

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

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended July 1, 2023

OR

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

Commission File Number: 001-39667

LESLIE'S, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

2005 East Indian School Road

Phoenix, AZ

(Address of principal executive offices)

20-8397425

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

85016

(Zip Code)

Registrant's telephone number, including area code: (602) 366-3999

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 \$0.001 per share	LESL	The 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 (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). YES NO

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

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

As of July 28, 2023, the Registrant had 184,004,936 shares of common stock, \$0.001 par value per share, outstanding.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical fact contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations or financial condition, business strategy, and plans and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would,” or the negative of these words or other similar terms or expressions. Our actual results or outcomes could differ materially from those indicated in these forward-looking statements for a variety of reasons, including, among others:

- our ability to execute on our growth strategies;
- supply disruptions;
- our ability to maintain favorable relationships with suppliers and manufacturers;
- competition from mass merchants and specialty retailers;
- impacts on our business from the sensitivity of our business to weather conditions, changes in the economy (including rising interest rates, recession fears, and inflationary pressures), geopolitical events or conflicts, and the housing market;
- disruptions in the operations of our distribution centers;
- our ability to implement technology initiatives that deliver the anticipated benefits, without disrupting our operations;
- our ability to attract and retain senior management and other qualified personnel;
- regulatory changes and development affecting our current and future products;
- our ability to obtain additional capital to finance operations;
- commodity price inflation and deflation;
- impacts on our business from epidemics, pandemics, or natural disasters;
- impacts on our business from cyber incidents and other security threats or disruptions;
- our ability to remediate the material weakness in our internal control over financial reporting or additional material weaknesses or other deficiencies in the future or to maintain effective disclosure controls and procedures and internal control over financial reporting; and
- other risks and uncertainties, including those listed in the section titled “Risk Factors” in our filings with the United States Securities and Exchange Commission (“SEC”).

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Quarterly Report on Form 10-Q primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties, and other factors described in Part I, Item 1A, “Risk Factors” in our Annual Report on Form 10-K for the year ended October 1, 2022, and in Part II, Item 1A, “Risk Factors” in our Quarterly Report on Form 10-Q for the quarter ended April 1, 2023. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Quarterly Report on Form 10-Q. The results, events, and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results or outcomes could differ materially from those described in the forward-looking statements.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q, and, while we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements made in this Quarterly Report on Form 10-Q are based on events or circumstances as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Quarterly Report on Form 10-Q to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, or investments.

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements.

LESLIE'S, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in Thousands, Except Share and Per Share Amounts)

	July 1, 2023 (Unaudited)	October 1, 2022 (Audited)	July 2, 2022 (Unaudited)
Assets			
Current assets			
Cash and cash equivalents	\$ 19,430	\$ 112,293	\$ 193,130
Accounts and other receivables, net	49,263	45,295	47,266
Inventories	436,557	361,686	361,391
Prepaid expenses and other current assets	31,454	23,104	30,542
Total current assets	536,704	542,378	632,329
Property and equipment, net	85,396	78,087	71,653
Operating lease right-of-use assets	250,378	236,477	221,694
Goodwill and other intangibles, net	219,835	213,701	155,663
Deferred tax assets	194	1,268	1,230
Other assets	44,918	37,720	34,422
Total assets	<u>\$ 1,137,425</u>	<u>\$ 1,109,631</u>	<u>\$ 1,116,991</u>
Liabilities and stockholders' deficit			
Current liabilities			
Accounts payable and accrued expenses	\$ 242,510	\$ 266,972	\$ 330,881
Operating lease liabilities	61,342	60,373	63,303
Income taxes payable	3,345	12,511	30,611
Current portion of long-term debt	8,100	8,100	8,100
Total current liabilities	315,297	347,956	432,895
Operating lease liabilities, noncurrent	193,004	179,835	161,473
Revolving Credit Facility	31,000	—	—
Long-term debt, net	774,884	779,726	781,322
Other long-term liabilities	3,050	65	70
Total liabilities	1,317,235	1,307,582	1,375,760
Commitments and contingencies			
Stockholders' deficit			
Common stock, \$0.001 par value, 1,000,000,000 shares authorized and 184,004,936, 183,480,545, and 183,027,684 issued and outstanding as of July 1, 2023, October 1, 2022, and July 2, 2022, respectively.	184	183	183
Additional paid in capital	97,313	89,934	87,050
Retained deficit	(277,307)	(288,068)	(346,002)
Total stockholders' deficit	(179,810)	(197,951)	(258,769)
Total liabilities and stockholders' deficit	<u>\$ 1,137,425</u>	<u>\$ 1,109,631</u>	<u>\$ 1,116,991</u>

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

LESLIE'S, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in Thousands, Except Per Share Amounts)
(Unaudited)

	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Sales	\$ 610,891	\$ 673,633	\$ 1,018,839	\$ 1,086,529
Cost of merchandise and services sold	359,295	370,026	630,777	629,977
Gross profit	251,596	303,607	388,062	456,552
Selling, general and administrative expenses	135,789	131,469	324,427	300,872
Operating income	115,807	172,138	63,635	155,680
Other expense:				
Interest expense	17,675	6,847	48,282	20,659
Other (income) expenses, net	—	(143)	—	407
Total other expense	17,675	6,704	48,282	21,066
Income before taxes	98,132	165,434	15,353	134,614
Income tax expense	25,585	42,448	4,592	33,519
Net income	<u>\$ 72,547</u>	<u>\$ 122,986</u>	<u>\$ 10,761</u>	<u>\$ 101,095</u>
Earnings per share:				
Basic	<u>\$ 0.39</u>	<u>\$ 0.67</u>	<u>\$ 0.06</u>	<u>\$ 0.55</u>
Diluted	<u>\$ 0.39</u>	<u>\$ 0.67</u>	<u>\$ 0.06</u>	<u>\$ 0.54</u>
Weighted average shares outstanding:				
Basic	183,932	182,937	183,725	184,707
Diluted	184,760	184,721	184,752	186,695

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

LESLIE'S, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(Amounts in Thousands)
(Unaudited)

	Common Stock		Additional		Retained Deficit	Total Stockholders' Deficit
	Shares	Amount	Paid in Capital			
Balance, April 2, 2022	182,784	\$ 183	\$ 83,074	\$ (468,988)	\$ (385,731)	
Issuance of common stock under the Plan	244	—	1,049	—	1,049	
Equity-based compensation	—	—	2,927	—	2,927	
Net income	—	—	—	122,986	122,986	
Balance, July 2, 2022	<u>183,028</u>	<u>\$ 183</u>	<u>\$ 87,050</u>	<u>\$ (346,002)</u>	<u>\$ (258,769)</u>	
Balance, April 1, 2023	183,843	\$ 184	\$ 94,705	\$ (349,854)	\$ (254,965)	
Issuance of common stock under the Plan	166	—	—	—	—	
Equity-based compensation	—	—	2,649	—	2,649	
Restricted stock units surrendered in lieu of withholding taxes	(4)	—	(41)	—	(41)	
Net income	—	—	—	72,547	72,547	
Balance, July 1, 2023	<u>184,005</u>	<u>\$ 184</u>	<u>\$ 97,313</u>	<u>\$ (277,307)</u>	<u>\$ (179,810)</u>	
	Common Stock		Additional		Retained Deficit	Total Stockholders' Deficit
	Shares	Amount	Paid in Capital			
Balance, October 2, 2021	189,821	\$ 190	\$ 204,711	\$ (422,459)	\$ (217,558)	
Issuance of common stock under the Plan	707	1	1,377	—	1,378	
Equity-based compensation	—	—	8,462	—	8,462	
Repurchase and retirement of common stock	(7,500)	(8)	(127,500)	(24,638)	(152,146)	
Net income	—	—	—	101,095	101,095	
Balance, July 2, 2022	<u>183,028</u>	<u>\$ 183</u>	<u>\$ 87,050</u>	<u>\$ (346,002)</u>	<u>\$ (258,769)</u>	
Balance, October 1, 2022	183,481	\$ 183	\$ 89,934	\$ (288,068)	\$ (197,951)	
Issuance of common stock under the Plan	643	1	—	—	1	
Equity-based compensation	—	—	9,159	—	9,159	
Restricted stock units surrendered in lieu of withholding taxes	(119)	—	(1,780)	—	(1,780)	
Net income	—	—	—	10,761	10,761	
Balance, July 1, 2023	<u>184,005</u>	<u>\$ 184</u>	<u>\$ 97,313</u>	<u>\$ (277,307)</u>	<u>\$ (179,810)</u>	

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

LESLIE'S, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in Thousands)
(Unaudited)

	Nine Months Ended	
	July 1, 2023	July 2, 2022
Operating Activities		
Net income	\$ 10,761	\$ 101,095
Adjustments to reconcile net income to net cash (used in) provided by operating activities:		
Depreciation and amortization	25,569	22,880
Equity-based compensation	9,159	8,462
Amortization of deferred financing costs and debt discounts	1,541	1,483
Provision for doubtful accounts	25	723
Deferred income taxes	1,074	2,504
Loss on asset dispositions	103	271
Changes in operating assets and liabilities:		
Accounts and other receivables	(3,399)	(9,129)
Inventories	(70,393)	(146,196)
Prepaid expenses and other current assets	(9,614)	(9,075)
Other assets	(8,864)	(9,429)
Accounts payable and accrued expenses	(21,846)	91,145
Income taxes payable	(9,166)	23,666
Operating lease assets and liabilities, net	237	(5,742)
Net cash (used in) provided by operating activities	(74,813)	72,658
Investing Activities		
Purchases of property and equipment	(26,733)	(25,927)
Business acquisitions, net of cash acquired	(15,549)	(40,670)
Proceeds from asset dispositions	1,384	414
Net cash used in investing activities	(40,898)	(66,183)
Financing Activities		
Borrowings on Revolving Credit Facility	264,000	45,000
Payments on Revolving Credit Facility	(233,000)	(45,000)
Repayment of long-term debt	(6,075)	(6,075)
Payment of deferred financing costs	(297)	—
Proceeds from options exercised	—	1,378
Repurchase and retirement of common stock	—	(152,146)
Payments of employee tax withholdings related to restricted stock vesting	(1,780)	—
Net cash provided by (used in) financing activities	22,848	(156,843)
Net decrease in cash and cash equivalents	(92,863)	(150,368)
Cash and cash equivalents, beginning of period	112,293	343,498
Cash and cash equivalents, end of period	<u>\$ 19,430</u>	<u>\$ 193,130</u>
Supplemental Information:		
Interest	\$ 46,413	\$ 19,409
Income taxes, net of refunds received	12,648	7,442

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

LESLIE'S, INC.
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1—Business and Operations

Leslie's, Inc. ("Leslie's," "we," "our," "us," "its," or the "Company") is the leading direct-to-consumer pool and spa care brand. We market and sell pool and spa supplies and related products and services, which primarily consist of maintenance items such as chemicals, equipment and parts, and cleaning accessories, as well as safety, recreational, and fitness-related products. We currently market our products through 1,009 company-operated locations in 39 states and e-commerce websites.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

We prepared the accompanying interim condensed consolidated financial statements following United States generally accepted accounting principles ("GAAP"). The financial statements include all normal and recurring adjustments that are necessary for a fair presentation of our financial position and operating results. The interim condensed consolidated financial statements include the accounts of Leslie's, Inc. and our subsidiaries. All significant intercompany accounts and transactions have been eliminated. These interim condensed consolidated financial statements and the related notes should be read in conjunction with the audited consolidated financial statements and notes included in our Annual Report on Form 10-K for the year ended October 1, 2022.

Fiscal Periods

We operate on a fiscal calendar that results in a fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to September 30th. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. References to the three months ended July 1, 2023 and July 2, 2022 refer to the 13 weeks ended July 1, 2023 and July 2, 2022, respectively. References to the nine months ended July 1, 2023 and July 2, 2022 refer to the 39 weeks ended July 1, 2023 and July 2, 2022, respectively.

Use of Estimates

Management is required to make certain estimates and assumptions during the preparation of the condensed consolidated financial statements in accordance with GAAP. These estimates and assumptions impact the reported amount of assets and liabilities and disclosures of contingent assets and liabilities as of the date of the condensed consolidated financial statements. They also impact the reported amount of net income (loss) during any period. Actual results could differ from those estimates.

Significant estimates underlying the accompanying condensed consolidated financial statements include inventory reserves, lease assumptions, vendor rebate programs, our loyalty program, the determination of income taxes payable and deferred income taxes, sales returns reserve, self-insurance liabilities, the recoverability of intangible assets and goodwill, fair value of assets acquired in a business combination, and contingent consideration related to business combinations.

Seasonality

Our business is highly seasonal. Sales and earnings are highest during our third and fourth fiscal quarters, being April through September, which represent the peak months of swimming pool use. Sales are substantially lower during our first and second fiscal quarters.

Summary of Other Significant Accounting Policies

There have been no changes to our Significant Accounting Policies since our Annual Report on Form 10-K for the year ended October 1, 2022, other than the adoption of Reference Rate Reform discussed further below. For more information regarding our Significant Accounting Policies and Estimates, see Note 2—Summary of Significant Accounting Policies included in our Annual Report on Form 10-K for the year ended October 1, 2022.

Recent Accounting Pronouncements

In March 2020, January 2021 and December 2022, the FASB issued ASU No. 2020-04, 2021-01 and 2022-06, respectively, regarding Reference Rate Reform (collectively “Topic 848”). This collective guidance is in response to accounting concerns regarding contract modifications and hedge accounting because of impending rate reform associated with structural risks of interbank offered rates, and particularly, the risk of cessation of the London Inter-Bank Offer Rate (“LIBOR”) related to regulators in several jurisdictions around the world having undertaken reference rate reform initiatives to identify alternative reference rates. The intended cessation date of the overnight 1-, 3-, 6-, and 12-month tenors of LIBOR is expected to be June 30, 2023. In addition, Topic 848 provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The guidance is effective upon issuance and may be applied through December 31, 2024, after which entities will no longer be permitted to apply the relief in Topic 848. The primary contracts for which LIBOR is used are our Revolving Credit Facility and Term Loan (as defined in Note 9—Long-Term Debt, Net). The Company transitioned from a LIBOR-based rate to a Term Secured Overnight Financing Rate (“Term SOFR”)-based rate for our Revolving Credit Facility and Term Loan and elected the optional expedients under the standard as of the first day of the second and third quarters, respectively. This adoption did not have a material impact to our condensed consolidated financial statements.

Note 3—Business Combinations

Our condensed consolidated financial statements include the results of operations of these acquisitions from the date of acquisition. The total purchase consideration was allocated to the tangible and intangible assets acquired and the liabilities assumed at their estimated fair values as of each acquisition date, with the excess recorded to goodwill. The goodwill resulting from these acquisitions is expected to be deductible for income tax purposes. During the measurement periods, which will not exceed one year from each closing, we will continue to obtain information to assist us in finalizing the acquisition date fair values. Any qualifying changes to our preliminary estimates will be recorded as adjustments to the respective assets and liabilities, with any residual amounts allocated to goodwill.

Fiscal 2023 Acquisitions

During the nine months ended July 1, 2023, we acquired five businesses for an aggregate purchase price of \$15.5 million, net of cash acquired. These acquisitions expanded our pool and spa footprint and added 12 new locations across Arizona, California, Florida, and Louisiana. The purchase accounting for these acquisitions has not yet been completed.

	Total
Total purchase consideration, net of cash acquired	\$ 15,549
Fair value of assets acquired and liabilities assumed:	
Inventories	4,518
Finite-lived intangible assets	2,700
Other assets and liabilities, net	152
Total assets acquired, net of liabilities assumed	7,370
Goodwill	\$ 8,179

Fiscal 2022 Acquisitions

In fiscal 2022, we acquired six businesses for an aggregate purchase price of \$107.7 million, inclusive of contingent consideration of up to \$4.0 million if certain performance metrics are achieved within one to three years of the respective closing dates. Contingent considerations are remeasured to fair value at each reporting period until the contingency is resolved. There were no material reductions in the fair value of certain prior year contingent considerations. These acquisitions expanded our pool and spa footprint and added 27 new locations as well as expanded our manufacturing capabilities. The following table sets forth the preliminary purchase price allocation of these acquisitions, net of immaterial measurement period adjustments, in the aggregate (in thousands). The purchase accounting for five of the six acquisitions is complete.

