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 September 30, 2024

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: 000-28827

PETMED EXPRESS, INC.
(Exact name of registrant as specified in its charter)

FLORIDA	**65-0680967**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

420 South Congress Avenue, Delray Beach, Florida 33445
(Address of principal executive offices, including zip code)

(561) 526-4444
(Registrant's telephone number, including area code)

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

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, par value $.001 per share	PETS	NASDAQ Global Select Market

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 (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See definition 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 (defined in Rule 12b-2 of the Exchange Act).
Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: 20,663,218 shares of Common Stock, $.001 par value per share, at November 7, 2024.

PART I - FINANCIAL INFORMATION

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

In addition to historical information, certain information in this Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended ("Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended ("Exchange Act"). All statements, other than statements of historical facts, including statements concerning our plans, objectives, goals, beliefs, business strategies, future events, business conditions, our results of operations, financial position and our business outlook, business trends and other information, may be forward-looking statements. You can identify these forward-looking statements by the words "believes," "intends," "expects," “might,” "may," "will," "should," "plans," "projects," "contemplates," "intends," "budgets," “potential,” "predicts," "estimates," "anticipates," “future,” “goal,” and variations of such words or similar expressions. These statements are based on our beliefs, as well as assumptions we have used based upon information currently available to us. Because these statements reflect our current views concerning future events, these statements involve risks, uncertainties, and assumptions, many of which, by their nature, are inherently uncertain and beyond our control. Our expectations, beliefs, estimates and projections are expressed in good faith and we believe there is a reasonable basis for them. However, there can be no assurance that management’s expectations, beliefs, estimates and projections will result or be achieved, and actual future results may differ materially from what is expressed in or indicated by the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A, under the heading “Risk Factors,” in our Annual Report on Form 10-K for the year ended March 31, 2024 (the “2024 Form 10-K”) filed with the Securities and Exchange Commission (“SEC”) on June 14, 2024, and under “Part II, Item 1A., Risk Factors” in this Quarterly Report on Form 10-Q, if and as such risk factors may be updated from time to time in our periodic filings with the SEC. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and a reader, whether investing in our common stock or not, should not place undue reliance on these forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments.

We caution you that the risks, uncertainties and other factors referenced above may not contain all of the risks, uncertainties and other factors that are important to you. In addition, we cannot assure you that we will realize the results, benefits or developments that we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our business in the way expected. There can be no assurance that (i) we have correctly measured or identified all of the factors affecting our business or the extent of these factors’ likely impact, (ii) the available information with respect to these factors on which such analysis is based is complete or accurate, (iii) such analysis is correct, or (iv) our strategy, which is based in part on this analysis, will be successful. All forward-looking statements in this Quarterly Report on Form 10-Q apply only as of the date of this Quarterly Report on Form 10-Q or as of the date they were made or as otherwise specified herein. We assume no obligation to revise or update any forward-looking statements for any reason, except as required by law.

Investors and others should note that we use our websites (https://petmeds.com, https://petcarerx.com and https://www.investors.petmeds.com), as well as social media, press releases, SEC filings, public conference calls and webcasts, as channels of distribution of Company information. The information we post through these channels may be deemed material. Accordingly, investors should monitor these channels, in addition to following our press releases, SEC filings, public conference calls and webcasts. The contents of our websites and social media posts, however, are not incorporated by reference into this Quarterly Report on Form 10-Q. Further, our references to website URLs in this filing are intended to be inactive textual references only.

NOTE REGARDING COMPANY REFERENCES

When used in this Quarterly Report on Form 10-Q, unless otherwise stated or the context otherwise indicates, "PetMed Express," "PetMeds," "PetMed," "the Company," "we," "our," and "us" refers to PetMed Express, Inc. and its direct and indirect wholly owned subsidiaries, taken as a whole.

ITEM 1. FINANCIAL STATEMENTS.

PETMED EXPRESS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except for share and per share amounts)

	September 30, 2024	March 31, 2024
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	$ 52,045	$ 55,296
Accounts receivable, less allowance for credit losses of $27 and $273, respectively	1,620	3,283
Inventories, net	13,092	28,556
Prepaid expenses and other current assets	3,655	6,325
Prepaid income taxes	367	188
Total current assets	70,779	93,648
Noncurrent assets:		
Property and equipment, net	26,204	26,657
Intangible and other assets, net	15,524	16,503
Goodwill	26,658	26,658
Operating lease right-of-use assets	1,188	1,432
Deferred tax assets, net	5,681	4,986
Total noncurrent assets	75,255	76,236
Total assets	$ 146,034	$ 169,884
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 16,951	$ 37,024
Sales tax payable	24,373	25,012
Accrued expenses and other current liabilities	5,412	7,060
Current operating lease liabilities	446	459
Deferred revenue	1,650	2,603
Total current liabilities	48,832	72,158
Operating lease liabilities, net of current lease liabilities	768	995
Total liabilities	49,600	73,153
Commitments and contingencies (Note 7)		
Shareholders' equity:		
Preferred stock, $.001 par value, 5,000,000 shares authorized; 2,500 convertible shares issued and outstanding with a liquidation preference of $4 per share	9	9
Common stock, $.001 par value, 40,000,000 shares authorized; 20,663,218 and 21,148,692 shares issued and outstanding, respectively	21	21
Additional paid-in capital	17,515	25,146
Retained earnings	78,889	71,555
Total shareholders' equity	96,434	96,731
Total liabilities and shareholders' equity	$ 146,034	$ 169,884

See accompanying notes to unaudited condensed consolidated financial statements.

PETMED EXPRESS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except for share and per share amounts) (Unaudited)

	Three Months Ended September 30,		Six Months Ended September 30,	
	2024	**2023**	**2024**	**2023**
Net sales	$ 59,570	$ 70,999	$ 127,522	$ 149,243
Cost of sales	42,259	50,937	92,240	106,655
Gross profit	17,311	20,062	35,282	42,588
Operating expenses:				
General and administrative	10,493	11,962	15,367	27,673
Advertising	4,606	5,512	11,596	12,777
Depreciation and amortization	1,658	1,713	3,379	3,391
Total operating expenses	16,757	19,187	30,342	43,841
Income (loss) from operations	554	875	4,940	(1,253)
Other income:				
Interest income, net	185	151	280	345
Other, net	186	254	417	760
Total other income	371	405	697	1,105
Income (loss) before (benefit) provision for income taxes	925	1,280	5,637	(148)
(Benefit) provision for income taxes	(1,401)	565	(443)	273
Net income (loss)	$ 2,326	$ 715	$ 6,080	$ (421)
Net income (loss) per common share:				
Basic	$ 0.11	$ 0.04	$ 0.30	$ (0.02)
Diluted	$ 0.11	$ 0.03	$ 0.29	$ (0.02)
Weighted average number of common shares outstanding:				
Basic	20,597,807	20,382,979	20,555,544	20,357,752
Diluted	20,938,817	20,780,455	20,940,161	20,357,752
Cash dividends declared per common share	$ —	$ 0.30	$ —	$ 0.60

See accompanying notes to unaudited condensed consolidated financial statements.

PETMED EXPRESS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands) (Unaudited)

	Six Months Ended September 30,	
	2024	**2023**
Cash flows from operating activities:		
Net income (loss)	$ 6,080	$ (421)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:		
Depreciation and amortization	3,379	3,391
Share based compensation	(7,631)	3,489
Deferred income taxes	(696)	(146)
Bad debt expense	176	36
(Increase) decrease in operating assets and increase (decrease) in operating liabilities:		
Accounts receivable	1,488	(345)
Inventories, net	15,464	3,237
Prepaid income taxes	(179)	426
Prepaid expenses and other current assets	2,670	(3,516)
Operating lease right-of-use assets, net	245	394
Accounts payable	(20,071)	(5,542)
Sales tax payable	(639)	(1,278)
Accrued expenses and other current liabilities	(221)	(136)
Lease liabilities	(240)	(383)
Deferred revenue	(953)	579
Net cash (used in) provided by operating activities	(1,128)	(215)
Cash flows from investing activities:		
Acquisition of PetCareRx, net of cash acquired	–	(35,859)
Purchases of property and equipment	(1,948)	(2,137)
Net cash used in investing activities	(1,948)	(37,996)
Cash flows from financing activities:		
Dividends paid	(175)	(12,404)
Net cash used in financing activities	(175)	(12,404)
Net decrease in cash and cash equivalents	(3,251)	(50,615)
Cash and cash equivalents, at beginning of period	55,296	104,086
Cash and cash equivalents, at end of period	$ 52,045	$ 53,471
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 466	$ –
Dividends payable in accrued expenses and other current liabilities	$ 39	$ 1,513

See accompanying notes to unaudited condensed consolidated financial statements.

PETMED EXPRESS, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1: Summary of Significant Accounting Policies

Organization

PetMed Express, Inc. and subsidiaries, d/b/a PetMeds® (collectively, the "Company"), is a leading nationwide direct-to-consumer pet pharmacy and online provider of prescription and non-prescription medications, food, supplements, supplies and vet services for dogs, cats, and horses. The Company markets and sells directly to consumers through its websites, toll-free numbers, and mobile application. The Company offers consumers an attractive alternative for obtaining pet medications, foods, and supplies in terms of convenience, price, speed of delivery, and valued customer service.

Founded in 1996, the Company's executive headquarters offices are currently located in Delray Beach, Florida. The Company's fiscal year end is March 31, and references herein to fiscal 2025 or fiscal 2024 refer to the Company's fiscal years ending March 31, 2025 and 2024, respectively.

Basis of Presentation and Consolidation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with the instructions to Form 10-Q and, therefore, do not include all of the information and footnotes required by accounting principles generally accepted in the United States ("GAAP") for complete financial statements. In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments, consisting of normal recurring accruals, necessary to present fairly the financial position of the Company at September 30, 2024, the Statements of Operations for the three and six months ended September 30, 2024 and 2023, and Cash Flows for the six months ended September 30, 2024 and 2023. The results of operations for the three and six months ended September 30, 2024 are not necessarily indicative of the operating results expected for the fiscal year ending March 31, 2025. These financial statements should be read in conjunction with the audited financial statements and notes thereto contained in our 2024 Form 10-K. The unaudited condensed consolidated financial statements include the accounts of PetMed Express, Inc. and its direct and indirect wholly owned subsidiaries. All significant intercompany transactions have been eliminated in consolidation.

Use of Estimates

The preparation of unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the unaudited condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially from those estimates.

Fair Value of Financial Instruments

The carrying amounts of the Company's cash and cash equivalents, accounts receivable, and accounts payable approximate fair value due to the short-term nature of these instruments.

Deferred Revenue

Deferred revenue is recorded when payments are received or due in advance of performing our service obligations and revenue is recognized over the service period. Deferred revenue represents prepayments of PetPlus memberships with PetCareRx, Inc. ("PetCareRx"). The total deferred revenue as of September 30, 2024 and March 31, 2024 for these memberships was $1.6 million and $2.6 million, respectively. Memberships provide discounted pricing, free standard shipping, veterinary telehealth services and local Caremark Pharmacy prescription pickup. The membership fee is an annual charge and automatically renews one year from the initial enrollment date. The Company generally recognizes the revenue ratably over the term of the membership.

Long-lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Recoverability of assets is measured by a comparison of the carrying amount of the asset to the undiscounted cash flows expected to be generated from the asset. Management determined that no impairment of long-lived assets existed as of September 30, 2024.

Goodwill and Intangible Assets

Goodwill represents the excess of the purchase price over the fair value of net assets acquired in a business combination. The Company is required to assess goodwill and other indefinite-lived intangible assets for impairment annually, or more frequently if circumstances indicate impairment may have occurred. The Company performs its annual impairment assessment in the fourth quarter of each year. The Company has concluded that it has one reporting unit and has assigned the entire balance of goodwill to this reporting unit. If the carrying value of an indefinite-lived intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

The Company performed a goodwill impairment test as of September 30, 2024 initially using a qualitative assessment. The Company considered its share price decreases as well as the decrease in its quarterly sales from the three months ended June 30, 2024 to be indicative of a risk that the carrying amount of goodwill may not be recoverable. Based on these and other qualitative factors, the Company determined a triggering event occurred that required an interim goodwill impairment test. The Company performed a quantitative impairment test and valuation to identify the fair value of its reporting unit.

Based on the quantitative assessment, the Company concluded that goodwill was not impaired because the estimated fair value of the reporting unit exceeded its carrying value by approximately $44.8 million. The Company estimated the fair value of its reporting unit using a combination of a discounted cash flow and public company market approach with a 70% and 30% weighting, respectively. A key assumption under the cash flow approach was a 30% weighted average cost of capital. A key assumption under the public company market approach was a 10% control premium.

The Company's other indefinite-lived intangible assets are primarily made up of a trade name which was evaluated for impairment using a qualitative assessment and concluded it was not more likely than not that the other indefinite-lived assets were impaired as of September 30, 2024.

Recent Accounting Pronouncements

The Company does not believe that any recently issued, but not yet effective, accounting standards, if currently adopted, would have a material effect on the Company's consolidated financial position, results of operations, or cash flows.

In November 2023, the Financial Accounting Standards Board (“FASB”) issued Update 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures". This Update applies to all public entities that are required to report segment information in accordance with Topic 280. The amendments in this Update revise reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. The amendments in this Update do not change how a public entity identifies its operating segments, aggregates those operating segments, or applies the quantitative thresholds to determine its reportable segments. The Update effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Update should be applied retrospectively to all prior periods presented in the financial statements. The Company is currently evaluating the impact of adopting this Update.

In December 2023, the FASB issued Update 2023-09, "Income Taxes (Topic 740): Improvements to Income Tax Disclosures". This Update applies to all entities that are subject to Topic 740. The amendments in this Update revise income tax disclosures primarily related to the rate reconciliation and income taxes paid information as well as the effectiveness of certain other income tax disclosures. The Update is effective for annual periods beginning after December 15, 2024. Early adoption is permitted. The Update should be applied on a prospective basis, but retrospective application is permitted. The Company is currently evaluating the impact of adopting this Update.

Note 2: Revenue Recognition

In accordance with ASC Topic 606 *("Revenue from Contracts with Customers")*, the Company generates revenue by selling prescription and non-prescription pet medication products, pet food, supplements, supplies, membership fees, and veterinary services. Certain pet supplies offered on the Company’s websites are drop shipped to customers. The Company considers itself the principal in the arrangement because the Company controls the specified good before it is transferred to the customer. Revenue contracts contain one performance obligation, which is delivery of the product. Customer care and support is deemed not to be a material right to the contract. The transaction price is adjusted at the date of sale for any applicable sales discounts and an estimate of product returns, which are based on historical patterns, however this is not considered a key judgment. Revenue is recognized when control transfers to the customer at the point in time at which the

shipment of the product occurs. This key judgment is determined as the shipping point, which represents the point in time when the Company has a present right to payment, title has transferred to the customer, and the customer has assumed the risks and rewards of ownership. Virtually all the Company's sales are paid by credit cards and the Company usually receives the cash settlement in two to three banking days. Credit card sales minimize the accounts receivable balances relative to sales.

Outbound shipping and handling fees are an accounting policy election and are included in sales as the Company considers itself the principal in the arrangement given its responsibility for supplier selection and discretion over pricing. Shipping costs associated with outbound freight after control over a product has transferred to a customer are an accounting policy election and are accounted for as fulfillment costs and are included in cost of sales.

Membership fees represent the amounts recognized from two membership models. The first is the PetPlus membership for PetCareRx customers, the second is a partner membership, which allows employees in-network to join PetPlus membership program through their employers. These memberships provide discounted pricing, free standard shipping, veterinary telehealth services and local Caremark Pharmacy prescription pickup which represent a single stand-ready performance obligation to provide these benefits. The PetPlus membership fee is an upfront annual charge and automatically renews one year from the initial enrollment date. The Company recognizes the revenue ratably over the term of the PetPlus membership which is generally one year. As shown in the following table, under the PetPlus program, the Company recognized $1.2 million and $2.7 million of previously deferred annual membership fees in the three and six months ended September 30, 2024, and had $1.6 million of deferred revenue as of the quarter ended September 30, 2024.

	(amounts in millions)
Deferred revenue, March 31, 2024	$ 2.6
Deferred memberships fees and others received	1.1
Deferred membership fee revenue and others recognized	(1.5)
Deferred revenue, June 30, 2024	2.1
Deferred memberships fees and others received	0.7
Deferred membership fee revenue and others recognized	(1.2)
Deferred revenue, September 30, 2024	$ 1.6

In addition to annual membership fees earned under the PetPlus program, the Company also earns membership fees on a month-to-month basis under its PetCareRx partner membership program. For the three and six months ended September 30, 2024, membership fees earned under the partner program were $0.9 million and $1.8 million, respectively. For the three and six months ended September 30, 2023, membership fees earned under the partner program were $0.7 million and $1.3 million, respectively.

The Company has no material contract asset or liability balances at September 30, 2024 and March 31, 2024, respectively.

The Company disaggregates sales in the following categories: reorder sales vs new order sales vs membership fees. The following table illustrates sales in those categories:

	Three Months Ended September 30,				Increase (Decrease)	
Revenue (in thousands)	**2024**	**%**	**2023**	**%**	**$**	**%**
Reorder sales	$ 50,052	84.0 %	$ 58,017	81.7 %	$ (7,965)	(13.7)%
New order sales	7,449	12.5 %	10,558	14.9 %	(3,109)	(29.4)%
Membership fees	2,069	3.5 %	2,424	3.4 %	(355)	(14.6)%
Total net sales	$ 59,570	100.0 %	$ 70,999	100.0 %	$ (11,429)	(16.1)%

Revenue (in thousands)	Six Months Ended September 30, 2024	%	2023	%	Increase (Decrease) $	%
Reorder sales	$ 104,291	81.8 %	$ 120,182	80.6 %	$ (15,891)	(13.2)%
New order sales	18,838	14.8 %	24,251	16.2 %	(5,413)	(22.3)%
Membership fees	4,393	3.4 %	4,810	3.2 %	(417)	(8.7)%
Total net sales	$ 127,522	100.0 %	$ 149,243	100.0 %	$ (21,721)	(14.6)%

The Company changed the definition of a new order sale on July 1, 2024, to include sales from customers who have not previously ordered from the Company over the past twelve months compared to the prior definition which was thirty-six months. The reorder and new order sales amounts for the three and six months ended September 30, 2024, and the reorder and new order sales amounts for the three and six months ended September 30, 2023 reflect this new customer definition change.

Under the previous definition of a new customer, reorder and new order sales were $62.4 million and $6.2 million, respectively, for the three months ended September 30, 2023. Under the previous definition of a new customer, reorder and new order sales were $130.4 million and $14.0 million, respectively, for the six months ended September 30, 2023.

Note 3: Net Income (Loss) Per Share

In accordance with the provisions of ASC Topic 260 ("*Earnings Per Share*") basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during the period. Diluted net income per common share includes the dilutive effect of potential restricted and performance stock and the effects of the potential conversion of preferred shares, calculated using the treasury stock method. Unvested restricted stock and convertible preferred shares issued by the Company represent the only dilutive effect reflected in the diluted weighted average shares outstanding.

