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

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**FORM 8-K**

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

**Date of Report (Date of earliest event reported): April 2, 2019**

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

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

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

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

**7035 South High Tech Drive**  
**Midvale, Utah**  
(Address of principal executive offices)

**84047**  
(Zip Code)

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

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

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

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

Emerging growth company

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

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

On April 2, 2019, the Board of Directors of Sportsman's Warehouse Holdings, Inc. (the "Company") appointed Mr. Robert Julian as the Company's Chief Financial Officer and principal financial officer, effective April 24, 2019. Mr. Kevan Talbot will continue to serve as our Chief Financial Officer until the effective date of Mr. Julian's appointment and, thereafter, will assist in the transition of responsibilities to Mr. Julian until a date to be determined between Mr. Talbot and the Company.

Prior to joining the Company, Mr. Julian, 56, served as Executive Vice President, Chief Financial Officer and Treasurer for Deluxe Entertainment Services Group from July 2017 to June 2018. Prior to such time, Mr. Julian served as Senior Vice President and Chief Financial Officer for Callaway Golf Company from May 2015 to April 2017, and as Executive Vice President and Chief Financial Officer for Lydall Inc. from October 2012 to May 2015.

During his employment by the Company, Mr. Julian will receive an annual base salary of \$425,000 and will have a target bonus level of 50% of base salary, both of which may be increased but not decreased in the discretion of the Compensation Committee of the Company's Board of Directors (the "Committee"). As part of Mr. Julian's employment with the Company, the Committee will consider him for an award under the Company's 2013 Performance Incentive Plan (the "Plan"), the terms and conditions of which will be established by the Committee. The Company intends to grant Mr. Julian an award of restricted stock units under the Plan in May 2019 with a grant date fair value of \$300,000 and such units are scheduled to vest in full, subject to Mr. Julian's continued employment, at the end of three years. Mr. Julian will be eligible to participate in the Company's benefit plans generally made available to the executives of the Company. Mr. Julian will be paid a signing bonus of \$50,000 (net) in connection with his joining the Company.

In connection with Mr. Julian's appointment, the Company entered into a severance agreement (the "Agreement") with Mr. Julian. The Agreement is attached hereto as Exhibit 10.1 and is incorporated herein by reference. The following description of the Agreement is qualified in its entirety by reference to such exhibit.

The Agreement provides that Mr. Julian's employment may be terminated by the Company or by Mr. Julian for any reason at any time, with or without notice. In the event Mr. Julian's employment is terminated by the Company without "Gross Misconduct," or by Mr. Julian for "Good Reason" (as these terms are defined in the Agreement), Mr. Julian will be entitled to receive, subject to providing a release of claims to the Company, (i) continued payment of his base salary (as severance pay) for twelve months following such termination of employment, (ii) a pro-rated portion of his target annual bonus for the year in which such termination of employment occurs, (iii) reimbursement for COBRA premiums for up to twelve months, and (iv) accelerated vesting of any equity awards granted to him by the Company if such termination of employment occurs on or after a "Change of Control" (as defined in the Agreement), to the extent such awards are outstanding and unvested immediately prior to such termination of employment.

The Agreement also includes confidentiality, non-compete, and non-solicitation covenants in favor of the Company.

Mr. Julian also intends to enter into a customary indemnification agreement with the Company, the form of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

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

On April 5, 2019, the Board of Directors approved an amended and restated form of director and officer indemnification agreement ("Indemnification Agreement") to be entered into with each of the Company's directors and officers. The Indemnification Agreement has been updated to remove outdated references to Seidler Equity Partners III, L.P., the Company's former controlling stockholder. The Indemnification Agreement will replace the Company's existing indemnification agreements in place with the Company's directors and officers. The Indemnification Agreement is attached hereto as Exhibit 10.2 and is incorporated herein by reference. The foregoing description of the D&O Indemnification Agreement is qualified in its entirety by reference to such exhibit.

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

Exhibit 10.1. Severance Agreement, April 2, 2019, between Sportsman's Warehouse Holdings, Inc. and Robert Julian

Exhibit 10.2. Form of Indemnification Agreement

**SIGNATURES**

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

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

By: /s/ Jon Barker

Name: Jon Barker

Title: President and Chief Executive Officer

Date: April 8, 2019

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# **SEVERANCE AGREEMENT**

**THIS SEVERANCE AGREEMENT** (this "Agreement") is made and entered into this 2<sup>nd</sup> day of April, 2019 (the "Effective Date"), by and between Sportsman's Warehouse Holdings, Inc., a Delaware corporation (the "Company"), and Robert Julian (the "Executive").