	Total
Total purchase consideration, net of cash acquired	\$ 107,663
Fair value of assets acquired and liabilities assumed:	
Inventories	20,050
Finite-lived intangible assets	15,200
Other assets and liabilities, net	3,086
Total assets acquired, net of liabilities assumed	38,336
Goodwill	\$ 69,327

Note 4 — Goodwill and Other Intangibles, Net
Goodwill

The following table details the changes in goodwill (in thousands):

	July 1, 2023	October 1, 2022	July 2, 2022
Balance at beginning of the period	\$ 173,513	\$ 101,114	\$ 101,114
Acquisitions, net of measurement period adjustments	7,185	72,399	24,160
Balance at the end of the period	<u>\$ 180,698</u>	<u>\$ 173,513</u>	<u>\$ 125,274</u>

Other Intangible Assets

Other intangible assets consisted of the following as of July 1, 2023 (in thousands, except weighted average remaining useful life):

	Weighted Average Remaining Useful Life (in Years)	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount
Trade name and trademarks (finite life)	10.1	\$ 26,740	\$ (7,436)	\$ 19,304
Trade name and trademarks (indefinite life)	Indefinite	9,350	—	9,350
Non-compete agreements	5.6	8,683	(7,534)	1,149
Consumer relationships	7.6	24,100	(14,935)	9,165
Other intangibles	5.3	6,620	(6,451)	169
Total		<u>\$ 75,493</u>	<u>\$ (36,356)</u>	<u>\$ 39,137</u>

Other intangible assets consisted of the following as of October 1, 2022 (in thousands, except weighted average remaining useful life):

	Weighted Average Remaining Useful Life (in Years)	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount
Trade name and trademarks (finite life)	11.0	\$ 24,440	\$ (5,907)	\$ 18,533
Trade name and trademarks (indefinite life)	Indefinite	9,350	—	9,350
Non-compete agreements	6.5	8,683	(7,379)	1,304
Consumer relationships	7.9	24,100	(13,339)	10,761
Other intangibles	6.2	6,620	(6,380)	240
Total		<u>\$ 73,193</u>	<u>\$ (33,005)</u>	<u>\$ 40,188</u>

Other intangible assets consisted of the following as of July 2, 2022 (in thousands, except weighted average remaining useful life):

	Weighted Average Remaining Useful Life (in Years)	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount
Trade name and trademarks (finite life)	9.5	\$ 10,440	\$ (5,505)	\$ 4,935
Trade name and trademarks (indefinite life)	Indefinite	17,750	—	17,750
Non-compete agreements	6.7	8,683	(7,328)	1,355
Consumer relationships	6.0	19,000	(12,926)	6,074
Other intangibles	6.4	6,620	(6,345)	275
Total		<u>\$ 62,493</u>	<u>\$ (32,104)</u>	<u>\$ 30,389</u>

Amortization expense was \$1.1 million and \$0.7 million for the three months ended July 1, 2023 and July 2, 2022, respectively. Amortization expense was \$3.4 million and \$2.1 million for the nine months ended July 1, 2023 and July 2, 2022, respectively. No impairment of goodwill or other intangible assets was recorded during the three and nine months ended July 1, 2023 and July 2, 2022, respectively.

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The following table summarizes the estimated future amortization expense related to finite-lived intangible assets on our condensed consolidated balance sheet as of July 1, 2023 (in thousands):

	Amount
Remainder of fiscal 2023	\$ 980
2024	3,693
2025	3,573
2026	3,325
2027	3,063
Thereafter	15,153
Total	\$ 29,787

Note 5—Accounts and Other Receivables, Net

Accounts and other receivables, net consisted of the following (in thousands):

	July 1, 2023	October 1, 2022	July 2, 2022
Vendor and other rebates receivable	\$ 23,298	\$ 24,546	\$ 27,936
Customer receivables	21,175	17,708	17,470
Other receivables	6,436	4,553	2,985
Allowance for doubtful accounts	(1,646)	(1,512)	(1,125)
Total	\$ 49,263	\$ 45,295	\$ 47,266

Note 6—Inventories

Inventories consisted of the following (in thousands):

	July 1, 2023	October 1, 2022	July 2, 2022
Raw materials	\$ 8,342	\$ 9,065	\$ 9,927
Finished goods	428,215	352,621	351,464
Total	\$ 436,557	\$ 361,686	\$ 361,391

Note 7—Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following (in thousands):

	July 1, 2023	October 1, 2022	July 2, 2022
Prepaid insurance	\$ 3,629	\$ 1,110	\$ 3,559
Prepaid occupancy costs	1,955	1,840	1,836
Prepaid sales tax	7,679	2,874	6,358
Prepaid inventory	—	—	5,748
Prepaid other	4,308	4,847	2,263
Other current assets	13,883	12,433	10,778
Total	\$ 31,454	\$ 23,104	\$ 30,542

Note 8—Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consisted of the following (in thousands):

	July 1, 2023	October 1, 2022	July 2, 2022
Accounts payable	\$ 147,437	\$ 156,456	\$ 218,953
Accrued payroll and employee benefits	14,437	34,010	18,258
Customer deposits	7,477	13,250	15,134
Interest	630	342	4,496
Inventory related accruals	23,635	16,034	21,791
Loyalty and deferred revenue	5,932	5,541	6,392
Sales tax	15,729	9,130	16,037
Self-insurance reserves	9,517	9,280	11,566
Other accrued liabilities	17,716	22,929	18,254
Total	<u>\$ 242,510</u>	<u>\$ 266,972</u>	<u>\$ 330,881</u>

As of July 1, 2023, October 1, 2022, and July 2, 2022, capital expenditures included in other accrued liabilities were \$0.9 million, \$1.1 million, and \$0.3 million, respectively.

Note 9—Long-Term Debt, Net

Our long-term debt, net consisted of the following (in thousands, except interest rates):

	Effective Interest Rate ⁽¹⁾	July 1, 2023	October 1, 2022	July 2, 2022
Term Loan	7.97 % ⁽²⁾	\$ 791,775	\$ 797,850	\$ 799,875
Revolving Credit Facility	6.83 % ⁽³⁾	31,000	—	—
Total long-term debt		822,775	797,850	799,875
Less: current portion of long-term debt		(8,100)	(8,100)	(8,100)
Less: noncurrent Revolving Credit Facility		(31,000)	—	—
Less: unamortized discount		(2,439)	(2,805)	(2,926)
Less: deferred financing charges		(6,352)	(7,219)	(7,527)
Total long-term debt, net		<u>\$ 774,884</u>	<u>\$ 779,726</u>	<u>\$ 781,322</u>

(1)Effective interest rates as of July 1, 2023.

(2)Carries interest at a specified margin over Term SOFR between 2.50% and 2.75% with a minimum SOFR of 0.50% plus a SOFR adjustment.

(3)Carries interest at a specific margin between 0.25% and 0.75% with respect to Base Rate loans and between 1.25% and 1.75% with respect to Term SOFR loans, with a SOFR adjustment.

Term Loan

In June 2023, we entered into Amendment No. 1 (“Term Loan Amendment”) to our Amended and Restated Term Loan Credit Agreement (“Term Loan”). The Term Loan Amendment (i) replaced the existing LIBOR-based interest rate benchmark with a Term SOFR-based benchmark and (ii) amended certain other related terms and provisions, including the addition of a SOFR adjustment of (a) 0.11448% per annum for one-month, (b) 0.26161% per annum for three months, and (c) 0.42826% per annum for six months. The other material terms of the Term Loan remained substantially unchanged.

The Term Loan provides for an \$810.0 million secured term loan facility with a maturity date of March 9, 2028. Borrowings under the Term Loan have an initial applicable rate, at our option, of (i) 2.75% for loans that are Term SOFR loans and (ii) 1.75% for loans that are ABR loans (the “Applicable Rate”). The Applicable Rate of the Term Loan is based on our first lien leverage ratio as follows: (a) if the first lien leverage ratio is greater than 2.75 to 1.00, the applicable rate will be 2.75% for Term SOFR loans and 1.75% for ABR loans and (b) if the first lien leverage ratio is less than or equal to 2.75 to 1.00, the applicable rate will be 2.50% for Term SOFR loans and 1.50% for ABR loans. For Term SOFR loans, the loans will bear interest at the Term SOFR-based benchmark rate plus the Applicable Rate and the SOFR adjustment, as defined above.

Revolving Credit Facility

In March 2023, we entered into Amendment No. 6 to our \$200.0 million credit facility (“Revolving Credit Facility”) maturing on August 13, 2025 (the “Amendment”). The Amendment (i) increased the revolving credit commitments under the Revolving Credit Facility in the amount of \$50.0 million, such that the aggregate commitments are \$250.0 million and (ii) replaced the existing LIBOR-based rate with a Term SOFR-based rate, as an interest rate benchmark. The Revolving Credit Facility has (i) an applicable margin on Base Rate loans with a range of 0.25% to 0.75%, (ii) an applicable margin on Term SOFR loans with a range of 1.25% and 1.75%, (iii) a SOFR Adjustment of 0.10% for all borrowing periods, (iv) a floor of 0% per annum, and (v) a commitment fee rate of 0.25% per annum. The other material terms of the Revolving Credit Facility prior to the Amendment remained substantially unchanged.

As of July 1, 2023, we had \$31.0 million outstanding on our Revolving Credit Facility. No amounts were outstanding on the Revolving Credit Facility as of October 1, 2022 and July 2, 2022. The amount available under our Revolving Credit Facility was reduced by \$11.4 million of existing standby letters of credit as of July 1, 2023.

Representations and Covenants

Substantially all of our assets are pledged as collateral to secure our indebtedness. The Term Loan and the Revolving Credit Facility do not require us to comply with any financial covenants. The Term Loan and the Revolving Credit Facility contain customary representations and warranties, covenants, and conditions to borrowing. No event of default occurred as of July 1, 2023, October 1, 2022, or July 2, 2022.

Future Debt Maturities

The following table summarizes the debt maturities and scheduled principal repayments of our indebtedness as of July 1, 2023 (in thousands):

	Amount
Remainder of fiscal 2023	\$ 2,025
2024	6,075
2025	41,125
2026	8,100
2027	8,100
Thereafter	757,350
Total	<u>\$ 822,775</u>

Note 10—Income Taxes

Our effective income tax rate was 29.9% for the nine months ended July 1, 2023, compared to 24.9% for the nine months ended July 2, 2022. The difference between the statutory rate and our effective rate for the nine months ended July 1, 2023 was primarily attributable to state taxes and net income tax expenses attributable to equity-based compensation awards. The difference between the statutory rate and our effective rate for the nine months ended July 2, 2022 was primarily attributable to state taxes. Our effective income tax rate can fluctuate due to factors including valuation allowances, changes in tax laws, federal and state audits, and the impact of other discrete items.

In August 2022, the Inflation Reduction Act of 2022 was signed into law and contains provisions effective January 1, 2023 which were not material to the Company’s income tax provision.

Note 11—Commitments & Contingencies

Contingencies

We are defendants in lawsuits or potential claims encountered in the normal course of business. When the potential liability from a matter can be estimated and the loss is considered probable, we record the estimated loss. Due to uncertainties related to the resolution of lawsuits, investigations and claims, the ultimate outcome may differ from the estimates. We do not expect that the resolutions of any of these matters will have a material effect to our condensed consolidated financial position or results of operations. We did not record any material loss contingencies as of July 1, 2023, October 1, 2022, and July 2, 2022, respectively.

Our workers' compensation insurance program, general liability insurance program, and employee group medical plan have self-insurance retention features of up to \$0.4 million per event as of July 1, 2023, October 1, 2022, and July 2, 2022, respectively. We had standby letters of credit outstanding in the amount of \$11.4 million as of July 1, 2023 for the purpose of securing such obligations under our workers' compensation self-insurance programs.

Note 12—Related Party Transactions

On December 14, 2021, the Company entered into a share repurchase agreement with Bubbles Investor Aggregator, L.P. and Explorer Investment Pte. Ltd. (together, the "Selling Stockholders"), each a greater than 5% beneficial owner of the Company's common stock at the time of the transaction, providing for the repurchase by the Company from the Selling Stockholders of an aggregate of 7.5 million shares of common stock, conditioned on the closing of a contemporaneous secondary public offering (the "Offering"). The price per share of repurchased common stock paid by the Company was \$20.25, which represents the per share price at which shares of common stock were sold to the public in the Offering less the underwriting discount. The repurchase transaction closed on December 16, 2021. See Note 13—Share Repurchase Program for detailed information regarding our share repurchase program.

Note 13—Share Repurchase Program

On December 3, 2021, the board of directors authorized a share repurchase program for up to an aggregate of \$300 million of the Company's outstanding shares of common stock over a period of three years, expiring December 3, 2024. The amount, price, manner, and timing of repurchases are determined by the Company in its discretion and depends on a number of factors, including legal requirements, price, economic and market conditions, the Company's financial condition, capital requirements, cash flows, results of operations, future business prospects, and other factors our management may deem relevant. The share repurchase program may be amended, suspended, or discontinued at any time. Shares may be repurchased from time-to-time using a variety of methods, including on the open market and/or in privately negotiated transactions, including under plans complying with Rule 10b5-1 under the Exchange Act, as part of accelerated share repurchases, and other methods.

On December 16, 2021, the Company repurchased and retired 7.5 million shares of common stock at a price per share of \$20.25 under the program. The Company paid \$151.9 million (\$152.1 million including offering costs) to fund the share repurchase using existing cash on hand. The Company accounted for the share repurchase and retirement of shares under the cost method by deducting its par value from common stock, reducing additional paid-in-capital by \$127.5 million (using the share price when the shares were originally issued), and increasing retained deficit by the remaining excess cost of \$24.4 million.

As of July 1, 2023, approximately \$147.7 million remained available for future purchases under our share repurchase program.

The following table presents information about our repurchases of common stock under our share repurchase program (in thousands):

	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Total number of shares repurchased	—	—	27	7,500
Total amount paid for shares repurchased	\$ —	\$ —	\$ 419	\$ 151,875

Note 14—Equity-Based Compensation

Equity-Based Compensation

2020 Omnibus Incentive Plan

In October 2020, we adopted the Leslie's, Inc. 2020 Omnibus Incentive Plan (the "Plan"). The Plan provides for the grant of awards such as non-qualified stock options to purchase Leslie's common stock (each, a "Stock Option"), restricted stock units ("RSUs") and performance stock units ("PSUs") which may settle in Leslie's, Inc. common stock to our directors, executives, and eligible employees of the Company. The vesting of the Company's outstanding and unvested Stock Options, RSUs, and PSUs is contingent upon the holder's continued service through the date of each applicable vesting event. As of July 1, 2023, we had approximately 7.3 million shares of common stock available for future grants under the Plan.

As of July 1, 2023, the aggregate unamortized value of all outstanding equity-based compensation awards was approximately \$29.7 million, which is expected to be recognized over a weighted average period of approximately 2.4 years.

Stock Options

Stock Options granted under the Plan generally expire ten years from the date of grant and consist of Stock Options that vest upon the satisfaction of time-based requirements. The following tables summarize our Stock Option activity under the Plan during the nine months ended July 1, 2023 (in thousands, except per share amounts):

	Number of Options		Weighted Average Exercise Price
Outstanding, Beginning	3,780	\$	18.24
Granted	—		—
Exercised	—		—
Forfeited/Expired	(304)		19.30
Balance, Ending	<u>3,476</u>	\$	18.15
Vested and exercisable as of July 1, 2023	<u>1,983</u>	\$	18.15

		As of July 1, 2023
Aggregate intrinsic value of options outstanding	\$	—
Unamortized value of unvested stock options	\$	5,631
Weighted average years that expense is expected to be recognized		1.2
Weighted average remaining contractual years outstanding		7.9

Restricted Stock Units and Performance Units

RSUs represent grants that vest ratably upon the satisfaction of time-based requirements. PSUs represent grants potentially issuable in the future based upon the Company's achievement of certain performance conditions. The fair value of our RSUs and PSUs are calculated based on the Company's stock price on the date of the grant.

The following table summarizes our RSU and PSU activity under the Plan during the nine months ended July 1, 2023 (in thousands, except per share amounts):

	Number of RSUs/PSUs		Weighted Average Grant Date Fair Value
Outstanding, Beginning	2,297	\$	10.04
Granted ⁽¹⁾	1,310		11.73
Vested	(634)		9.74
Forfeited	(219)		15.59
Balance, Ending	<u>2,754</u>	\$	10.46

(1)Includes 0.3 million PSUs granted in December 2022 subject to the Company achieving certain adjusted net income and sales performance targets on a cumulative basis during each of fiscal years 2023, 2024, and 2025. The criteria are based on a range of these performance targets in which participants may earn between 0% to 200% of the base number of awards granted. The weighted average grant date fair value of the PSUs was \$12.04. The Company assesses the attainment of target payout rates each reporting period. Equity-based compensation expense is recognized for awards deemed probable of vesting.

		As of July 1, 2023
Unamortized value of unvested RSUs/PSUs	\$	24,096
Weighted average period (years) expense is expected to be recognized		2.7

During the three months ended July 1, 2023 and July 2, 2022, equity-based compensation expense was \$2.6 million and \$2.9 million, respectively. During the nine months ended July 1, 2023 and July 2, 2022, equity-based compensation expense was \$9.2 million and \$8.5 million, respectively. Equity-based compensation expense is reported in selling, general, & administrative expenses ("SG&A") in our condensed consolidated statements of operations.