The following is a reconciliation of the numerators and denominators of the basic and diluted net income (loss) per share computations for the periods presented (in thousands, except for share and per share amounts):

	Three Months Ended September 30,		Six Months Ended September 30,	
	2024	2023	2024	2023
Net income (loss) (numerator):				
Net income (loss)	$ 2,326	$ 715	$ 6,080	$ (421)
Shares (denominator):				
Weighted average number of common shares outstanding used in basic computation	20,597,807	20,382,979	20,555,544	20,357,752
Common shares issuable upon vesting of restricted stock	330,885	387,351	374,492	—
Common shares issuable upon conversion of preferred shares	10,125	10,125	10,125	—
Shares used in diluted computation	20,938,817	20,780,455	20,940,161	20,357,752
Net income (loss) per common share:				
Basic	$ 0.11	$ 0.04	$ 0.30	$ (0.02)
Diluted	$ 0.11	$ 0.03	$ 0.29	$ (0.02)

For the three months ended September 30, 2024 and 2023, 661,440 and 435,558 shares issuable upon vesting of restricted stock and zero and zero shares issuable upon conversion of preferred shares, respectively, were excluded from the computation of diluted net income (loss) per common share, as their inclusion would have had an anti-dilutive effect on diluted net income (loss) per common share.

For the six months ended September 30, 2024 and 2023, 504,930 and 842,714 shares issuable upon vesting of restricted stock and zero and 10,125 shares issuable upon conversion of preferred shares, respectively, were excluded from the computation of diluted net income (loss) per common share, as their inclusion would have had an anti-dilutive effect on diluted net income (loss) per common share.

Note 4: Stock-Based Compensation

The Company records compensation expense associated with restricted stock in accordance with ASC Topic 718 (“*Compensation - Stock Compensation*”). The Company had 426,380 common shares issued under the 2016 Employee Equity Compensation Restricted Stock Plan (the “2016 Employee Plan”) (which 2016 Employee Plan was succeeded by the 2022 Employee Plan in April 2023, and no further awards will be granted under the 2016 Employee Plan), 59,074 common shares issued under the 2022 Employee Equity Compensation Plan (as amended) (the “2022 Employee Plan”), and 257,567 common shares issued under the 2015 Outside Director Equity Compensation Plan (as amended) (the “2015 Director Plan”). At September 30, 2024, all shares were issued with service-based vesting conditions with the exception of 2,000 performance stock units which vested on July 1, 2024. The Company records stock-based compensation expense for these awards on a straight-line basis over the requisite service period. The Company reverses stock-based compensation expense previously recorded upon forfeiture of unvested awards except for the performance restricted shares with a market condition issued to the former Chief Executive Officer (“CEO”) and performance stock units (“PSUs”) with a market condition issued to the former Chief Financial Officer (“CFO”) as described in the following paragraphs. For the three months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense related to restricted stock awards of $0.6 million and $1.7 million, respectively. For the six months ended September 30, 2024 and 2023, the Company recorded a (reversal) and stock-based compensation expense related to restricted stock awards of $(7.6) million and $3.5 million, respectively.

In June 2023, the Board of Directors amended and restated the 2015 Director Plan and the 2022 Employee Plan (collectively, the "Plans") to include the ability to grant restricted stock units ("RSUs") and performance stock units

("PSUs") under the Plans. The amendments and restatement of the Plans did not increase the maximum number of shares of common stock that could be awarded under the Plans. At September 30, 2024, the Company had 43,000 RSUs outstanding under the 2024 Omnibus Incentive Plan (the "2024 Omnibus Plan"), 290,000 RSUs outstanding under the 2024 Inducement Incentive Plan (the "2024 Inducement Plan"), 608,219 RSUs outstanding under the 2022 Employee Plan and 22,316 RSUs outstanding under the 2015 Director Plan.

In August 2021, the Company issued 90,000 shares of restricted stock and 510,000 performance restricted shares with a market condition to the Company's former CEO, in accordance with the former CEO's employment agreement, under the 2016 Employee Plan. In April 2024, the Company and former CEO entered into a Transition and Separation Agreement pursuant to which the Company cancelled the 510,000 performance restricted shares and accelerated vesting on 30,000 remaining unvested restricted shares which otherwise would not have vested. Cancellation of the 510,000 shares resulted in an $8.8 million reversal of compensation expense, partially offset by $0.1 million of compensation expense from the accelerated vesting of the 30,000 shares in the six months ended September 30, 2024.

On April 29, 2024, the Company appointed a new CEO, and in conjunction with her new employment agreement, she received a grant of 483,092 RSUs under the Company's 2022 Employee Equity Compensation Plan for a number of RSUs equal to $2.0 million divided by the closing price of the Company's common stock on the Nasdaq Stock Market on the date of grant, subject to a $4.00 minimum stock price. Such RSUs will vest in one-third increments on each of the first three anniversaries of the date of grant so long as the CEO continues to be employed by the Company on each vesting date, and such RSUs will otherwise contain the standard provisions for RSU grants by the Company.

In August 2022, the Company issued 13,000 restricted shares and 3,000 performance restricted shares to the Company's former CFO, in accordance with the CFO's employment agreement, under the 2016 Employee Plan. One-third of the restricted shares were scheduled to vest on each of the first three anniversaries of the date of grant, subject to the CFO's continued employment with the Company through the applicable vesting date, with any unvested RSUs being forfeited upon the CFO ceasing to be an employee of the Company. The performance restricted shares were based on the attainment of performance criteria equally weighted between adjusted EBITDA and revenue, and on June 8, 2023 the Company determined that the performance criteria were not attained over the applicable performance period and the performance restricted shares were cancelled.

In June 2023, the Company granted the Company's former CFO 11,750 RSUs under the 2022 Employee Plan, of which 3,750 RSUs were awarded in recognition of the CFO's contributions during fiscal year 2023 and the remaining 8,000 awarded as a part of the equity award cycle for fiscal year 2024. One-third of the RSUs were scheduled to vest on each of the first three anniversaries of the date of grant, subject to the CFO's continued employment with the Company through the applicable vesting date, with any unvested RSUs being forfeited upon the former CFO ceasing to be an employee of the Company. Also in June 2023, the former CFO was awarded 8,000 PSUs with a market condition.

On May 16, 2024, the Company granted the former CFO 74,850 RSUs of which 14,970 would vest on June 30, 2024, 22,455 would vest August 31, 2024 and 37,425 would vest on August 31, 2025. On May 31, 2024, the Company and CFO entered into a Transition and Separation Agreement pursuant to which the former CFO agreed to leave the Company following a transition period. Upon the completion of the transition period and contingent on the former CFO's complying with the terms of the Agreement, the Company accelerated the vesting of all unvested restricted shares and RSUs that were originally scheduled to vest on or before August 3, 2025. Under the Agreement, PSUs with a market condition were cancelled. Acceleration and cancellation of the former CFO's restricted shares, RSUs and PSUs resulted in net additional compensation expense of $0.2 million in the three months ended June 30, 2024.

On August 8, 2024, the Company adopted the 2024 Omnibus Plan pursuant to which the Company reserved 850,000 shares of common stock, par value $.001 per share, of the Company's common stock for the issuance of equity awards granted.

On September 27, 2024, the Company adopted the 2024 Inducement Plan pursuant to which the Company reserved 350,000 shares of common stock, par value $.001 per share, of the Company's common stock (subject to the adjustment provisions of the Inducement Plan) for the issuance of equity awards granted under the Inducement Plan.

On September 27, 2024, the new CFO received a grant of 250,000 RSUs under the Company's 2024 Inducement Plan for a number of RSUs equal to $1.0 million divided by the closing price of the Company's common stock on the Nasdaq Stock Market on the date of grant, subject to a $4.00 minimum stock price. Such RSUs will vest in one-third increments on each of the first three anniversaries of the date of grant so long as the CFO continues to be employed by the Company on each vesting date, and such RSUs will otherwise contain the standard provisions for RSU grants by the Company.

All stock-based compensation expense is recognized as a payroll-related expense and it is included within the general and administrative expenses line item within the Company's unaudited Condensed Consolidated Statements of Operations, and the offset is included in the additional paid-in capital line item of the Company's unaudited Condensed Consolidated Balance Sheets.

Restricted Stock Awards

The fair value assigned to restricted stock awards ("RSAs") is the market price of the Company's stock at the grant date. The vesting period ranges from one to three years. Restricted stock award activity under the 2016 Employee Plan, 2022 Employee Plan, and 2015 Director Plan was as follows:

	2015 Director Plan	2016 Employee Plan	2022 Employee Plan	Total	Weighted-Average Grant Date Fair Value
Non-vested restricted stock outstanding at March 31, 2024	23,707	605,343	74,076	703,126	$ 19.39
Granted and issued	–	–	–	–	$ –
Vested	(13,666)	(59,256)	(46,742)	(119,664)	$ 22.08
Forfeited	–	(530,880)	(23,334)	(554,214)	$ 18.72
Balance at September 30, 2024	10,041	15,207	4,000	29,248	$ 21.05

At September 30, 2024 and 2023, there were 29,248 and 725,529 RSAs subject to restriction and forfeiture outstanding, respectively. For the three months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense related to RSAs of $0.2 million and $1.6 million, respectively. For the six months ended September 30, 2024 and 2023, the Company recorded a (reversal) stock-based compensation expense related to RSAs of $(8.3) million and $3.4 million, respectively.

Restricted Stock Units

The Company first granted RSUs in the year ended March 31, 2024. The fair value assigned to RSUs is the market price of the Company's stock on the grant date. The vesting period for employees and members of the Board of Directors generally ranges from one to three years. For the six months ended September 30, 2024, RSU activity under the Plans was as follows:

	RSUs	Weighted-Average Grant Date Fair Value Per RSU
Balance at March 31, 2024	85,080	$ 12.75
Granted	995,258	$ 4.01
Vested and issued	(66,739)	$ 8.38
Forfeited	(50,064)	$ 6.50
Balance at September 30, 2024	963,535	$ 4.35

The total grant-date fair value of RSUs granted during the three months ended September 30, 2024 and 2023 was $1.2 million and $0.9 million, respectively. The total grant-date fair value of RSUs granted during the six months ended September 30, 2024 and 2023 was $4.0 million and $1.1 million, respectively. For the three months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense related to RSUs of $0.4 million and $0.1 million, respectively. For the six months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense related to RSUs of $0.7 million and $0.1 million, respectively.

Performance Stock Units

The fair value assigned to PSUs is determined using the market price of the Company's stock on the grant date for awards with a performance condition, and by using a Monte Carlo simulation for awards with a market condition. PSUs with a performance condition generally vest over one year. PSUs with a market condition generally vest over three years. Stock-based compensation expense associated with PSUs with a performance condition are re-assessed each reporting

period based upon the estimated performance attainment on the reporting date until the performance conditions are met. The ultimate number of shares of common stock that are issued to an employee is the result of the actual performance of the Company or individual at the end of the performance period compared to the performance targets.

PSU activity under the Plans was as follows:

	PSUs		Weighted-Average Grant Date Fair Value Per PSU
Balance at March 31, 2024	12,000	$	10.48
Granted	–	$	–
Vested and issued	(2,000)	$	13.95
Forfeited	(10,000)	$	9.79
Performance adjustment	–	$	–
Balance at September 30, 2024	–	$	–

In the six months ended September 30, 2024, 10,000 PSUs were forfeited. The total grant-date fair value of PSUs granted during the six months ended September 30, 2024 and 2023 was zero and $0.1 million, respectively. There were no PSU's granted in the three months ended September 30, 2024 and 2023. For the three months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense, net of forfeitures, related to PSUs of zero and $20 thousand, respectively. For the six months ended September 30, 2024 and 2023, the Company recorded stock-based compensation expense, net of forfeitures, related to PSUs of $(36) thousand and $24 thousand, respectively.

Note 5: Fair Value

The Company carries cash and cash equivalents at fair value in the unaudited Condensed Consolidated Balance Sheets. Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. ASC Topic 820 ("*Fair Value Measurement*") establishes a three-tier fair value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

Level 1 - Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
Level 2 - Include other inputs that are directly or indirectly observable in the marketplace.
Level 3 - Unobservable inputs which are supported by little or no market activity.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. At September 30, 2024 and March 31, 2024, the Company had invested the majority of its $52.0 million and $55.3 million cash and cash equivalents balance in money market funds which are classified within Level 1.

Note 6: Intangible and Other Assets, Net

Intangible assets and other assets, net consisted of the following (in thousands):

	Useful Life	Gross Value	Accumulated Amortization	Net Carrying Value	Weighted Average Remaining Useful Life (Years)
September 30, 2024					
Intangible Assets					
Toll-free telephone number	Indefinite	$ 375	$ –	$ 375	Indefinite
Internet domain names	Indefinite	485	–	485	Indefinite
Trade Names - PetCareRx	Indefinite	2,600	–	2,600	Indefinite
Customer Relationships -PetCareRx	7 years	6,700	(1,436)	5,264	5.5 years
Developed Technology - PetCareRx	3 years	3,000	(1,500)	1,500	1.5 years
		$ 13,160	$ (2,936)	$ 10,224	
Other Assets					
Initial minority interest investment in Vetster	N/A	5,300	–	5,300	N/A
Balance September 30, 2024		$ 18,460	$ (2,936)	$ 15,524	
March 31, 2024					
Intangible Assets					
Toll-free telephone number	Indefinite	$ 375	$ –	$ 375	Indefinite
Internet domain names	Indefinite	485	–	485	Indefinite
Trade Names - PetCareRx	Indefinite	2,600		2,600	Indefinite
Customer Relationships -PetCareRx	7 years	6,700	(957)	$ 5,743	6 years
Developed Technology - PetCareRx	3 years	3,000	(1,000)	$ 2,000	2 years
		$ 13,160	$ (1,957)	$ 11,203	
Other Assets					
Initial minority interest investment in Vetster	N/A	5,300	–	5,300	N/A
Balance March 31, 2024		$ 18,460	$ (1,957)	$ 16,503	

Amortization expense for intangible assets was $0.5 million and $0.5 million for the three months ended September 30, 2024 and 2023, respectively. Amortization expense for intangible assets was $1.0 million and $1.0 million for the six months ended September 30, 2024 and 2023, respectively. The indefinite life intangibles are not being amortized and are subject to an annual review for impairment in accordance with the ASC Topic 350 ("*Goodwill and Other Intangible Assets*").

On April 19, 2022, the Company engaged in a three-year partnership agreement with Vetster Inc. ("Vetster"), a Canadian veterinary telehealth company. The Company also purchased a 5% minority interest in Vetster in the amount of $5.0 million and received warrants for additional equity in Vetster, which are tied to future performance milestones. Under the terms of the agreement, Vetster became the exclusive provider of telehealth and telemedicine services to the Company. The minority interest investment is being valued on the cost basis and the investment will be evaluated periodically for any impairment. On October 3, 2023, the Company purchased additional shares in Vetster in the amount of $0.3 million. This increases the minority interest investment to $5.3 million. Following this round, the Company's minority ownership changed to approximately 4.8% of Vetster's outstanding shares.

Note 7: Commitments and Contingencies

Legal Matters and Routine Proceedings

On April 18, 2024, Plaintiff Timothy Fitchett ("Plaintiff") filed an action against the Company in the Court of Common Pleas of Allegheny County, Pennsylvania, on behalf of himself and purportedly on behalf of a class of others

similarly situated. Plaintiff alleges that the Company violated Pennsylvania's Unfair Trade Practices and Consumer Protection Law by representing "reg." prices for products which the Company allegedly never charged for those products. On May 13, 2024, the Company removed the matter to the U.S. District Court for the Western District of Pennsylvania in Pittsburgh. The company successfully opposed the Plaintiff's motion to remand the case back to the Court of Common Pleas. On the face of the Complaint, Plaintiff is seeking damages for himself in the amount of the allegedly illusory discounts he allegedly believed he was receiving when purchasing products from the Company or, in the alternative, a complete refund of amounts he paid to the Company, and he is also seeking a liability determination for members of the proposed class. The Company denies liability in this matter and intends to defend the action accordingly, and the Company cannot determine materiality or estimate a range of potential liability, if any, at this time if the Company were determined to be liable.

The Company may from time to time be involved in various other claims and lawsuits in the ordinary course of business, including claims related to products, product warranties, contracts, employment, intellectual property, consumer protection, pharmacy and other regulatory matters. The Company has settled complaints that had been filed with various states' pharmacy boards in the past. There can be no assurances made that other states will not attempt to take similar actions against the Company in the future. The Company also intends to vigorously defend its trade or service marks. There can be no assurance that the Company will be successful in protecting its trade or service marks. Legal costs related to the above matters are expensed as incurred. From time to time, the Company may be involved in and subject to disputes and legal proceedings, as well as demands, claims and threatened litigation that arise in the ordinary course of its business. These proceedings may include allegations involving business practices, infringement of intellectual property, employment or other matters. The ultimate outcome of any legal proceeding is often uncertain, there can be no assurance that the Company will be successful in any legal proceeding, and unfavorable outcomes could have a negative impact on our results of operations and financial condition. In accordance with ASC Topic 450-20 ("*Loss Contingencies*"), the Company records a liability in its financial statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. The Company reviews the status of each significant matter each accounting period as additional information is known and adjusts the loss provision when appropriate. If a matter is both probable to result in a liability and the amounts of loss can be reasonably estimated, the Company estimates and discloses the possible loss or range of loss to the extent necessary to make the financial statements not misleading. If the loss is not probable and cannot be reasonably estimated, a liability is not recorded in the Company's financial statements. Gain contingencies are not recorded until they are realized. Legal costs related to any legal matters are expensed as incurred.

Note 8: Changes in Shareholders' Equity:

Changes in Shareholders' Equity for the three and six months ended September 30, 2024 is summarized below (in thousands):

	Common Stock	Additional Paid-In Capital	Retained Earnings
Beginning balance at March 31, 2024:	$ 21	$ 25,146	$ 71,555
Stock based compensation (reversal)	—	(8,204)	—
Dividends forfeited	—	—	1,250
Net income	—	—	3,754
Ending balance at June 30, 2024:	$ 21	$ 16,942	$ 76,559
Stock based compensation expense	—	573	—
Dividends forfeited	—	—	4
Net income	—	—	2,326
Ending balance at September 30, 2024:	$ 21	$ 17,515	$ 78,889

Changes in Shareholders' Equity for the three and six months ended ended September 30, 2023 is summarized below (in thousands):

	Common Stock	Additional Paid-In Capital	Retained Earnings
Beginning balance at March 31, 2023:	$ 21	$ 18,277	$ 91,659
Stock based compensation expense	—	1,760	—
Dividends declared	—	—	(6,346)
Net loss	—	—	(1,136)
Ending balance at June 30, 2023:	$ 21	$ 20,037	$ 84,177
Stock based compensation expense	—	1,728	—
Dividends declared	—	—	(6,308)
Net income	—	—	715
Ending balance at September 30, 2023:	$ 21	$ 21,765	$ 78,584

There were no shares of common stock that were purchased or retired in the six months ended September 30, 2024 or 2023.