## **RECITALS**

**THE PARTIES ENTER THIS AGREEMENT** on the basis of the following facts, understandings and intentions:

**A.** The Executive is commencing employment with the Company and, in connection therewith, desires to make certain representations to the Company, and enter into certain agreements with the Company, as set forth herein.

**B.** The Executive and the Company desire to clarify the severance (if any) and other benefits due to the Executive should the Executive's employment by the Company terminate.

**NOW, THEREFORE**, in consideration of the above recitals incorporated herein and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

### **1. Termination**

**Employment At-Will.** The Executive's employment by the Company is "at will," meaning that the Executive's employment by the Company may be terminated at any time, by the Executive or by the Company, with or without advance notice, and for any reason (with or without cause, with or without Gross Misconduct (as defined below), with or without Good Reason (as defined below), or for any other reason) or for no reason.

#### **1.1 The Company's Obligations upon Termination.**

**1.1.1 *Death or Incapacity.*** If the Executive's employment by the Company terminates due to the Executive's death or Incapacity (as defined below), due to a termination of employment by the Company other than as provided in Section 1.2.2, or due to a termination of employment by the Executive other than as provided in Section 1.2.2, the Company shall have no further obligation to make or provide to the Executive, and the Executive shall have no further right to receive or obtain from the Company, any payments or benefits except for payment to the Executive (or, in the event of the Executive's death, to his estate) of the Accrued Obligations. "Accrued Obligations" means the following: the Executive's earned and accrued salary and personal time off (if the Executive accrues personal time off under the Company's policies then in effect) through the date of termination of the Executive's employment with the Company, and reimbursement of any business expenses incurred by the Executive during the period of his employment by the Company that are reimbursable by the Company pursuant to its expense reimbursement policies, each in accordance with the Company's policies then in effect and each to the extent not previously paid.

**1.1.2 *Termination without Gross Misconduct or for Good Reason.*** If the Executive's employment by the Company is terminated by the Company during the Term other than due

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to Gross Misconduct (and other than due to the Executive's Incapacity), or if the Executive terminates his employment during the Term for Good Reason, the Company shall have no further obligation to make or provide to the Executive, and the Executive shall have no further right to receive or obtain from the Company, any payments or benefits except for payment to the Executive of the Accrued Obligations and, subject to Section 1.2.4, the following severance benefits:

- (a) The Company will pay the Executive (as severance) continued payment of the Executive's base salary (at the regular rate per payroll period in effect immediately prior to the termination of the Executive's employment with the Company and paid in accordance with the Company's regular payroll practices) through and ending with the date that is twelve (12) months after the date the Executive's employment with the Company terminated (the date the Executive's employment with the Company terminates is referred to as the "Severance Date"); provided that the continued base salary benefit for the period commencing with the day following the Severance Date and ending with the 60<sup>th</sup> day following the Severance Date shall not be paid over such 60-day period but shall instead be accumulated and paid on (or within two (2) business days after) such 60<sup>th</sup> day following the Severance Date.
  - (b) The Company will pay the Executive an amount equal to the Executive's target bonus for the fiscal year in which the Severance Date occurs (as such target bonus is established for such fiscal year by the Company's Board of Directors (the "Board") or a committee thereof), pro-rated through the Severance Date for the portion of the fiscal year the Executive was actually employed by the Company. Such amount is to be paid on (or within two (2) business days after) the 60<sup>th</sup> day following the Severance Date.
  - (c) The Company will pay or reimburse the Executive for his premiums charged to continue medical coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), at the same or reasonably equivalent medical coverage for the Executive (and, if applicable, the Executive's eligible dependents) as in effect immediately prior to the Severance Date, to the extent that the Executive elects such continued coverage; provided that the Company's obligation to make any payment or reimbursement pursuant to this clause (c) shall commence with continuation coverage for the month following the month in which the Executive's Severance Date occurs and shall cease with continuation coverage for the twelfth (12<sup>th</sup>) month following the month in which the Executive's Severance Date occurs (or, if earlier, shall cease upon the first to occur of the Executive's death, the date the Executive becomes eligible for coverage under the health plan of a future employer, or the date the Company ceases to offer group medical coverage to its active executive employees or the Company is otherwise under no obligation to offer COBRA continuation coverage to the Executive). To the extent the Executive elects COBRA coverage, he shall notify the Company in writing of such election prior to such coverage taking effect and complete any other continuation coverage enrollment procedures the Company may then have in place.
  - (d) If the Severance Date occurs on or after the date of a Change of Control (as defined below), any equity awards (i.e., restricted stock, restricted stock units or options)
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granted to the Executive by the Company that are outstanding and otherwise unvested immediately prior to the Severance Date shall, on the Severance Date, be treated as follows: (a) any time-based vesting conditions applicable to such awards shall be considered satisfied and fully vested; and (b) any performance-based vesting conditions applicable to such awards shall be treated as provided for in the applicable award agreement.

