair of the Board.

3.14 Rules and Regulations. The Board shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board shall deem proper.

3.15 Committees.

(a) The Board may, by resolution, designate from among its members one (1) or more committees, each such committee to consist of one (1) or more of the directors of the Corporation, the exact number of which shall be fixed from time to time by resolution of the Board. The Board may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent

provided in the resolution of the Board establishing such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board shall keep minutes of their meetings and shall report their proceedings to the Board when requested or required by the Board.

(b) Any committee of the Board may adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper.

(c) The Board may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation or removal from the committee or from the Board. The Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal, or increase in the number of members of the committee.

ARTICLE IV

OFFICERS

4.1 General. The officers of the Corporation shall be appointed by the Board and shall include (a) a President, (b) a Chief Financial Officer, and (c) a Secretary. The Board, in its discretion, may also appoint such additional officers as the Board may deem necessary or desirable, including a Chief Executive Officer, one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine. Subject to the rules or regulations of any stock exchange applicable to the Corporation or other applicable law, the Board may delegate to any officer of this Corporation or any committee of the Board the power to appoint, remove and prescribe the term and duties of any officer provided for in this Section 4.1. Any number of offices may be held by the same person, unless otherwise provided by the Certificate of Incorporation or these Bylaws.

4.2 Appointment and Term. Each officer shall serve at the pleasure of the Board and shall hold office until such officer's successor has been appointed, or until such officer's earlier death, resignation or removal. Any officer may be removed, either with or without cause, by the Board or by any officer upon whom such power of removal may be conferred by the Board.

4.3 Resignations. An officer may resign from his or her position at any time, by giving notice in writing or electronic transmission to the Board, the Chair of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be without prejudice to any rights, if any, the Corporation may have under any contract to which the officer is a party. Such resignation shall take effect at the time therein specified, or, if no time is specified, immediately; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board in the manner prescribed in these Bylaws for election or appointment to such office.

4.5 Compensation. The Board shall fix, or may appoint a committee to fix, the compensation of all officers of the Corporation appointed by the Board. Subject to the rules or regulations of any stock exchange applicable to the Corporation or other applicable law, the Board may authorize any officer upon whom the power to appoint officers may have been conferred pursuant to Section 4.1 to fix the compensation of such officers.

4.6 Chief Executive Officer. The Chief Executive Officer, if any, shall have general supervision, direction and control of the business and affairs of the Corporation and shall be responsible for corporate policy and strategy. The Chief Executive Officer shall, if present and in the absence of the Chair of the Board and the Lead Independent Director, preside at meetings of the stockholders.

4.7 President. The President of this Corporation shall have the general powers and duties of management usually vested in the office of president and general manager of a corporation and shall have such other authority and

shall perform such other duties as may from time to time be assigned to him or her by the Board or Chief Executive Officer, if any.

4.8 Vice Presidents. A Vice President, if any, shall have such powers and duties as shall be prescribed by his or her superior officer, the President or the Chief Executive Officer, if any. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the President, the Chief Executive Officer, if any, or as the Board may from time to time determine.

4.9 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the President or the Chief Executive Officer, if any, or as the Board may from time to time determine.

4.10 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board, of the committees of the Board and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the President, the Chief Executive Officer, if any, or as the Board may from time to time determine.

4.11 Treasurer. The Treasurer, if any, shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the President, the Chief Executive Officer, if any, or as the Board may from time to time determine.

4.12 Other Officers. Such other officers as the Board may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board which shall not be inconsistent with these Bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give a security for the faithful performance of his or her duties. The Board may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

4.13 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

4.14 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

4.15 Action with Respect to Securities of Other Entities. The President, the Chief Executive Officer, if any, or any other officer of the Corporation authorized by the Board is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or equity interests of any other corporation or entity or corporations or entities standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

ARTICLE V

STOCK

5.1 Certificates. Except as otherwise provided in a resolution approved by the Board, all shares of the Corporation issued shall be uncertificated shares. The foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two authorized officers of the Corporation (it being understood that each of the Chair of the Board, the President, Vice President, the Treasurer, an Assistant Treasurer, the Secretary, and an Assistant Secretary shall be an authorized officer of the Corporation for such purpose), representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile signature. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issuance.

5.2 Transfers. Shares of stock of the Corporation shall be transferable upon the Corporation's books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law). Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of capital stock of the Corporation that are not represented by a certificate shall be transferred in accordance with applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Corporation to do so. The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes or series owned by such stockholders in any manner not prohibited by the DGCL.

5.3 Lost, Stolen, or Destroyed Certificates. The Board may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board may, in its discretion, require the owner of such lost, stolen or destroyed certificate to give the Corporation a bond (or other adequate security) in such sum as the Corporation may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares. The Board may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

5.4 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

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

ARTICLE VI

NOTICES

6.1 Notice to Stockholders. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records

of the Corporation. Notice shall be given (i) if mailed, when deposited in the United States mail, postage prepaid, (ii) if delivered by courier service, the earlier of when the notice is received or left at the stockholder's address, or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address (unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL to be given by electronic transmission). A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files or information. Any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws provided by means of electronic transmission (other than any such notice given by electronic mail) may only be given in a form consented to by such stockholder, and any such notice by such means of electronic transmission shall be deemed to be given as provided by the DGCL. The terms "electronic mail," "electronic mail address," "electronic signature" and "electronic transmission" as used herein shall have the meanings ascribed thereto in the DGCL.