Note 9: Income Taxes

For the three months ended September 30, 2024 and 2023, the Company recorded an income tax benefit of approximately $1.4 million and an income tax provision of approximately $0.6 million, respectively, and for the six months ended September 30, 2024 and 2023, the Company recorded an income tax benefit of $0.4 million and an income tax provision of $0.3 million, respectively. The decrease in the income tax provision for the three and six months ended September 30, 2024 is related to the cancellation of the former CEO's performance stock units resulting in additional $8.7 million of increased income during the year. The effective tax rate for the three months ended September 30, 2024 was approximately (151.5)%, compared to approximately 44.1% for the three months ended September 30, 2023, and the effective tax rate for the six months ended September 30, 2024 was approximately (7.9)%, compared to approximately (184.5)% for the six months ended September 30, 2023 . The projected full-year effective tax rate used for purposes of the income tax provision for the three and six months ended September 30, 2024 reflects the $1.8 million impact of a favorable permanent difference associated with the cancellation of the former CEO's performance restricted shares. No tax benefit was recorded for the original compensation expense due to expected limitation under Internal Revenue Code Section 162 (m) and therefore, there is no tax benefit to reverse upon cancellation of the stock. The impact of this favorable permanent difference is partially offset by the impacts of stock compensation recognized for book and tax purposes.

Under Internal Revenue Code Section 382, if a corporation undergoes an "ownership change", the corporation's ability to use its pre-change net operating loss and tax credit carryforwards to offset its post-change income and tax liabilities may be limited. Generally, an ownership change occurs when the equity ownership of one or more stockholders or groups of stockholders who owns at least 5% of a corporation's stock increases its ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). On April 3, 2023, 100% of the issued and outstanding stock of PetCareRx was acquired by the Company. The merger triggered an ownership change of PetCareRx within the meaning of Section 382.

As a result of the acquisition, the Company performed a Section 382 analysis to determine if the net operating losses carried forward would have a utilization limitation. Any limitation could result in the expiration of a portion of the federal net operating loss carryforward before utilization, which would reduce the Company's gross deferred tax assets. As of April 3, 2023, and prior to the acquisition, PetCareRx had approximately $96.0 million of net operating losses and $1.9 million of disallowed interest expense. The results of the Section 382 analysis determined the net operating losses and disallowed interest expense in total, would be limited and reduced to approximately $14.5 million.

Note 10: Related Party Transaction

On September 29, 2024 the Company entered into a master services agreement with Fabric, Inc ("Fabric"), a privately-held company. Under this agreement, Fabric will provide services to the Company with a one-year term with auto-renewal unless either party provides notice at least 90 days in advance. Per the terms of the agreement, the Company will pay Fabric, $115,000 the first year and $100,000 for each potential year thereafter with potential changes in the

amounts paid based on actual usage of Fabric's services. There was no amount owed by the Company to Fabric as of September 30, 2024. Sandra Campos, Chief Executive Officer and President of the Company, is an investor in Fabric and serves on the Board of Directors of Fabric. This transaction was reviewed and approved by the Company's Audit Committee of the Board of Directors in accordance with the Company's related party transaction policy.

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

The following discussion and analysis should be read in conjunction with our unaudited condensed consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2024, and our 2024 Form 10-K.

Certain information in this Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. You can identify these forward-looking statements by the words "believes," "intends," "expects," "may," "will," "should," "plans," "projects," "contemplates," "intends," "budgets," "predicts," "estimates," "anticipates," or similar expressions. These statements are based on our beliefs, as well as assumptions we have used based upon information currently available to us. Because these statements reflect our current views concerning future events, these statements involve risks, uncertainties, and assumptions. Actual future results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A of our 2024 Form 10-K under the heading "Risk Factors." A reader, whether investing in our common stock or not, should not place undue reliance on these forward-looking statements, which apply only as of the date of this Quarterly Report on Form 10-Q. We assume no obligation to revise or update any forward-looking statements for any reason, except as required by law.

When used in this Quarterly Report on Form 10-Q, unless otherwise stated or the context otherwise indicates, "PetMed Express," "PetMeds," "PetMed," "the Company," "we," "our," and "us" refers to PetMed Express, Inc. and its direct and indirect wholly owned subsidiaries, taken as a whole.

Executive Summary

PetMed Express, Inc. and subsidiaries, d/b/a PetMeds®, is a leading nationwide direct-to-consumer pet pharmacy and online provider of prescription and non-prescription medications, foods, supplements, supplies and vet services for dogs, cats and horses. PetMeds markets and sells directly to consumers through its websites, toll-free numbers, and mobile application. We offer consumers an attractive alternative for obtaining pet medications, foods, and supplies in terms of convenience, price, speed of delivery, and valued customer service.

Founded in 1996, our executive headquarters offices are currently located at 420 South Congress Avenue, Delray Beach, Florida 33445, and our telephone number is (561) 526-4444. We have a March 31 fiscal year end.

Presently, our product line includes approximately 15,000 of the most popular pet medications, health products, food and supplies for dogs, cats, and horses.

We market our products through national advertising campaigns which aim to increase the recognition of the "PetMeds®" brand name, and "PetCareRx" brand name, increase traffic to our websites at www.petmeds.com and www.petcarerx.com, acquire new customers, and maximize repeat purchases. Our sales consist of products sold mainly to retail consumers. The average purchase was approximately $96 and $94 for the quarters ended September 30, 2024, and September 30, 2023, respectively.

Critical Accounting Policies

Our discussion and analysis of our financial condition and the results of our operations contained herein are based upon our condensed consolidated financial statements and the data used to prepare them. Our condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. On an ongoing basis we re-evaluate our judgments and estimates including those related to product returns, bad debts, inventories, and income taxes. We base our estimates and judgments on our historical experience, knowledge of current conditions, and our beliefs of what could occur in the future considering available information. Actual results may differ from these estimates under different assumptions or conditions. Our estimates are guided by observing the following critical accounting policies.

There have been no material changes to our significant accounting policies as compared to the significant accounting policies described in our Annual Report on Form 10-K, filed on June 11, 2024, except as noted below:

Long-lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Recoverability of assets is measured by a comparison of the carrying amount of the asset to the undiscounted cash flows expected to be generated from the asset. Management determined that no impairment of long-lived assets existed as of September 30, 2024.

Goodwill and Intangible Assets

Goodwill represents the excess of the purchase price over the fair value of net assets acquired in a business combination. The Company is required to assess goodwill and other indefinite-lived intangible assets for impairment annually, or more frequently if circumstances indicate impairment may have occurred. The Company performs its annual impairment assessment in the fourth quarter of each year. The Company has concluded that it has one reporting unit and has assigned the entire balance of goodwill to this reporting unit. If the carrying value of an indefinite-lived intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

The Company performed a goodwill impairment test as of September 30, 2024 initially using a qualitative assessment. The Company considered its share price decreases as well as the decrease in its quarterly sales from the three months ended June 30, 2024 to be indicative of a risk that the carrying amount of goodwill may not be recoverable. Based on these and other qualitative factors, the Company determined a triggering event occurred that required an interim goodwill impairment test. The Company performed a quantitative impairment test and valuation to identify the fair value of its reporting unit.

Based on the quantitative assessment, the Company concluded that goodwill was not impaired because the estimated fair value of the reporting unit exceeded its carrying value by approximately $44.8 million. The Company estimated the fair value of its reporting unit using a combination of a discounted cash flow and public company market approach with a 70% and 30% weighting, respectively. A key assumption under the cash flow approach was a 30% weighted average cost of capital. A key assumption under the public company market approach was a 10% control premium.

The Company's other indefinite-lived intangible assets are primarily made up of a trade name which was evaluated for impairment using a qualitative assessment and concluded it was not more likely than not that the other indefinite-lived assets were impaired as of September 30, 2024.

Economic Conditions, Challenges, and Risk

Macroeconomic factors, including inflation, increased interest rates, significant capital market and supply chain volatility, and global economic and geopolitical developments, have direct and indirect impacts on our results of operations that are difficult to isolate and quantify. In addition, rising fuel, utility, and food costs, rising interest rates, and recessionary fears may impact customer demand and our ability to forecast consumer spending patterns. We also expect the current macroeconomic environment and enterprise customer cost optimization efforts to impact our revenue growth rates. We expect some or all of these factors to continue to impact our operations for the remainder of fiscal 2025.

Results of Operations

The following should be read in conjunction with our unaudited Condensed Consolidated Financial Statements and the related notes thereto included elsewhere herein. The following table sets forth, as a percentage of sales, certain operating data appearing in our unaudited Condensed Consolidated Statements of Income (Loss):

	Three Months Ended September 30,		Six Months Ended September 30,	
	2024	2023	2024	2023
Sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales	70.9	71.7	72.3	71.5
Gross profit	29.1	28.3	27.7	28.5
Operating expenses:				
General and administrative	17.6	16.8	12.1	18.5
Advertising	7.7	7.8	9.1	8.6
Depreciation and amortization	2.8	2.4	2.6	2.3
Total operating expenses	28.1	27.0	23.8	29.4
Income (loss) from operations	1.0	1.3	3.9	(0.9)
Total other income	0.6	0.6	0.5	0.7
Income (loss) before provision for income taxes	1.6	1.9	4.4	(0.2)
(Benefit) provision for income taxes	(2.4)	0.8	(0.3)	0.2
Net income (loss)	4.0 %	1.1 %	4.8 %	(0.4)%

Non-GAAP Financial Measures

Adjusted EBITDA

To provide investors and the market with additional information regarding our financial results, we have disclosed (see below) adjusted EBITDA, a non-GAAP financial measure that we calculate as net income excluding share-based compensation expense, depreciation and amortization, income tax provision, interest income (expense), and other non-operational expenses. We have provided reconciliations below of net income to adjusted EBITDA, the most directly comparable GAAP financial measures.

We have included adjusted EBITDA herein because it is a key measure used by our management and Board of Directors to evaluate our operating performance, generate future operating plans, and make strategic decisions regarding the allocation of capital. In particular, the exclusion of certain expenses in calculating adjusted EBITDA facilitates operating performance comparability across reporting periods by removing the effect of non-cash expenses and other expenses. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and Board of Directors.

We believe it is useful to exclude non-cash charges, such as net stock-based compensation expense, depreciation and amortization from our adjusted EBITDA because the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations. We believe it is useful to exclude income tax provision and interest income (expense), as neither are components of our core business operations. We also believe that it is useful

to exclude other non-operational expenses, including acquisition costs related to PetCareRx, employee severance and estimated state sales tax accruals and settlements as these items are not indicative of our ongoing operations. Adjusted EBITDA has limitations as a financial measure, and these non-GAAP measures should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future and adjusted EBITDA does not reflect capital expenditure requirements for such replacements or for new capital expenditures;
- Adjusted EBITDA does not reflect net share-based compensation. Share-based compensation has been, and will continue to be for the foreseeable future, a material recurring expense in our business and an important part of our compensation strategy;
- Adjusted EBITDA does not reflect interest income (expense), net; or changes in, or cash requirements for, our working capital;
- Adjusted EBITDA does not reflect transaction related costs and other items which are either not representative of our underlying operations or are incremental costs that result from an actual or planned transaction and include litigation matters, integration consulting fees, internal salaries and wages (to the extent the individuals are assigned full-time to integration and transformation activities) and certain costs related to integrating and converging IT systems;
- Adjusted EBITDA does not reflect certain non-operating expenses including the employee severance which reduces cash available to us;
- Adjusted EBITDA does not reflect certain non operating expenses (income) including sales tax expense (income) relating to recording a liability for sales tax we did not collect from our customers.
- Other companies, including companies in our industry, may calculate adjusted EBITDA differently, which reduces the measure’s usefulness as comparative measures.

Because of these and other limitations, adjusted EBITDA should only be considered as supplemental to, and alongside with other GAAP based financial performance measures, including various cash flow metrics, net income, net margin, and our other GAAP results.

The following tables present a reconciliation of net income (loss), the most directly comparable GAAP measure, to adjusted EBITDA for each of the periods indicated:

($ in thousands, except percentages)	Three Months Ended		Increase (Decrease)	
	September 30, 2024	September 30, 2023	$	%
Consolidated Reconciliation of GAAP Net Income to Adjusted EBITDA:				
Net income	$ 2,326	$ 715	$ 1,611	225 %
Add (subtract):				
Stock-based Compensation	573	1,728	(1,155)	(67)%
Income Taxes	(1,401)	565	(1,966)	(348)%
Depreciation and Amortization	1,658	1,713	(55)	(3)%
Interest (Income), Net [(1)]	(185)	(151)	(34)	23 %
Acquisition/Partnership Transactions and Other Items	–	168	(168)	(100)%
Employee Severance	305	15	290	1933 %
Sales Tax (Income)	(1,178)	(1,316)	138	(10)%
Adjusted EBITDA	$ 2,098	$ 3,437	$ (1,339)	(39)%

(1) Included in interest income, net is $0.4 million of interest expense related to the sales tax liability and $0.6 million of interest income for the three months ended September 30, 2024. This compares to $0.4 million of interest expense related to the sales tax liability and $0.6 million of interest income for the three months ended September 30, 2023.

($ in thousands, except percentages)	Six Months Ended		Increase (Decrease)	
	September 30, 2024	September 30, 2023	$	%
Consolidated Reconciliation of GAAP Net Income to Adjusted EBITDA:				
Net income (loss)	$ 6,080	$ (421)	$ 6,501	(1544)%
Add (subtract):				
Stock-based Compensation	$ (7,631)	$ 3,488	$ (11,119)	(319)%
Income Taxes	$ (443)	$ 273	(716)	(262)%
Depreciation and Amortization	$ 3,379	$ 3,391	(12)	— %
Interest (Income), Net (1)	$ (280)	$ (345)	65	(19)%
Acquisition/Partnership Transactions and Other Items	$ 180	$ 1,294	(1,114)	(86)%
Employee Severance	$ 454	$ 408	46	11 %
Sales Tax (Income)	$ (1,178)	$ (1,316)	138	(10)%
Adjusted EBITDA	$ 561	$ 6,772	$ (6,211)	(92)%

(1) Included in interest income, net is $0.8 million of interest expense related to the sales tax liability and $1.1 million of interest income for the six months ended September 30, 2024. This compares to $0.8 million of interest expense related to the sales tax liability and $1.2 million of interest income for the six months ended September 30, 2023.

Three Months Ended September 30, 2024 Compared With Three Months Ended September 30, 2023 and Six Months Ended September 30, 2024 Compared With Six Months Ended September 30, 2023

Sales

Sales decreased by approximately $11.4 million, or 16.1%, to approximately $59.6 million for the quarter ended September 30, 2024, compared to approximately $71.0 million for the quarter ended September 30, 2023. Sales decreased by approximately $21.7 million, or 14.6%, to approximately $127.5 million for the six months ended September 30, 2024, compared to approximately $149.2 million for the quarter ended September 30, 2023. The decrease in sales for the quarter ended September 30, 2024 reflects broader macroeconomic factors partially offset by lower consumer promotional usage. The decrease in sales for the six months ended September 30, 2024 reflects both broader macroeconomic factors and higher consumer promotional usage.

Reorder sales decreased by approximately $8.0 million, or 13.7%, to approximately $50.1 million for the quarter ended September 30, 2024, compared to approximately $58.0 million for the quarter ended September 30, 2023. Reorder sales decreased by approximately $15.9 million, or 13.2%, to approximately $104.3 million for the six months ended September 30, 2024, compared to approximately $120.2 million for the for six months ended September 30, 2023. The decrease in reorder sales is primarily due to a decline in prescription medication sales.

New order sales decreased by approximately $3.1 million or 29.4%, to approximately $7.4 million for the quarter ended September 30, 2024, compared to $10.6 million for the quarter ended September 30, 2023. New order sales decreased by approximately $5.4 million or 22.3%, to approximately $18.8 million for the six months ended September 30, 2024, compared to $24.3 million for the six months ended September 30, 2023. The decrease for the quarter ended September 30, 2024 in new order sales is primarily due to a strategic reduction in media spend.

We acquired approximately 77,000 new customers for the quarter ended September 30, 2024 compared to approximately 113,000 new customers for the quarter ended September 30, 2023. We acquired approximately 197,000 new

customers for the six months ended September 30, 2024 compared to approximately 250,000 new customers for the six months ended September 30, 2023. The following tables illustrates sales by various sales classifications:

	Three Months Ended September 30,				Increase (Decrease)	
Revenue (In thousands)	**2024**	**%**	**2023**	**%**	**$**	**%**
Reorder sales	$ 50,052	84.0 %	$ 58,017	81.7 %	$ (7,965)	(13.7)%
New order sales	7,449	12.5 %	10,558	14.9 %	(3,109)	(29.4)%
Membership fees	2,069	3.5 %	2,424	3.4 %	(355)	(14.6)%
Total net sales	$ 59,570	100.0 %	$ 70,999	100.0 %	$ (11,429)	(16.1)%

	Six Months Ended September 30,				Increase (Decrease)	
Revenue (In thousands)	**2024**	**%**	**2023**	**%**	**$**	**%**
Reorder sales	$ 104,291	81.8 %	$ 120,182	80.6 %	$ (15,891)	(13.2)%
New order sales	18,838	14.8 %	24,251	16.2 %	(5,413)	(22.3)%
Membership fees	4,393	3.4 %	4,810	3.2 %	(417)	(8.7)%
Total net sales	$ 127,522	100.0 %	$ 149,243	100.0 %	$ (21,721)	(14.6)%

The Company changed the definition of a new order sale on July 1, 2024, to include sales from customers who have not previously ordered from the Company over the past twelve months compared to the prior definition which was thirty-six months. The reorder and new order sales amounts for the three and six months ended September 30, 2024, and the reorder and new order sales amounts for the three and six months ended September 30, 2023 reflect this new definition.

Under the previous definition of a new customer, reorder and new order sales were $62.4 million and $6.2 million, respectively, for the three months ended September 30, 2023. Under the previous definition of a new customer, reorder and new order sales were $130.4 million and $14.0 million, respectively, for the six months ended September 30, 2023.

AutoShip & Save subscription sales as a percentage of total sales was 53.3% of net sales for the most recent quarter ended September 30, 2024, up from 51.0% of net sales for the same period last year.

Going forward, sales may be adversely affected due to increased competition and consumers giving more consideration to price. The changes in consumer behavior due to macroeconomic factors makes future sales somewhat challenging to predict. No guarantees can be made that sales will grow in the future.

Cost of sales

Cost of sales decreased by approximately $8.7 million, or 17.0%, to approximately $42.3 million for the quarter ended September 30, 2024, from approximately $50.9 million for the quarter ended September 30, 2023. Cost of sales decreased by approximately $14.4 million, or 13.5%, to approximately $92.2 million for the six months ended September 30, 2024, from approximately $106.7 million for the six months ended September 30, 2023. Cost of sales, as a percentage of sales, was 70.9% for the quarter ended September 30, 2024, compared to 71.7% for the quarter ended September 30, 2023. Cost of sales, as a percentage of sales, was 72.3% for the six months ended September 30, 2024, compared to 71.5% for the six months ended September 30, 2023. The cost of sales, as a percentage of sales, decreased for the quarter ended September 30, 2024 compared to the quarter ended September 30, 2023 primarily due to an increase in vendor promotional activity in the most recent period. The cost of sales, as a percentage of sales, increased for the six months ended September 30, 2024 compared to the six months ended September 30, 2023 primarily due to an increase in discount activity in the most recent period.

Gross profit

Gross profit decreased by approximately $2.8 million, or 13.7%, to approximately $17.3 million for the quarter ended September 30, 2024, from approximately $20.1 million for the quarter ended September 30, 2023. Gross profit decreased by approximately $7.3 million, or 17.2%, to approximately $35.3 million for the six months ended September 30, 2024, from approximately $42.6 million for the six months ended September 30, 2023.The gross profit decreases for the quarter and six months ended ended September 30, 2024 compared to the quarter ended and six months ended September 30, 2023 were primarily due to lower sales. The gross margin percentage increased by approximately 0.8%, to approximately 29.1% for the quarter ended September 30, 2024, from approximately 28.3% for the quarter ended September 30, 2023, primarily due to favorable sales mix and lower discount activity in the most recent quarter.