**1.1.3 *Exclusive Remedy.*** The Executive agrees that the payments contemplated by this Agreement will constitute the Executive's sole and exclusive remedy for any termination of the Executive's employment (other than any right to continued benefit coverage under and to the extent required by COBRA, and except for payment of any vested benefit the Executive may have under a retirement program sponsored or maintained by the Company that is intended to be qualified under Section 401(a) of the Internal Revenue Code (any such benefit to be paid under and in accordance with the terms and conditions of such plan)). The Executive covenants that he will not assert or pursue any other remedies, at law or in equity, with respect to any such termination. The Executive agrees to resign, and does hereby resign, on the Severance Date as an officer and director of the Company and any affiliate of the Company, and as a fiduciary of any benefit plan of the Company or any affiliate of the Company. The Executive agrees to promptly execute and provide to the Company any further documentation, as reasonably requested by the Company, to confirm such resignation.

**1.1.4 *Offsets.*** All severance amounts due from the Company to the Executive under Section 1.2.2 will be subject to offset or reduction to take into account any of the Executive's obligations to the Company. As a condition precedent to any Company obligation to the Executive pursuant to Section 1.2.2 (other than payment of the Accrued Obligations), the Executive shall, upon or promptly following the Severance Date (and in all cases within twenty-one (21) days following the Severance Date unless a longer period of time is required under applicable law to obtain an effective general release, in which case such longer period of time shall apply), deliver to the Company a valid, executed general release of the Executive's claims in a form reasonably satisfactory to the Company, and such general release shall not be revoked by the Executive pursuant to any revocation rights afforded by applicable law.

**1.1.5 *Certain Defined Terms.***

For purposes of this Agreement, "Change of Control" means the occurrence of any of the following after the Effective Date:

(A) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (a "Person" for purposes of this Change in Control definition)) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended) of more than 30% of either (1) the then-outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that, for purposes of

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this clause (A), the following acquisitions shall not constitute a Change of Control; (a) any acquisition directly from the Company, (b) any acquisition by the Company, (c) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any affiliate of the Company or a successor, (d) any acquisition by a Person or affiliate of a Person who owned more than 30% of the Outstanding Company Common Stock or Outstanding Company Voting Securities on the Effective Date, or (e) any acquisition by any entity pursuant to a transaction that complies with clauses (C)(1), (2) and (3) below;

(B) Individuals who, as of the Effective Date, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least two-thirds of the directors then comprising the Incumbent Board (including for these purposes, the new members whose election or nomination was so approved, without counting the member and his predecessor twice) shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(C) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its subsidiaries (each, a “Business Combination”), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets directly or through one or more subsidiaries (a “Parent”) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than 30% of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of 30% existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity

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resulting from such Business Combination or a Parent were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(D) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a Business Combination.

For purposes of this Agreement, “Good Reason” means the occurrence of any of the following by the Company without the Executive’s express written consent: (a) a significant and material diminution in the Executive’s position, responsibilities, reporting responsibilities or title, or a reduction in the Executive’s base salary; or (b) if, on or following the date of a Change of Control, the Company moves the Executive’s principal office with the Company to a location more than fifty (50) miles outside of Salt Lake City, Utah; provided, however, that any such condition or conditions, as applicable, shall not constitute grounds for a termination for Good Reason unless both (x) the Executive provides written notice to the Company of the condition claimed to constitute grounds for Good Reason within sixty (60) days of the initial existence of such condition(s), and (y) the Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof; and provided, further, that in all events the termination of the Executive’s employment with the Company shall not constitute a termination for Good Reason unless such termination occurs not more than one hundred and eighty (180) days following the initial existence of the condition claimed to constitute grounds for Good Reason.