6.2 Notice to Directors. Any notice required to be given to any director may be given by the method stated in Section 6.1 or as otherwise provided in these Bylaws, with notice other than one that is delivered personally to be sent to such address or electronic mail address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known address or electronic mail address of such director.

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

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

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

6.6 Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the Corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the Corporation. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

6.7 Waiver. Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or the Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or the Bylaws.

ARTICLE VII

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

7.1 Directors and Officers. The Corporation will indemnify each person who was or is a party or is threatened to be made a party to any Proceeding, by reason of the fact that such person is or was a director or officer of the Corporation, or while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, member, trustee, administrator, employee or agent of another corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise (in each case, an "indemnitee") to the fullest extent permitted by the DGCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that the Corporation will not be required to indemnify or advance expenses to any director or officer in connection with any Proceeding (or part thereof) initiated by such person unless (a) the Proceeding was authorized by the Board or (b) the Proceeding is initiated to enforce rights to indemnification or advancement of expenses as provided under Section 7.3 or is a compulsory counterclaim brought by such person.

Any reference to an officer of the Corporation in this Article VII shall be deemed to refer exclusively to the Chief Executive Officer, President, Chief Financial Officer, Secretary and any Assistant Secretary or other officer of the Corporation appointed by the Board pursuant to Article IV of these Bylaws, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the Board or equivalent governing body of such other entity pursuant to the certificate of incorporation and bylaws or equivalent organizational documents of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The fact that any person who is or was an employee of the Corporation or an employee of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, but not an officer thereof as described in the preceding sentence, has been given or has used the title of "Vice President" or any other title that could be construed to suggest or imply that such person is or may be such an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall not result in such person being constituted as, or being deemed to be, such an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise for purposes of this Article VII.

7.2 Employees and Other Agents. The Corporation shall have power to indemnify and advance expenses to employees and other agents to the fullest extent of the provisions of this Article VII.

7.3 Expenses. The Corporation shall to the fullest extent permitted by law advance to any person who was or is a party or is threatened to be made a party to any Proceeding, by reason of the fact that such person is or was a director or officer of the Corporation, or while serving as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, prior to the final disposition of the Proceeding, promptly following request therefor, all expenses incurred by any director or officer in defending a Proceeding, or in connection with a Proceeding brought to establish or enforce a right to indemnification or advancement of expenses under Section 7.4; provided, however, that, if the DGCL requires, or in the case of an advance of expenses made in a Proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses will be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it is ultimately determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified or entitled to advancement for such expenses under this Article VII or otherwise.

7.4 Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advancement of expenses to directors and officers under this Article VII will be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or officer. Any right to indemnification or advancement of expenses granted by this Article VII to a director or officer will be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (a) the claim for indemnification or advancement of expenses is denied, in whole or in part, (b) a request for indemnification under Section 7.1 is not paid in full by the Corporation within 45 days after request therefor, or (c) if a request for an

advancement of expenses under Section 7.3 is not paid in full by the Corporation within 20 days after a written request has been received by the Corporation. The claimant in such enforcement action, if successful in whole or in part, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, will be entitled to be paid also the expense of prosecuting or defending the claim to the fullest extent permitted by the DGCL. In (x) any suit brought to enforce a right to indemnification hereunder (but not in a suit brought to enforce a right to an advancement of expenses), and (y) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its independent legal counsel, its stockholders or the Board) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its independent legal counsel, its stockholders or the Board) that the claimant has not met such applicable standard of conduct, will be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise is on the Corporation.

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

7.6 Survival of Rights. The rights conferred on any person by this Article VII will continue as to a person who has ceased to be a director or officer and will inure to the benefit of the heirs, executors and administrators of such a person.

7.7 Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the Corporation, upon approval by the Board, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article VII.

7.8 Amendments. Any repeal or modification of this Article VII is only prospective and does not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the subject of any Proceeding for which indemnification or advancement of expenses is sought.

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

7.10 Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, member, trustee, administrator, employee or agent of another corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this Article VII in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this Article VII shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or his or her successors shall be prospective only and shall not limit, eliminate or impair any such right with respect to any Proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

7.11 Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise.

7.12 Certain Definitions. For the purposes of this Article VII, the following definitions apply:

(a) The term "Proceeding" is to be broadly construed and includes, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, legislative or investigative, whether brought by or in the right of the Corporation or otherwise.

(b) The term "expenses" is to be broadly construed and includes, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any Proceeding.

(c) The term the "Corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, stands in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(d) References to "fines" include any excise taxes assessed on a person with respect to an employee benefit plan.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

8.2 Corporate Seal. The Corporation may adopt and may subsequently alter the corporate seal and it may use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

8.3 Maintenance and Inspection of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books and other records. Any such records maintained by the Corporation may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

8.4 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

8.5 Dividends. Subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, dividends on the capital stock of the Corporation may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 3.11 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock or other securities of the Corporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any

such reserve. In the event that the Board declares a dividend on the capital stock of the Corporation pursuant to this Section 8.5, the Board may fix a record date in order that the Corporation may determine the stockholders entitled to receive payment of any dividend, which record date shall be fixed in accordance with Section 2.11(b).