Note 15—Earnings Per Share

The following is a reconciliation of basic weighted average common shares outstanding to diluted weighted average common shares outstanding (in thousands, except per share amounts):

	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Numerator:				
Net income	\$ 72,547	\$ 122,986	\$ 10,761	\$ 101,095
Denominator:				
Weighted average shares outstanding - basic	183,932	182,937	183,725	184,707
Effect of dilutive securities:				
Stock Options	—	1	—	52
RSUs	828	1,783	1,027	1,936
Weighted average shares outstanding - diluted	<u>184,760</u>	<u>184,721</u>	<u>184,752</u>	<u>186,695</u>
Basic earnings per share	<u>\$ 0.39</u>	<u>\$ 0.67</u>	<u>\$ 0.06</u>	<u>\$ 0.55</u>
Diluted earnings per share	<u>\$ 0.39</u>	<u>\$ 0.67</u>	<u>\$ 0.06</u>	<u>\$ 0.54</u>

The following number of weighted-average potentially dilutive shares were excluded from the calculation of diluted earnings per share because the effect of including such shares would have been antidilutive (in thousands):

	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Stock Options	3,502	3,967	3,591	1,742
RSUs	1,587	563	778	551
Total	<u>5,089</u>	<u>4,530</u>	<u>4,369</u>	<u>2,293</u>

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition and results of operations should be read together with our condensed consolidated financial statements and related notes, which are included elsewhere in this Quarterly Report on Form 10-Q. This discussion may contain forward-looking statements based upon current expectations that involve risks and uncertainties. Actual results or outcomes may differ materially from those anticipated in these forward-looking statements, which are subject to risks, uncertainties, and other factors, including those described in Part I, Item 1A, “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended October 1, 2022 and in Part II, Item 1A, “Risk Factors” in our Quarterly Report on Form 10-Q for the quarter ended April 1, 2023.

We operate on a fiscal calendar that results in a fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to September 30th. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. References to the three months ended July 1, 2023 and July 2, 2022 refer to the 13 weeks ended July 1, 2023 and July 2, 2022, respectively. References to the nine months ended July 1, 2023 and July 2, 2022 refer to the 39 weeks ended July 1, 2023 and July 2, 2022, respectively.

Our Company

We are the largest and most trusted direct-to-consumer brand in the \$15 billion United States pool and spa care industry, serving residential and professional consumers. Founded in 1963, we are the only direct-to-consumer pool and spa care brand with national scale, operating an integrated marketing and distribution ecosystem powered by a physical network of 1,009 branded locations and a robust digital platform. We offer an extensive assortment of professional-grade products, the majority of which are exclusive to Leslie’s, as well as certified installation and repair services, all of which are essential to the ongoing maintenance of pools and spas. Our dedicated team of associates, pool and spa care experts, and experienced service technicians are passionate about empowering our consumers with the knowledge, products, and solutions necessary to confidently maintain and enjoy their pools and spas. The considerable scale of our integrated marketing and distribution ecosystem, which is powered by our direct-to-consumer network, uniquely enables us to efficiently reach and service every pool and spa in the continental United States.

We operate primarily in the pool and spa aftermarket industry, which is one of the most fundamentally attractive consumer categories given its scale, predictability, and growth outlook. We have a highly predictable, recurring revenue model, as evidenced by our 59 consecutive years of sales growth. Approximately 80% of our assortment is comprised of non-discretionary products essential to the care of residential and commercial pools and spas. Our assortment includes chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related products. We also offer important essential services, such as equipment installation and repair for residential consumers and professional pool operators. Consumers receive the benefit of extended vendor warranties on purchased products from our locations and on installations or repairs from our certified in-field technicians. We offer complimentary, commercial-grade in-store water testing and analysis via our proprietary AccuBlue® system, which increases consumer engagement, conversion, basket size, and loyalty, resulting in higher lifetime value. Our water treatment expertise is powered by data and intelligence accumulated from the millions of water tests we have performed over the years, positioning us as the most trusted water treatment service provider in the industry. Due to the non-discretionary nature of our products and services, our business has historically delivered strong, uninterrupted growth and profitability in all market environments, including through the Great Recession and the COVID-19 pandemic.

We have a legacy of leadership and disruptive innovation. Since our founding in 1963, we have been the leading innovator in our category and have provided our consumers with the most advanced pool and spa care available. As we have scaled, we have leveraged our competitive advantages to strategically reinvest in our business and intellectual property to develop new value-added capabilities. Over the course of our history, we have pioneered complimentary in-store water testing, offered complimentary in-store equipment repair services, introduced the industry’s first loyalty program, and developed an expansive platform of owned and exclusive brands. These differentiated capabilities allow us to meet the needs of any pool and spa owner, whether they care for their pool or spa themselves or rely on a professional, whenever, wherever, and however they choose to engage with us.

Key Factors and Measures We Use to Evaluate Our Business

We consider a variety of financial and operating measures in assessing the performance of our business. The key measures we use under GAAP are sales, gross profit and gross margin, SG&A, and operating income (loss). The key non-GAAP measures and other operating measures we use are comparable sales, comparable sales growth, Adjusted EBITDA, Adjusted net income (loss), and Adjusted earnings per share.

Sales

We offer a broad range of products that consists of regularly purchased, non-discretionary pool and spa maintenance items such as chemicals, equipment, cleaning accessories and parts, as well as installation and repair services for pool and spa equipment. Our offering of proprietary, owned, and third-party brands across diverse product categories drives sales growth by attracting new consumers and encouraging repeat visits from our existing consumers. Revenue from merchandise sales at retail locations is recognized at the point of sale, revenue from services is recognized when the services are rendered, and revenue from e-commerce merchandise sales is generally recognized upon shipment of the merchandise. Revenue is recorded net of related discounts and sales tax. Payment from retail customers is generally at the point of sale and payment terms for professional pool operator customers are based on our credit requirements and generally have terms of less than 60 days. When we receive payment from a consumer before the consumer has taken possession of the merchandise or the service has been performed, the amount received is recorded as deferred revenue or as a customer deposit until the sale or service is complete. Sales are impacted by product mix and availability, as well as promotional and competitive activities and the spending habits of our consumers. Growth of our sales is primarily driven by comparable sales growth and expansion of our locations in existing and new markets.

Comparable Sales and Comparable Sales Growth

We measure comparable sales growth as the increase or decrease in sales recorded by the comparable base in any reporting period, compared to sales recorded by the comparable base in the prior reporting period. The comparable base includes sales through our locations and through our e-commerce websites and third-party marketplaces. Comparable sales growth is a key measure used by management and our board of directors to assess our financial performance.

We consider a new or acquired location comparable in the first full month after it has completed one year of sales. Closed locations become non-comparable during their last partial month of operation. Locations that are relocated are considered comparable at the time the relocation is complete. Comparable sales is not calculated in the same manner by all companies, and accordingly, is not necessarily comparable to similarly titled measures of other companies and may not be an appropriate measure for performance relative to other companies.

The number of new locations reflects the number of locations opened during a particular reporting period. New locations require an initial capital investment in location buildouts, fixtures, and equipment, which we amortize over time as well as cash required for inventory.

As of July 1, 2023, we operated 1,009 locations in 39 states across the United States. We owned 27 locations and leased the remainder of our locations. Our initial lease terms are typically five years with options to renew for multiple successive five-year periods. We evaluate new opportunities in new and existing markets based on the number of pools and spas in the market, competition, our existing locations, availability and cost of real estate, and distribution and operating costs of our locations. We review performance of our locations on a regular basis and evaluate opportunities to strategically close locations to improve our profitability. Our limited investment costs in individual locations and our ability to transfer sales to our extensive network of remaining locations and e-commerce websites allows us to improve profitability as a result of any strategic closures.

Gross Profit and Gross Margin

Gross profit is equal to our sales less our cost of merchandise and services sold. Cost of merchandise and services sold reflects the direct cost of purchased merchandise, costs to package certain chemical products, including direct materials and labor, costs to provide services, including labor and materials, as well as distribution and occupancy costs. The direct cost of purchased merchandise includes vendor rebates, which are generally treated as a reduction of merchandise costs. We recognize such vendor rebates at the time the obligations to purchase products or perform services have been completed, and the related inventory has been sold. Distribution costs include warehousing and transportation expenses, including costs associated with third-party fulfillment centers used to ship merchandise to our e-commerce consumers. Occupancy costs include the rent, common area maintenance, real estate taxes, and depreciation and amortization costs of all retail locations. These costs are significant and are expected to continue to increase proportionate to our growth.

Gross margin is gross profit as a percentage of our sales. Gross margin is impacted by merchandise costs, pricing and promotions, product mix and availability, inflation, and service costs, which can vary. Our proprietary brands, custom-formulated products, and vertical integration provide us with cost savings, as well as greater control over product availability and quality as compared to other companies in the industry. Gross margin is also impacted by the costs of distribution and occupancy costs, which can vary.

Our gross profit is variable in nature and generally follows changes in sales. The components of our cost of merchandise and services sold may not be comparable to the components of cost of sales or similar measures of other companies. As a result, our gross profit and gross margin may not be comparable to similar data made available by other companies.

Selling, General and Administrative Expenses

Our SG&A includes selling and operating expenses across our retail locations and digital platform, and our corporate-level general and administrative expenses. Selling and operating expenses at retail locations include payroll, bonus and benefit costs for personnel, supplies, and credit and debit card processing costs. Corporate expenses include payroll, bonus, and benefit costs for our corporate and field support functions, equity-based compensation, marketing and advertising, insurance, utilities, occupancy costs related to our corporate office facilities, professional services, and depreciation and amortization for all assets, except those related to our retail locations and distribution operations, which are included in cost of merchandise and services sold. Selling and operating expenses generally vary proportionately with sales and the change in the number of locations. In contrast, general and administrative expenses are generally not directly proportional to sales and the change in the number of locations but are expected to increase over time to support our growth and public company obligations. The components of our SG&A may not be comparable to the components of similar measures of other companies.

Operating Income (Loss)

Operating income (loss) is gross profit less SG&A. Operating income (loss) excludes interest expense, loss on debt extinguishment, income tax expense (benefit), and other (income) expenses, net. We use operating income (loss) as an indicator of the productivity of our business and our ability to manage expenses.

Adjusted EBITDA

Adjusted EBITDA is defined as earnings before interest (including amortization of debt issuance costs), taxes, depreciation and amortization, management fees, equity-based compensation expense, loss on debt extinguishment, costs related to equity offerings, strategic project costs, executive transition costs, severance, losses (gains) on asset dispositions, merger and acquisition costs, and other non-recurring, non-cash or discrete items. Adjusted EBITDA is a key measure used by management and our board of directors to assess our financial performance. Adjusted EBITDA is also frequently used by analysts, investors, and other interested parties to evaluate companies in our industry, when considered alongside other GAAP measures. We use Adjusted EBITDA to supplement GAAP measures of performance to evaluate the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other companies using similar measures.

Adjusted EBITDA is not a recognized measure of financial performance under GAAP but is used by some investors to determine a company's ability to service or incur indebtedness. Adjusted EBITDA is not calculated in the same manner by all companies, and accordingly, is not necessarily comparable to similarly titled measures of other companies and may not be an appropriate measure for performance relative to other companies. Adjusted EBITDA should not be construed as an indicator of a company's operating performance in isolation from, or as a substitute for, net income (loss), cash flows from operations or cash flow data, all of which are prepared in accordance with GAAP. We have presented Adjusted EBITDA solely as supplemental disclosure because we believe it allows for a more complete analysis of results of operations. Adjusted EBITDA is not intended to represent, and should not be considered more meaningful than, or as an alternative to, measures of operating performance as determined in accordance with GAAP. In the future, we may incur expenses or charges such as those added back to calculate Adjusted EBITDA. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these items.

Adjusted Net Income (Loss) and Adjusted Earnings per Share

Adjusted net income (loss) and Adjusted earnings per share are additional key measures used by management and our board of directors to assess our financial performance. Adjusted net income (loss) and Adjusted earnings per share are also frequently used by analysts, investors, and other interested parties to evaluate companies in our industry, when considered alongside other GAAP measures.

Adjusted net income (loss) is defined as net income (loss) adjusted to exclude management fees, equity-based compensation expense, loss on debt extinguishment, costs related to equity offerings, strategic project costs, executive transition costs, severance, losses (gains) on asset dispositions, merger and acquisition costs, and other non-recurring, non-cash, or discrete items. Adjusted diluted earnings per share is defined as Adjusted net income (loss) divided by the diluted weighted average number of common shares outstanding.

Factors Affecting the Comparability of our Results of Operations

Our reported results have been affected by, among other events, the following events, which must be understood in order to assess the comparability of our period-to-period financial performance and condition.

Impact of Macroeconomic Events and Uncertainties

Our financial performance and condition may be impacted to varying extents from period to period by macroeconomic and geopolitical developments, including the COVID-19 pandemic, escalating global conflicts, supply chain disruptions, labor market constraints, rising rates of inflation, rising interest rates, general economic slowdown, and potential failures among financial institutions. The extent of the impact of COVID-19 on our financial and operating performance depends significantly on the duration and severity of the pandemic, the actions taken to contain or mitigate its impact, and any changes in consumer behaviors. While it is not possible to predict the likelihood, timing, or severity of future direct and indirect impacts of COVID-19 on our business, due to the non-discretionary nature of our products and services, our business has delivered strong growth and profitability throughout the pandemic, despite restrictions on the operation of our locations and distribution facilities. Significant disruption to our supply chain for products we sell, as a result of COVID-19, geopolitical conflict or otherwise, could have a material impact on our sales and earnings.

Business Acquisitions

See Note 3—Business Combinations to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for information regarding our business acquisitions.

Results of Operations

We derived our condensed consolidated statements of operations for the three and nine months ended July 1, 2023 and July 2, 2022 from our condensed consolidated financial statements. Our historical results are not necessarily indicative of the results that may be expected in the future. The following table summarizes key components of our results of operations for the periods indicated, both in dollars and as a percentage of our sales (in thousands, except per share amounts):

Statements of Operations Data:	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Sales	\$ 610,891	\$ 673,633	\$ 1,018,839	\$ 1,086,529
Cost of merchandise and services sold	359,295	370,026	630,777	629,977
Gross profit	251,596	303,607	388,062	456,552
Selling, general and administrative expenses	135,789	131,469	324,427	300,872
Operating income	115,807	172,138	63,635	155,680
Other expense:				
Interest expense	17,675	6,847	48,282	20,659
Other (income) expenses, net	—	(143)	—	407
Total other expense	17,675	6,704	48,282	21,066
Income before taxes	98,132	165,434	15,353	134,614
Income tax expense	25,585	42,448	4,592	33,519
Net income	<u>\$ 72,547</u>	<u>\$ 122,986</u>	<u>\$ 10,761</u>	<u>\$ 101,095</u>
Earnings per share				
Basic	<u>\$ 0.39</u>	<u>\$ 0.67</u>	<u>\$ 0.06</u>	<u>\$ 0.55</u>
Diluted	<u>\$ 0.39</u>	<u>\$ 0.67</u>	<u>\$ 0.06</u>	<u>\$ 0.54</u>
Weighted average shares outstanding				
Basic	183,932	182,937	183,725	184,707
Diluted	184,760	184,721	184,752	186,695
Percentage of Sales ⁽¹⁾	(%)	(%)	(%)	(%)
Sales	100.0	100.0	100.0	100.0
Cost of merchandise and services sold	58.8	54.9	61.9	58.0
Gross margin	41.2	45.1	38.1	42.0
Selling, general and administrative expenses	22.2	19.5	31.8	27.7
Operating income	19.0	25.6	6.2	14.3
Other expense:				
Interest expense	2.9	1.0	4.7	1.9
Other (income) expenses, net	—	—	—	—
Total other expense	2.9	1.0	4.7	1.9
Income before taxes	16.1	24.6	1.5	12.4
Income tax expense	4.2	6.3	0.5	3.1
Net income	<u>11.9</u>	<u>18.3</u>	<u>1.1</u>	<u>9.3</u>
Other Financial and Operations Data:				
Number of new and acquired locations, net	12	14	19	27
Number of locations open at end of period	1,009	979	1,009	979
Comparable sales growth ⁽²⁾	(11.8)%	7.4%	(10.9)%	10.7%
Adjusted EBITDA ⁽³⁾	\$ 129,038	\$ 182,942	\$ 108,683	\$ 192,734
Adjusted EBITDA as a percentage of sales ⁽³⁾	21.1%	27.2%	10.7%	17.7%
Adjusted net income ⁽³⁾	\$ 76,362	\$ 125,685	\$ 25,370	\$ 112,031
Adjusted diluted earnings per share	\$ 0.41	\$ 0.68	\$ 0.14	\$ 0.60

(1) Components may not add to totals due to rounding.

(2) See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business.”

(3) The tables below provide a reconciliation from our net income to Adjusted EBITDA and net income to Adjusted net income for the three and nine months ended July 1, 2023 and July 2, 2022, respectively (in thousands).