General and administrative expenses

General and administrative expenses decreased by approximately $1.5 million, or 12.3%, to approximately $10.5 million for the quarter ended September 30, 2024, from approximately $12.0 million for the quarter ended September 30, 2023. The decrease to general and administrative expenses for the quarter ended September 30, 2024 was primarily due to a $1.2 million decrease in stock-based compensation expense, which was primarily related to reduced stock compensation associated with an executive departure, a $0.3 million decrease in payroll, and a $0.4 million decrease in credit card processing fees. These decreases were partially offset a $0.3 million increase in professional fees.

General and administrative expenses decreased by approximately $12.3 million, or 44.5%, to approximately $15.4 million for the six months ended September 30, 2024, from approximately $27.7 million for the six months ended September 30, 2023. The decrease to general and administrative expenses for the six months ended September 30, 2024 was primarily due to an $11.1 million decrease in stock-based compensation expense, of which $8.7 million was from the stock compensation reversal associated with an executive departure, a $0.5 million decrease in credit card processing fees which were driven by lower sales, and a $0.6 million decrease in payroll.

Advertising expenses

Advertising expenses decreased by approximately $0.9 million, or 16.4%, to approximately $4.6 million for the quarter ended September 30, 2024, from approximately $5.5 million for the quarter ended September 30, 2023. The decrease for the quarter can be mainly attributed to lower gross media spend and by lower marketing funded by manufacturers. The advertising costs of acquiring a new customer, defined as total advertising costs divided by new customers acquired, was $60 for the quarter ended September 30, 2024 compared to $49 for the quarter ended September 30, 2023. The increase to customer acquisition costs for the quarter ended September 30, 2024, was due to a less efficient variable marketing spend. The advertising cost of acquiring a new customer can be impacted by the advertising environment, the effectiveness of our advertising creative, spending, and price competition. Historically, the advertising environment fluctuates due to supply and demand. A more favorable advertising environment may positively impact future sales, whereas a less favorable advertising environment may negatively impact future sales. As a percentage of sales, advertising expense was 7.7% and 7.8% for the quarters ended September 30, 2024 and 2023, respectively. The advertising percentage may fluctuate quarter to quarter due to seasonality and advertising availability.

Advertising expenses decreased by approximately $1.2 million, or 9.2%, to approximately $11.6 million for the six months ended September 30, 2024, from approximately $12.8 million for the six months ended September 30, 2023. The decrease can be mainly attributed to lower gross media spend partially offset by lower marketing funded by manufacturers. The advertising costs of acquiring a new customer, defined as total advertising costs divided by new customers acquired, was $59 for the six months ended September 30, 2024 compared to $51 for the six months ended September 30, 2023. As a percentage of sales, advertising expense was 9.1% and 8.6% for the six months ended September 30, 2024 and 2023, respectively.

Depreciation and amortization

Depreciation and amortization expense was $1.7 million and $1.7 million for the quarters ended September 30, 2024 and September 30, 2023, respectively. Depreciation and amortization expense was $3.4 million and $3.4 million for the six months ended September 30, 2024 and September 30, 2023, respectively.

Other income

Other income remained unchanged for the quarter ended September 30, 2024 and 2023. Other income decreased to approximately $0.7 million for the six months ended September 30, 2024 compared to approximately $1.1 million for the

six months ended September 30, 2023.The decrease to other income for the quarter was due to slightly lower invested balances, and a one time payment received in prior year. Interest income may decrease in the future based on several factors, including utilization of our cash balances on future investments or partnerships, or on our operating activities. Additionally, interest income could increase or decrease if the current interest rate environment changes.

Provision for income taxes

For the quarters ended September 30, 2024 and 2023, the Company recorded an income tax benefit of approximately $1.4 million and a tax provision of approximately $0.6 million, respectively. For the six months ended September 30, 2024 and 2023, the Company recorded an income tax benefit of approximately $0.4 million and a tax provision of approximately $0.3 million, respectively. The decrease in the tax provision for the three and six months ended September 30, 2024 is related to the cancellation of the former CEO's performance stock units resulting in additional $8.7 million of income during the quarter. The effective tax rate for the quarter ended September 30, 2024 was approximately (151.5)%, compared to approximately 44.1% for the quarter ended September 30, 2023.

Liquidity and Capital Resources

Overview

We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity considering the most recent developments driven by macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, and geopolitical events. We proactively seek opportunities to improve the efficiency of our operations, take steps to realize internal cost savings, including aligning our staffing needs, creating a more variable cost structure to better support our current and expected future levels of operations and process streamlining.

Current Sources of Liquidity

Our working capital at September 30, 2024 and March 31, 2024 was $21.9 million and $21.5 million, respectively. The $0.5 million increase in working capital was attributable to the $22.9 million decrease in current assets, primarily inventory and prepaid expenses, which were offset by the $23.3 million decrease in current liabilities, primarily accounts payable. Net cash used in operating activities was $1.1 million for the six months ended September 30, 2024, compared to cash used in operating activities of $0.2 million for the six months ended September 30, 2023. The inventory decline was attributable to the Company's SKU rationalization strategy to reduce the amount of inventory on hand. The $0.9 million decrease in cash provided by operating activities is due to the $6.5 million increase in net income reduced by $11.5 million of non-cash operating adjustments and offset by the $4.1 million increase in current liabilities net of current assets excluding cash. Net cash used in investing activities was $1.9 million for the six months ended September 30, 2024, compared to $38.0 million used in investing activities for the six months ended September 30, 2023. The change in net cash used in investing activities is primarily related to the PetCareRx acquisition and an additional investment in Vetster in the prior year. Net cash used in financing activities was $0.2 million and $12.4 million for the six months ended September 30, 2024 and the six months ended September 30, 2023, respectively, due to the payment of an aggregate $0.60 per share dividend for the six months ended September 30, 2023.

The board reviews and discusses the capital allocation needs of the Company on a quarterly basis and as part of that review on October 26, 2023, our Board of Directors elected to suspend the quarterly dividend indefinitely. This move was intended to focus use of the Company's existing cash flow on growth initiatives and other, higher return initiatives. The declaration and payment of future dividends is discretionary and will be subject to a determination by the Board of Directors.

As of September 30, 2024, we had $1.2 million in outstanding lease commitments assumed in the PetCareRx acquisition for the leases on two buildings. Other than the foregoing leases, we are not currently bound by any material long-term or short-term commitments for the purchase or lease of capital expenditures. Any material amounts expended for capital expenditures would be the result of an increase in the capacity needed to adequately provide for any future increase in our business. To date we have paid for any needed additions to our capital equipment infrastructure from working capital funds and anticipate this being the case in the future. Our primary source of working capital is cash from operations. We presently have no alternative sources of working capital and have no commitments.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Market risk generally represents the risk that losses may occur in the value of financial instruments as a result of movements in interest rates, foreign currency exchange rates, and commodity prices. Our financial instruments include cash and cash equivalents, accounts receivable, and accounts payable. The book values of cash equivalents, accounts receivable, and accounts payable are considered to be representative of fair value because of the short maturity of these instruments. Interest rates affect our return on excess cash and cash equivalents. At September 30, 2024, we had $52.0 million in cash and cash equivalents, and the majority of our cash and cash equivalents generate interest income based on prevailing interest rates. A significant change in interest rates would impact the amount of interest income generated from our excess cash and cash equivalents. It would also impact the market value of our cash and cash equivalents. Our cash and cash equivalents are subject to market risk, primarily interest rate and credit risk. Our cash and cash equivalents are managed by a limited number of outside professional managers within investment guidelines set by our Board of Directors. Such guidelines include security type, credit quality, and maturity, and are intended to limit market risk by maintaining cash in federally-insured bank deposit accounts and restricting cash equivalents to highly-liquid investments with maturities of three months or less. We do not hold any derivative financial instruments that could expose us to significant market risk. At September 30, 2024, we had no debt obligations.

ITEM 4. CONTROLS AND PROCEDURES.

Evaluation of Disclosure Controls and Procedures

Our management, including our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) as of September 30, 2024, the end of the period covered by this report (the "Evaluation Date"). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded as of the Evaluation Date, that our disclosure controls and procedures were not effective as of September 30, 2024, due to material weaknesses described below.

Material Weaknesses

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

As identified in our 2024 Form 10-K, we identified the following material weaknesses:

1. A material weakness in the design of our controls over the review of appropriate application of GAAP relating to our sales tax liability as well as an additional tax error relating the misapplication of Internal Revenue Code Section162(m) which limits the deductibility of executive compensation in our consolidated financial statements. We also identified a material weakness in the design of our controls over accurate valuation of our deferred tax asset and goodwill relating to our acquisition of PetCareRx .

2. A material weakness in internal controls relating to our information technology general controls (“ITGCs”) in the areas of user access, change management, and service organizations over information technology (“IT”) systems that support the Company’s financial reporting processes. This material weakness may impact revenue and other business process controls and automated controls reliant upon these ITGCs. We believe these control deficiencies have been influenced by insufficient documentation to support management's procedures. The individual deficiencies identified to preventative and detective controls resulted in an aggregate material weakness related to ITGCs. This material weakness did not result in any identified misstatements to the financial statements or any change in previously released financial results.

Management is taking steps to remediate these material weaknesses (see “Remediation of Material Weaknesses” for details).

Remediation of Material Weaknesses

In response to the material weakness due to the tax calculations, we have developed and are in the process of implementing a remediation plan. The key elements of the plan include:

1. Enhancing the oversight and review of tax-related accounting estimates and calculations to ensure they are complete and accurate.

2. Providing additional training to personnel involved in tax accounting and financial reporting to enhance their understanding of the relevant accounting standards and requirements.

3. Enhancing the documentation of tax positions and related accounting judgments to ensure they are adequately supported and can withstand external scrutiny.

While our remediation plan related to the material weakness in internal controls relating to our information technology general controls ("ITGCs") may evolve and expand, management has been implementing and continues to implement measures designed to ensure that control deficiencies contributing to the material weakness are remediated such that these controls are designed, implemented, and operating effectively. The remediation actions include: (i) developing and maintaining documentation underlying ITGCs; (ii) implementing an IT management review, bringing in new management and revising the testing plan to monitor ITGCs with a specific focus on systems supporting our financial reporting processes; and (iii) enhanced quarterly reporting on the remediation measures to the Audit Committee of the Board of Directors.

The material weaknesses will be addressed once our remediation plan is fully developed and implemented. We will need to allow the updated controls to operate for an adequate period of time, after which we will conduct thorough testing to ensure the new and improved controls are operating effectively. We are actively working on implementing our remediation plan. Once this is in place, we will continue to test and monitor the new and improved controls to ensure they are operating as intended. It's possible that we may find additional steps, including adding more resources, are needed to fully address the material weaknesses in our internal control over financial reporting. This could require more time for evaluation and implementation. Additionally, we might make adjustments to the remediation efforts as we proceed.

Changes in Internal Control Over Financial Reporting

Other than as described above, there were no changes in our internal control over financial reporting during our most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design and disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgement in evaluating the benefits of possible controls and procedures relative to the their cost.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

For a description of our legal proceedings, see "Note 7: Commitments and Contingencies — Legal Matters and Routine Proceedings" to our condensed consolidated financial statements, which is incorporated by reference.

ITEM 1A. RISK FACTORS.

Our operations and financial results are subject to various risks and uncertainties that could adversely affect our business, financial condition, results of operations, and trading price of our common stock. Please refer to our 2024 Form 10-K for additional information concerning these and other uncertainties that could negatively impact the Company. There have been no material changes to the risk factors disclosed in our 2024 Form 10-K.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

ITEM 5. OTHER INFORMATION.

(a) and (b)

On November 6, 2024, the Company's Board of Directors (the "Board") approved and adopted a Third Amended and Restated Bylaws of the Company amending and restating the Company's Second Amended and Restated Bylaws (as amended and restated, the "Bylaws") to (i) align the Bylaws with the Securities and Exchange Commission's requirements regarding "universal" proxy cards pursuant to Rule 14a-19 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); (ii) enhance and clarify certain procedural mechanics and disclosure requirements relating to director nominations submitted by shareholders pursuant to the advance notice provisions of the Bylaws, including by requiring that proposing shareholders and any other proponents provide additional background information and disclosures and make certain representations; (iii) enhance certain procedural mechanics and disclosure requirements in connection with shareholder submissions of proposals regarding other business at any meeting of the shareholders (other than proposals made pursuant to Rule 14a-8 promulgated under the Exchange Act); (iv) enhance and clarify certain procedural mechanics and disclosure requirements relating to shareholders' actions by written consent; (v) designate (a) a state court located within the State of Florida (or if no such court has jurisdiction, the federal district court for the Southern District of Florida) as the exclusive forum for resolution of any actions asserting claims of breach of fiduciary duties, derivative actions, actions arising pursuant to the Florida Business Corporation Act, the Company's Articles of Incorporation or the Bylaws, or actions asserting claims governed by the internal affairs doctrine, and (b) U.S. federal district courts as the exclusive forum for resolution of actions asserting claims arising under the Securities Act of 1933, as amended; and (vi) make certain other clarifications and technical or non-substantive changes. The Bylaws were effective upon adoption by the Board.

The foregoing description of the Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Bylaws, which are filed as Exhibit 3.3 to this Quarterly Report on Form 10-Q and are incorporated herein by reference.

(c)

During the three months ended September 30, 2024, no director or officer (as defined in Rule 16a-1(f) of the Exchange Act) of the Company adopted, modified, or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

ITEM 6. EXHIBITS.

31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002).
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934 as adopted 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. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

3.1	Amended and Restated Articles of Incorporation (incorporated by reference to Exhibit 3.1 to our Registration Statement on Form 10-SB, File No. 000-28827, filed January 10, 2000).
3.2	Articles of Amendment to the Amended and Restated Articles of Incorporation (incorporated by reference to Exhibit 3.2 to our Form 10-K for the year ended March 31, 2015, filed May 22, 2015).
3.3 *	Third Amended and Restated Bylaws of PetMed Express, Inc.
10.1 +	Offer letter, dated August 5, 2024, by and between Doug Krulik and PetMed Express, Inc. (incorporated by reference to Exhibit 10.1 to our Form 8-K filed August 5, 2024).
10.2 +	Executive Employment Agreement, dated September 16, 2024, between PetMed Express, Inc. and Robyn D'Elia (incorporated by reference to Exhibit 10.1 to our Form 8-K filed September 12, 2024).
10.3 +	PetMed Express, Inc. 2024 Inducement Incentive Plan (incorporated by reference to Exhibit 10.1 to our Form 8-K filed September 27, 2024).
10.4 +	Form of Restricted Stock Unit Award under 2024 Inducement Incentive Plan (incorporated by reference to Exhibit 10.1.1 to our Form 8-K filed September 27, 2024).
10.5 +	Form of Performance Stock Unit Award under 2024 Inducement Incentive Plan (incorporated by reference to Exhibit 10.1.2 to our Form 8-K filed September 27, 2024).
10.6 +	Form of Restricted Stock Award under 2024 Inducement Incentive Plan (incorporated by reference to Exhibit 10.1.3 to our Form 8-K filed September 27, 2024).
10.7 +	Form of Stock Option Award under the 2024 Inducement Incentive Plan (incorporated by reference to Exhibit 10.1.4 to our Form 8-K filed September 27, 2024).
10.8 +	PetMed Express, Inc. 2024 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to our Form 8-K filed August 8, 2024).
10.9 +	Form of Restricted Stock Unit Award under 2024 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1.1 to our Form 8-K filed August 8, 2024).
10.10 +	Form of Performance Stock Unit Award under 2024 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1.2 to our Form 8-K filed August 8, 2024).
10.11 +	Form of Restricted Stock Award under 2024 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1.3 to our Form 8-K filed August 8, 2024).
10.12 +	Form of Stock Option Award under the 2024 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1.4 to our Form 8-K filed August 8, 2024).
10.13 +	Non-Employee Director Compensation Program, revised as of August 8, 2024 (incorporated by reference to Exhibit 10.2 to our Form 8-K filed August 8, 2024).
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*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline 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.

+ Indicates a management contract or compensatory plan or arrangement

SIGNATURES

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

PETMED EXPRESS, INC.

Date: November 7, 2024

By: /s/ Sandra Y. Campos
Sandra Y. Campos

Chief Executive Officer and President
(Principal Executive Officer)

By: /s/ Robyn D'Elia
Robyn D'Elia

Chief Financial Officer
(Principal Financial Officer)

By: /s/ Douglas Krulik
Douglas Krulik

Chief Accounting Officer
(Principal Accounting Officer)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

PETMED EXPRESS, INC

FORM 10-Q

FOR THE QUARTER ENDED:

SEPTEMBER 30, 2024

EXHIBITS

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Sandra Y. Campos, certify that:

1. I have reviewed this report on Form 10-Q for the quarter ended September 30, 2024 of PetMed Express, 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 officers 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 officers and I have disclosed, based on our most recent evaluation of the 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.

November 7, 2024

By: /s/ Sandra Y. Campos
Sandra Y. Campos
Chief Executive Officer and President

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Robyn D'Elia, certify that:

1. I have reviewed this report on Form 10-Q for the quarter ended September 30, 2024 of PetMed Express, 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 officers 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 officers and I have disclosed, based on our most recent evaluation of the 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.

November 7, 2024

By: /s/ Robyn D'Elia
Robyn D'Elia
Chief Financial Officer and Treasurer

Exhibit 32.1

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Sandra Y. Campos, and I, Robyn D'Elia, each certify to the best of our knowledge, based upon a review of the report on Form 10-Q for the quarter ended September 30, 2024 (the "Report") of the Registrant, that:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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: November 7, 2024

By: /s/ Sandra Y. Campos
Sandra Y. Campos
Chief Executive Officer and President

By: /s/ Robyn D'Elia
Robyn D'Elia
Chief Financial Officer and Treasurer

Exhibit 3.3

THIRD AMENDED AND RESTATED BYLAWS OF

PETMED EXPRESS, INC.

(A FLORIDA CORPORATION)

AS LAST AMENDED ON

NOVEMBER 6, 2024

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ARTICLE 1

Definitions

Section 1.1 Definitions. The following terms shall have the following meanings for purposes of these Third and Amended Restated Bylaws of the Corporation (the "Bylaws"):

"Corporation" means PetMed Express, Inc., a Florida corporation.

"Act" means the Florida Business Corporation Act, as it may be amended from time to time, or any successor legislation thereto.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

"Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient. For purposes of proxy voting, the term includes, but is not limited to, facsimile transmission, telegrams, cablegrams, telephone transmissions and transmissions through the Internet.

"Notice" means written notice and includes, but is not limited to, notice by electronic transmission. Notice shall be effective if given by a single written notice to shareholders who share an address, to the extent permitted by the Act.

"Principal Office" means the executive office (within or without the State of Florida) where the Corporation's principal executive offices are located.