8.6 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL or any successor provision, or other similar emergency condition, as a result of which a quorum of the Board or a standing committee of the Board cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate.

8.7 Electronic Signatures, etc. Any document, including, without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law.

8.8 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

8.9 Construction. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

ARTICLE IX

AMENDMENTS

9.1 Amendments. These Bylaws may be amended, altered, changed or repealed or new Bylaws adopted only in accordance with the Certificate of Incorporation.

ARTICLE X

EXCLUSIVE FORUM

10.1 Exclusive Federal Forum for Corporate Law Matters. The Court of Chancery in the State of Delaware shall be the sole and exclusive forum for certain actions as specified in the Certificate of Incorporation.

10.2 Exclusive Federal Forum for Securities Act Claims. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by applicable law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

10.3 Notice and Consent. To the fullest extent permitted by law, any person or entity holding, owning or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of these Bylaws, including this Article X.

10.4 Severability. If any provision or provisions of this Article X shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article X (including, without limitation, each portion of any paragraph of this Article X containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.

NON-EMPLOYEE DIRECTORS' COMPENSATION POLICY

As Amended August 23, 2023, Effective August 23, 2023

Directors of Sportsman's Warehouse Holdings, Inc., a Delaware corporation (the "Company"), who are not employed by the Company or one of its subsidiaries ("non-employee directors") are entitled to the compensation set forth below for their service as a member of the Company's Board of Directors (the "Board"). The Board has the right to amend this Non-Employee Directors' Compensation Policy (this "Policy") from time to time.

Cash Compensation

Annual Retainer	\$ 85,000
Additional Chair Retainer	\$130,000
Additional Lead Independent Director Retainer	\$ 15,000
Additional Committee Chair Retainers:	
Audit Committee Chair	\$ 30,000
Compensation Committee Chair	\$ 25,000
Nominating and Governance Committee Chair	\$ 25,000

Equity Compensation

Annual Equity Award	\$100,000
Annual Chair Equity Award	\$115,000

Cash Compensation

Each non-employee director will be entitled to a cash retainer while serving on the Board in the amount set forth above (the "Annual Retainer"). A non-employee director who serves as the Chair of the Board will be entitled to an additional cash retainer while serving in that position in the amount set forth above (the "Additional Chair Retainer"). A non-employee director who serves as the Lead Independent Director will be entitled to an additional cash retainer while serving in that position in the amount set forth above (the "Additional Lead Independent Director Retainer"); provided that, unless otherwise provided by the Board, an Additional Lead Independent Director Retainer shall not be paid if a non-employee director is then serving as Chair of the Board. A non-employee director who serves as the Chair of the Audit Committee, the Compensation Committee, or the Nominating and Governance Committee of the Board will be entitled to an additional cash retainer while serving in that position in the applicable amount set forth above (an "Additional Committee Chair Retainer").

The amounts of the Annual Retainer, Additional Chair Retainer, Additional Lead Independent Director Retainer and Additional Committee Chair Retainers reflected above are expressed as annualized amounts. These retainers will be paid in quarterly installments, in advance, with an installment payable promptly following the start of each fiscal quarter; provided that an installment will be pro-rated, based on calendar days, if a non-employee director

commences service (or commences service in the corresponding position, as the case may be) after the start of the particular fiscal quarter.

Equity Awards

On the date of each annual meeting of the Company's stockholders, each non-employee director in office immediately following such meeting will automatically be granted an award of restricted stock units (an "Annual RSU Award") determined by dividing (1) the Annual Equity Award grant value set forth above (or, if a non-employee director is then serving as Chair of the Board, the Annual Chair Equity Award grant value set forth above in the case of the award to the non-employee director then serving as Chair of the Board) by (2) the per-share closing price (in regular trading) of the Company's common stock on The Nasdaq Stock Market on the date of such annual meeting (or the most recent trading day on The Nasdaq Stock Market if such date is not a trading day), rounded down to the nearest whole unit. Each Annual RSU Award will vest in twelve (12) substantially equal installments, subject to the non-employee director's continued service as a director through each vesting date, with the first installment vesting one month following the date of grant and an additional installment vesting on each monthly anniversary of the date of grant thereafter for the next eleven (11) months; provided, however, that the outstanding and unvested portion of the Annual RSU Award will vest in full immediately prior to the first to occur of (a) the first annual meeting of the Company's stockholders for the year following the year of grant of the award should such annual meeting occur before the first annual anniversary of the date of grant or (b) a Change in Control of the Company (as Change in Control is defined in the form of award agreement approved by the Board to evidence such award). In the event that more than one annual meeting of the Company's stockholders occurs during a given fiscal year, automatic Annual RSU Awards will be made only in connection with the first such meeting to occur in that year. If any Annual Meeting is adjourned to a later date, the grant and vesting will be triggered as of the date the Annual Meeting was initially scheduled.