	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Net income	\$ 72,547	\$ 122,986	\$ 10,761	\$ 101,095
Interest expense	17,675	6,847	48,282	20,659
Income tax expense	25,585	42,448	4,592	33,519
Depreciation and amortization expense ⁽¹⁾	8,144	7,063	25,569	22,880
Equity-based compensation expense ⁽²⁾	2,754	3,113	9,460	8,825
Costs related to equity offerings ⁽³⁾	—	—	—	550
Strategic project costs ⁽⁴⁾	749	641	2,763	4,428
Executive transition costs and other ⁽⁵⁾	1,584	(156)	7,256	778
Adjusted EBITDA	<u>\$ 129,038</u>	<u>\$ 182,942</u>	<u>\$ 108,683</u>	<u>\$ 192,734</u>

	Three Months Ended		Nine Months Ended	
	July 1, 2023	July 2, 2022	July 1, 2023	July 2, 2022
Net income	\$ 72,547	\$ 122,986	\$ 10,761	\$ 101,095
Equity-based compensation expense ⁽²⁾	2,754	3,113	9,460	8,825
Costs related to equity offerings ⁽³⁾	—	—	—	550
Strategic project costs ⁽⁴⁾	749	641	2,763	4,428
Executive transition costs and other ⁽⁵⁾	1,584	(156)	7,256	778
Tax effects of these adjustments ⁽⁶⁾	(1,272)	(899)	(4,870)	(3,645)
Adjusted net income	<u>\$ 76,362</u>	<u>\$ 125,685</u>	<u>\$ 25,370</u>	<u>\$ 112,031</u>

(1)Includes depreciation related to our distribution centers and locations, which is reported in cost of merchandise and services sold in our condensed consolidated statements of operations.

(2)Represents charges related to equity-based compensation and the related Company payroll tax expense, which are reported in SG&A in our condensed consolidated statements of operations.

(3)Includes costs incurred for follow-on equity offerings, which are reported in other (income) expenses, net in our condensed consolidated statements of operations.

(4)Represents non-recurring costs, such as third-party consulting costs, which are not part of our ongoing operations and are incurred to execute differentiated, strategic projects, and are reported in SG&A in our condensed consolidated statements of operations.

(5)Includes executive transition costs, severance associated with corporate restructuring, losses (gains) on asset dispositions, merger and acquisition costs, and other non-recurring, non-cash, or discrete items as determined by management. Amounts are reported in SG&A in our condensed consolidated statements of operations.

(6)Represents the tax effect of the total adjustments based on our combined U.S. federal and state statutory tax rates. Amounts are reported in income tax expense in our condensed consolidated statements of operations.

Selected Financial Information

Sales

Sales decreased to \$610.9 million for the three months ended July 1, 2023, from \$673.6 million in the prior year period, a decrease of \$62.7 million, or 9.3%. Comparable sales decreased \$78.9 million, or 11.8%, compared to the prior year period, primarily driven by traffic declines. Non-comparable sales including acquisitions and new stores were \$16.1 million compared to the prior year period.

Sales decreased to \$1,018.8 million for the nine months ended July 1, 2023, from \$1,086.5 million in the prior year period, a decrease of \$67.7 million, or 6.2%. Comparable sales decreased \$118.0 million, or 10.9%, compared to the prior year period, primarily driven by traffic declines. Non-comparable sales including acquisitions and new stores were \$50.3 million compared to the prior year period.

Gross Profit and Gross Margin

Gross profit decreased to \$251.6 million for the three months ended July 1, 2023 from \$303.6 million in the prior year period, a decrease of \$52.0 million, or 17.1%. Gross margin decreased to 41.2% compared to 45.1% in the prior year period, a decrease of 390 basis points. Gross profit decreased to \$388.1 million for the nine months ended July 1, 2023 from \$456.6 million in the prior year period, a decrease of \$68.5 million, or 15.0%. Gross margin decreased to 38.1% compared to 42.0% in the prior year period, a decrease of 390 basis points. The decreases in gross margin were primarily driven by product margin rate declines associated with increased product costs that could not be passed through to consumers, distribution expenses related to peak season inventory build, and occupancy deleverage.

Selling, General and Administrative Expenses

SG&A increased to \$135.8 million during the three months ended July 1, 2023 from \$131.5 million during the three months ended July 2, 2022, an increase of \$4.3 million, or 3.3%. This increase in SG&A was primarily related to a \$4.5 million increase driven by non-comparable SG&A associated with acquisitions and new stores, a \$1.6 million increase in executive transition and other costs primarily related to severance payments associated with the elimination of non-customer facing positions, and higher depreciation and amortization expense of \$0.5 million. These increases were partially offset by reductions in comparable SG&A.

SG&A increased to \$324.4 million during the nine months ended July 1, 2023 from \$300.9 million during the nine months ended July 2, 2022, an increase of \$23.5 million, or 7.8%. This increase in SG&A was primarily related to a \$14.8 million increase driven by non-comparable SG&A associated with acquisitions and new stores, a \$6.5 million increase in executive transition and other costs primarily related to severance payments associated with the elimination of non-customer facing positions, and a \$0.6 million increase in non-cash equity-based compensation expense.

Total Other Expense

Total other expense increased to \$17.7 million for the three months ended July 1, 2023 from \$6.7 million in the prior year period, an increase of \$11.0 million. Total other expense increased to \$48.3 million for the nine months ended July 1, 2023 from \$21.1 million in the prior year period, an increase of \$27.2 million.

These increases in other expense were primarily related to the increase in interest expense of \$10.9 million and \$27.6 million for the three and nine months ended July 1, 2023, respectively, compared to the prior year periods, due to higher interest rates on our Term Loan and Revolving Credit Facility and increased borrowings on our Revolving Credit Facility.

Income Taxes

Income tax expense decreased to \$25.6 million for the three months ended July 1, 2023 compared to \$42.4 million in the prior year period, a decrease of \$16.8 million. Income tax expense decreased to \$4.6 million for the nine months ended July 1, 2023 compared to \$33.5 million in the prior year period, a decrease of \$28.9 million. These decreases were primarily attributable to lower pretax income.

The effective income tax rate was 26.1% and 29.9% for the three and nine months ended July 1, 2023, respectively. The effective income tax rate was 25.7% and 24.9% for the three and nine months ended July 2, 2022, respectively.

Net Income and Earnings per Share

Net income decreased to \$72.5 million for the three months ended July 1, 2023 compared to \$123.0 million in the prior year period, a decrease of \$50.5 million. Net income decreased to \$10.8 million for the nine months ended July 1, 2023 compared to \$101.1 million in the prior year period, a decrease of \$90.3 million. Diluted earnings per share was \$0.39 for the three months ended July 1, 2023 compared to \$0.67 in the prior year period. Diluted earnings per share was \$0.06 for the nine months ended July 1, 2023 compared to \$0.54 in the prior year period.

Adjusted net income decreased to \$76.4 million for the three months ended July 1, 2023 compared to \$125.7 million in the prior year period, a decrease of \$49.3 million. Adjusted net income decreased to \$25.4 million for the nine months ended July 1, 2023 compared to \$112.0 million in the prior year period, a decrease of \$86.6 million. Adjusted diluted earnings per share was \$0.41 for the three months ended July 1, 2023 compared to \$0.68 in the prior year period. Adjusted diluted earnings per share was \$0.14 for the nine months ended July 1, 2023 compared to \$0.60 in the prior year period.

Adjusted EBITDA

Adjusted EBITDA decreased to \$129.0 million for the three months ended July 1, 2023 compared to \$182.9 million in the prior year period, a decrease of \$53.9 million. Adjusted EBITDA decreased to \$108.7 million for the nine months ended July 1, 2023 compared to \$192.7 million in the prior year period, a decrease of \$84.0 million. These decreases were primarily due to decreases in gross profit and higher SG&A.

Seasonality and Quarterly Fluctuations

Our business is highly seasonal. Sales and earnings are highest during the third and fourth fiscal quarters, which include April through September, and represent the peak months of swimming pool use. Sales are substantially lower during our first and second fiscal quarters. We have a long track record of investing in our business throughout the year, including in operating expenses, working capital, and capital expenditures related to new locations and other growth initiatives. While these investments drive performance during the primary selling season in our third and fourth fiscal quarters, they have a negative impact on our earnings and cash flow during our first and second fiscal quarters.

We typically experience a build-up of inventory and accounts payable during the first and second fiscal quarters in anticipation of the peak swimming pool supply selling season. We negotiate extended payment terms with certain of our primary suppliers as we receive merchandise in December through March, and we pay for merchandise in April through July.

The principal external factor affecting our business is weather. Hot weather can increase purchases of chemicals and other non-discretionary products as well as purchases of discretionary products and can drive increased purchases of installation and repair services. Unseasonably cool weather or significant amounts of rainfall during the peak sales season can reduce chemical consumption in pools and spas and decrease consumer purchases of our products and services. In addition, unseasonably early or late warming trends can increase or decrease the length of the pool season and impact timing around pool openings and closings and, therefore, our total sales and timing of our sales.

We generally open new locations before our peak selling season begins and we generally close locations after our peak selling season ends. We expect that our quarterly results of operations will fluctuate depending on the timing and amount of sales contributed by new locations.

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are net cash provided by operating activities and borrowing availability under our Revolving Credit Facility. Historically, we have funded working capital requirements, capital expenditures, payments related to acquisitions, debt service requirements and repurchases of shares of our common stock with internally generated cash on hand and through our Revolving Credit Facility.

Cash and cash equivalents consist primarily of cash on deposit with banks. Cash and cash equivalents totaled \$19.4 million and \$112.3 million as of July 1, 2023 and October 1, 2022, respectively. As of July 1, 2023, we had \$31.0 million outstanding on our Revolving Credit Facility. No amounts were outstanding as of October 1, 2022.

Our primary working capital requirements are for the purchase of inventory, payroll, rent, other facility costs, distribution costs, and general and administrative costs. Our working capital requirements fluctuate during the year, driven primarily by seasonality and the timing of inventory purchases.

Our capital expenditures are primarily related to infrastructure-related investments, including investments related to upgrading and maintaining our information technology systems, ongoing location improvements, expenditures related to our distribution centers, and new location openings. We expect to fund capital expenditures from net cash provided by operating activities.

Based on our growth plans, we believe our cash and cash equivalents position, net cash provided by operating activities and borrowing availability under our Revolving Credit Facility will be adequate to finance our working capital requirements, planned capital expenditures, strategic acquisitions, share repurchases, and debt service over the next 12 months. If cash provided by operating activities and borrowings under our Revolving Credit Facility are not sufficient or available to meet our capital requirements, then we may need to obtain additional equity or debt financing. There can be no assurance that equity or debt financing will be available to us if we need it or, if available, whether the terms will be satisfactory to us.

As of July 1, 2023, outstanding standby letters of credit totaled \$11.4 million and, after considering borrowing base restrictions, we had \$207.6 million of available borrowing capacity under the terms of the Revolving Credit Facility. As of July 1, 2023, we were in compliance with the covenants under the Revolving Credit Facility and our Term Loan agreements.

Summary of Cash Flows

A summary of our cash flows from operating, investing, and financing activities is presented in the following table (in thousands):

	Nine Months Ended	
	July 1, 2023	July 2, 2022
Net cash (used in) provided by operating activities	\$ (74,813)	\$ 72,658
Net cash used in investing activities	(40,898)	(66,183)
Net cash provided by (used in) financing activities	22,848	(156,843)
Net decrease in cash and cash equivalents	<u>\$ (92,863)</u>	<u>\$ (150,368)</u>

Cash (Used in) Provided by Operating Activities

Net cash used in operating activities was \$74.8 million for the nine months ended July 1, 2023. Net cash provided by operating activities was \$72.7 million for the nine months ended July 2, 2022. This decrease was primarily driven by lower net income in the current year period and changes in working capital.

Cash Used in Investing Activities

Net cash used in investing activities decreased to \$40.9 million for the nine months ended July 1, 2023 compared to \$66.2 million in the prior year period, a decrease of \$25.3 million. This decrease was driven by lower investments for business acquisitions of \$25.1 million compared to the prior year period.

Cash Provided by (Used in) Financing Activities

Net cash provided by financing activities for the nine months ended July 1, 2023 was \$22.8 million and was primarily related to net borrowings on our Revolving Credit Facility of \$31.0 million, partially offset by the repayment of long-term debt of \$6.1 million and payments of employee tax withholdings related to vesting of restricted stock of \$1.8 million. Net cash used in financing activities for the nine months ended July 2, 2022 was \$156.8 million and was primarily related to the repurchase of common stock of \$152.1 million and the net repayment of long-term debt of \$6.1 million, partially offset by proceeds from option exercises of \$1.4 million.

Share Repurchase Program

On December 3, 2021, the board of directors authorized a share repurchase program for up to an aggregate of \$300 million of the Company's outstanding shares of common stock over a period of three years, expiring December 31, 2024. As of July 1, 2023, approximately \$147.7 million remained available for future purchases under our share repurchase program (see Note 13—Share Repurchase Program to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q).

Contractual Obligations and Other Commitments

The following table summarizes our contractual cash obligations as of July 1, 2023 (in thousands):

	Total	Payments Due By Period					
		Remainder of 2023	2024	2025	2026	2027	Thereafter
Long-term debt, net ⁽¹⁾	\$ 822,775	\$ 2,025	\$ 6,075	\$ 41,125	\$ 8,100	\$ 8,100	\$ 757,350
Purchase commitments ⁽²⁾	183,506	11,624	79,223	77,667	7,383	5,401	2,208
Operating lease obligations ⁽³⁾	304,484	13,674	79,993	65,950	56,785	36,885	51,197
Total	<u>\$ 1,310,765</u>	<u>\$ 27,323</u>	<u>\$ 165,291</u>	<u>\$ 184,742</u>	<u>\$ 72,268</u>	<u>\$ 50,386</u>	<u>\$ 810,755</u>

(1)We are required to pay a commitment fee of 0.25% based on the unused portion of the Revolving Credit Facility.

(2)Purchase obligations include all legally binding contracts and primarily relate to firm commitments for inventory purchases. Purchase orders that are not binding agreements are excluded from the table above.

(3)Operating lease obligations relate to our locations, office, distribution, and manufacturing facilities. We are obligated to make cash payments in connection with various lease obligations and purchase commitments and all obligations require cash payments to be made by us over varying periods of time. Certain leases are renewable at our option typically for periods of five or more years and some require payments upon early termination.

Critical Accounting Estimates

The preparation of our condensed consolidated financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the reported periods. The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of a company's financial condition and results of operations, and which require a company to make its most difficult and subjective judgments. Based on this definition, we have identified the critical accounting policies and judgments, which are disclosed in our Annual Report on Form 10-K for the fiscal year ended October 1, 2022. We base these estimates on historical results and various other assumptions we believe to be reasonable, all of which form the basis for making estimates concerning the carrying values of assets and liabilities that are not readily available from other sources. Actual results may differ from these estimates.

There have been no material changes to our critical accounting estimates during the three and nine months ended July 1, 2023 from those disclosed in our Annual Report on Form 10-K for the fiscal year ended October 1, 2022.

Recent Accounting Pronouncements

For information regarding recent accounting pronouncements, see Note 2—Summary of Significant Accounting Policies to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk

There have been no material changes in our primary risk exposures or management of market risks from those disclosed in our Annual Report on Form 10-K for the fiscal year ended October 1, 2022. The interest rate on borrowings under our Revolving Credit Facility and Term Loan were LIBOR-based rates prior to March 2023 and June 2023, respectively. Due to the discontinuation of LIBOR-based rates, we have transitioned the impacted interest rate benchmarks to Term SOFR-based rates. See Note 9—Long-Term Debt, Net to our condensed consolidated financial statements for additional information.

Impact of Inflation and Deflation

There have been no material changes in our exposure to inflation or deflation from those disclosed in our Annual Report on Form 10-K for the fiscal year ended October 1, 2022.

Item 4. Controls and Procedures.

Management's Evaluation of Disclosure Controls and Procedures

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e)) are designed to ensure that information required to be disclosed by us in reports we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized, and reported within the appropriate time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely discussions regarding required disclosure. We, under the supervision of and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that the design and operation of our disclosure controls and procedures were ineffective as the material weakness in internal control over financial reporting that was disclosed in our Annual Report on Form 10-K for the fiscal year ended October 1, 2022 was not yet remediated as of July 1, 2023.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended July 1, 2023 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, except as described below.

Remediation

As previously disclosed in Part II, Item 9A of our Annual Report on Form 10-K for the fiscal year ended October 1, 2022, we are in the process of implementing a plan to address the material weakness in internal control over financial reporting that was disclosed in our Annual Report on Form 10-K. The material weakness will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. We anticipate that the remediation of this material weakness will be completed during fiscal year 2023. We are committed to continuing to improve our internal control processes, and, as we continue to evaluate and work to improve our internal control over financial reporting, we may take additional measures to address control deficiencies, or we may modify certain of our remediation measures.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

We are subject to various litigations, claims and other proceedings that arise from time to time in the ordinary course of business. We believe these actions are routine and incidental to the business. As of July 1, 2023, we had established reserves for claims that were probable and estimable and such reserves were not significant as of such date. While we cannot feasibly predict the outcome of these matters with certainty, we believe, based on examination of these matters, experience to date and discussions with counsel, that the ultimate liability, individually or in the aggregate, will not have a material adverse effect on our business, financial position, results of operations, or cash flows.

Item 1A. Risk Factors.

There have been no material changes from the risk factors disclosed in our Annual Report on Form 10-K for the year ended October 1, 2022, except as disclosed in our Quarterly Report on Form 10-Q for the quarter ended April 1, 2023.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Issuer Purchases of Equity Securities

None.