ARTICLE 2

Offices

Section 2.1 Principal and Business Offices. The Corporation may have such principal and other business offices, either within or without the State of Florida, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

Section 2.2 Registered Office. The registered office of the Corporation required by the Act to be maintained in the State of Florida may but need not be identical with the Principal Office if located in the State of Florida, and the address of the registered office may be changed from time to time by the Board of Directors or by the registered agent. The business office of the registered agent of the Corporation shall be identical to such registered office.

ARTICLE 3

Shareholders

Section 3.1 Annual Meeting. The annual meeting of shareholders shall be held on a date and at a time and place designated by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The Board of Directors may, in its sole discretion, determine that the annual meeting of shareholders shall not be held at any place, but may instead be held solely by means of remote communication as provided under Section 607.0701 of the Act.

Section 3.2 Special Meetings.

(a) Call by Directors or President. Special meetings of shareholders, for any purpose or purposes, may be called by the Board of Directors, the Chairman of the Board, the Lead Director (if any) or the President.

(b) Call by Shareholders. The Corporation shall call a special meeting of shareholders in the event that the holders owning shares representing not less than ten percent (10%) of all of the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the Secretary one or more written demands for the meeting describing one or more purposes for which it is to be held, provide the information required to be submitted by a Proposing Shareholder pursuant to Section 3.15(b) and/or Section 3.15(c), as applicable, of these Bylaws, and comply with the other procedures and requirements contained or referenced in Section 3.15, including, without limitation, Section 3.15(d), and elsewhere in these Bylaws. For purposes of this Section 3.2(b), the calculation of the number of shares of the Company's common stock owned by a shareholder for purposes of determining such shareholder's eligibility to request a special meeting shall be determined in the same manner used to determine the share ownership of an Eligible Holder as set forth in Section 3.18(c)(iv) of these Bylaws. If, at any time after receipt by the Secretary of the Corporation of a proper request for a special meeting of shareholders, there are no longer valid requests from shareholders holding in the aggregate at least the requisite number of shares entitling the shareholders to request the calling of a special meeting, whether because of revoked requests or otherwise, the Board of Directors, in its discretion, may cancel the special meeting (or, if the special meeting has not yet been called, may direct the Chairman of the Board of Directors or the Secretary of the Corporation not to call such a meeting). The Corporation shall give notice of a special meeting within sixty days after the date that any valid demand by shareholders pursuant to these Bylaws is delivered to the Corporation.

Section 3.3 Place of Special Meeting. The Board of Directors may designate any place, either within or without the State of Florida, as the place of meeting for any special meeting of shareholders. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under Section 607.0702 of the Act. If no designation is made, the place of meeting shall be the Principal Office.

Section 3.4 Notice of Meeting.

(a) Content and Delivery.

(i) Notice of the place, if any, date, time, and means of remote communication, if any, of each annual and special shareholders' meeting shall be given by the Corporation not less than 10 nor more than 60 days before date of the meeting. Notices of special meetings shall also specify the purpose or purposes for which the meeting has been called. Unless otherwise required by the Act or the Corporation's Articles of Incorporation (the "Articles of Incorporation"):

(A) Notice of a shareholders' meeting need be given only to shareholders entitled to vote at the meeting; and

(B) Notices of annual meetings need not specify the purpose or purposes for which the meeting has been called.

(ii) Notices to shareholders must be in writing and may be communicated in person, by electronic means (in a manner authorized by the shareholder), or by mail or other method of delivery, in each case, by or at the direction of the President, the Secretary, or the officer or persons calling the meeting. If mailed, the notice shall be effective when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears in the Corporation's shareholder records, with postage thereon prepaid.

(b) Notice of Adjourned Meetings. If an annual or special meeting of shareholders is adjourned to a different date, time, or place, the Corporation shall not be required to give notice of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment; provided, however, that if a new record date for an adjourned meeting is or must be fixed, the Corporation shall give notice of the adjourned meeting to persons who are shareholders as of the new record date who are entitled to notice of the meeting.

(c) No Notice Under Certain Circumstances. Notwithstanding the other provisions of this Section 3.4, no notice of a meeting of shareholders need be given to a shareholder if: (1) an annual report and proxy statement for two consecutive annual meetings of shareholders, or (2) all, and at least two, checks in payment of dividends or interest on securities during a twelve-month period have been sent by first-class, United States mail, addressed to the shareholder at his or her address as it appears on the share transfer books of the Corporation, and returned undeliverable. The obligation of the Corporation to give notice of a shareholders' meeting to any such shareholder shall be reinstated once the Corporation has received a new address for such shareholder for entry on its share transfer books.

Section 3.5 Waiver of Notice.

(a) Written Waiver. A shareholder may waive any notice required by the Act or these Bylaws before or after the date and time stated for the meeting in the notice. The waiver

shall be in writing and signed by the shareholder entitled to the notice, and be delivered to the Corporation for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice.

(b) Waiver by Attendance. A shareholder's attendance at a meeting, in person or by proxy, waives objection to all of the following: (1) lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (2) consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Section 3.6 Fixing of Record Date.

(a) General. The Board of Directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to notice of a shareholders' meeting, entitled to vote, or take any other action. In no event may a record date fixed by the Board of Directors be a date preceding the date upon which the resolution fixing the record date is adopted or a date more than seventy days before the date of meeting or action requiring a determination of shareholders.

(b) Special Meeting. The record date for determining shareholders entitled to demand a special meeting shall be the close of business on the date the first shareholder delivers his or her demand to the Corporation.

(c) Shareholder Action by Written Consent. The record date for determining shareholders entitled to take action without a meeting shall be determined in accordance with Section 3.16 of these Bylaws.

(d) Absence of Board Determination for Shareholders' Meeting. If the Board of Directors does not determine the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting, such record date shall be the close of business on the day before the first notice with respect thereto is delivered to shareholders.

(e) Adjourned Meeting. A record date for determining shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

Section 3.7 Shareholders' List for Meetings.

(a) Preparation and Availability. After a record date for a meeting of shareholders has been fixed, the Corporation shall prepare an alphabetical list of the names of all of the shareholders entitled to notice of the meeting (and, if the Board of Directors fixes a different record date to determine the shareholders entitled to vote at the meeting, an alphabetical list of the names of all shareholders entitled to vote at the meeting). The list shall be arranged by

class or series of shares, if any, and show the address of and number of shares held by each shareholder. Such list shall be available for inspection by any shareholder for a period of ten days prior to the meeting or such shorter time as exists between the record date and the meeting date, and continuing through the meeting, at the Principal Office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the Corporation's transfer agent or registrar, if any. A shareholder or his or her agent or attorney may, on written demand, inspect the list, subject to the requirements of the Act, during regular business hours and at his or her expense, during the period that it is available for inspection pursuant to this Section 3.7. The Corporation shall make the shareholders' list available at the meeting and any shareholder or his or her agent or attorney may inspect the list at any time during the meeting or any adjournment thereof.

(b) Prima Facie Evidence. The shareholders' list is prima facie evidence of the identity of shareholders entitled to examine the shareholders' list or to vote at a meeting of shareholders.

(c) Failure to Comply. If the requirements of this Section 3.7 have not been substantially complied with, or if the Corporation refuses to allow a shareholder or his or her agent or attorney to inspect the shareholders' list before or at the meeting, on the demand of any shareholder, in person or by proxy, who failed to get such access, the meeting shall be adjourned until such requirements are complied with.

(d) Validity of Action Not Affected. Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of any action taken at a meeting of shareholders.

Section 3.8 Conduct of Meetings by Remote Communication. The Board of Directors may adopt guidelines and procedures for shareholders and proxy holders not physically present at an annual or special meeting of shareholders to participate in the meeting, be deemed Present in Person (as defined below), vote, communicate and read or hear the proceedings of the meeting substantially concurrently with such proceedings, all by means of remote communication. The Board of Directors may adopt procedures and guidelines for the conduct of an annual or special meeting solely by means of remote communication rather than holding the meeting at a designated place.

Section 3.9 Quorum.

(a) What Constitutes a Quorum. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. If the Corporation has only one class of stock outstanding, such class shall constitute a separate voting group for purposes of this Section 3.9. Except as otherwise provided in the Act, a majority of the votes entitled to be cast on the matter shall constitute a quorum of the voting group for action on that matter. After a quorum has been established at a shareholders' meeting, the subsequent withdrawal of shareholders, so as to reduce the number of shares entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

(b) Presence of Shares. Once a share is represented for any purpose at a meeting, other than for the purpose of objecting to holding the meeting or transacting business at the meeting, it is considered present for purposes of determining whether a quorum exists for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for the adjourned meeting.

(c) Adjournment in Absence of Quorum. Where a quorum is not present, the holders of a majority of the shares represented and who would be entitled to vote at the meeting if a quorum were present may adjourn such meeting from time to time.

Section 3.10 Voting Entitlement of Shares.

(a) Unless the Articles of Incorporation or the Act provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Only shares are entitled to vote.

(b) The shares of the Corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of shares entitled to vote for directors of the second corporation.

(c) This Section 3.10 does not limit the power of the Corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote on any matter, and shall not be deemed to be outstanding, after notice of redemption is mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank, trust company, or other financial institution upon an irrevocable obligation to pay the holders the redemption price upon surrender of the shares.

(e) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of the corporate shareholder may prescribe or, in the absence of any applicable provision, by such person as the Board of Directors of the corporate shareholder may designate. In the absence of any such designation or in case of conflicting designation by the corporate shareholder, the chairman of the board, the president, any vice president, the secretary, and the treasurer of the corporate shareholder, in that order, shall be presumed to be fully authorized to vote such shares.

(f) Shares held by an administrator, executor, guardian, personal representative, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his name or the name of his or her nominee.

(g) Shares held by or under the control of a receiver, a trustee in bankruptcy proceedings, or an assignee for the benefit of creditors may be voted by him or her without the transfer thereof into his or her name.

(h) If a share or shares 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 of the Corporation is given 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, then acts with respect to voting have the following effect:

(i) If only one votes, in person or in proxy, his or her act binds all;

(ii) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(iii) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the share or shares in question proportionally;

(iv) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or a vote evenly split for purposes of this subsection shall be a majority or a vote evenly split in interest;

(v) The principles of this subsection shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum;

(vi) Subject to Section 3.10(i), nothing herein contained shall prevent trustees or other fiduciaries holding shares registered in the name of a nominee from causing such shares to be voted by such nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by a trustee or their fiduciary without the necessity of transferring the shares to the name of the trustee or other fiduciary.

(i) The Corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the Corporation as the shareholder. The extent of this recognition may be determined in the procedure. The procedure may set forth (a) the types of nominees to which it applies; (b) the rights or privileges that the Corporation recognizes in a beneficial owner; (c) the manner in which the procedure is selected by the nominee; (d) the information that must be provided when the procedure is selected; (e) the period for which selection of the procedure is effective; and (f) other aspects of the rights and duties created.

Section 3.11 Vote Required.

(a) Matters Other Than Election of Directors. If a quorum exists, except in the case of the election of directors, action on a matter shall be approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Act or the Articles of Incorporation require a greater number of affirmative votes.

(b) Election of Directors.

(i) Each shareholder who is entitled to vote at an election of directors has the right to vote the number of shares owned by him or her for as many persons as there are directors to be elected. Unless otherwise required by the Articles of Incorporation, the election of directors shall be by written ballot. If authorized by the Board of Directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or proxy holder. Shareholders do not have a right to cumulate their votes for directors.

(ii) A nominee for director of the Corporation shall only be elected if, at any meeting of the shareholders held for the election of directors at which a quorum is present, the votes cast for the nominee's election exceed the votes cast against the nominee's election; provided, however, that a plurality of all votes cast at a meeting of shareholders at which a quorum is present is sufficient to elect a nominee to the Board of Directors if, in connection with the meeting, (i) a shareholder has duly nominated an individual for election to the Board of Directors in accordance with the advance notice and other nomination procedures and requirements adopted by the Corporation from time to time, and (ii) the shareholder nomination has not been withdrawn on or prior to the date that is fourteen (14) days prior to the date on which the Corporation first mails its notice of meeting to the shareholders. Votes cast "for" and "against" a nominee shall exclude votes "withheld", "abstentions" and "broker non-votes" with respect to that nominee's election. If directors are to be elected by a plurality of the votes cast, shareholders shall not be permitted to vote against a nominee.

Section 3.12 Conduct of Meeting. The Chairman of the Board of Directors or his or her designee, and in his or her absence, the Lead Director (if any), and in his or her absence, the Vice Chairman (if any), and in his or her absence, the President, and in his or her absence, a Vice President, and in his or her absence, any person chosen by the shareholders present shall call a shareholders' meeting to order and shall act as presiding officer of the meeting, and the Secretary of the Corporation shall act as secretary of all meetings of the shareholders, but, in the absence of the Secretary, the presiding officer may appoint any other person to act as secretary of the meeting. The presiding officer of the meeting shall have broad discretion in determining the order of business at a shareholders' meeting. The presiding officer's authority to conduct the meeting shall include, but in no way be limited to, recognizing shareholders entitled to speak,

calling for the necessary reports, stating questions and putting them to a vote, calling for nominations, and announcing the results of voting. The presiding officer also shall take such actions as are necessary and appropriate to preserve order at the meeting. The rules of parliamentary procedure need not be observed in the conduct of shareholders' meetings; however, meetings shall be conducted in accordance with accepted usage and common practice with fair treatment to all who are entitled to take part.

Section 3.13 Inspectors of Election. Inspectors of election shall be appointed by the Board of Directors to act at any meeting of shareholders at which any vote is taken. If inspectors of election are not so appointed, the presiding officer of the meeting may, and on the request of any shareholder shall, make such appointment. The inspectors of election shall determine the number of shares outstanding, the voting rights with respect to each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies; receive votes, ballots, consents, and waivers; hear and determine all challenges and questions arising in connection with the vote; count and tabulate all votes, consents, and waivers; determine and announce the result; and do such acts as are proper to conduct the election or vote with fairness to all shareholders. No inspector, whether appointed by the Board of Directors or by the person acting as presiding officer of the meeting, need be a shareholder.

Section 3.14 Proxies.

(a) Appointment. At all meetings of shareholders, a shareholder or attorney- in-fact for a shareholder may vote the shareholder's shares in person or by proxy. If an appointment form expressly provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. A shareholder or attorney-in-fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. As provided by Section 607.0722 of the Act, any type of electronic transmission appearing to have been, or containing or accompanied by such information or obtained under such procedures to reasonably ensure that the electronic transmission was, transmitted or authorized by such person is a sufficient appointment, subject to the verification requested by the Corporation under Section 3.17 of these Bylaws and Section 607.0724 of the Act. The appointment may be signed by any reasonable means, including, but not limited to, facsimile or electronic signature. Any copy, facsimile transmission or other reliable reproduction of the writing or electronic transmission of the appointment may be substituted or used in lieu of the original writing or electronic transmission for any purpose for which the original writing or electronic transmission could be used if the copy, facsimile transmission or other reproduction is a complete reproduction of the entire original writing or electronic transmission. Any shareholder directly or indirectly soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use of the Board of Directors.

(b) When Effective. An appointment of a proxy is effective when received by the Secretary or other officer or agent of the Corporation authorized to tabulate votes. An appointment is valid for up to eleven months unless a longer or shorter period is expressly provided in the appointment form. An appointment of a proxy is revocable by the shareholder

unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest.

Section 3.15 Advance Notice of Shareholder Nominations and Proposals.

(a) Annual Meetings. At an annual meeting of the shareholders, only such nominations of persons for the election of directors and such other business shall be conducted as shall have been properly brought before the meeting. Except as set forth in Section 3.18, to be properly brought before an annual meeting, nominations or such other business must be:

(i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof);

(ii) if not specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), otherwise properly brought before the meeting by or at the direction of the Board of Directors or any committee thereof duly authorized to bring nominations or other business before the meeting; or

(iii) otherwise properly brought before an annual meeting by a shareholder who is Present in Person and who complies with this Section 3.15 and the other applicable requirements and procedures of these Bylaws.

Except as set forth in Section 3.18, for nominations of individuals for election to the Board of Directors or proposals of other business to be properly requested by a shareholder to be made at an annual meeting, a shareholder must: (A) be a shareholder of record of the Corporation as of the record date set by the Board of Directors for the purpose of determining shareholders entitled to notice of, and to vote at, the annual meeting and at the time of such meeting (and any postponement, adjournment, rescheduling, or continuation thereof), (B) be a shareholder of record at the time of giving of the notice by the shareholder provided for in this Section 3.15, (C) be entitled to vote at the meeting in the election of each individual so nominated and on any such other business proposed by such shareholder, (D) be Present in Person at the applicable annual meeting (and any postponement, adjournment, rescheduling, or continuation thereof), and (E) comply in all applicable respects with the requirements and procedures set forth in these Bylaws, including this Section 3.15, and with other requirements of applicable law.

For the purposes of this Section 3.15, (A) "Present in Person" shall mean that the shareholder proposing nominees for election as directors or other business to be brought before the meeting of shareholders, or, if the Proposing Shareholder (as defined below) is not an individual, a qualified representative of such Proposing Shareholder, shall appear in person at such meeting of shareholders (unless such meeting is held by means of the Internet or other electronic technology in which case the Proposing Shareholder or, if applicable, its qualified representative shall be present at such meeting by means of the Internet or other electronic technology); and (B) "qualified representative" shall mean (i) if the shareholder is a corporation, any duly authorized officer of such corporation; (ii) if the shareholder is a limited liability company; any duly

authorized member, manager or officer of such limited liability company; (iii) if the shareholder is a partnership, any general partner or person who functions as general partner for such partnership; (iv) if the shareholder is a trust, the trustee of such trust; or (v) if the shareholder is an entity other than the foregoing, the persons acting in such similar capacities as the foregoing with respect to such entity.