For each new non-employee director appointed or elected to the Board other than on the date of an annual meeting of the Company's stockholders, the Board has discretion to provide that the new non-employee director will be entitled to a pro-rata portion of the Annual RSU Award on such terms and conditions that the Board shall, in its discretion, establish at the time of any such new non-employee director's initial appointment or election to the Board.

Each Annual RSU Award will be made under and subject to the terms and conditions of the Company's 2019 Performance Incentive Plan or any successor equity compensation plan approved by the Company's stockholders and in effect at the time of grant (the "2019 Plan"), and will be evidenced by, and subject to the terms and conditions of, an award agreement in the form approved by the Board to evidence such type of grant pursuant to this Policy (the "Form of Award Agreement"). To the extent then vested, restricted stock units will generally be paid in an equal number of shares of the Company's common stock in accordance with the applicable Form of Award Agreement. Restricted stock unit awards granted under the 2019 Plan are generally forfeited as to the unvested portion of the award upon the non-employee director's termination of service as a director for any reason.

Non-employee directors are entitled to receive dividend equivalents with respect to outstanding and unpaid restricted stock units granted pursuant to this Policy. Dividend equivalents,

if any, are paid in the form of a credit of additional restricted stock units under the 2019 Plan and are subject to the same vesting, payment and other provisions as the underlying restricted stock units (including, without limitation, any deferral election made pursuant to the next section with respect to the underlying restricted stock units).

The foregoing general provisions are, in the case of a particular award, subject to the terms and conditions of the applicable Form of Award Agreement.

Deferral of Settlement of Equity Awards

Unless and until otherwise determined by the Board, as applicable, each non-employee director may elect to defer the delivery of shares in settlement of any Annual RSU Award granted, or any additional restricted stock units granted as dividend equivalents with respect to such Annual RSU Award, pursuant to this Policy that would otherwise be delivered to such non-employee director on or following the date such restricted stock units vest pursuant to the terms of this Policy (the “Deferral Election”). Unless otherwise determined by the Board, for any such Deferral Election to be effective, it must be submitted to the Company’s Chief Financial Officer (or such other individual as the Company designates) (a) on or prior to December 15 of the calendar year immediately prior to the calendar year in which the Annual RSU Award to which the Deferral Election relates is granted, or (b) within 30 days after the applicable non-employee director is first appointed or elected to the Board. Any Deferral Election will be irrevocable, and will be subject to such rules, conditions and procedures as shall be determined by the Board, in its sole discretion, which rules, conditions and procedures shall at all times comply with the requirements of Section 409A, unless otherwise specifically determined by the Board. Deferral Elections shall be made pursuant to a form of deferral election in substantially the form attached hereto as **Exhibit A** or such other form as approved by the Board.

Expense Reimbursement

All non-employee directors are entitled to reimbursement from the Company for their reasonable travel (including airfare and ground transportation), lodging and meal expenses incident to meetings of the Board or committees thereof or in connection with other Board related business. The Company will make reimbursement to a non-employee director promptly following submission by the non-employee director of reasonable written substantiation for the expenses (and, as required for purposes of Internal Revenue Code Section 409A, in all events not later than the end of the calendar year following the calendar year in which the related expense was incurred).

EXHIBIT A

SPORTSMAN’S WAREHOUSE HOLDINGS, INC.

DIRECTORS’ COMPENSATION POLICY

***Restricted Stock Unit Deferral Election Form
For Non-Employee Directors***

Please complete and return this Restricted Stock Unit Deferral Election Form (the “***Election Form***”), as described below, [for existing non-employee directors making elections: on or before December 15 of the calendar year prior to the calendar year in which the Annual RSU Award to which the deferral election relates would be granted] [for new non-employee directors: within 30 days following the date you join the Board] (the “***Submission Deadline***”), to Jeff White, Chief Financial Officer, Sportsman’s Warehouse Holdings, Inc. 1475 West 9000 South, Suite A, West Jordan, Utah 84088.

Neither the provision of this Election Form nor your completion of this Election Form represents a commitment by the Company to grant an Annual RSU Award to you. The grant of an Annual RSU Award remains subject to the terms of the Company’s Director’s Compensation Policy as may be hereinafter amended (the “***Policy***”). Terms not otherwise defined herein shall have the meaning set forth in the Policy or the 2019 Plan, as applicable.

I understand that my Election Form will become effective and irrevocable as of the Submission Deadline; provided that if this Election Form is properly submitted within 30 days following the date I first become eligible to participate in the Policy, it will become effective and irrevocable on the date I submit it.

I. PERSONAL INFORMATION

(Please print)

Participant Name: [] (the “***Participant***”)

II. ANNUAL RSU AWARD DEFERRAL ELECTION

By signing below, I elect to defer settlement in accordance with this Article II of (i) 100% of my Annual RSU Award (if any) that may be granted to me under the 2019 Plan and pursuant to the Policy in the calendar year following the calendar year in which I tender this election (or if I first became eligible to participate in the Policy in the calendar year in which I tender this election, in the calendar year in which I tender this election) and (ii) 100% of any restricted stock units granted to me as dividend equivalents with respect to such Annual RSU Award. If I do not timely submit a properly completed Election Form, then settlement of my Annual RSU Award and any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award will not be deferred, and instead will vest and settle in accordance with the terms of the Policy, the 2019 Plan, and the applicable Form of Award Agreement.