Sales of Unregistered Securities

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

(a) Information Required to be Disclosed on Form 8-K

On August 1, 2023, our board of directors approved and adopted the Company's Amended and Restated Bylaws (as amended and restated, the "Bylaws"), which became effective immediately. Among other things, the amendments: (a) revise and enhance the procedural mechanics and disclosure requirements relating to business proposals submitted and director nominations made by stockholders, including by updating certain provisions to promote consistency with the SEC's adoption of Rule 14a-19 under the Securities Exchange Act of 1934, as amended, relating to the universal proxy rules, and by requiring certain additional background information regarding the proposing stockholders, proposed nominees or business (as applicable) and certain other persons related to such matters; (b) require that a stockholder directly or indirectly soliciting proxies from other stockholders use a proxy card color other than white; (c) update the procedural mechanics with respect to adjourned meetings of stockholders; (d) revise and enhance the organizational mechanics relating to the conduct stockholder meetings; (e) opt out of Section 116 of the General Corporation Law of the State of Delaware (the "DGCL") by requiring that certain notices and other information or documents provided by stockholders to the Company pursuant to the Bylaws be delivered in writing; (f) allow the board of directors and its committees to conduct business in the event of an emergency, as permitted under the Section 110 of the DGCL; (g) provide for certain procedures relating to the use of electronic signatures; (h) eliminate the requirement to have a stockholder list available for inspection at stockholder meetings; and (i) revise the Company's procedures relating to the indemnification of certain parties, including by providing for the indemnification of persons serving as directors or officers of subsidiaries of the Company. The Bylaws also incorporate various other updates and technical, clarifying and conforming changes, including to reflect the phasing in of the declassification of our board of directors, as approved by the Company's stockholders the Annual Meeting of Shareholders held on March 16, 2023, and to remove certain obsolete references to differentiated requirements before and after the "trigger event" that occurred when L Catterton and GIC Pte. Ltd. and each of their respective affiliates ceased to own at least 50% of the Company's outstanding shares of common stock. The foregoing summary of the amendments to the Bylaws is qualified in all respects by reference to the text of the Bylaws, a copy of which is filed as Exhibit 3.1 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

(b) Changes to Procedures for Recommending Director Nominees

Not applicable.

(c) Trading Plans

During the quarter ended July 1, 2023, no director or Section 16 officer adopted or terminated any Rule 10b5-1 trading arrangements or non-Rule 10b5-1 trading arrangements (in each case, as defined in Item 408(a) of Regulation S-K).

Item 6. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference		
		Form	Exhibit	Filing Date/ Period End Date
3.1*	Amended and Restated Bylaws, effective as of August 1, 2023			
10.1	Amendment No. 1, dated as of June 8, 2023, to the Amended and Restated Term Loan Credit Agreement by and among Leslie's Poolmart, Inc., Leslie's, Inc., the lenders from time to time party thereto and Nomura Corporate Funding Americas, LLC, as administrative agent and collateral agent	8-K	10.1	6/13/2023
10.2*	Offer Letter, dated as of July 7, 2023, by and between Leslie's Poolmart, Inc. and Scott Bowman			
10.3*	Executive Severance Pay Plan, dated July 17, 2023, by and between Leslie's Poolmart, Inc. and Scott Bowman			
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934			
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934			
32.1+	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350			
32.2+	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350			
101.INS*	Inline XBRL Instance Document			
101.SCH*	Inline XBRL Schema Document			
101.CAL*	Inline XBRL Calculation Linkbase Document			
101.LAB*	Inline XBRL Label Linkbase Document			
101.PRE*	Inline XBRL Presentation Linkbase Document			
101.DEF*	Inline XBRL Definition Linkbase Document			
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document).			

* Filed herewith.

+ Furnished herewith and not deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

SIGNATURES

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

LESLIE'S, INC.

Date: August 2, 2023

By:

/s/ Steven M. Weddell
Steven M. Weddell
Executive Vice President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

AMENDED AND RESTATED BYLAWS

OF

LESLIE'S, INC.

* * * * *

ARTICLE I

Offices

SECTION 1.01 Registered Office. The address of the registered office of Leslie's, Inc. (the "Company") in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, Delaware 19808. The name of the Company's registered agent at such address is Corporation Service Company. The Company may also have offices in such other places in the United States or elsewhere (and may change the Company's registered agent) as the Board of Directors of the Company (the "Board") may, from time to time, determine or as the business of the Company may require.

ARTICLE II

Meetings of Stockholders

SECTION 2.01 Annual Meetings. Annual meetings of stockholders of the Company may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board shall determine and state in the notice of meeting. The Board may, in its sole discretion, determine that any meeting of stockholders of the Company shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.11 hereof and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"). At the annual meeting, the stockholders of the Company shall elect directors and transact such other business as may properly be brought before the annual meeting. The Board may postpone, reschedule or cancel any annual meeting of stockholders of the Company.

SECTION 2.02 Special Meetings. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock (as defined in the Company's certificate of incorporation as then in effect (as the same may be amended and/or restated from time to time, the "Certificate of Incorporation")), special meetings of the stockholders of the Company for any purpose or purposes may be called at any time only by or at the direction of the Board or the Chairman of the Board. Special meetings of the stockholders of the Company may be held at such place, if any, either within or without the State of Delaware, and at such time and date as determined by the Board, the Chairman of the Board, the Chief Executive Officer of the Company (the "CEO"). The Board may postpone, reschedule or cancel any special meeting of stockholders of the Company.

SECTION 2.03 Notice of Stockholder Business and Nominations; Form and Requirements of Notice.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders of the Company may be made at an annual meeting of stockholders of the Company only (a) pursuant to the Company's notice of meeting (or any supplement thereto) delivered pursuant to Section 2.04 hereof; (b) by or at the direction of the Board or any authorized committee thereof; or (c) by any stockholder of the Company who is entitled to vote at the meeting, who complies with the notice procedures set forth in Sections 2.03(A)(2) and (A)(3) hereof and who is a stockholder of record at the time such notice is delivered to the Secretary of the Company (the "Secretary"), on the record date for the determination of stockholders of the Company entitled to vote at the annual meeting, and at the time of the annual meeting. For the avoidance of doubt, the foregoing clause (c) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the Company's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act (as defined below)).

(2) Without qualification, for nominations or other business to be properly brought before an annual meeting by a stockholder of the Company pursuant to Section 2.03(A)(1)(c) hereof, the stockholder must have given timely notice thereof in writing to the Secretary, and, in the case of business other than nominations of persons for election to the Board, such other business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Company in writing not later than the Close of Business (as defined below) on the 90th day nor earlier than the Close of Business on the 120th day prior to the first anniversary of the preceding year's annual meeting (which anniversary date shall, for purposes of the Company's first annual meeting of stockholders of the Company after the shares of its Common Stock, are first publicly traded (the "First Annual Meeting"), be deemed to have occurred on November 4, 2020); *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 70 days after the anniversary date of the previous year's meeting, or if no annual meeting was held in the preceding year (other than in connection with the First Annual Meeting), notice by a stockholder of the Company to be timely must be so delivered not earlier than the Close of Business on the 120th day prior to such annual meeting and not later than the Close of Business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which Public Announcement (as defined below) of the date of such meeting is first made. In no event shall the adjournment or postponement of an annual meeting (or the Public Announcement of the adjournment or postponement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. A stockholder's notice given in accordance with this Section 2.03(A) or Section 2.03(B) below must contain only the names of the nominees for whom such stockholder (or beneficial owner, if any) intends to solicit proxies, and a stockholder shall not be entitled to make additional or substitute nominations following expiration of the time periods set forth in these Amended and Restated Bylaws ("Bylaws"). For the avoidance of doubt, the number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of the beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. Notwithstanding anything in this Section 2.03(A)(2) to the contrary, if the number of directors to be elected to the Board at an annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 2.03(A)(2) and there is no Public Announcement naming all of the nominees for the additional directorships or specifying the size of the increased Board at least 100 days prior to the first anniversary of the prior year's annual meeting of stockholders of the Company, then a stockholder's notice required by this Section 2.03(A)(2) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary at the principal executive offices of the Company in writing not later than the Close of Business on the 10th day following the day on which such Public Announcement is first made.

(3) To be in proper form, a stockholder's notice to the Secretary (the stockholder providing such notice, the "Noticing Stockholder") under this Section 2.03(A) must:

(a) as to each person whom the Noticing Stockholder proposes to nominate for election or re-election as a director, set forth or provide (i) a written statement, not to exceed 500 words, in support of such person, (ii) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest or that is otherwise required pursuant to and in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder, and (iii) the information required to be submitted by nominees pursuant to Section 2.03(A)(4), including, within the time period specified therein, all fully completed and signed Questionnaires described therein, which will be promptly provided following a request therefor;

(b) as to any other business that the Noticing Stockholder proposes to bring before the meeting, set forth or provide (i) a brief description of the business desired to be brought before the meeting, (ii) the text, if any, of the proposal (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Company, the language of the proposed amendment), and (iii) the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of the Noticing Stockholder or any beneficial owner on behalf whose proposal is made (collectively with the Noticing Stockholder, the "Holder"); and

(c) (1) as to the Holders, set forth (i) the name and address of the Noticing Stockholder as they appear on the Company's books, (ii) the name and address of all other Holders, if any, (iii) the class or series and number of shares of the Company that are, directly or indirectly, owned of record by each Holder, and (iv) a representation by the Noticing Stockholder that the Noticing Stockholder is a stockholder of record of the Company entitled to vote at the meeting, will continue to be a stockholder of record of the Company entitled to vote at such meeting through the date of such meeting and intends to appear in person at the meeting to propose such business or nomination; and (2) as to the Holders and any Stockholder Associated Person, set forth (i) the class or series and number of shares of the Company that are, directly or indirectly, owned beneficially by such Holder or Stockholder Associated Person, (ii) the Ownership Information (as defined below) for each Holder and Stockholder Associated Person (as defined below), (iii) a representation as to whether any Holder, Stockholder Associated Person, or other participant (as defined in Item 4 of Schedule 14A under the Exchange Act) will engage in a solicitation with respect to such nomination or proposal and, if so, whether such solicitation will be conducted as an exempt solicitation under Rule 14a-2(b) of the Exchange Act, the name of each participant in such solicitation and the amount of the cost of solicitation that has been and will be borne, directly or indirectly, by each participant in such solicitation and (x) in the case of a proposal of business other than nominations, whether such person or group intends to deliver, through means

satisfying each of the conditions that would be applicable to the Company under either Exchange Act Rule 14a-16(a) (Notice of Internet Availability of Proxy Materials) or Exchange Act Rule 14a-16(n) (Full Set Delivery), a proxy statement and form of proxy to holders (including any beneficial owners pursuant to Rule 14b-1 and Rule 14b-2 of the Exchange Act) of at least the percentage of the Company's voting shares required under applicable law to carry the proposal or (y) in the case of any solicitation that is subject to Rule 14a-19 of the Exchange Act, confirming that such person or group will deliver, through means satisfying each of the conditions that would be applicable to the Company under either Exchange Act Rule 14a-16(a) or Exchange Act Rule 14a-16(n), a proxy statement and form of proxy to holders (including any beneficial owners pursuant to Rule 14b-1 and Rule 14b-2 of the Exchange Act) of at least 67% of the outstanding shares of the Company entitled to vote generally in the election of directors, (iv) a certification regarding whether each Holder has complied with all applicable federal, state and other legal requirements in connection with its acquisition of shares or other securities of the Company and such Holder's acts or omissions as a stockholder of the Company and (v) a representation that promptly after soliciting the stockholders referred to in the representation required under clause (A)(3)(c)(2)(iii) of this Section 2.03, and no later than the tenth (10th) day before such meeting of stockholders, such Holder(s) will provide the Company with documents, which may take the form of a certified statement and documentation from a proxy solicitor, specifically demonstrating that the necessary steps have been taken to deliver a proxy statement and form of proxy to holders of such percentage of the Company's stock.

The Company may also, as a condition to any such nomination or business being deemed properly brought before an annual meeting, request any Holder or proposed nominee to deliver to the Secretary, within five Business Days of any such request, including such other information as may be reasonably requested by the Company, including, without limitation, such other information as may be reasonably required by the Board, in its sole discretion, to determine (i) the eligibility of a proposed nominee to serve as a director of the Company, (ii) whether such nominee qualifies as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation, or any publicly disclosed corporate governance guideline or committee charter of the Company and (iii) such other information that the Board determines, in its sole discretion, could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

A Noticing Stockholder shall further update and supplement its notice of any nomination or other business proposed to be brought before a meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.03 shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is 10 Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Company not later than five Business Days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than seven Business Days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to the meeting), or any adjournment, recess, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of 10 Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof).

Notwithstanding anything in this Section 2.03(A) to the contrary, if any information or communication submitted pursuant to this Section 2.03 is inaccurate or incomplete in any material respect (as determined by the Board (or any authorized committee thereof)) such information shall be deemed not to have been provided in accordance with this Section 2.03. The obligation to update and supplement as set forth in this Section 2.03 or any other section of these Bylaws shall not limit the Company's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or under any other provision of these Bylaws or enable or be deemed to permit a stockholder who has previously submitted notice hereunder or under any other provision of these Bylaws to amend or update any nomination or other business proposal or to submit any new nomination or other business proposal, including by changing or adding nominees, matters, business and or resolutions proposed to be brought before a meeting of stockholders.

Notwithstanding anything to the contrary contained in these Bylaws, if the person whom the Noticing Stockholder proposes to nominate for election or re-election as a director pursuant to the notice procedures set forth in Sections 2.03(A)(2) and (A)(3) hereof becomes ineligible or unwilling to serve on the Board, the Noticing Stockholder may not, at the annual meeting for which its notice for nomination has previously been given, propose to nominate any substitute, successor or replacement nominee for election or re-election as a director, unless it gives a new timely notice pursuant to Section 2.03(A).

(d) For purposes of this section, "Ownership Information" means: a description (which description shall include, in addition to all other information, information identifying any parties thereto) of (i) any agreement, arrangement or understanding (including, without limitation, any option, warrant, convertible security, stock appreciation right, or other derivative or similar right or agreement), whether the instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of stock, 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 Company or with a value derived in whole in or part from the value of any class or series of shares of the Company, whether or not the instrument or right is subject to settlement in the underlying class or series of shares of the Company or otherwise (a "Derivative Instrument") that has been entered into by any Holder or Stockholder Associated Person or and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of any security of the Company or principal competitor of the Company (as defined for the purposes of Section 8 of the Clayton Antitrust Act of 1914) (a

“Competitor”); (ii) any agreement, arrangement or understanding (including, without limitation, any profit interest, contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument, hedging or pledging transaction, and/or borrowed or loaned shares), whether the instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of stock, that has been entered into by any Holder or Stockholder Associated Person, the intent or effect of which may be to transfer to or from any such person, in whole or in part, any of the economic consequences of ownership of any security of the Company or to maintain, increase or decrease the voting power of any such person or any of such person’s affiliates or associates with respect to any security of the Company or any Competitor; (iii) any proxy, contract, arrangement, understanding or relationship pursuant to which any Holder, Stockholder Associated Person or proposed nominee has a right to vote or has granted a right to vote any shares of the Company or any Competitor; (iv) any short interest held by any Holder, Stockholder Associated Person or proposed nominee presently or within the last 12 months in any shares of the Company or any Competitor (for purposes of this Section 2.03, a Holder, Stockholder Associated Person or proposed nominee is deemed to hold a short interest in a security if such Holder, Stockholder Associated Person or proposed nominee, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security); (v) any voting right in the manager or managing member of the Company or such Competitor held by any Holder, Stockholder Associated Person or proposed nominee that is separated or separable from the underlying shares of the Company or such Competitor; (vi) any proportionate interest in shares of the Company or any Competitor; (vii) any Derivative Instrument held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which any Holder, Stockholder Associated Person or proposed nominee is (a) a general partner or, directly or indirectly, holds any interest in a general partner, or (b) is the manager or managing member or, directly or indirectly, holds any interest in the manager or managing member of a limited liability company or similar entity; (viii) any performance-related fees (other than an asset-based fee) that any Holder, Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the Company or any Derivative Instrument; (ix) any direct or indirect legal, economic or financial interest (including short interest) of any Holder or Stockholder Associated Person in the outcome of any vote to be taken at any annual or special meeting of stockholders of the Company or any other entity with respect to any matter that is substantially related, directly or indirectly, to any nomination or business proposed by any Holder under this Bylaw; (x) any equity interests in any Competitor held by or on behalf of any Holder or Stockholder Associated Person; and (xi) any plans or proposals which any Stockholder or Stockholder Associated Person may have with respect to securities of the Company that would be required to be disclosed pursuant to Item 4 of Exchange Act Schedule 13D and any agreement, arrangement or understanding with respect to the nomination or other business between or among any Holder or Stockholder Associated Person and any other person, including, without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable). “Stockholder Associated Person” means as to any Holder (A) any person acting in concert with such Holder, (B) any person controlling, controlled by or under common control with such Holder or any of their respective affiliates and associates, or person acting in concert therewith and (C) if such Holder is an entity, each individual who is a director, executive officer, general partner or managing member of such entity or of any other entity that has or shares control of such entity. As used in these Bylaws, the terms “affiliate(s)” and “associate(s)” shall have the meanings attributed to such terms in Rule 12b-2 under the Exchange Act and the rules and regulations promulgated thereunder.