In addition, any proposal of business (other than the nomination of persons for election to the Board of Directors) must be a proper matter for shareholder action. Without qualification or limitation, for business (including, but not limited to, director nominations) to be properly brought before an annual meeting by a shareholder pursuant to these Bylaws, the shareholder or shareholders of record intending to propose the business (together with any (i) any beneficial owner of any shares of the Corporation's Common Stock owned of record or beneficially by such shareholder (other than a shareholder that is a depositary), (ii) any Affiliate or Associate (within the meaning of Rule 12b-2 of the Exchange Act) of such record or beneficial shareholder or shareholders, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such record or beneficial shareholder or shareholders in any solicitation of proxies contemplated by the shareholder's notice delivered to the Corporation pursuant to this Section 3.15, and (iv) any person who may be deemed to be a member of a "group" (as such term is used in Rule 13d-5 of the Exchange Act) with such record or beneficial shareholder or shareholders (or any of their respective Affiliates or Associates) with respect to the shares of the Corporation's Common Stock, regardless of whether such person is disclosed as a member of a "group" in a Schedule 13D or an amendment thereto filed with the SEC relating to the Corporation, the "Proposing Shareholder") must have given timely and proper notice thereof (including, in the case of nominations, the completed and signed questionnaire, representation and agreement required by Section 3.15(b)(v) of these Bylaws), and timely updates and supplements thereof, in each case in proper form, in writing to the Secretary even if such matter is already the subject of any notice to the shareholders or Public Disclosure from the Board of Directors. In addition to such shareholder complying with the applicable provisions of Rule 14a-19, including, without limitation, any interpretative guidance relating thereto issued from time to time by the Staff of the SEC (as defined below) (collectively, "Rule 14a-19") promulgated under the Exchange Act (as defined below), as applicable, to be timely, a Proposing Shareholder's notice for an annual meeting must be delivered to or mailed and received at the Principal Office: (x) not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, in advance of the anniversary of the previous year's annual meeting if such meeting is to be held on a day which is not more than 30 days in advance of the anniversary of the previous year's annual meeting or not later than 60 days after the anniversary of the previous year's annual meeting; and (y) with respect to any other annual meeting of shareholders, including in the event that no annual meeting was held in the previous year, not earlier than the close of business on the 120th day prior to the annual meeting and not later than the close of business on the later of: (1) the 90th day prior to the annual meeting and (2) the close of business on the tenth day following the first date of Public Disclosure of the date of such meeting. In no event shall the adjournment, recess, or postponement of an annual meeting or the Public Disclosure or other announcement thereof, commence a new time period (or extend any time period) for the giving of a shareholder's notice pursuant to these Bylaws. For the purposes of this Section 3.15, (A) "close of business" shall mean 5:00 p.m., local time, at the principal

executive offices of the Corporation on any calendar day, whether or not such day is a business day; and (B) "Public Disclosure" shall mean a disclosure made by the Corporation in a press release reported by the Dow Jones News Services, The Associated Press, or a comparable national news service or in a document filed by the Corporation with the Securities and Exchange Commission (the "SEC") pursuant to Sections 13, 14, or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Notwithstanding anything in this Section 3.15 to the contrary, in the event that the number of directors to be elected to the Board of Directors at the next annual meeting is increased by the Board of Directors, and there is no Public Disclosure by the Corporation of such action or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by this Section 3.15(a) shall also be considered timely with respect to such annual meeting, but only with respect to nominees for any new director positions created by such increase, and only with respect to a shareholder who had, prior to such increase in the size of the Board of Directors, previously submitted to the Corporation a timely and proper shareholder notice proposing nominees for election to the Board of Directors at such annual meeting in compliance with this Section 3.15 in all applicable respects, if it shall be delivered to the Secretary at the Principal Office not later than the close of business on the 10th day following the day on which such Public Disclosure is first made by the Corporation. In addition, to be considered timely, a shareholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is 10 days prior to the meeting or any adjournment, recess or postponement thereof, and such update and supplement shall be delivered to the Secretary at the Principal Office not later than five days prior to the date of the meeting or any adjournment, recess or postponement thereof in the case of the update and supplement required to be made as of 10 days prior to the meeting or any adjournment, recess or postponement thereof. The obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit or prejudice the Corporation's rights with respect to any deficiencies in any notice provided by a shareholder, extend any applicable deadlines hereunder or under any other provision of these Bylaws or enable or be deemed to permit a shareholder who has previously submitted notice hereunder or under any other provision of these Bylaws to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and or resolutions proposed to be brought before a meeting of the shareholders.

(b) Shareholder Nominations. For the nomination of any person or persons for election to the Board of Directors pursuant to Section 3.15(a)(iii) or Section 3.15(d), a Proposing Shareholder's notice to the Secretary, to be proper, shall set forth or include (the following is collectively referred to herein as the "Nominee Information"):

(i) the name, age, email address, business address, and residence address of each nominee proposed in such notice;

(ii) the principal occupation or employment of each such nominee;

(iii) the information required by Sections 3.15(b)(vi)(B) through (M) below (replacing references to the "Proposing Shareholder" with "each director nominee");

(iv) such other information concerning each 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) or that is otherwise required to be disclosed, under Section 14(a) of the Exchange Act;

(v) a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire the Proposing Shareholder providing the shareholder notice shall request in writing from the Secretary prior to submitting the shareholder notice and which the Secretary shall provide to such shareholder within ten days after receiving such request) and a written statement and agreement executed by each such nominee acknowledging that such person:

(A) consents to (1) being named by the Proposing Shareholder submitting the shareholder notice as its nominee for election as a director, (2) being named in any proxy statement relating to such meeting and applicable proxy cards as a nominee, and (3) serving as a director if elected; and

(B) makes the following representations: (1) that the director nominee has read and, if elected as a director of the Corporation, agrees to adhere to the Corporation's Corporate Governance Guidelines, Corporate Code of Business Conduct & Ethics, and any other of the Corporation's policies or guidelines applicable to directors, including with regard to securities trading; (2) will comply with all applicable rules of the SEC, all applicable rules of any securities exchanges upon which the Corporation's securities are listed, the Articles of Incorporation, these Bylaws, and all applicable fiduciary duties under state law; (3) is not now subject to any governmental law, regulation, order, decree, or sanction that could prohibit or limit such director nominee's service on the Board of Directors or any committee thereof; (4) that the director nominee is not and will not become a party to any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, 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 or 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; (5) that the director nominee is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other

than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification ("Compensation Arrangement") that has not been disclosed to the Corporation in connection with such person's nomination for director or service as a director; and (6) that the director nominee, if elected as a director of the Corporation, intends to serve the entire term until the next annual meeting; and

(vi) as to the Proposing Shareholder:

(A) the name and address of the Proposing Shareholder as they appear on the Corporation's books and of the beneficial owner, if any, on whose behalf the nomination is being made;

(B) (1) the class and number of shares of the Corporation which are owned by the Proposing Shareholder (beneficially and of record) and owned by the beneficial owner, if any, on whose behalf the nomination is being made (the disclosures to be made pursuant to Section 3.15(b)(vi)(A) and Section 3.15(b)(vi)(B) are referred to herein as the "Shareholder Information"), (2) any profits interest, option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived, in whole or in part, from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including, without limitation, where the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether a Proposing Shareholder may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a "Derivative Instrument") which are, directly or indirectly, owned beneficially or of record by any Proposing Shareholder or to which any Proposing Shareholder is a party, in each case for clauses (1) and (2), as of the date of the Proposing Shareholder's notice, and (3) a representation that the Proposing Shareholder will notify the Corporation in writing of the class and number of such shares owned of record and

beneficially and/or any or Derivative Instruments held by such Proposing Shareholder as of the record date for the meeting within five business days after the record date for such meeting;

(C) a description of any agreement, arrangement, or understanding with respect to such nomination between or among the Proposing Shareholder or the beneficial owner, if any, on whose behalf the nomination is being made and any of their affiliates or associates (including the names of any such persons), and a representation that the Proposing Shareholder will notify the Corporation in writing of any such agreement, arrangement, or understanding in effect as of the record date for the meeting within five business days after the record date for such meeting;

(D) a description of any agreement, arrangement, or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the Proposing Shareholder's notice by, or on behalf of, the Proposing Shareholder or the beneficial owner, if any, on whose behalf the nomination is being made and any of their affiliates or associates, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of such person or any of their affiliates or associates with respect to shares of stock of the Corporation, and a representation that the Proposing Shareholder will notify the Corporation in writing of any such agreement, arrangement, or understanding in effect as of the record date for the meeting within five business days after the record date for such meeting;

(E) a representation that the Proposing Shareholder is a holder of record of shares of the Corporation entitled to vote at the meeting and intends to be Present in Person at the meeting to nominate the person or persons specified in the notice and/or to bring such other business included in its notice before the meeting, as applicable, and an acknowledgment that, if such Proposing Shareholder is not Present in Person at such meeting to nominate the proposed nominee(s) or to bring such business included in its notice, as applicable, before such meeting, the Corporation need not present such business or proposed nominee(s) for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation;

(F) any proxy, contract, agreement, arrangement, understanding, or relationship pursuant to which any Proposing Shareholder has any right to vote, or has granted a right to vote, any class or series of shares of the Corporation;

(G) any significant equity interests or any Derivative Instruments in any principal competitor of the Corporation held by any Proposing Shareholder;

(H) any direct or indirect interest of any Proposing Shareholder in any contract, agreement, arrangement, understanding, or relationship with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, without limitation, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(I) any material pending or threatened action, suit or proceeding in which any Proposing Shareholder is or is reasonably expected to be made, a party or material participant involving the Corporation or any of its officers or directors;

(J) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by the Proposing Shareholder;

(K) any other information relating to the Proposing Shareholder that would be required to be disclosed in a proxy statement and form of proxy 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 a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (the disclosures to be made pursuant to the foregoing Sections 3.15(b)(vi)(B)(2) through (K) are referred to as "Disclosable Interests"; provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Shareholder solely as a result of being the shareholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner);

(L) a representation by such Proposing Shareholder as to the accuracy of the information set forth in such notice; and

(M) for a shareholder soliciting proxies in support of nominees (other than those nominated by the Board of Directors), a representation that the Proposing Shareholder and any such beneficial owner intend or are part of a group that intends to solicit proxies from shareholders in support of its nominees in accordance with Rule 14a-19, including delivery of a proxy statement and form of proxy, of at least sixty-seven

percent (67%) of the voting power of shares entitled to vote on the election of directors.

The Corporation may require any Proposing Shareholder and/or proposed nominee to furnish, within five business days after such request by the Corporation, such other information as it may reasonably require to determine the eligibility or suitability of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee, including under the listing standards of each securities exchange upon which the Corporation's securities are listed, any applicable rules of the SEC, any publicly disclosed standards used by the Board of Directors in selecting nominees for election as a director and for determining and disclosing the independence of directors, including those applicable to a director's service on any of the committees of the Board of Directors, or the requirements of any other laws or regulations applicable to the Corporation. If requested by the Corporation, any supplemental information required under this paragraph shall be provided within five business days after it has been requested by the Corporation. The Corporation may also request that a proposed nominee submit to a background check, which may include interviews by the Board of Directors or any committee thereof, and any proposed nominee shall comply with such request within five business days after such request by the Corporation.

(c) Other Shareholder Proposals. For all business other than director nominations, a Proposing Shareholder's notice to the Secretary, to be proper, shall set forth as to each matter the Proposing Shareholder proposes to bring before the meeting:

(i) a description of the business desired to be brought before the annual meeting;

(ii) the reasons for conducting such business at the annual meeting;

(iii) the text of any 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);

(iv) any interest, including any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act), in such business of such shareholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the business is being proposed;

(v) a description of all agreements, arrangements, or understandings between or among such shareholder, the beneficial owner, if any, on whose behalf the proposal is being made, any of their affiliates or associates, and any other person or persons (including their names) in connection with the proposal of such business and any material interest of such shareholder, beneficial owner, or any of their affiliates or associates, in such business, including any anticipated benefit

therefrom to such shareholder, beneficial owner, or their affiliates or associates; and

(vi) the information required by Section 3.15(b)(vi) above.

(d) Special Meetings of Shareholders. Only such business shall be conducted at a special meeting of shareholders as shall have been properly brought before the meeting. For business to be properly brought before a special meeting, it must be (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (ii) if not specified in the notice of meeting (or any supplement thereto) provided by or at the direction of the Board of Directors (or any duly authorized committee thereof), otherwise properly brought before the special meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof); or (iii) brought before the meeting by a shareholder Present in Person who has requested a special meeting in accordance with the provisions of Section 3.2(b) and complies with the notice and other procedures and requirements contained or referenced in Section 3.2(b) and this Section 3.15. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders called by the Board of Directors at which directors are to be elected pursuant to the Corporation's notice of meeting:

(i) by or at the direction of the Board of Directors (or any duly authorized committee thereof); or

(ii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any shareholder of the Corporation Present in Person who (A) is a shareholder of record of the Corporation as of the record date set by the Board of Directors for the purpose of determining shareholders entitled to notice of, and to vote at, the special meeting, at the time the shareholder's notice provided for in Section 3.15(b) and this Section 3.15(d) is delivered to the Secretary, and at the time of such meeting (and any postponement, adjournment, rescheduling, or continuation thereof), (B) is entitled to vote at the meeting in the election of each individual so nominated, and (C) complies with the notice and other procedures and requirements set forth in this Section 3.15 including, without limitation Section 3.15(b), and elsewhere in these Bylaws and complies with any requirements of applicable law, including, but not limited to, the Exchange Act.

In the event the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board of Directors, any such shareholder 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 such shareholder delivers a shareholder's notice that complies with the requirements of Section 3.15(b) to the Secretary at the Principal Office not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of: (x) the 90th day prior to such special meeting; or (y) the tenth day following the date of the first Public Disclosure of the date of the special meeting and of the nominees

proposed by the Board of Directors to be elected at such meeting. In no event shall the adjournment, recess, or postponement of a special meeting or the Public Disclosure or other announcement thereof commence a new time period (or extend any time period).

(e) Effect of Noncompliance. Only such persons who are nominated in accordance with the procedures set forth in this Section 3.15 or Section 3.18 shall be eligible to be elected at any meeting of shareholders of the Corporation to serve as directors. In no event may a shareholder provide notice of proposed nominations pursuant to this Section 3.15 for the election of directors with respect to a greater number of nominees (as alternates or otherwise) than are subject to election by shareholders at the applicable meeting. Only such other business shall be conducted at a meeting as shall be properly brought before the meeting in accordance with the procedures and requirements set forth in this Section 3.15 or Section 3.18, as applicable. If any proposed nomination was not made or proposed in compliance with this Section 3.15 or Section 3.18, as applicable, or other business was not made or proposed in compliance with this Section 3.15, or any Proposing Shareholder breaches, or takes any action contrary to, any of the representations, undertakings, or commitments made in the shareholder notice it delivers to the Corporation or any of the documents submitted in connection therewith, then except as otherwise required by applicable law, the chair of the meeting shall have the power and duty to declare that such nomination shall be disregarded and/or that such proposed other business shall not be transacted notwithstanding that proxies in respect of such nominations or other business may have been received by the Corporation. Notwithstanding anything in these Bylaws to the contrary, unless otherwise required by law, if a Proposing Shareholder intending to propose business or make nominations at an annual meeting or propose a nomination at a special meeting pursuant to this Section 3.15 does not provide the information required under this Section 3.15 to the Corporation, including the updated information required by Section 3.15(b)(vi)(B), Section 3.15(b)(vi)(C), and Section 3.15(b)(vi)(D) within five business days after the record date for such meeting or the Proposing Shareholder is not Present in Person at the meeting to present the proposed business or nominations, such business or nominations shall not be considered, notwithstanding that proxies in respect of such business or nominations may have been received by the Corporation.

(f) Rule 14a-8. This Section 3.15 and Section 3.18 shall not apply to a proposal proposed to be made by a shareholder if the shareholder has notified the Corporation of the shareholder's intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and neither this Section 3.15 nor Section 3.18 shall be deemed to affect any right of a shareholder to request inclusion of a proposal in, nor the right of the Corporation to omit a proposal from, any proxy statement filed by the Corporation with the SEC pursuant to Rule 14a-8 of the Exchange Act and the SEC Staff's interpretations, guidance, and no-action letter determinations relating thereto.

(g) Rule 14a-19. Notwithstanding the foregoing provisions of this Section 3.15, unless otherwise required by law, (i) no shareholder proposing nominations pursuant to this Section 3.15 shall solicit proxies in support of director nominees other than the Corporation's nominees unless such shareholder has complied with Rule 14a-19 in connection with the solicitation of such proxies, including the timely provision of the required notices to the

Corporation and (ii) if any such shareholder (A) provides notice pursuant to Rule 14a-19(b) and (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3), including the provision of the required notices thereunder to the Corporation in a timely manner, or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such shareholder has met the requirements of Rule 14a-19(a)(3) in accordance with clause (z) of the following sentence, then the Corporation shall treat any proxies or votes solicited for such shareholder's candidates as abstentions rather than votes for such shareholder's candidates. If any shareholder providing notice as to nominations pursuant to this Section 3.15 provides notice pursuant to Rule 14a-19(b), then such shareholder shall (x) promptly notify the Corporation if it subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3), (x) if Rule 14a-19(c) applies, comply with Rule 14a-19(c) by notifying the Secretary in writing at the Principal Office within two business days of the change of intention and (z) if it has not provided a notice to the Corporation under clause (x) or (y), deliver to the Corporation, no later than seven business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3).

Section 3.16 Action by Shareholders Without Meeting.

(a) Requirements for Written Consents. Any action required or permitted by the Act to be taken at any annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote if one or more written consents describing the action so taken (i) shall be signed by the holders of record on the record date established pursuant to Section 3.16(b) (the "Written Consent Record Date") of outstanding stock entitled to vote thereon having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and (ii) and shall be delivered to the Principal Office, the Corporation's principal place of business, the Secretary, or another officer or agent of the Corporation having custody of the books in which proceedings of meetings of shareholders are recorded. Delivery shall be made by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of the signature of each shareholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the date of the earliest dated consent delivered in the manner required herein, written consents signed by the number of holders required to take action are delivered to the Corporation by delivery as set forth in this Section 3.16. Only shareholders of record on the Written Consent Record Date shall be entitled to consent to corporate action in writing without a meeting.

(b) Without qualification, any shareholder of record seeking to have the shareholders authorize or take any action by written consent shall first request in writing that the Board of Directors fix a Written Consent Record Date for the purpose of determining the shareholders entitled to take such action, which request shall be in proper form and delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation. Within 10 days after receipt of a request in proper form and otherwise in compliance with this Section 3.16(b) from any such shareholder, the Board of Directors may adopt a resolution fixing a Written Consent Record Date for the purpose of determining the shareholders entitled to take such action, which date shall not be more than 10 days after the date upon which the resolution

fixing the record date is adopted by the Board of Directors. If no resolution fixing a record date has been adopted by the Board of Directors within such 10 day period after the date on which such a request is received, (i) the Written Consent Record Date for determining shareholders entitled to consent to such action, when no prior action of the Board of Directors is required by applicable law, shall be the first date on which valid signed written consents constituting applicable percentage of the outstanding shares of the Corporation and setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner described in this Section 3.16, and (ii) the Written Consent Record Date for determining shareholders entitled to consent to such action, when prior action by the Board of Directors is required by applicable law, shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

(c) To be in proper form for purposes of this Section 3.16, a request by a shareholder for the Board of Directors to fix a Written Consent Record Date shall set forth:

(i) As to each Soliciting Person (as defined below), the Shareholder Information (as defined in Section 3.15(b)(vi)(B), except that for purposes of this Section 3.16 the term "Soliciting Person" shall be substituted for the term "Proposing Shareholder" in all places it appears in Section 3.15(b)(vi)(A) and Section 3.15(b)(vi)(B);

(ii) As to each Soliciting Person, any Disclosable Interests (as defined in Section 3.15(b)(vi)(K), except that for purposes of this Section 3.16 the term "Soliciting Person" shall be substituted for the term "Proposing Shareholder" in all places it appears in Sections 3.15(b)(vi)(B)(2) through (K) and the disclosure pursuant Sections 3.15(b)(vi)(B)(2) through (K) shall be made with respect to the action or actions proposed to be taken by written consent);

(iii) As to the action or actions proposed to be taken by written consent, (A) a reasonably brief description of the action or actions, the reasons for taking such action or actions and any material interest in such action or actions of each Soliciting Person, (B) the text of the resolutions or consent proposed to be acted upon by written consent of the shareholders, and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Soliciting Persons and (y) between or among any Soliciting Person and any other person (including their names) in connection with the request or such action or actions; and

(iv) If directors are proposed to be elected by written consent, the Nominee Information for each person whom a Proposing Shareholder proposes to elect as a director by written consent.