An Annual RSU Award and any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award that are deferred pursuant to this Article II are referred to together as the “**Deferred Award**” in this Election Form. Notwithstanding anything to the contrary in this Election Form, if the applicable Annual RSU Award that I have elected to defer settlement of pursuant to this Article II is granted prior to the Submission Deadline, the number of restricted stock units that shall constitute the Deferred Award will be equal to the product of (i) the total number of restricted stock units subject to such Annual RSU Award at the time of grant *plus* any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award *times* (ii) the Proration Fraction (as defined below), rounded down to the nearest whole restricted stock unit. The remainder of the restricted stock units subject to such Annual RSU Award and the remainder of any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award will not constitute (or otherwise be part of) the Deferred Award. “Proration Fraction” means a fraction, the numerator of which is the number of days remaining in the scheduled vesting period for the Annual RSU Award after the date this Election Form becomes effective and irrevocable and the denominator of which is the total number of days in such vesting period.

By signing below, I elect to have my Deferred Award settled as follows to the extent it becomes vested and nonforfeitable:

1. Subject to the following paragraph, and to the extent my Deferred Award becomes vested and nonforfeitable, my Deferred Award will be settled in a single lump sum installment in whole shares on the earlier of:

(a) immediately prior to the occurrence of a change in the ownership of the Company, a change in the effective control of the Company, or a change in the ownership of a substantial portion of the assets of the Company, all within the meaning of Treasury Regulation Section 1.409A-3; or

(b) within 60 days following the date of my Separation from Service or my death, whichever is earlier.

For the purposes of the foregoing, “**Separation from Service**” means my “separation from service” (within the meaning of Section 409A(2)(A)(i) of the Code and Treasury Regulation Section 1.409A-1(h)) with the Company and all of its Subsidiaries.

2. If a distribution hereunder is triggered because of my Separation from Service and I am a “specified employee” within the meaning of Section 409A of the Code at the time of my Separation from Service, then the distribution that I would otherwise be entitled to receive upon the date of my Separation from Service will not be settled until the date that is 6 months and 1 day following the date of my Separation from Service, unless I die following the date of my Separation from Service, in which case, my distribution will commence as soon as practicable following, and in all events within sixty (60) days after, the date of my death.

III. PARTICIPANT ACKNOWLEDGEMENTS AND SIGNATURE

1. I agree to all of the terms and conditions of this Election Form.
 2. I acknowledge that I have received and read a copy of the 2019 Plan's prospectus and that I am familiar with the terms and provisions of the 2019 Plan.
 3. I agree to the right of the Board to amend or terminate my election under Article II at any time and for any reason, with or without notice; provided that such termination or amendment is performed in compliance with Section 409A (as determined by Company legal counsel in its sole and absolute discretion).
 4. I understand that the obligation of the Company to settle any Deferred Award is unfunded and that no assets of any kind have been segregated in a trust or otherwise set aside to satisfy any obligation under this Election Form. I also understand that any election to defer the settlement of any Annual RSU Award and any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award pursuant to this Election Form will make me only a general, unsecured creditor of the Company.
 5. I understand that any amounts deferred will be taxable as ordinary income in the year settled. Notwithstanding, I agree and understand that the Company does not guarantee in any way whatsoever the tax treatment of any deferrals or payments made under the Policy or this Election Form. I understand that I will be responsible for all taxes and any other costs owed with respect to any deferrals or payments made with respect to my Annual RSU Award and any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award.
 6. If the settlement of any Deferred Award is subject to tax withholding, I understand that the Company will be under no obligation to settle any Deferred Award until such applicable tax withholding obligations are satisfied and that if I fail to satisfy any such tax withholding obligations I will forfeit my right to receive the shares subject to my Deferred Award. If a tax withholding obligation applies, I understand that the Company has the right (but not the obligation) to withhold taxes from my Deferred Award (including pursuant to net share withholding) in any amount and through such procedure as the Company deems necessary or desirable to satisfy any income or other tax obligations incurred with respect to my Annual RSU Award and any restricted stock units granted as dividend equivalents with respect to such Annual RSU Award.
 7. I understand that it is my responsibility to consult with my own tax advisors as to any federal, state, local and other taxes I may owe in connection with the settlement of any Deferred Award.
 8. I understand, acknowledge and agree that the Board has the discretion to make all determinations and decisions regarding any elections set forth on this Election Form.
 9. I understand that this Election Form and the elections made hereunder are intended to comply with the requirements of Section 409A so that none of the Deferred Award issuable will be subject to the tax acceleration and additional penalty taxes imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. If applicable, I understand that I am solely
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responsible for any accelerated income taxes and additional taxes and tax penalties imposed by Section 409A.

10. I also understand that this Election Form and the elections made hereunder will in all respects be subject to the terms and conditions of the Policy, the applicable Form of Award Agreement and the 2019 Plan, as applicable. Should any inconsistency exist between this Election Form, the Policy, the 2019 Plan, the Form of Award Agreement under which an Annual RSU Award was granted or a dividend equivalent was paid, and/or any applicable law, then the provisions of either the applicable law (including, but not limited to, Section 409A) or the 2019 Plan will control, with the 2019 Plan subordinated to the applicable law and the Form of Award Agreement and the Policy subordinated to this Election Form.