(4) To be eligible to be a nominee for election or reelection as a director of the Company pursuant to this Section 2.03, a proposed nominee must deliver to the Secretary at the principal executive offices of the Company (i) a fully signed and completed written questionnaire (a “Questionnaire”) with respect to the background and qualification of such person (in the same form required of the Company’s nominees, which form shall be provided by the Secretary upon written request of any stockholder of record identified by name within five Business Days of such written request) and (ii) a written representation and agreement, which shall be signed by the person proposed to be nominated and pursuant to which such person shall represent and agree that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Company, will act or vote in such capacity on any issue or question (a “Voting Commitment”) that has not been disclosed in such representation and agreement or (2) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Company, with such person’s fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding (whether written or oral) with any person or entity other than the Company with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Company that has not been disclosed in such representation and agreement, (C) if elected as director of the Company, currently intends to serve for a full term for which such person is standing for election, (D) if elected as a director of the Company, will comply with all applicable laws and all applicable rules of the U.S. exchanges upon which the securities of the Company are listed and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and other guidelines of the Company applicable to directors and duly adopted by the Board, (E) consents to being named as a nominee in a proxy statement and form of proxy relating to the meeting at which directors are to be elected and to serving as a director if elected and (F) will provide to the Company such other information as the Company may reasonably request, including such information reasonably necessary for the Company to determine whether a nominee will satisfy any qualifications or requirements imposed by the Certificate of Incorporation or these Bylaws, any law, rule, regulation or listing standard that may be applicable to the Company, or relevant to a determination

whether such person can be considered an independent director, which information shall be promptly provided following a request therefor. If a stockholder has submitted notice of an intent to nominate a candidate for election or re-election as a director pursuant to Section 2.03, all written and signed representations and agreements and all fully completed and signed Questionnaires described in this paragraph shall be provided to the Company at the same time as such notice, and the additional information described in clause (ii)(F) of the preceding sentence shall be provided to the Company promptly upon request by the Company, but in any event within five (5) business days after such request. All information provided pursuant to this Section 2.03(A)(4) shall be deemed part of the stockholder's notice submitted pursuant to this Section 2.03. Notwithstanding the foregoing, if any information or communication submitted pursuant to this Section 2.03(A)(4) is inaccurate or incomplete in any material respect (as determined by the Board (or any authorized committee thereof)) such information shall be deemed not to have been provided in accordance with this Section 2.03. Upon written request of the Secretary, such stockholder shall provide, within seven business days after delivery of such request (or such longer period as may be specified in such request), (i) written verification, reasonably satisfactory to the Company, to demonstrate the accuracy of any information submitted and (ii) a written affirmation of any information submitted as of an earlier date. If the stockholder giving notice of an intent to nominate a candidate for election fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 2.03.

(B) Special Meetings of Stockholders of the Company. Only such business shall be conducted at a special meeting of stockholders of the Company as shall have been brought before the meeting pursuant to the Company's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders of the Company at which directors are to be elected pursuant to the Company's notice of meeting (1) by or at the direction of the Board or (2) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Company who is entitled to vote at the meeting, who complies with the notice procedures set forth in this Section 2.03 and who is a stockholder of record at the time such notice is delivered to the Secretary at the principal executive offices of the Company, on the record date for the determination of stockholders of the Company entitled to vote at the special meeting and at the time of the special meeting. In the event that the Company calls a special meeting of stockholders of the Company for the purpose of electing one or more directors to the Board, any such stockholder 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 Company's notice of meeting if the stockholder's notice as required, if such stockholder's notice for a special meeting were for an annual meeting, by Section 2.03(A)(2) hereof (including the additional information required by Section 2.03(A)(4) hereof) shall be delivered to the Secretary at the principal executive offices of the Company 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 the 90th day prior to such special meeting or the 10th day following the day on which Public Announcement is first made of the date of such special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the adjournment or postponement of a special meeting (or the Public Announcement of the adjournment or postponement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General. (1) Except as otherwise provided by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.03 shall be eligible to serve as a director and only such business shall be conducted at an annual or special meeting of stockholders of the Company as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.03. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of any meeting of stockholders of the Company shall, in addition to making any other determination that may be appropriate for the conduct of the meeting, determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws (including whether a Holder provided all information and complied with all representations required under Section 2.03 or complied or did not comply with the requirements of Rule 14a-19 under the Exchange Act) and, if any proposed nomination or business is not in compliance with these Bylaws (including due to a failure to comply with the requirements of Rule 14a-19 under the Exchange Act), shall declare that such defective proposal or nomination shall be disregarded, notwithstanding that votes and proxies in respect of any such proposal or nomination have been received by the Company. In furtherance and not by way of limitation of the foregoing provisions of this Section 2.03, unless otherwise required by law, or otherwise determined by the chairman of the meeting, (A) if the stockholder does not provide the information required under Section 2.03 (including the information required under Section 2.03(A)(4)) to the Company within the time frames specified herein or (B) if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Company to present a nomination or other business, any such nomination shall be disregarded or such other business shall not be transacted, notwithstanding that votes and proxies in respect of any such nomination or other business may have been received by the Company.

(2) Whenever used in these Bylaws, (a) "Public Announcement" shall mean disclosure (i) in a press release issued by the Company, provided such press release is issued by the Company following its customary procedures, that is reported by the Dow Jones News Service, Associated Press or comparable national news service, or is generally available on internet news sites or (ii) in a document publicly filed by the Company with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder; (b) the "Close of Business" means 5:00 p.m. local time at the Company's

principal executive offices, and if an applicable deadline falls on the “Close of Business” on a day that is not a Business Day, then the applicable deadline shall be deemed to be the Close of Business on the immediately preceding Business Day; (c) “Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are authorized or obligated by law or executive order to close. Further, “delivery” of any notice or materials by a stockholder as required under this Section 2.03 shall be made by both (1) hand delivery, overnight courier service, or by certified or registered mail, return receipt required, in each case, to the Secretary at the principal executive offices of the Company, and (2) electronic mail to the Secretary at the principal executive offices of the Company or such other email address for the Secretary as may be specified in the Company’s proxy statement for the annual meeting of stockholders immediately preceding such delivery of notice or materials. For purposes of this Section 2.03, to be considered a qualified representative of a stockholder of the Company, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Company prior to the making of such nomination or proposal at such meeting (and in any event not fewer than five (5) business days before the meeting), stating that such person is authorized to act for such stockholder as a proxy at the meeting of stockholders of the Company, and such person must produce proof that he or she is a duly authorized officer, manager or partner of such stockholder or such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, as well as valid government-issued photo identification, at the meeting of stockholders of the Company. For purposes of clause (A)(3)(c)(2)(i) of this Section 2.03, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both); (B) the right to vote such shares, alone or in concert with others; and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(3) Notwithstanding the foregoing provisions of this Section 2.03, the Holders and any Stockholder Associated Person shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.03; *provided, however*, that, to the fullest extent permitted by law, any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to these Bylaws (including Sections 2.03 (A)(1)(c) and (B) hereof), and compliance with this Section 2.03 shall be the exclusive means for a stockholder of the Company to make nominations or submit other business at any meeting of stockholders of the Company (other than business properly brought under and in compliance with Rule 14a-8 of the Exchange Act (or any successor provision)). Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Company’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or the rights of the holders of any class or series of stock having a preference over the common stock of the Company as to dividends or upon liquidation to elect directors under specified circumstances (including any certificate of designation relating to any series of Preferred Stock (as defined in the Certificate of Incorporation)).

(4) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use for solicitation by the Board.

SECTION 2.04 Notice of Meetings. Whenever stockholders of the Company are required or permitted to take any action at a meeting, a timely notice in writing or by electronic transmission, in the manner provided in Section 232 of the DGCL, of the meeting, which shall state the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders of the Company and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders of the Company entitled to vote at the meeting, if such date is different from the record date for determining stockholders of the Company entitled to notice of the meeting, and, in the case of a special meeting, the purposes for which the meeting is called, shall be mailed to or transmitted electronically by the Secretary to each stockholder of record entitled to vote thereat as of the record date for determining the stockholders of the Company entitled to notice of the meeting. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of the Company entitled to vote at such meeting as of the record date for determining the stockholders of the Company entitled to notice of the meeting.

SECTION 2.05 Quorum. Unless otherwise required by law, the Certificate of Incorporation or the rules of any stock exchange upon which the Company’s securities are listed, the holders of record of a majority of the voting power of the issued and outstanding shares of the Company entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders of the Company. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on that matter. Once a quorum is present at any meeting, it shall not be broken by the subsequent withdrawal of any stockholder of the Company.

SECTION 2.06 Voting. Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders of the Company shall be entitled to one vote for each share of Common Stock held by such stockholder that has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders of the Company or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy in any manner provided by applicable law, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder of the Company may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a written revocation of the proxy or a new proxy bearing a later date. Unless required by the Certificate of Incorporation or applicable law, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the voting power of the shares of the Company present in person or represented by proxy and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which, by express provision of applicable law, of the rules or regulations of any stock exchange applicable to the Company, of any regulation applicable to the Company or its securities, of the Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding anything to the contrary in these Bylaws and subject to the Certificate of Incorporation, all elections of directors shall be determined by a plurality of the votes cast in respect of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

SECTION 2.07 Chairman of Meetings. The Chairman of the Board, if one is elected, or, in his or her absence or disability, the CEO, or in the absence of the Chairman of the Board and the CEO, a person designated by the majority of the directors shall be the chairman of the meeting and, as such, shall preside at all meetings of the stockholders of the Company.

SECTION 2.08 Secretary of Meetings. The Secretary shall act as secretary at all meetings of the stockholders of the Company. In the absence or disability of the Secretary, the chairman of the meeting shall appoint a person to act as secretary at such meetings.

SECTION 2.09 Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any meeting of stockholders of the Company may be taken without a meeting, without prior notice and without a vote only in the manner provided in the Certificate of Incorporation and in accordance with applicable law.

SECTION 2.10 Adjournment. The chairman of any meeting of stockholders of the Company shall have the power to adjourn the meeting for any or no reason from time to time, whether or not a quorum is present. At any meeting of stockholders of the Company, if less than a quorum be present, the chairman of the meeting or stockholders of the Company holding a majority in voting power of the shares of stock of the Company, present in person or by proxy and entitled to vote thereat, shall have the power to adjourn the meeting for any or no reason from time to time without notice other than announcement at the meeting until a quorum shall be present. Any business may be transacted at the adjourned meeting that might have been transacted at the meeting originally noticed. When a meeting is adjourned to another time or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are: (i) announced at the meeting at which the adjournment is taken; (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxyholders to participate in the meeting by means of remote communication; or (iii) set forth in the notice of meeting (*provided, however*, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting). If after the adjournment a new record date for determination of stockholders of the Company entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders of the Company entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders of the Company entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

SECTION 2.11 Remote Communication. If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Company and proxyholders not physically present at a meeting of stockholders of the Company may, by means of remote communication:

(A) participate in a meeting of stockholders of the Company; and

(B) be deemed present in person and vote at a meeting of stockholders of the Company whether such meeting is to be held at a designated place or solely by means of remote communication; *provided, however*, that:

(1) the Company shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Company or proxyholder;

(2) the Company shall implement reasonable measures to provide such stockholders of the Company and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Company, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(3) if any stockholder of the Company or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Company.

SECTION 2.12 Inspectors of Election. The Company may, and shall if required by law, in advance of any meeting of stockholders of the Company, appoint one or more inspectors of election, who may be employees of the Company, to act at the meeting or any adjournment thereof and to make a written report thereof. The Company may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders of the Company, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of the Company outstanding and the voting power of each such share, (b) determine the shares of the Company represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares of the Company represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Company, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

SECTION 2.13 Organization. The date and time of the opening and the closing of the polls for each matter upon which the stockholders of the Company will vote at a meeting shall be announced at the meeting by the chairman of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto shall be accepted. The Board may adopt by resolution such rules, regulations and procedures for the conduct of the meeting of stockholders of the Company as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of the Company entitled to vote at the meeting, their duly authorized and constituted proxies, qualified representatives (including rules around who qualifies as such) or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted to questions or comments by participants; and (f) restricting the use of cell phones, audio or video recording devices and similar devices at the meeting. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall declare that a nomination or other business was not properly brought before the meeting if the facts warrant (including if a determination is made that a nomination or other business was not made or proposed, as the case may be, in accordance with Section 2.10 of these Bylaws), and if such chairman should so declare, such nomination shall be disregarded or such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.03, unless otherwise required by law, if the Noticing Stockholder (or a qualified representative of the Noticing Stockholder) does not appear at the annual or special meeting of stockholders of the Company to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Company. Unless and to the extent determined by the Board or the chairman of the meeting, no meeting of stockholders of the Company shall be required to be held in accordance with the rules of parliamentary procedure.

SECTION 2.14 Delivery to Corporation. Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information (other than a document authorizing another person to act for a stockholder by proxy at a meeting of stockholders pursuant to Section 212 of the DGCL) to the Company or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), the Company shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested. For the avoidance of doubt, the Company expressly opts out of Section 116 of the DGCL

with respect to the delivery of information and documents (other than a document authorizing another person to act for a stockholder by proxy at a meeting of stockholders pursuant to Section 212 of the DGCL) to the Company required by this Article II.

ARTICLE III

Board of Directors

SECTION 3.01 Powers. Except as otherwise provided in the Certificate of Incorporation or the DGCL, the business and affairs of the Company shall be managed by or under the direction of the Board. The Board may exercise all such authority and powers of the Company and do all such lawful acts and things as are not, by the DGCL or the Certificate of Incorporation, directed or required to be exercised or done by the stockholders of the Company.

SECTION 3.02 Number and Term; Chairman. Subject to the Certificate of Incorporation, the number of directors shall be fixed exclusively by resolution of the Board. The term of each director elected to the Board shall be as set forth in the Certificate of Incorporation. Directors need not be stockholders of the Company. The Board shall elect a Chairman of the Board, who shall have the powers and perform such duties as provided in these Bylaws and as the Board may from time to time prescribe. The Chairman of the Board shall preside at all meetings of the Board at which he or she is present. If the Chairman of the Board is not present at a meeting of the Board, the CEO (if the CEO is a director and is not also the Chairman of the Board) shall preside at such meeting, and, if the CEO is not present at such meeting or is not a director, a majority of the directors present at such meeting shall elect one of their members to preside.

SECTION 3.03 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Board, the Chairman of the Board, the CEO or the Secretary. The resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise expressly provided in the resignation.

SECTION 3.04 Removal. Directors of the Company may be removed in the manner provided in the Certificate of Incorporation and applicable law.

SECTION 3.05 Vacancies and Newly-Created Directorships. Except as otherwise provided by applicable law, vacancies occurring in any directorship (whether by death, resignation, retirement, disqualification, removal or other cause) and newly-created directorships resulting from any increase in the number of directors shall be filled in accordance with the Certificate of Incorporation. Any director elected to fill a vacancy or newly-created directorship shall hold office until (a) prior to the annual meeting of stockholders to be held in 2027 (the "2027 Annual Meeting"), the next election of the class for which such director shall have been chosen and (b) from and after the 2027 Annual Meeting, the next election of directors, and, in each case, until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

SECTION 3.06 Meetings. Regular meetings of the Board may be held at such places and times as shall be determined from time to time by the Board, either within or without the State of Delaware. Special meetings of the Board may be called by the CEO of the Company or the Chairman of the Board or as provided by the Certificate of Incorporation, and shall be called by the CEO or the Secretary if directed by the Board and shall be at such places and times as they or he or she shall fix. Notice need not be given of regular meetings of the Board. At least 24 hours before each special meeting of the Board, written notice, notice by electronic transmission or oral notice (either in person or by telephone) of the time, date and place of the meeting shall be given to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting of the Board.

SECTION 3.07 Quorum, Voting and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business at a meeting of the Board. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the act of a majority of the directors present at a meeting of the Board at which a quorum is present shall be the act of the Board. In the absence of a quorum, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

SECTION 3.08 Committees; Committee Rules. The Board may, by resolution passed by a majority of the directors, designate one or more committees, each such committee to consist of one or more of the directors of the Company. The meetings of any such committee shall be held in compliance with these Bylaws. The Board may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board establishing such committee, shall have and may exercise all the powers and authority of the

Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it. Notwithstanding the foregoing, no committee shall have the power or authority of the Board in reference to the following matters: (a) approving or adopting, or recommending to the stockholders of the Company, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders of the Company for approval or (b) adopting, amending or repealing any Bylaw of the Company. All committees of the Board shall keep minutes of their meetings and shall report their proceedings to the Board when requested or required by the Board. Each committee of the Board may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board designating such committee. Unless otherwise provided in such a resolution or by law, the Certificate of Incorporation or these Bylaws, (i) the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum for the transaction of business at a meeting of the committee unless the committee shall consist of one or two members, in which event one member shall constitute a quorum and (ii) all matters shall be determined by a majority vote of the members present at a meeting of the committee at which a quorum is present. In the absence of a quorum, a majority of the directors present may adjourn the meeting of the committee to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member, to the extent permitted by applicable law.