For purposes of this Section 3.16, the term "Soliciting Person" shall mean (A) the shareholder making a request for the Board of Directors to fix a record date and proposing the action or actions to be taken by written consent, (B) the beneficial owner or beneficial owners, if different, on whose behalf such request is made (other than a beneficial owner that is a depositary), (C) any

Affiliate or Associate of such shareholder or beneficial owner, (D) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such shareholder or beneficial owner in any solicitation of consents, and (E) any person who may be deemed to be a member of a "group" (as such term is used in Rule 13d-5 of the Exchange Act) with such shareholder or beneficial owner (or any of their respective Affiliates or Associates) with respect to the shares of the Corporation's Common Stock, regardless of whether such person is disclosed as a member of a "group" in a Schedule 13D or an amendment thereto filed with the SEC relating to the Corporation.

(d) In connection with an action or actions proposed to be taken by written consent in accordance with this Section 3.16, the shareholder or shareholders seeking such action or actions shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, so that the information provided or required to be provided pursuant to this Section 3.16 shall be true and correct as of the record date for determining the shareholders eligible to take such action and as of the date that is five business days prior to the date the consent solicitation is commenced, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for determining the shareholders eligible to take such action (in the case of the update and supplement required to be made as of the record date), and not later than three business days prior to the date that the consent solicitation is commenced (in the case of the update and supplement required to be made as of five business days prior to the commencement of the consent solicitation). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any written consent provided by a shareholder, extend any applicable deadlines hereunder or enable or be deemed to permit a shareholder who has previously submitted a written consent hereunder to amend or update any proposal, including by changing or adding nominees, matters, business or proposed resolutions.

(e) Notwithstanding anything in these Bylaws to the contrary, no action may be taken by the shareholders by written consent except in accordance with this Section 3.16. If the Board of Directors shall determine that any request to fix a Written Consent Record Date or to take shareholder action by written consent was not properly made in accordance with this Section 3.16, or the shareholder or shareholders seeking to take such action do not otherwise comply with this Section 3.16, then the Board of Directors shall not be required to fix a Written Consent Record Date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. In addition to the requirements of this Section 3.16 with respect to shareholders seeking to take an action by written consent, each Soliciting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to such action.

(f) Revocation of Written Consents. Any written consent may be revoked prior to the date that the Corporation receives the required number of consents to authorize the proposed action. No revocation is effective unless in writing and until received by the Corporation at its Principal Office or its principal place of business, or received by the Secretary

or other officer or agent having custody of the books in which proceedings of meetings of shareholders are recorded.

(g) Notice to Nonconsenting Shareholders. Within ten days after obtaining such authorization by written consent, notice must be given in writing to those shareholders who have not consented in writing or who are not entitled to vote on the action. The notice shall fairly summarize the material features of the authorized action and, if the action be such for which dissenters' rights are provided under the Act, the notice shall contain a clear statement of the right of shareholders dissenting therefrom to be paid the fair value of their shares upon compliance with the provisions of the Act regarding the rights of dissenting shareholders.

(h) Same Effect as Vote at Meeting. A consent signed under this Section 3.16 has the effect of a meeting vote and may be described as such in any document. Whenever action is taken by written consent pursuant to this Section 3.16, the written consent of the shareholders consenting thereto or the written reports of inspectors appointed to tabulate such consents shall be filed with the minutes of proceedings of shareholders.

Section 3.17 Acceptance of Instruments Showing Shareholder Action. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the Corporation, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of a shareholder. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a shareholder, the Corporation, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, personal representative, or conservator representing the shareholder and, if the Corporation requests, evidence of fiduciary status acceptable to the Corporation is presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy, or assignee for the benefit of creditors of the shareholder and, if the Corporation requests, evidence of this status acceptable to the Corporation is presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the Corporation requests, evidence acceptable to the Corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all co-owners.

The Corporation may reject a vote, consent, waiver, or proxy appointment if the Secretary or other officer or agent of the Corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

Section 3.18 Shareholder Nominations Included in the Corporation's Proxy Materials.

(a) Inclusion of Nominee in Proxy Statement. Subject to the provisions of this Section 3.18, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting:

(i) the name of any person nominated for election (the "Nominee") to the Board of Directors, which shall also be included on the Corporation's form of proxy and ballot for the relevant annual meeting, by any Eligible Holder (as defined below) or group of up to 20 Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board of Directors or its designee, acting in good faith, all applicable conditions and complied with all applicable procedures set forth in this Section 3.18 (such Eligible Holder or group of Eligible Holders being a "Nominating Shareholder");

(ii) disclosure about the Nominee and the Nominating Shareholder required under SEC rules or any other applicable law, rule or regulation to be included in the proxy statement; and

(iii) any statement included by the Nominating Shareholder in the Nomination Notice for inclusion in the proxy statement in support of the Nominee's election to the Board of Directors (subject, without limitation, to Section 3.18(e)(ii)), if such statement does not exceed 500 words.

Promptly after the Corporation has determined that it shall include a Nominee in its proxy statement and proxy card for an annual meeting, the Corporation shall notify the Nominating Shareholder that nominated the Nominee of such determination.

Notwithstanding anything herein to the contrary, the Corporation may solicit shareholders against any Nominee and include in its proxy statement for any annual meeting any other information that the Corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of the Nominee, including without limitation any statement in opposition to the nomination and any of the information provided pursuant to this Section 3.18.

(b) Maximum Number of Nominees.

(i) The Corporation shall not be required to include in any proxy materials for an annual meeting of shareholders a number of Nominees greater than 20% of the number of directors in office as of the last day on which a Nomination Notice may be submitted pursuant to Section 3.18(d) (the "Final

Nomination Date"), rounded down to the nearest whole number, but not less than two (the "Maximum Number"). The Maximum Number for a particular annual meeting shall be reduced by (A) Nominees nominated by a Nominating Shareholder for that annual meeting whose nomination is subsequently withdrawn after the Nominating Shareholder is notified by the Corporation that the Nominees will be included in the Corporation's proxy statement and proxy card for the annual meeting, (B) Nominees nominated by a Nominating Shareholder for such annual meeting pursuant to this Section 3.18 that the Board of Directors itself decides to nominate for election at such annual meeting, (C) the number of directors in office as of the Final Nomination Date who had been Nominees nominated by a Nominating Shareholder with respect to any of the preceding two annual meetings (including any Nominee who had been counted at any such annual meeting pursuant to the immediately preceding clause (B)) whose reelection at the upcoming annual meeting is being recommended by the Board of Directors and (D) any director candidate for whom the Corporation shall have received one or more valid shareholder notices (whether or not subsequently withdrawn) nominating such person for election to the Board of Directors pursuant to Section 3.15, other than any such director referred to in this clause (D) who at the time of such annual meeting will have served as a director continuously, as a nominee of the Board of Directors, for at least two annual terms, but only to the extent the Maximum Number after such reduction with respect to this clause (D) equals one. If one or more vacancies for any reason occurs on the Board of Directors after the Final Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection with the occurrence of the vacancy or vacancies, then the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) Any Nominating Holder submitting more than one Nominee pursuant to this Section 3.18 for an annual meeting shall rank such Nominees based on the order in which the Nominating Holder desires such Nominees to be selected for inclusion in the Corporation's proxy statement for such annual meeting if the number of Nominees pursuant to this Section 3.18 exceeds the Maximum Number. If the number of Nominees pursuant to this Section 3.18 for any annual meeting exceeds the Maximum Number, then the highest ranking Nominee who meets the requirements of this Section 3.18 from each Nominating Holder will be selected for inclusion in the Corporation's proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the shares of common stock of the Corporation disclosed as owned in each Nominating Shareholder's Nomination Notice.

(iii) If, after the Final Nomination Date, (A) the Corporation is notified, or the Board of Directors or its designee, acting in good faith, determines, that (1) a Nominating Shareholder has failed to satisfy or to continue to satisfy the eligibility requirements described in Section 3.18(c), (2) any of the

representations and warranties made in the Nomination Notice cease to be true and accurate in all material respects (or omit a material fact necessary to make the statements therein not misleading) or (3) any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Shareholder or the Nominee under this Section 3.18, (B) a Nominating Shareholder or any qualified representative thereof does not appear at the annual meeting to present any nomination submitted pursuant to this Section 3.18, or the Nominating Shareholder withdraws its nomination, or (C) a Nominee becomes ineligible for inclusion in the Corporation's proxy statement pursuant to this Section 3.18 or dies, becomes disabled or is otherwise disqualified from being nominated for election or serving as a director of the Corporation or is unwilling or unable to serve as a director of the Corporation, in each case as determined by the Board of Directors or its designee, acting in good faith, whether before or after the Corporation's definitive proxy statement for such annual meeting is made available to shareholders, then the nomination of the Nominating Shareholder or such Nominee, as the case may be, shall be disregarded and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), the Nominating Shareholder may not cure in any way any defect preventing the nomination of the Nominee, and the Corporation (1) may omit from its proxy statement and any ballot or form of proxy the disregarded Nominee and any information concerning such Nominee (including a Nominating Shareholder's statement in support), any other Nominee that the Corporation had determined not to include in its proxy statement and proxy card for such annual meeting and any successor or replacement nominee proposed by the Nominating Shareholder or by any other Nominating Shareholder and (2) may otherwise communicate to its shareholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Nominee will not be included as a Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(c) Eligibility of Nominating Shareholder.

(i) An "Eligible Holder" is a person who has either (A) been a record holder of the shares of the Corporation's common stock used to satisfy the eligibility requirements in this Section 3.18(c) continuously for the three-year period specified in Section 3.18(c)(ii) or (B) provides to the Secretary of the Corporation, within the time period referred to in Section 3.18(c), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form and in substance that the Board of Directors or its designee, acting in good faith, determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(ii) An Eligible Holder or group of up to 20 Eligible Holders may submit a nomination in accordance with this Section 3.18 only if the person or

group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice and continues to own at least the Minimum Number through the date of the annual meeting. A group of funds under common management and investment control shall be treated as one Eligible Holder for purposes of such limitation if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Corporation that demonstrates that the funds are under common management and investment control. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations applicable to an individual Eligible Holder that are set forth in this Section 3.18, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate, and a breach of any obligation, agreement, representation or warranty under this Section 3.18 by any member of a group shall be deemed a breach by the Nominating Shareholder. If any shareholder withdraws from a group of Eligible Holders at any time prior to the annual meeting, then the group of Eligible Shareholders shall only be deemed to own the shares held by the remaining members of the group and if, as a result of such withdrawal, the Nominating Shareholder no longer owns the Minimum Number of shares of the Corporation's common stock, then the nomination shall be disregarded as provided in Section 3.18(b)(iii).

(iii) The "Minimum Number" of shares of the Corporation's common stock means 3% of the number of outstanding shares of the Corporation's common stock as of the most recent date for which such amount is given in any filing by the Corporation with the SEC prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 3.18, an Eligible Holder "owns" only those outstanding shares of common stock of the Corporation as to which the Eligible Holder possesses both:

(A) the full voting and investment rights pertaining to such shares; and

(B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell or (3) subject to any option, warrant, forward contract, swap, contract of sale, other

Derivative Instrument or similar instrument or agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares and/or (y) hedging, offsetting, or altering to any degree gain or loss arising from maintaining the full economic ownership of such shares by such Eligible Holder or any of its affiliates. An Eligible Holder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five business days' notice, recalls such loaned shares upon being notified by the Corporation that any of the Eligible Holder's Nominees will be included in the Corporation's proxy statement and proxy card for the annual meeting (subject to the provisions of this Section 3.18) and holds such shares through the date of the annual meeting. The terms "owned," "owning," "ownership" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board of Directors.

(v) No person shall be permitted to be in more than one group constituting a Nominating Shareholder, and if any person appears as a member of more than one group, then such person shall be deemed to be a member of the group that has the largest amount of shares of common stock of the Corporation disclosed as owned in the Nomination Notice.

(d) Nomination Notice. To nominate a Nominee for purposes of this Section 3.18, the Nominating Shareholder must have given timely notice thereof in writing to the Secretary. To be timely, a Nominating Shareholder's notice shall be received by the Secretary at the Principal Office not less than 120 days nor more than 150 days prior to the first annual anniversary of the date set forth in the Corporation's proxy statement for the immediately preceding annual meeting as the date on which the Corporation first made available to its shareholders definitive proxy materials for the immediately preceding annual meeting; provided, however, that if the date for which the annual meeting is called is more than 30 days before or more than 30 days after the first annual anniversary of the immediately preceding annual meeting, then notice by the Nominating Shareholder to be timely must be received by the Secretary by the later of the close of business on the date that is 180 days prior to the date of such

annual meeting or the tenth day following the date of the first Public Disclosure of such annual meeting. In no event shall any adjournment, recess, or postponement of any annual meeting or Public Disclosure or other announcement thereof commence a new time period (or extend any time period) for the giving of a Nomination Notice. To be in proper form, a Nominating Shareholder's notice to the Secretary for purposes of this Section 3.18 shall include all of the following information and documents (collectively, the "Nomination Notice"):

(i) a Schedule 14N (or any successor form) relating to the Nominee, completed and filed with the SEC by the Nominating Shareholder as applicable, in accordance with SEC rules;

(ii) a written notice of the nomination of such Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Shareholder (including each group member):

(A) the information and representations that would be required to be set forth in a shareholder's notice of a nomination for the election of directors pursuant to Section 3.15;

(B) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(C) a representation and warranty that the shares of common stock of the Corporation owned by the Nominating Shareholder were acquired in the ordinary course of business and not with the intent or objective to influence or change control of the Corporation and are not being held with the purpose or effect of changing control of the Corporation or to gain a number of seats on the Board of Directors that exceeds the maximum number of nominees that shareholders may nominate pursuant to this Section 3.18;

(D) a representation and warranty that the Nominating Shareholder satisfies the eligibility requirements set forth in Section 3.18(c) and has provided evidence of ownership to the extent required by Section 3.18(c)(i);

(E) a representation and warranty that the Nominating Shareholder will continue to satisfy the eligibility requirements described in Section 3.18(c) through the date of the annual meeting;

(F) a representation and warranty that the Nominating Shareholder has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Nominees it is nominating pursuant to this Section 3.18;

(G) a representation and warranty as to the Nominating Shareholder's intentions with respect to continuing to own the Minimum Number of shares of common stock of the Corporation through the date of the annual meeting;

(H) a representation and warranty that the Nominating Shareholder will not engage in, and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act (without reference to the exception in Rule 14a-(l)(2)(iv)) (or any successor rules), with respect to the annual meeting, other than with respect to its Nominees or any nominees of the Board of Directors;

(I) a representation and warranty that the Nominating Shareholder will not use any proxy card other than the Corporation's proxy card in soliciting shareholders in connection with the election of a Nominee at the annual meeting;

(J) a representation and warranty that the Nominee's nomination for election to the Board of Directors or, if elected, Board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded;

(K) a representation and warranty that the Nominee (1) qualifies as independent under the rules of any stock exchange on which the Corporation's securities are traded, (2) meets the audit committee and compensation committee independence requirements under the rules of any stock exchange on which the Corporation's securities are traded, (3) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule), and (4) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933, as amended, or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Nominee;

(L) details of any position of the Nominee as an employee, consultant, agent, officer or director of any Competitor (as defined below) within the three years preceding the submission of the Nomination Notice;

(1) "Competitor" means an individual, business or any other entity or enterprise engaged or having publicly announced its intent to engage in the sale or marketing of any Competing Product or Service (as defined below).

(2) "Competing Product or Service" means any product or service that is sold in competition with, or is being developed

and that will compete with, a product or service developed, manufactured, or sold by the Corporation.

(M) if desired, a statement for inclusion in the proxy statement in support of the Nominee's election to the Board of Directors, provided that such statement shall not exceed 500 words and shall fully comply with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 thereunder; and

(N) in the case of a nomination by a group, the designation by all group members of one group member for purposes of receiving communications, notices and inquiries from the Corporation and that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(iii) an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, acting in good faith, pursuant to which the Nominating Shareholder (including each group member) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) to file any written solicitation or other written communication with the Corporation's shareholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the SEC, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) to assume all liability (jointly and severally by all group members in the case of a nomination by a group) stemming from any action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Shareholder, its affiliates and associates or their respective agents and representatives with the Corporation, its shareholders or any other person in connection with the nomination or election of directors, including without limitation the Nomination Notice, or out of the facts, statements or other information that the Nominating Shareholder or its Nominees provided to the Corporation in connection with the inclusion of such Nominees in the Corporation's proxy statement;

(D) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding,

whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to any nomination submitted by the Nominating Shareholder pursuant to this Section 3.18 or a failure or alleged failure of the Nominating Shareholder to comply with, or any breach or alleged breach of, its obligations, agreements or representations under this Section 3.18;

(E) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Shareholder (including with respect to any group member) with the Corporation, its shareholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects or omits a material fact necessary to make the statements made not misleading or that the Nominating Shareholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Section 3.18(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify the Corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission and/or notify the Corporation of the failure to continue to satisfy the eligibility requirements described in Section 3.18(c), as the case may be, it being understood that providing any such notification shall not be deemed to cure any defect or limit the Corporation's right to omit a Nominee from its proxy materials as provided in this Section 3.18; and

(F) at the request of the Corporation, promptly, but in any event within five business days after such request, to provide to the Corporation such additional information as reasonably requested by the Corporation;

(iv) an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, acting in good faith, by the Nominee:

(A) that the Nominee will provide such other information as may reasonably be required by the Corporation to determine the eligibility of such person to serve as a director of the Corporation and will make such other acknowledgments, enter into such agreements and provide such other information as the Board of Directors requires of all directors, including promptly completing the Corporation's director questionnaire;

(B) that the Nominee has read and agrees, if elected as a director of the Corporation, to adhere to the Corporation's Corporate Governance Guidelines and Corporate Code of Business Conduct & Ethics and any other Corporation policies and guidelines applicable to directors;

(C) that the Nominee is not and will not become a party to (1) any compensatory, payment, reimbursement, indemnification or other financial agreement, arrangement or understanding with any person or entity in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (2) any agreement, arrangement or understanding with any person or entity as to how the Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been disclosed to the Corporation or (3) any Voting Commitment that could limit or interfere with the Nominee's ability to comply, if elected as a director of the Corporation, with his or her fiduciary duties under applicable law; and

(D) in the event that any information or communication provided by the Nominee to the Corporation, its shareholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects or omits a material fact necessary to make the statements made not misleading (and in any event within 48 hours of discovering such misstatement, omission or failure), that the Nominee will notify the Corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission, as the case may be, it being understood that providing any such notification shall not be deemed to cure any defect or limit the Corporation's right to omit a Nominee from its proxy materials as provided in this Section 3.18.

The information and documents required by this Section 3.18(d) shall be (i) provided with respect to and executed by each group member in the case of information applicable to group members and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Shareholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 3.18(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) Exceptions

(i) Notwithstanding anything to the contrary contained in this Section 3.18, the Corporation may omit from its proxy statement and any ballot or form of proxy any Nominee and any information concerning such Nominee (including a Nominating Shareholder's statement in support), and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Shareholder may not, after the Final Nomination Date, cure in any way any defect preventing the nomination of the Nominee, if:

(A) the Corporation receives a notice pursuant to Section 3.15 that a shareholder intends to nominate a person for election to the Board of Directors at the annual meeting;

(B) the Board of Directors or its designee, acting in good faith, determines that such Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with these Bylaws, or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation's securities are traded;

(C) the Nominee was nominated for election to the Board of Directors pursuant to this Section 3.18 at one of the Corporation's two preceding annual meetings and either (i) withdrew or became ineligible or unavailable for election at any such annual meeting or (ii) received a vote of less than 25% of the shares of common stock of the Corporation entitled to vote for such Nominee; or

(D) the Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended.