By signing this Election Form, I authorize the implementation of the above elections. I understand that my deferral election is irrevocable effective as of the Submission Deadline, or if I properly submit this Election Form within 30 days following the date I first become eligible to participate in the Policy, this Election Form shall be effective and irrevocable on the date I submit it. I further understand that I may not change the Election Form after it becomes effective and irrevocable, except in accordance with the requirements of Section 409A and the procedures specified by the Board.

Signed:

Date: _____

Participant _____

Agreed to and accepted:

Sportsman's Warehouse Holdings, Inc.

By:

Date: _____

IMPORTANT DEADLINE: Please remember that if you wish to make any election set forth on this Election Form, then the properly completed Election Form must be signed by you and returned ON OR BEFORE THE SUBMISSION DEADLINE to Jeff White, Chief Financial Officer, at Sportsman's Warehouse Holdings, Inc. by e-mail to [].***

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
2019 PERFORMANCE INCENTIVE PLAN
DIRECTOR RESTRICTED STOCK UNIT AWARD AGREEMENT (DEFERRED SETTLEMENT)

THIS DIRECTOR RESTRICTED STOCK UNIT AWARD AGREEMENT (DEFERRED SETTLEMENT) (this "Agreement") is dated as of [_____, ____] by and between Sportsman's Warehouse Holdings, Inc., a Delaware corporation (the "Corporation"), and [_____] (the "Director").

W I T N E S S E T H

WHEREAS, pursuant to the Sportsman's Warehouse Holdings, Inc. 2019 Performance Incentive Plan (the "Plan"), the Corporation has granted to the Director effective as of the date hereof (the "Award Date"), a credit of stock units under the Plan (the "Award"), upon the terms and conditions set forth herein, in the Plan and in the Restricted Stock Unit Deferral Election Form For Non-Employee Directors by and between the Director and the Company dated [_____] (the "Election Form").

NOW THEREFORE, in consideration of services rendered and to be rendered by the Director, and the mutual promises made herein and the mutual benefits to be derived therefrom, the parties agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the Plan.

2. **Grant.** Subject to the terms of this Agreement, the Corporation hereby grants to the Director an Award with respect to an aggregate of [_____] restricted stock units (subject to adjustment as provided in Section 7.1 of the Plan) (the "Stock Units"). As used herein, the term "stock unit" shall mean a non-voting unit of measurement which is deemed for bookkeeping purposes to be equivalent to one outstanding share of the Corporation's Common Stock (subject to adjustment as provided in Section 7.1 of the Plan) solely for purposes of the Plan and this Agreement. The Stock Units shall be used solely as a device for the determination of the payment to eventually be made to the Director if such Stock Units vest pursuant to Section 3. The Stock Units shall not be treated as property or as a trust fund of any kind.

3. **Vesting.** Subject to Section 8 below, the Award shall vest and become nonforfeitable in twelve (12) substantially equal installments (subject to adjustment under Section 7.1 of the Plan), with the first installment vesting one month following the Award Date and an additional installment vesting on each monthly anniversary of the Award Date thereafter for the next eleven (11) months; provided, however, that the outstanding and unvested portion of the Award shall vest and become nonforfeitable on the first to occur of (i) immediately prior to the first annual meeting of the Corporation's stockholders that occurs following the Award Date should such annual meeting occur before the one-year anniversary of the Award Date, or (ii) upon (or, if necessary to give effect to such acceleration, immediately prior to) a Change in Control (as such term is defined below). For purposes of this Agreement, "Change in Control" means the occurrence of a change in the ownership of the Corporation, a change in the effective control of the Corporation, or a change in the ownership of a substantial portion of the Corporation's assets, all within the meaning of Treasury Regulation § 1.409A-3.

4. **Continuance of Service Required; No Service Commitment.** The vesting schedule in Section 3 requires continued service through each applicable vesting date as a condition to the vesting of the applicable installment of the Award and the rights and benefits under this Agreement. Service for only a portion of the vesting period, even if a substantial portion, will not entitle the Director to any proportionate vesting or avoid or mitigate a termination of rights and benefits upon or following a termination of services as provided in Section 8 below or under the Plan.

5. **Dividend and Voting Rights.**

(a) **Limitations on Rights Associated with Units.** The Director shall have no rights as a stockholder of the Corporation, no dividend rights (except as expressly provided in Section 5(b) with respect to Dividend Equivalent Rights) and no voting rights, with respect to the Stock Units and any shares of Common Stock underlying or issuable in respect of such Stock Units until such shares of Common Stock are actually issued to and held of record by the

Director. No adjustments will be made for dividends or other rights of a holder for which the record date is prior to the date of issuance of such shares.