SECTION 3.09 Action Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or any committee thereof, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed in the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form.

SECTION 3.10 Remote Meeting. Unless otherwise restricted by the Certificate of Incorporation, members of the Board, or any committee designated by the Board, may participate in a meeting by means of conference telephone or other communications equipment in which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

SECTION 3.11 Compensation. The Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Company in any capacity.

SECTION 3.12 Reliance on Books and Records. A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Company and upon such information, opinions, reports or statements presented to the Company by any of the Company's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company or the Board.

SECTION 3.13 Emergency Bylaws. This Section 3.13 shall be operative during any emergency condition as contemplated by Section 110 of the DGCL (an "Emergency"), notwithstanding any different or conflicting provisions in these Bylaws, the Certificate of Incorporation or the DGCL. In the event of any Emergency, or other similar emergency condition, if a quorum cannot be readily convened for a meeting, the director or directors in attendance at a meeting of the Board or a standing committee thereof shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate. Except as the Board may otherwise determine, during any Emergency, the Company and its directors and officers, may exercise any authority and take any action or measure contemplated by Section 110 of the DGCL.

ARTICLE IV

Officers

SECTION 4.01 Number. The officers of the Company shall include a CEO, a President and a Secretary, each of whom shall be elected by the Board and who shall hold office for such terms as shall be determined by the Board and until their successors are elected and qualify or until their earlier resignation or removal. In addition, the Board may elect one or more Vice Presidents, including one or more Executive Vice Presidents, Senior Vice Presidents, a Treasurer and one or more Assistant Treasurers and one or more Assistant

Secretaries, who shall hold their office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. Any number of offices may be held by the same person.

SECTION 4.02 Other Officers and Agents. The Board may appoint such other officers and agents as it deems advisable, who shall hold their office for such terms and shall exercise and perform such powers and duties as shall be determined from time to time by the Board. The Board may appoint one or more officers called a Vice Chairman, each of whom does not need to be a member of the Board.

SECTION 4.03 Chief Executive Officer. The CEO, who may also be the President, subject to the determination of the Board, shall have general executive charge, management, and control of the properties and operations of the Company in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities. If the Board has not elected a Chairman of the Board or in the absence or inability to act as the Chairman of the Board, the CEO shall exercise all of the powers and discharge all of the duties of the Chairman of the Board, but only if the CEO is a director of the Company.

SECTION 4.04 President. The President of the Company shall, subject to the powers of the Board, the Chairman of the Board and the CEO, have general charge of the business, affairs and property of the Company, and control over its officers, agents and employees. The President shall see that all orders and resolutions of the Board are carried into effect. The President is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Company, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Company. The President shall have such other powers and perform such other duties as may be prescribed by the Chairman of the Board, the CEO, the Board or as may be provided in these Bylaws. Unless otherwise determined by the Board, the CEO shall be the President of the Company.

SECTION 4.05 Vice Presidents. Each Vice President, if any are appointed, of whom one or more may be designated an Executive Vice President or Senior Vice President, shall have such powers and shall perform such duties as shall be assigned to him or her by the CEO or the Board.

SECTION 4.06 Treasurer. The Treasurer shall have custody of the corporate funds, securities, evidences of indebtedness and other valuables of the Company and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Company in such depositories as may be designated by the Board or its designees selected for such purposes. The Treasurer shall disburse the funds of the Company, taking proper vouchers therefor. The Treasurer shall render to the CEO and the Board, upon their request, a report of the financial condition of the Company. If required by the Board, the Treasurer shall give the Company a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board shall prescribe.

In addition, the Treasurer shall have such further powers and perform such other duties incident to the office of Treasurer as from time to time are assigned to him or her by the CEO or the Board.

SECTION 4.07 Secretary. The Secretary shall: (a) cause minutes of all meetings of the stockholders of the Company and directors to be recorded and kept properly; (b) cause all notices required by these Bylaws or otherwise to be given properly; (c) see that the minute books, stock books and other nonfinancial books, records and papers of the Company are kept properly; and (d) cause all reports, statements, returns, certificates and other documents to be prepared and filed when and as required. The Secretary shall have such further powers and perform such other duties as prescribed from time to time by the CEO or the Board.

SECTION 4.08 Assistant Treasurers and Assistant Secretaries. Each Assistant Treasurer and each Assistant Secretary, if any are appointed, shall be vested with all the powers and shall perform all the duties of the Treasurer and Secretary, respectively, in the absence or disability of such officer, unless or until the CEO or the Board shall otherwise determine. In addition, Assistant Treasurers and Assistant Secretaries shall have such powers and shall perform such duties as shall be assigned to them by the CEO or the Board.

SECTION 4.09 Corporate Funds and Checks. The funds of the Company shall be kept in such depositories as shall from time to time be prescribed by the Board or its designees selected for such purposes. All checks or other orders for the payment of money shall be signed by the CEO, a Vice President, the Treasurer or the Secretary or such other person or agent as may from time to time be authorized and with such countersignature, if any, as may be required by the Board.

SECTION 4.10 Contracts and Other Documents. The CEO and the Secretary, or such other officer or officers as may from time to time be authorized by the Board or any other committee given specific authority in the premises by the Board during the intervals

between the meetings of the Board, shall have power to sign and execute on behalf of the Company deeds, conveyances and contracts and any and all other documents requiring execution by the Company.

SECTION 4.11 Ownership of Stock of Another Corporation. Unless otherwise directed by the Board, the CEO, a Vice President, the Treasurer or the Secretary, or such other officer or agent as shall be authorized by the Board, shall have the power and authority, on behalf of the Company, to attend and to vote at any meeting of securityholders of any entity in which the Company holds securities or equity interests and may exercise, on behalf of the Company, any and all of the rights and powers incident to the ownership of such securities or equity interests at any such meeting, including the authority to execute and deliver proxies and consents on behalf of the Company.

SECTION 4.12 Delegation of Duties. In the absence, disability or refusal of any officer to exercise and perform his or her duties, the Board may delegate to another officer such powers or duties.

SECTION 4.13 Resignation and Removal. Any officer of the Company may be removed from office for or without cause at any time by the Board. Any officer may resign at any time in the same manner prescribed under Section 3.03 hereof.

SECTION 4.14 Vacancies. The Board shall have the power to fill vacancies occurring in any office.

SECTION 4.15 Compensation. Compensation of all executive officers shall be approved by the Board, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Company; *provided, however*, that compensation of all executive officers may be determined by a committee established for that purpose if so authorized by the unanimous vote of the Board.

ARTICLE V

Stock

SECTION 5.01 Shares With Certificates. The shares of stock of the Company shall be represented by certificates; *provided, however*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Company's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock in the Company represented by certificates shall be entitled to have a certificate signed by, or in the name of the Company by, (a) the Chairman of the Board or the Vice Chairman of the Board or, the President or a Vice President and (b) the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, certifying the number and class of shares of the Company owned by such holder. Any or all of the signatures on the certificate may be a facsimile or other form of electronic signatures. The Board shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class, and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars. In case any officer, transfer agent or registrar who has signed or whose facsimile or other form of electronic signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

SECTION 5.02 Shares Without Certificates. If the Board chooses to issue shares of stock without certificates, the Company, if required by the DGCL, shall, within a reasonable time after the issuance or transfer of shares without certificates, send the stockholder of the Company a written statement of the information required by the DGCL. The Company may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates; *provided, however*, that the use of such system by the Company is permitted by applicable law.

SECTION 5.03 Transfer of Shares. Shares of stock of the Company shall be transferable upon its books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, in the manner prescribed by law, the Certificate of Incorporation and in these Bylaws, upon surrender to the Company by delivery thereof (to the extent evidenced by a physical stock certificate) to the person in charge of the stock and transfer books and ledgers. Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of the Company that are not represented by a certificate shall be transferred in accordance with applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Company to do so. The Board shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issuance, transfer and registration of certificates for shares of stock of the Company.

SECTION 5.04 Lost, Stolen, Destroyed or Mutilated Certificates. A new certificate of stock or uncertificated shares may be issued in the place of any certificate previously issued by the Company alleged to have been lost, stolen or destroyed, and the Company may, in its discretion, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Company a bond, in such sum as the Company may direct, in order to indemnify the Company against any claims that may be made against it in connection therewith. A new certificate or uncertificated shares of stock may be issued in the place of any certificate previously issued by the Company that has become mutilated upon the surrender by such owner of such mutilated certificate and, if required by the Company, the posting of a bond by such owner in an amount sufficient to indemnify the Company against any claim that may be made against it in connection therewith.

SECTION 5.05 List of Stockholders Entitled To Vote. The Company shall prepare, no later than the tenth day before each meeting of stockholders of the Company, a complete list of the stockholders of the Company entitled to vote at the meeting (*provided, however*, that if the record date for determining the stockholders of the Company entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders of the Company entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order and showing the address of each stockholder of the Company and the number of shares registered in the name of each such stockholder. Such list shall be open to the examination of any stockholder of the Company, for any purpose germane to the meeting for 10 days ending on the day before the meeting date (a) on a reasonably accessible electronic network (*provided, however*, that the information required to gain access to such list is provided with the notice of meeting) or (b) during ordinary business hours at the principal place of business of the Company. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company of the Company. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders of the Company entitled to examine the list of stockholders of the Company required by this Section 5.05 or to vote in person or by proxy at any meeting of stockholders of the Company.

SECTION 5.06 Fixing Date for Determination of Stockholders of Record.

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

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

(C) Unless otherwise restricted by the Certificate of Incorporation, in order that the Company may determine the stockholders of the Company entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. Subject to the provisions of the Certificate of Incorporation, any stockholder of record seeking to have the stockholders of the Company authorize or take corporate action by written consent shall, by written notice to the Secretary, request that the Board fix a record date, which notice shall include the text of any proposed resolution. If no record date for determining stockholders of the Company entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (a) when no prior action of the Board is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with applicable law and (b) if prior action by the Board is required by law, the

record date for such purpose shall be at the Close of Business on the day on which the Board adopts the resolution taking such prior action.

SECTION 5.07 Registered Stockholders. Prior to the surrender to the Company of the certificate or certificates for a share or shares of stock or notification to the Company of the transfer of uncertificated shares with a request to record the transfer of such share or shares, the Company shall be entitled to recognize the exclusive right of the registered owner of such share or shares as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner of such share or shares. To the fullest extent permitted by law, the Company shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VI

Notice and Waiver of Notice

SECTION 6.01 Notice. If mailed, notice to stockholders of the Company shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder of the Company at such stockholder's address as it appears on the records of the Company. Without limiting the manner by which notice otherwise may be given effectively to stockholders of the Company, any notice to stockholders of the Company may be given by electronic transmission in the manner provided in Section 232 of the DGCL. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

SECTION 6.02 Waiver of Notice. A written waiver of any notice, signed by a stockholder of the Company or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting (in person or by remote communication) shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE VII

Indemnification

SECTION 7.01 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (each a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Company or, while a director or officer of the Company, is or was serving at the request of the Company as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Company to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, if permitted, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; *provided, however*, that, except as provided in Section 7.03 hereof with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Company shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized or ratified by the Board. Notwithstanding anything in this Article VII to the contrary, the Company shall not be liable to indemnify any indemnitee under this Article VII for any amounts paid in settlement of any proceeding effected without the Company's written consent, which consent shall not be unreasonably withheld.

SECTION 7.02 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 7.01 hereof, an indemnitee shall also have the right to be paid by the Company the expenses (including attorneys' fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article VII (which shall be governed by Section 7.03 hereof) (hereinafter an "advancement of expenses"); *provided, however*, that, if the DGCL requires or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred

by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including service to an employee benefit plan) shall be made solely upon delivery to the Company of an undertaking (an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a “final adjudication”) that such indemnitee is not entitled to be indemnified or entitled to advancement of expenses under Sections 7.01 and 7.02 hereof or otherwise.

SECTION 7.03 Right of Indemnitee to Bring Suit. If a claim under Section 7.01 or 7.02 hereof is not paid in full by the Company within (a) 60 days after a written claim for indemnification has been received by the Company or (b) 20 days after a claim for an advancement of expenses has been received by the Company, the indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Company to recover an advancement of expenses pursuant to the terms of an undertaking or otherwise, the indemnitee shall be entitled to be paid also the expense (including attorneys’ fees) of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL and (b) any suit brought by the Company to recover an advancement of expenses pursuant to the terms of an undertaking or otherwise, the Company shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Company (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Company (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Company to recover an advancement of expenses pursuant to the terms of an undertaking or otherwise, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Company.

SECTION 7.04 Indemnification Not Exclusive.

(A) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article VII, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article VII, shall not limit or restrict in any way the power of the Company to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders of the Company or disinterested directors or otherwise, both as to action in such indemnitee’s capacity as an officer, director, employee or agent of the Company and as to action in any other capacity.

(B) In the event of payment under this Article VII, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee’s own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

SECTION 7.05 Corporate Obligations; Reliance. The rights granted pursuant to the provisions of this Article VII shall vest at the time a person becomes a director or officer of the Company and shall be deemed to create a binding contractual obligation on the part of the Company to the persons who from time to time are elected as officers or directors of the Company and such persons in acting in their capacities as officers or directors of the Company or any subsidiary shall be entitled to rely on such provisions of this Article VII without giving notice thereof to the Company. Such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

SECTION 7.06 Insurance. The Company may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the DGCL.

SECTION 7.07 Indemnification of Employees and Agents of the Company; Service at Subsidiaries. The Company may, to the extent authorized by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Company. Any person serving as a director or officer of a subsidiary of the Company shall be entitled to the rights to indemnification conferred in this Article VII, and to the advancement of expenses, as defined in Section 7.02, with respect to his or her service at such subsidiary (provided, however, that the advancement of expenses to any person who is not an indemnitee as defined in Section 7.01 shall be at the discretion of the Company). Any director or officer of a subsidiary is deemed to be serving such subsidiary at the request of the Company, and the Company is deemed to be requesting such service. This Article VII shall, to the fullest extent permitted by law, supersede any conflicting provisions contained in the corporate governance documents of any other subsidiary of the Company. In addition, the Company may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to individuals with respect to their service as an employee or agent of subsidiaries of the Company.

ARTICLE VIII

Miscellaneous

SECTION 8.01 Electronic Transmission. For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

SECTION 8.02 Corporate Seal. The Board may provide a suitable seal, containing the name of the Company, which seal shall be in the charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

SECTION 8.03 Fiscal Year. The fiscal year of the Company shall end each year on the Saturday closest to September 30th of that year, or such other day as the Board may designate.

SECTION 8.04 Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

SECTION 8.05 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

SECTION 8.06 Severability. If any provision of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of these Bylaws and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby.

SECTION 8.07 Electronic Signatures, etc. Except as otherwise required by the Certificate of Incorporation or these Bylaws (including, without limitation, as otherwise required by Section 2.14), any document, including, without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Company may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Company may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. The terms “electronic mail,” “electronic mail address,” and “electronic signature” as used herein shall have the meanings ascribed thereto in the DGCL.

ARTICLE IX

SECTION 9.01 Amendments. The Board is authorized to make, repeal, alter, amend and rescind, in whole or in part, these Bylaws without the assent or vote of the stockholders of the Company in any manner not inconsistent with the laws of the State of Delaware or the Certificate of Incorporation. Notwithstanding any other provisions of these Bylaws or any provision of law that might otherwise permit a lesser vote of the stockholders of the Company, in addition to any vote of the holders of any class or series of shares of the Company required by the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred

Stock), these Bylaws or applicable law, the affirmative vote of the holders of at least 66²/₃% in voting power of all the then-outstanding shares of Common Stock entitled to vote thereon shall be required in order for the stockholders of the Company to alter, amend, repeal or rescind, in whole or in part, any provision of these Bylaws (including this Section 9.01) or to adopt any provision inconsistent herewith.

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Leslie's Poolmart Inc.
2005 E. Indian School Rd.
Phoenix, AZ 85016

602.366.3999
602.366.3944 f
lesliespool.com

July 7, 2023

Scott Bowman

Dear Scott,

We are very pleased to extend to you the following offer to join Leslie's Poolmart, Inc. (the "Company") effective July 17, 2023, as our Chief Financial Officer Designate, reporting directly to Mike Egeck, Chief Executive Officer. On August 7, 2023, you will officially become Leslie's Chief Financial Officer and Treasurer. We look forward to having you join the Company and are confident that you will be able to make significant contributions to support our growth at Leslie's.

Base Salary: Your base annual salary will be \$550,000, less normal withholdings, paid consistently with the Company's standard payroll practices.

Incentive Compensation: Your incentive bonus will be based upon the annual results of the Company's financial performance for the fiscal year and is governed by the Company's Annual Incentive Plan. Your target bonus percentage is 100% of your base salary, representing an annual target bonus of \$550,000.