(ii) Notwithstanding anything to the contrary contained in this Section 3.18, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Nominee included in the Nomination Notice, if the Board of Directors or its designee, acting in good faith, determines that:

(A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;

(B) such information directly or indirectly impugns character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or

(C) the inclusion of such information in the proxy statement would otherwise violate SEC rules or any other applicable law, rule or regulation.

For purposes of this Section, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the Exchange Act.

ARTICLE 4

Board of Directors

Section 4.1 General Powers and Number.

(a) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation managed under the direction of, the Board of Directors, a majority of whom shall be Independent Directors. For purposes of this Section 4.1, "Independent Director" shall mean a person other than an officer or employee of the Corporation or its subsidiaries or any other individual having a relationship which, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(b) The Board of Directors shall consist of not less than three (3) nor more than eleven (11) individuals, which numbers may be increased or decreased from time to time by amendment to these Bylaws by a majority of the directors or by an affirmative shareholder vote. Subject to the foregoing, the number of directors shall be established from time to time by resolution of the Board of Directors. If the terms of the directors are staggered under Section 4.6 of these Bylaws, any increase or decrease in the number of directors shall be allocated proportionately among the classes. Any decrease in the number of directors shall not prematurely shorten the term of any incumbent director.

(c) Qualifications. Directors must be natural persons who are eighteen years of age or older but need not be residents of the State of Florida.

Section 4.2 Term of Office. The term of each director shall expire at the next annual meeting of shareholders following his or her election or until his or her successor is elected and qualifies, unless their terms are staggered under Section 4.6.

Section 4.3 Removal. The shareholders may remove one or more directors with or without cause. A director may be removed by the shareholders at a meeting of shareholders, provided that the notice of the meeting states that the purpose, or one of the purposes, of the meeting is such removal. If a director is elected by a voting group, only the shareholders of that voting group may participate in the vote to remove the director.

Section 4.4 Failed Director Election. Any director who fails to receive the requisite number of votes for reelection shall be required to promptly tender his or her resignation to the Board of Directors. The Corporate Governance and Nominating Committee of the Board of Directors shall make a recommendation to the Board of Directors on whether to accept or reject the offer of resignation, or whether other action should be taken. In reaching its decision, the Board of Directors will consider the Corporate Governance and Nominating Committee's recommendation and may consider any other factors it deems relevant, which may include the director's qualifications, the director's past and expected future contributions to the Corporation, the overall composition of the Board of Directors and committees of the Board of Directors, whether accepting the tendered resignation would cause the Corporation to fail to meet any

applicable rule or regulation (including the NASDAQ listing standards and the requirements of the federal securities laws) and the percentage of outstanding shares represented by the votes cast at the meeting. The director who tenders his or her offer of resignation shall not participate in the Corporate Governance and Nominating Committee's recommendation or the Board of Director's decision. The Board of Directors will act on the resignation within ninety (90) days following certification of the shareholder vote for the meeting and will promptly disclose its decision and rationale as to whether to accept the resignation (or the reasons for rejecting the resignation, if applicable) in a filing with the SEC or by other public announcement.

Section 4.5 Resignation. A director may resign at any time by delivering written notice to the Board of Directors or its Chairman or Vice Chairman (if any), or to the Corporation. A director's resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Section 4.6 Staggered Terms for Directors. The Board of Directors may, by the Articles of Incorporation, or by amendment to these Bylaws adopted by a vote of the shareholders, be divided into one, two or three classes with the number of directors in each class being as nearly equal as possible; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; at the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. If the directors have staggered terms, then any increase or decrease in the number of directors shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

Section 4.7 Vacancies.

(a) Who May Fill Vacancies. Except as provided below, whenever any vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of directors, it may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors, or by the shareholders. Any director elected in accordance with the preceding sentence shall hold office until the next annual meeting of the Corporation. If the directors first fill a vacancy, the shareholders shall have no further right with respect to that vacancy, and if the shareholders first fill the vacancy, the directors shall have no further rights with respect to that vacancy.

(b) Directors Elected by Voting Groups. Whenever the holders of shares of any voting group are entitled to elect a class of one or more directors by the provisions of the Articles of Incorporation, vacancies in such class may be filled by holders of shares of that voting group or by a majority of the directors then in office elected by such voting group or by a sole remaining director so elected. If no director elected by such voting group remains in office, unless the Articles of Incorporation provide otherwise, directors not elected by such voting group may fill vacancies.

(c) Prospective Vacancies. A vacancy that will occur at a specific later date, because of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 4.8 Compensation. The Board of Directors, irrespective of any personal interest of any of its members, may establish reasonable compensation of all directors for services to the Corporation as directors, officers, or otherwise, or may delegate such authority to an appropriate committee. The Board of Directors also shall have authority to provide for or delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers, and employees and to their families, dependents, estates, or beneficiaries on account of prior services rendered to the Corporation by such directors, officers, and employees.

Section 4.9 Regular Meetings. The Board of Directors may provide the date, time, and place, either within or without the State of Florida, for the holding of regular meetings of the Board of Directors without notice. Such meetings may also be remotely held as provided by Section 4.14(d).

Section 4.10 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the Vice Chairman (if any), the Lead Director (if any), the President or one-third of the members of the Board of Directors. The person or persons calling the meeting may fix any place, either within or without the State of Florida, as the place for holding any special meeting of the Board of Directors, and if no other place is fixed, the place of the meeting shall be the Principal Office. Such meetings may also be remotely held as provided by Section 4.14(d).

Section 4.11 Notice. Special meetings of the Board of Directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting. The Corporation may give notice of a regular or special meeting of the Board of Directors by electronic means to each director who consents to such electronic means of notice in the manner authorized by that director.

Section 4.12 Waiver of Notice. Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

Section 4.13 Quorum and Voting. A quorum of the Board of Directors consists of a majority of the number of directors prescribed by these Bylaws. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors. A director who is present at a meeting of the Board of Directors or a committee of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless: (a) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting specified business at the meeting; or (b) he or she votes against or abstains from the action taken.

Section 4.14 Conduct of Meetings.

(a) Presiding Officer. The Board of Directors shall elect from among its members a Chairman of the Board of Directors, who shall preside at meetings of the Board of Directors. If the Chairman is an employee of the Corporation, the Board of Directors may elect from among its members a Lead Director, who shall preside at executive sessions of the Board at which employees of the Corporation or any of its subsidiaries shall not be present. The Chairman, and in his or her absence, the Lead Director (if any), and in his or her absence, the Vice Chairman (if any), and in his or her absence, the President, and in his or her absence, a Vice President (if any), and in his or her absence, any director chosen by the directors present, shall call meetings of the Board of Directors to order and shall act as presiding officer of the meeting.

(b) Minutes. The Secretary of the Corporation shall act as secretary of all meetings of the Board of Directors but in the absence of the Secretary, the presiding officer may appoint any other person present to act as secretary of the meeting. Minutes of any regular or special meeting of the Board of Directors shall be prepared and distributed to each director.

(c) Adjournments. A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(d) Participation by Conference Call or Similar Means. The Board of Directors may permit any or all directors to participate in a regular or a special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting, including virtual meetings. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.15 Committees. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate from among its members an Executive Committee and one or more other committees (which may include, by way of example and not as a limitation, a Compensation Committee, an Audit Committee and a Corporate Governance and Nominating Committee) each of which, to the extent provided in such resolution and in any charter adopted by the Board of Directors for any committee, shall have and may exercise all the authority of the Board of Directors, except that no such committee shall have the authority to:

(a) approve or recommend to shareholders actions or proposals required by the Act to be approved by shareholders;

(b) fill vacancies on the Board of Directors or any committee thereof;

(c) adopt, amend, or repeal these Bylaws; or

(d) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the Board of Directors.

Except as otherwise provided by the SEC or NASDAQ, each committee must have one or more members, who shall serve at the pleasure of the Board of Directors. The Board of Directors, by resolution adopted in accordance with this Section 4.15, may designate one or more directors as alternate members of any such committee, who may act in the place and stead of any absent member or members at any meeting of such committee. The Board of Directors may adopt a charter for any such committee specifying requirements with respect to committee chairs and membership, responsibilities of the committee, the conduct of meetings and business of the committee and such other matters as the Board may designate. In the absence of a committee charter or a provision of a committee charter governing such matters, the provisions of these Bylaws which govern meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors apply to committees and their members as well.

Section 4.16 Lead Director. If the Board of Directors appoints a Lead Director to preside at executive sessions of the Board of Directors, the Board of Directors may assign to the Lead Director by resolutions such additional duties as the Board of Directors determines, in its discretion, including acting as a liaison between the Board of Directors and the officers of the Corporation and assisting in the setting of agendas for meetings of the Board of Directors.

Section 4.17 Action Without Meeting. Any action required or permitted by the Act to be taken at a meeting of the Board of Directors or a committee thereof may be taken without a meeting if the action is taken by all members of the Board or of the committee. The action shall be evidenced by one or more written consents describing the action taken, signed by each director or committee member and retained by the Corporation. Such action shall be effective when the last director or committee member signs the consent, unless the consent specifies a different effective date. A consent signed under this Section 4.17 has the effect of a vote at a meeting and may be described as such in any document.

ARTICLE 5

Officers

Section 5.1 Required Officers; Duties of Officers.

(a) The Corporation shall have such officers as the Board of Directors may appoint from time to time. The Board of Directors shall designate from among the officers it elects those who shall be the executive officers of the Corporation responsible for all policy making functions, under the direction of the Board of Directors. The Board of Directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the Corporation. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. The Board of Directors may also authorize any duly appointed officer to appoint one or more officers or assistant officers. The same individual may simultaneously hold more than one office.

(b) Each officer has the authority and shall perform the duties set forth in a resolution or resolutions of the Board of Directors or by direction of any officer authorized by the Board of Directors to prescribe the duties of other officers.

Section 5.2 Election and Term of Office. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is practicable. Each officer shall hold office until his or her successor shall have been duly elected or until his or her prior death, resignation, or removal.

Section 5.3 Removal. The Board of Directors may remove any officer and, unless restricted by the Board of Directors, an officer may remove any officer or assistant officer appointed by that officer, at any time, with or without cause and notwithstanding the contract rights, if any, of the officer removed. The appointment of an officer does not of itself create contract rights.

Section 5.4 Resignation. An officer may resign at any time by delivering notice to the Corporation. The resignation shall be effective when the notice is delivered, unless the notice specifies a later effective date and the Corporation accepts the later effective date. If a resignation is made effective at a later date and the Corporation accepts the future effective date, the pending vacancy may be filled before the effective date but the successor may not take office until the effective date.

Section 5.5 Vacancies. A vacancy in any principal office because of death, resignation, removal, disqualification, or otherwise, shall be filled as soon thereafter as practicable by the Board of Directors for the unexpired portion of the term.

Section 5.6 Chairman. The Chairman shall have authority, subject to such rules as may be prescribed by the Board of Directors, to direct the President in the performance of the President's duties. In general, he or she shall perform all duties as may be prescribed by the Board of Directors from time to time.

Section 5.7 Salaries. The salaries of the principal officers shall be fixed from time to time by the Board of Directors or by a duly authorized committee thereof, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the Corporation.

ARTICLE 6

Contracts, Checks and Deposits

Section 6.1 Contracts. The Board of Directors may authorize any officer or officers, or any agent or agents to enter into any contract or execute or deliver any instrument in the name of and on behalf of the Corporation, and such authorization may be general or confined to specific instances. In the absence of other designation, all deeds, mortgages, and instruments of

assignment or pledge made by the Corporation shall be executed in the name of the Corporation by the Chairman, the President, or one of the Vice Presidents (if any); the Secretary or an Assistant Secretary (if any), when necessary or required, shall attest and affix the corporate seal, if any, thereto; and when so executed no other party to such instrument or any third party shall be required to make any inquiry into the authority of the signing officer or officers.

Section 6.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by or under the authority of a resolution of the Board of Directors.

Section 6.3 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositaries as may be selected by or under the authority of a resolution of the Board of Directors.

ARTICLE 7

Share Certificates; Dividends and Distributions

Section 7.1 Form and Content of Share Certificates.

(a) Shares may but need not be represented by certificates. Unless the Act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum, each share certificate must state on its face:

(i) The name of the issuing corporation and that the Corporation is organized under the laws of the State of Florida;

(ii) The name of the person to whom issued; and

(iii) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the shares being issued are of different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the Board of Directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the Corporation will furnish the shareholder a full statement of this information on request and without charge.

(d) Each share certificate:

(i) Must be signed (either manually or in facsimile) by an officer or officers designated by the Board of Directors; and

(ii) May bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Section 7.2 Shares Without Certificates.

(a) The Board of Directors may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the Corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the Corporation shall send the shareholder a written statement of the information required on certificates by the Act.

Section 7.3 Restriction on Transfer of Shares and Other Securities.

(a) The Articles of Incorporation, these Bylaws, an agreement among shareholders, or an agreement between shareholders and the Corporation may impose restrictions on the transfer or registration of transfer of shares of the Corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of such shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this Section 7.3, and effected in compliance with the provisions of the Act, including having a proper purpose as referred to in the Act.

Section 7.4 Shareholder's Pre-emptive Rights.

(a) The shareholders of the Corporation do not have a pre-emptive right to acquire the Corporation's unissued shares.

Section 7.5 Distributions to Shareholders.

(a) The Board of Directors may authorize, and the Corporation may make, distributions to its shareholders subject to any limitations in the Articles of Incorporation and the Act.

(b) If the Board of Directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the Corporation's shares), it is the date the Board of Directors authorizes the distribution.

ARTICLE 8

Seal

Section 8.1 Seal. The Board of Directors may provide for a corporate seal for the Corporation.

ARTICLE 9

Indemnification

Section 9.1 Provision of Indemnification. The Corporation shall, to the fullest extent permitted or required by the Act, including any amendments thereto (but in the case of any such amendment, only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than prior to such amendment), indemnify its Directors and Executive Officers against any and all Liabilities, and advance any and all reasonable Expenses, incurred thereby in connection with any Proceeding to which any such Director or Executive Officer is a Party or in which such Director or Executive Officer is deposed or called to testify as a witness because he or she is or was a Director or Executive Officer of the Corporation, whether or not such person continues to serve in such capacity at the time the obligation to indemnify against Liabilities or advance Expenses is incurred or paid. The rights to indemnification granted hereunder shall not be deemed exclusive of any other rights to indemnification against Liabilities or the advancement of Expenses which a Director or Executive Officer may be entitled under any written agreement, Board of Director resolution, vote of shareholders, the Act, or otherwise. The Corporation may, but shall not be required to, supplement the foregoing rights to indemnification against Liabilities and advancement of Expenses by the purchase of insurance on behalf of any one or more of its Directors or Executive Officers whether or not the Corporation would be obligated to indemnify or advance Expenses to such Director or Executive Officer under this Article 9. For purposes of this Article 9, the term "Directors" includes former directors and any directors who are or were serving at the request of the Corporation as directors, officers, employees, or agents of another Corporation, partnership, joint venture, trust, or other enterprise, including, without limitation, any employee benefit plan (other than in the capacity as agents separately retained and compensated for the provision of goods or services to the enterprise, including, without limitation, attorneys-at-law, accountants, and financial consultants), whether or not such person continues to serve in such capacity at the time the obligation to indemnify against Liabilities or advance Expenses is incurred or paid. The term "Executive Officers" refers to those persons described in Section 240.3b-7 of the Exchange Act. All other capitalized terms used in this Article 9 and not otherwise defined herein shall have the meaning set forth in Section 607.0850 of the Act. The provisions of this Article 9 are intended solely for the benefit of the indemnified parties described herein, their heirs and personal representatives and shall not create any rights in favor of third parties. No amendment to or repeal of this Article 9 shall diminish the rights of indemnification provided for herein to any person who serves or served as a Director or Executive Officer at any time prior to such amendment or repeal.

ARTICLE 10

Amendments

Section 10.1 Authority to Amend the Articles of Incorporation.

(a) The Corporation may amend its Articles of Incorporation at any time to add or change a provision that is required or permitted in the Articles of Incorporation or to delete a provision not required in the Articles of Incorporation. Whether a provision is required or permitted in the Articles of Incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the Corporation does not have a vested property right resulting from any provision in the Articles of Incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the Corporation.

Section 10.2 Amendment by Board of Directors. The Board of Directors may adopt one or more amendments to the Articles of Incorporation without shareholder action:

(a) To extend the duration of the Corporation if it was incorporated at a time when limited duration was required by law;

(b) To delete the names and addresses of the initial directors;

(c) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Department of State of the State of Florida;

(d) To delete any other information contained in the Articles of Incorporation that is solely of historical interest;

(e) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the Corporation has only shares of that class outstanding;

(f) To delete the authorization for a class or series of shares authorized pursuant to Section 607.0602 of the Act, if no shares of such class or series have been issued;

(g) To change the corporate name by substituting the word “corporation,” “incorporated,” or “company,” or the abbreviation “corp.,” “Inc.,” or “Co.,” for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(h) To make any other change expressly permitted by the Act to be made without shareholder action.

Section 10.3 Amendment of Bylaws by Board of Directors. The Board of Directors may amend or repeal the Bylaws unless the Act reserves the power to amend a particular bylaw provision exclusively to the shareholders.

Section 10.4 Bylaw Increasing Quorum or Voting Requirements for Directors.

(a) A bylaw that fixes a greater quorum or voting requirement for the Board of Directors may be amended or repealed:

(i) If originally adopted by the shareholders, only by the shareholders;

(ii) If originally adopted by the Board of Directors, either by the shareholders or by the Board of Directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the Board of Directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the Board of Directors.

(c) Action by the Board of Directors under paragraph (a)(ii) to adopt or amend a bylaw that changes the quorum or voting requirement for the Board of Directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

ARTICLE 11

Miscellaneous

Section 11.1 Application of Florida Law. Whenever any provision of these Bylaws is inconsistent with any provision of the Act, as they may be amended from time to time, then in such instance, Florida law shall prevail.

Section 11.2 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 11.3 Conflicts with Articles of Incorporation. In the event that any provision contained in these Bylaws conflicts with any provision of the Articles of Incorporation, as amended from time to time, the provisions of the Articles of Incorporation shall prevail and be given full force and effect, to the full extent permissible under the Act.

Section 11.4 Partial Invalidity. If any provision of these Bylaws shall, for any reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of these Bylaws, and these Bylaws shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 11.5 Exclusive Forum for Adjudication of Disputes. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any claim that is based upon a violation of a duty under the laws of the State of Florida by a current or former director, officer, employee, or shareholder of the Corporation in such capacity, (b) any derivative action or proceeding brought on behalf of the Corporation, (c) any action asserting a claim arising pursuant to the Act, the Articles of Incorporation or these Bylaws (as any of the foregoing may be amended from time to time), or (d) any action asserting a claim governed by the internal affairs doctrine that is not included in the foregoing paragraphs (a), (b), or (c), shall be a state court located in the State of Florida (or, if no state court located within the State of Florida has jurisdiction, the federal district court for the Southern District of Florida). To the extent not inconsistent with applicable law, unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing, holding or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 11.5.