(b) **Dividend Equivalent Rights Distributions.** As of any date that the Corporation pays an ordinary cash dividend on its Common Stock, the Corporation shall credit the Director with an additional number of Stock Units equal to (i) the per share cash dividend paid by the Corporation on its Common Stock on such date, multiplied by (ii) the total number of Stock Units (including any dividend equivalents previously credited hereunder) (with such total number adjusted pursuant to Section 7.1 of the Plan) subject to the Award as of the related dividend payment record date, divided by (iii) the fair market value of a share of Common Stock on the date of payment of such dividend. Any Stock Units credited pursuant to the foregoing provisions of this Section 5(b) shall be subject to the same vesting, payment and other terms, conditions and restrictions as the original Stock Units to which they relate. No crediting of Stock Units shall be made pursuant to this Section 5(b) with respect to any Stock Units which, as of such record date, have either been paid pursuant to Section 7 or terminated pursuant to Section 8.

6. Restrictions on Transfer and Other Restrictions. Neither the Award, nor any interest therein or amount or shares payable in respect thereof may be sold, assigned, transferred, pledged or otherwise disposed of, alienated or encumbered, either voluntarily or involuntarily, except as set forth in Section 5.6 of the Plan. The Amended and Restated Articles of Incorporation (the “**Articles**”) and Bylaws of the Corporation, as either of them may be amended from time to time, may provide for additional restrictions and limitations with respect to the Common Stock (including additional restrictions and limitations on the transfer of shares). To the extent that these restrictions and limitations are greater than those set forth in this Agreement, such restrictions and limitations shall apply to the shares of Common Stock issuable with respect to the Award and are incorporated herein by this reference. Such restrictions and limitations are not, however, in lieu of, nor shall they in any way reduce or eliminate, any limitation or restriction on the shares of Common Stock acquired pursuant to the Award imposed under the Plan or this Agreement.

7. Timing and Manner of Payment of Stock Units. Subject to Section 18(b) below, on the earlier of (i) immediately prior to the occurrence of a Change in Control (as defined above) or (ii) within 60 days following the Director’s “separation from service” (within the meaning of Section 409A(2)(A) (i) of the Code and Treasury Regulation Section 1.409A-1(h)) with the Company and all of its Subsidiaries (such separation from service, a “**Separation from Service**”) or the Director’s death, whichever is earlier, the Corporation shall deliver to the Director in a single lump sum distribution a number of shares of Common Stock (either by delivering one or more certificates for such shares or by entering such shares in book entry form, as determined by the Corporation in its discretion) equal to the number of Stock Units subject to this Award that have vested and become nonforfeitable pursuant to Section 3 hereof (or become vested and nonforfeitable in connection with such event, as the case may be), unless such Stock Units terminate on or prior to such date pursuant to Section 8. The Corporation’s obligation to deliver shares of Common Stock or otherwise make payment with respect to vested Stock Units is subject to the condition precedent that the Director or other person entitled under the Plan to receive any shares with respect to the vested Stock Units deliver to the Corporation any representations or other documents or assurances required pursuant to Section 8.1 of the Plan. The Director shall have no further rights with respect to any Stock Units that are paid or that terminate pursuant to Section 8.

8. Effect of Termination of Service. The Director’s Stock Units shall terminate to the extent such units have not become vested on or before the date on which the Director ceases to serve as a member of the Board, regardless of the reason for such separation. If any unvested Stock Units are terminated hereunder, such Stock Units shall automatically terminate and be cancelled as of the date of the Director ceases to serve as a member of the Board without payment of any consideration by the Corporation and without any other action by the Director, or the Director’s beneficiary or personal representative, as the case may be.

9. Adjustments Upon Specified Events. Upon the occurrence of certain events relating to the Corporation’s stock contemplated by Section 7.1 of the Plan (including, without limitation, an extraordinary cash dividend on such stock), the Administrator shall make adjustments in accordance with such section in the number of Stock Units then outstanding and the number and kind of securities that may be issued in respect of the Award. No such adjustment shall be made with respect to any ordinary cash dividend for which dividend equivalents are credited pursuant to Section 5(b).

10. Tax Withholding. Subject to Section 8.1 of the Plan, upon any distribution of shares of Common Stock in respect of the Stock Units, the Corporation shall automatically reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of whole shares, valued at their then fair market value (with the “fair market value” of such shares determined in accordance with the applicable provisions of the Plan), to satisfy any withholding obligations of the Corporation or its Subsidiaries with respect to such distribution of shares at the minimum applicable withholding rates. In the event that the Corporation cannot legally satisfy such withholding obligations by such reduction of shares, or in the event of a cash payment or any other withholding event in respect of the Stock Units, the Corporation (or a Subsidiary) shall be entitled to require a cash payment by or on behalf of the Director and/or to deduct from other compensation payable to the Director any sums required by federal, state or local tax law to be withheld with respect to such distribution or payment.

11. Notices. Any notice to be given under the terms of this Agreement shall be in writing and addressed to the Corporation at its principal office to the attention of the Secretary, and to the Director at the Director’s last address reflected on the Corporation’s records, or at such other address as either party may hereafter designate in writing to the other. Any such notice shall be given only when received, but if the Director is no longer in service to the Corporation, shall be deemed to have been duly given by the Corporation when enclosed in a properly sealed envelope addressed as aforesaid, registered or certified, and deposited (postage and registry or certification fee prepaid) in a post office or branch post office regularly maintained by the United States Government.