Signing Bonus: The Company has agreed to grant you a sign-on bonus of \$500,000. The initial sign on bonus payment of \$300,000 will be grossed-up to account for normal and customary payroll tax withholdings and will be paid to you on the first regular payroll processing date following 30 days of employment. The second bonus payment of \$200,000 will be subject to normal and customary payroll tax withholdings and will be paid on the first payroll processing date in December 2023.

Equity Incentive: Leslie's recognizes the importance of your role and level of specialized knowledge you will bring to the organization, and we want to ensure that our top contributors have an opportunity to share in the ownership, financial success, and personal wealth generation of being a Leslie's shareholder. Accordingly, and subject to approval by the Compensation Committee of the Leslie's, Inc. Board of Directors, you will receive a one-time sign on equity grant valued at \$550,000. In addition, you will be eligible for future equity grants as approved by the Compensation Committee.

Executive Severance Plan: You will be designated as an eligible employee to participate in the Leslie's Poolmart, Inc. Executive Severance Plan. Detailed information on this program will be provided to you in a separate Executive Severance Plan Participation Agreement.

Benefits Program: You will be eligible to participate in Leslie's standard fringe benefits program, subject to and on a basis consistent with the terms and conditions of any such plans. Such benefits currently include health & welfare insurance, our 401(k)-retirement plan, four (4) weeks of vacation, and certain paid holidays, among other perks.

Health insurance eligibility will begin immediately upon your effective date of employment, while eligibility for other fringe benefits may be subject to additional qualifying criteria. You will receive detailed information about our benefits program from Leslie's Human Resources.

As we must include in all offers of employment, we mention that your employment is at-will, and therefore, your employment and compensation can be terminated, with or without cause, and with or without notice, at any time, at your option or the Company's option. Although other terms and conditions of employment may change, this at-will employment relationship, as defined above, will remain in effect throughout your employment with the Company. This letter does not represent an employment contract, rather an offer of employment and description of benefits.

Scott, we would be extremely pleased to have you join the Leslie's leadership team, as we sincerely believe that you will find succeeding with the team to be very gratifying and personally rewarding. We have a great deal of confidence in you and recognize your ability to add significant value to our business.

If there is anything that we can do to help you with this important decision, please let us know.

Sincerely yours,

/s/ Naomi Cramer
Naomi Cramer
Chief People Officer

Accepted by Scott Bowman:

/s/ Scott Bowman
Scott Bowman

7/7/2023
Date

LESLIE'S POOLMART, INC. EXECUTIVE SEVERANCE PAY PLAN

Leslie's Poolmart, Inc. (hereinafter the "Company") hereby adopts the Leslie's Poolmart, Inc. Executive Severance Pay Plan (the "Plan"), effective upon the date of its execution.

Section 1: Purpose; Definitions

1.1 **Purpose.** The purpose of the Plan is to provide severance pay to eligible executives of the Company in the circumstances and on the conditions specified. The Plan is an "employee welfare benefit plan" within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended, (hereinafter "ERISA"). Neither the receipt nor the amount of any severance payment is contingent, directly or indirectly, on an employee's retirement. Severance payments are contingent, prospective payments that may be provided under the circumstances and conditions described.

1.2 Definitions.

a. **Cause.** With respect to any Participant, Cause means (i) the willful and continued failure by Participant to substantially perform their duties with the Company; (ii) conviction of any felony; (iii) conviction of any crime involving moral turpitude or dishonesty that causes, or is likely to cause, harm to the Company; (iv) participation in a fraud or willful act of dishonesty against the Company that causes, or is likely to cause, harm to the Company; (v) intentional and material damage to the Company's property; (vi) the Participant's intentional failure to follow, or intentional conduct that violates the Company's written policies that are generally applicable to all officers of the Company or (vii) the Participant's intentional violation of any term of agreement between the Participant and the Company, including non-disclosure and non-competition agreements, or any statutory duty the Participant owes to the Company.

b. **COBRA.** The Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

c. **Code.** The Internal Revenue Code of 1986, as amended from time to time, or any successor thereto.

d. **Compensation Committee.** The Compensation Committee means the Compensation Committee of the Company's board of directors.

e. **Covered Employer.** For purposes of the Plan, the term "Covered Employer" is defined to mean the Company or one of the Company's subsidiaries.

f. **Eligible Employee.** An individual designated by the Company, who (i) has been an employee of the Company for a minimum of ninety (90) days prior to a Separation From Service, (ii) is not eligible for severance benefits under any other plan, program, policy, procedure or agreement of or with the Company, (iii) incurs a Separation From Service without Cause, by action of the Company, other than as a result of death, total disability as contemplated by a long term disability plan of the Company, or any voluntary resignation or termination, and (iv) executes a Final Release, at the time of Separation From Service.

g. **Final Release.** A general release effective between or among the Company and the Participant, which is satisfactory in form and substance to the Company, as applicable, including non-disclosure and non-solicitation restrictions, and for which the period has expired for the exercise of any revocation rights of the Participant with respect thereto.

h. **Medical Benefits Continuation.** Means, subject to a Participant's (a) timely election of continuation coverage under COBRA, with respect to the Company's group health insurance plans in which such Participant participated immediately prior to the Separation from Service and (b) continued payment by such Participant of premiums for such plans at the "active employee" rate (excluding, for purposes of calculating cost, Participant's ability to pay premiums with pre-tax dollars), the Company shall provide COBRA continuation coverage for such Participant and his or her eligible dependents until the earliest of (x) expiration of twelve (12) months following the date of the Separation From Service, (y) Participant or his or her eligible dependents, as the case may be, ceasing to be eligible under COBRA, and (z) Participant becoming eligible for coverage under the health insurance plan of a subsequent employer. If the Company is unable to provide, or is unable to continue to provide, Medical Benefits Continuation as contemplated hereunder due to restrictions imposed by law, the Company shall pay Participant a cash amount equal to the number of months remaining in the severance period multiplied by the applicable active employee rate.

i. **Participant.** Each Eligible Employee.

j. **Plan Administrator.** The Compensation Committee is the Plan Administrator. The Compensation Committee may delegate its authority under the Plan to such person(s) as it deems necessary or appropriate from time to time, and any such delegation shall carry with it the Plan Administrator's discretionary authority.

k. **Separation From Service.** A termination of substantial services for the Company and any affiliate thereof within the contemplation of Code Sections 414(b) and 414(c). An individual will not be treated as having incurred a Separation From Service where the individual's level of future services for the Company and any affiliate is reasonably

anticipated by the Employer to exceed 30% of the average level of bona fide services provided by that individual in any capacity for the prior 36 month period, or the prior period of services if less, but will be treated as having incurred a Separation From Service at any time when such reasonably anticipated level of future services is equal to or less than such 30% average level of prior services.

1. *Senior Officer.* An officer of the Company at or above the level of Senior Vice President and serves on the Company's Executive Board as determined by the Company's Chief Executive Officer.

Section 2: Eligibility

Each individual is a Participant in the Plan as of the date the individual becomes a Senior Officer and satisfies all elements of the definition of an Eligible Employee. No other persons have any rights under the Plan or to receive any benefit under the Plan. No employee will be eligible to receive a benefit under the Plan unless the employee and the Company execute a Participation Agreement substantially in the form attached as Exhibit A to the Plan (or another form approved by the Compensation Committee). The executed Participation Agreement will constitute an agreement between the Company and the employee that binds both of them to the terms of the Plan and will bind their heirs, executors, administrators, successors, and assigns, both present and future.

Section 3: Plan Benefits

3.1 Benefits. A Participant is eligible to receive (a) periodic severance payments for a duration of 18 (eighteen) months following date of Separation From Service and (b) Medical Benefits Continuation.

3.2 Payment of Benefits. Plan benefits will be the Participant's base pay amount and annual target bonus, for the duration described in Section 3.1(a), using the payroll date frequency in effect for the Participant as of the date the individual incurs a Separation From Service, as provided in this Section 3.2.

a. *Payment Timing.* Payment of Plan benefits will commence on the 30th day following the Participant's Separation From Service, provided the Participant has executed a Final Release (for which any revocation rights have expired) before the end of such 30 day period. Plan benefits with respect to the period from the date of Separation From Service until such payment commencement date will be accumulated and paid on the first business date which occurs after the expiration of such 30 day period, and remaining Plan benefits will be paid thereafter on normal payroll cycles (except as otherwise provided in Section 5.3 with respect to certain death benefits).

b. *No Final Release.* If an otherwise Eligible Employee fails to execute a Final Release (for which any revocation rights have expired) before the end of the 30-day period described in Section 3.2.a. above, such individual shall be ineligible for Plan benefits.

3.3 Deductions. The employer will effect all legally required deductions. All payments under the Plan will be subject to tax withholding or other withholding required or permitted by applicable law to the extent deemed necessary by the Plan Administrator. The Participant will bear the cost of any taxes not withheld on benefits provided under the Plan, regardless of whether withholding is required.

Section 4: Financing Plan Benefits

All Plan benefits shall be paid directly by the Company or designated subsidiary out of its general assets. All Plan benefits are unfunded and unsecured until paid.

Section 5: Covenants

5.1 Generally. In consideration for the benefits provided under the Plan, each Participant will agree to the covenants set forth in this Section 5.

5.2 No Disparagement. The Participant will at no time make any derogatory, misleading or otherwise negative statement about the actions, performance or behavior of the Company or its officers, directors, employees and agents.

5.3 Cooperation. The Participant will cooperate with the Company in order to ensure an orderly transfer of his or her duties and responsibilities. In addition, the Participant will at all times, both before and after termination of employment, (a) provide reasonable cooperation in connection with any action or proceeding (or any appeal from any action or proceeding) that relates to events occurring during the Participant's employment hereunder, provided that such cooperation does not materially interfere with the Participant's then current employment, and (b) cooperate with the Company in executing and delivering documents requested by the Company, and taking any other actions, that are necessary or requested by the Company to assist the Company in patenting, copyrighting, or registering any programs, ideas, inventions, discoveries, patented or copyrighted material, or trademarks, and to vest title thereto in the Company.

5.4 Recoupment. If the Participant breaches any of the covenants set forth in this Section 5 or any additional covenants set forth in the Final Release, the Company will have no further obligation to pay to the Participant any benefit under the

Plan, and the Participant will be obligated to repay to the Company all benefits previously paid to, or on behalf of, the Participant under the Plan.

Section 6: Miscellaneous

6.1 **Employment Rights.** No provisions of the Plan and no action taken by the Company or the Plan Administrator will give any person any right to be retained in the employ of the Company. The Plan does not constitute a contract of employment and the Company and Participant acknowledge that Participant's employment is and will continue to be at-will, as defined under applicable law. Participation does not give any person the right to be rehired or retained.

6.2 **Controlling Law.** ERISA shall be controlling in all matters relating to the Plan. The provisions of this Plan are intended to be applied in a manner consistent with Section 409A (as defined below), but neither the Company nor any affiliate thereof shall be liable for any determination by any person(s) that the arrangement or the administration thereof is subject to the tax provisions of Section 409A.

6.3 **No Right To Assets.** Participation in the Plan does not create, in favor of any Participant, any right or lien in or against any asset of the Company. Nothing contained in the Plan, and no action taken under its provisions, will create or be construed to create a trust of any kind, or a fiduciary relationship, between the Company and a Participant or any other person. The Company's promise to pay benefits under the Plan will at all times remain unfunded as to each Participant, whose rights under the Plan are limited to those of a general and unsecured creditor of the Company.

6.4 **Interests Not Transferable.** The interests of persons entitled to benefits under the Plan may not be sold, transferred, alienated, assigned nor encumbered; provided, however, that upon the death of a Participant in pay status under the Plan, the sum of any remaining scheduled benefit payments will be paid in a lump sum to the surviving spouse of the Participant, if any, or if none then to the estate of the Participant.

6.5 **Headings.** The headings of sections and subsections herein are for convenience of reference only and shall not be construed or interpreted as part of the Plan.

6.6 **Severability.** If any provision of the Plan shall be held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if such illegal or invalid provision had never been contained in the Plan.

6.7 **Administration.** The Plan Administrator shall have the sole and final power, duty, discretion, authority and responsibility of directing and administering the Plan. All directions by the Plan Administrator shall be conclusive on all parties concerned. The Plan Administrator shall have the sole, absolute and final right and power to construe, interpret and administer the provisions of the Plan including, but not limited to, the power (i) to construe any ambiguity and interpret any provision of the Plan or supply any omission or reconcile any inconsistencies in such manner as it deems proper, (ii) to determine eligibility to become a Participant in the Plan in accordance with its terms, (iii) to decide all questions of eligibility for, and determine the amount, manner, and time of payment of, any benefits hereunder, and (iv) to establish uniform rules and procedures to be followed in any matters required to administer the Plan.

6.8 Section 409A Compliance.

a. This Plan is intended to comply with the requirements of Section 409A of the Code and the regulations and guidance promulgated thereunder ("Section 409A") or an exemption from Section 409A. The Company shall undertake to administer, interpret, and construe this Plan in a manner that does not result in the imposition on a Participant of any additional tax, penalty, or interest under Section 409A. Each payment under this Plan shall be treated as a separate payment for purposes of Section 409A.

b. Notwithstanding anything herein to the contrary, in the event that a Participant is a "specified employee" within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provision of any benefit (whether under this Plan or otherwise) that is considered deferred compensation under Section 409A payable on account of a "separation from service," and that is not exempt from Section 409A as involuntary separation pay or a short-term deferral (or otherwise), to the extent necessary to avoid the imposition of excise taxes under Section 409A, such payment or benefit shall be made or provided at the date which is the earlier of (i) the expiration of the six (6)-month period measured from the date of such "separation from service" of the Participant or (ii) the date of the Participant's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 6.8(b) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Participant in a lump sum without interest, and any remaining payments and benefits due under this Plan shall be paid or provided in accordance with the normal payment dates specified for them herein.

c. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, all such payments shall be made on or before the last day of the calendar year following the calendar year in which the expense occurred.

6.9 **Equity Awards.** The Plan does not affect the terms of any outstanding equity awards. The treatment of any outstanding equity awards shall be determined in accordance with the terms of the Company equity plan or plans under which they were granted and any applicable award agreements.

Section 7: Amendment and Termination

The Company reserves the right, in its sole discretion, to amend the Plan from time to time or to terminate the Plan, all without prior notice. No representation by anyone can extend the Company's severance pay policies to provide for severance payments that are not covered by the Plan.

Exhibit A

Date: July 17, 2023
To: **Scott Bowman**

Subject: Leslie's Poolmart, Inc. Executive Severance Plan Participation Agreement

I am pleased to advise that you have been designated as an "Eligible Employee" for the purposes of the Leslie's Poolmart, Inc. Executive Severance Plan, as amended from time to time (the "Plan"). A copy of the current plan document is enclosed). For clarification, this Plan supercedes and replaces in its entirety any and all other Company executive severance plans, including without limitation, the Leslie's Poolmart, Inc. 2019 Executive Severance Plan.

This means that, upon your execution of this agreement, you will be eligible to receive the severance benefits described in the Plan in the event you experience a Separation From Service without Cause as defined under the Plan. If you have any questions, please contact me or Brad Gazaway.

By signing the attached signature page and in consideration of the opportunity to participate in the Plan, you agree to be bound by the terms of the Plan, including the covenants set forth in Section 5 of the Plan. Your participation in the Plan does not confer any rights to continue in the employ of Leslie's or any of its affiliates.

Please sign the attached signature page and return the original to Steve Weddell as soon as possible.

Best regards,

/s/ Michael R. Egeck

Michael R. Egeck
Chief Executive Officer

**Leslie's Poolmart, Inc. Executive Severance Plan
Agreement Signature Page**

July 17, 2023

I, **Scott Bowman**, have read the Leslie's Poolmart, Inc. Executive Severance Plan and agree to its terms, and I agree to be bound by the terms of the covenants in Section 5 of the Plan. This agreement supersedes any and all prior agreements and communications, whether written or oral, between the Company and me regarding the subject matter of the Plan.

/s/ Scott Bowman
Signature

7/17/2023
Date

**CERTIFICATION 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**

I, Michael R. Egeck, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Leslie's, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2023

By:

/s/ Michael R. Egeck
Michael R. Egeck
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION 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**

I, Steven M. Weddell, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Leslie's, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2023

By:

/s/ Steven M. Weddell
Steven M. Weddell
Chief Financial Officer
(Principal Financial Officer and
Principal Accounting Officer)

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

In connection with the Quarterly Report on Form 10-Q of Leslie's, Inc. (the "Company") for the quarter ended July 1, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

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

Date: August 2, 2023

By:

/s/ Michael R. Egeck
Michael R. Egeck
Chief Executive Officer
(Principal Executive Officer)

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

In connection with the Quarterly Report on Form 10-Q of Leslie's, Inc. (the "Company") for the quarter ended July 1, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

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

Date: August 2, 2023

By:

/s/ Steven M. Weddell
Steven M. Weddell
Chief Financial Officer
(Principal Financial Officer and
Principal Accounting Officer)