12. Plan and Election Form. The Award and all rights of the Director under this Agreement are subject to the terms and conditions of the provisions of the Plan and the Election Form, incorporated herein by reference. The Director agrees to be bound by the terms of the Plan, the Election Form and this Agreement. The Director acknowledges having read and understanding the Plan, the Prospectus for the Plan, the Election Form and this Agreement. Unless otherwise expressly provided in other sections of this Agreement, provisions of the Plan or the Election Form that confer discretionary authority on the Board or the Administrator do not (and shall not be deemed to) create any rights in the Director unless such rights are expressly set forth herein or are otherwise in the sole discretion of the Board or the Administrator so conferred by appropriate action of the Board or the Administrator under the Plan after the date hereof.

13. Entire Agreement. This Agreement, the Plan and the Election Form together constitute the entire agreement and supersede all prior understandings and agreements, written or oral, of the parties hereto with respect to the subject matter hereof. The Plan, the Election Form and this Agreement may be amended pursuant to Section 8.6 of the Plan. Such amendment must be in writing and signed by the Corporation. The Corporation may, however, unilaterally waive any provision hereof in writing to the extent such waiver does not adversely affect the interests of the Director hereunder, but no such waiver shall operate as or be construed to be a subsequent waiver of the same provision or a waiver of any other provision hereof.

14. Limitation on Director’s Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Corporation as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. The Director shall have only the rights of a general unsecured creditor of the Corporation with respect to amounts credited and benefits payable, if any, with respect to the Stock Units, and rights no greater than the right to receive the Common Stock as a general unsecured creditor with respect to Stock Units, as and when payable hereunder.

15. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16. Section Headings. The section headings of this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

17. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to conflict of law principles thereunder.

18. Construction.

(a) It is intended that the terms of the Award will not result in the imposition of any tax liability pursuant to Section 409A of the Code. This Agreement shall be construed and interpreted consistent with that intent.

(b) If the Director is a “specified employee” within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the Director’s Separation from Service, the Director shall not be entitled to any payment or benefit pursuant to Section 7 triggered by such Separation from Service until the earlier of (i) the date which is six (6) months after his or her Separation from Service for any reason other than death, or (ii) the date of the Director’s death. The provisions of this Section 18(b) shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. Any amounts otherwise payable to the Director upon or in the six (6) month period following the Director’s Separation from Service that are not so paid by reason of this Section 18(b) shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the Director’s Separation from Service (or, if earlier, as soon as practicable, and in all events within sixty (60) days, after the date of the Director’s death). Notwithstanding anything to the contrary herein, for purposes of this Agreement, “Separation from Service” shall be interpreted to constitute a “separation from service” within the meaning of Section 409A(2)(A)(i) of the Code and Treasury Regulation Section 1.409A-1(h).

19. Clawback Policy. The Stock Units 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 the Stock Units or any shares of Common Stock or other cash or property received with respect to the Stock Units (including any value received from a disposition of the shares acquired upon payment of the Stock Units).

20. No Advice Regarding Grant. The Director is hereby advised to consult with his or her own tax, legal and/or investment advisors with respect to any advice the Director may determine is needed or appropriate with respect to the Stock Units (including, without limitation, to determine the foreign, state, local, estate and/or gift tax consequences with respect to the Award). Neither the Corporation nor any of its officers, directors, affiliates or advisors makes any representation (except for the terms and conditions expressly set forth in this Award Agreement) or recommendation with respect to the Award. Except for the withholding rights set forth in Section 10 above, the Director is solely responsible for any and all tax liability that may arise with respect to the Award.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Corporation has caused this Agreement to be executed on its behalf by a duly authorized officer and the Director has hereunto set his or her hand as of the date and year first above written.

<p>SPORTSMAN'S WAREHOUSE HOLDINGS, INC., a Delaware corporation</p> <p>By: _____ Print Name: [_____] Its: [_____]</p>	<p>DIRECTOR</p> <p>_____ <i>Signature</i> [___Director's Name___]</p>
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**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joseph P. Schneider, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sportsman's Warehouse Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 7, 2023

/s/ Joseph P. Schneider

Joseph P. Schneider

*Interim President and Interim Chief Executive Officer
(Principal Executive Officer)*

**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER
PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jeff White, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Sportsman's Warehouse Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 7, 2023

/s/ Jeff White

Jeff White
Chief Financial Officer and Secretary
(Principal Financial and Accounting Officer)

CERTIFICATIONS
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED
PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Sportsman's Warehouse Holdings, Inc. (the "Registrant") for the fiscal quarter ended July 29, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Joseph P. Schneider, Interim President and Interim Chief Executive Officer of the Registrant, and Jeff White, Chief Financial Officer and Secretary of the Registrant, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of their knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: September 7, 2023

/s/ Joseph P. Schneider

Joseph P. Schneider

*Interim President and Interim Chief Executive Officer
(Principal Executive Officer)*

Date: September 7, 2023

/s/ Jeff White

Jeff White

*Chief Financial Officer and Secretary
(Principal Financial and Accounting Officer)*

The foregoing certifications are being furnished pursuant to 18 U.S.C. Section 1350. They are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the Registrant, regardless of any general incorporation language in such filing.