For purposes of this Agreement, “Gross Misconduct” means the occurrence of any of the following:

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

For purposes of this Agreement, “Incapacity” means any mental or physical illness or disability that renders the Executive incapable of performing the Executive’s duties, even with a reasonable accommodation, for more than 12 consecutive weeks in any twelve-month period, unless a longer period is required by law.

For purposes of this Agreement, the “Term” shall mean the period of time commencing with the Effective Date through and ending with the third anniversary of the Effective Date (the “Termination Date”); provided, however, that the Term shall be automatically extended for one (1) additional year on the Termination Date and each anniversary of the Termination Date thereafter, unless either party gives written notice at least thirty (30) days prior to the expiration of the Term (including any renewal thereof) of such party’s desire to terminate the Term (such notice to be delivered in accordance with Section 3.8). The term “Term” shall include any extension thereof pursuant to the preceding sentence.

## **2. Protective Covenants.**

### **2.1 Confidential Information; Inventions.**

**2.1.1** The Executive shall not disclose or use at any time, either during the period of time he is employed by the Company (the “Period of Employment”) or thereafter, any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent that such disclosure or use is directly related to and required by the Executive’s performance in good faith of duties for the Company. The Executive will take all appropriate steps to safeguard Confidential Information in his possession and to protect it against disclosure, misuse, espionage, loss and theft. The Executive shall deliver to the Company at the termination of the Period of Employment, or at any time the Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information or the Work Product (as hereinafter defined) of the business of the Company or any of its Affiliates (as defined below) which the Executive may then possess or have under his control. Notwithstanding the foregoing, the Executive may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company the earliest possible notice thereof, shall, as much in advance of the return date as possible, make available to the Company and its counsel the documents and other information sought, and shall assist the Company and such counsel in resisting or otherwise responding to such process. The Executive understands that nothing in this Agreement is intended to limit the Executive’s right (i) to discuss the terms, wages, and working conditions of the Executive’s employment to the extent permitted and/or protected by applicable labor laws, (ii) to report Confidential Information in a confidential manner either to a federal, state or local government official or to an attorney where such disclosure is solely for the purpose of reporting or investigating a suspected violation of law, or (iii) to disclose Confidential Information in an anti-retaliation lawsuit or other legal proceeding, so long as that disclosure or filing is made under seal and the Executive does not otherwise disclose such Confidential Information, except pursuant to court order. The Company

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encourages Executive, to the extent legally permitted, to give the Company the earliest possible notice of any such report or disclosure.

**2.1.2** As used in this Agreement, the term “Confidential Information” means information that is not generally known to the public and that is used, developed or obtained by the Company in connection with its business, including, but not limited to, information, observations and data obtained by the Executive while employed by the Company or any predecessors thereof (including those obtained prior to the Effective Date) concerning (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures and strategies, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, product roadmaps, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients, customer or client lists, and the preferences of, and negotiations with, customers and clients, (xiii) personnel information of other employees and independent contractors (including their compensation, unique skills, experience and expertise, and disciplinary matters), (xiv) other copyrightable works, (xv) all production methods, processes, technology and trade secrets, and (xvi) all similar and related information in whatever form. Confidential Information will not include any information that has been published (other than a disclosure by the Executive in breach of this Agreement) in a form generally available to the public prior to the date the Executive proposes to disclose or use such information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

**2.1.3** As used in this Agreement, the term “Work Product” means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) which relates to the Company’s or any of its Affiliates’ actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by the Executive (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its Affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed or made prior to the Effective Date) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that the Executive may have discovered, invented or originated during his employment by the Company or any of its Affiliates prior to the Effective Date, that he may discover, invent or originate during the Period of Employment or at any time in the period of twelve (12) months after the Severance Date, shall be the exclusive property of the Company and its Affiliates, as applicable, and Executive hereby assigns all of Executive’s right, title and interest in and to such Work Product to the Company or its applicable Affiliate, including all intellectual property rights therein. Executive shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the

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Company may deem necessary to protect or perfect its (or any of its Affiliates', as applicable) rights therein, and shall assist the Company, at the Company's expense, in obtaining, defending and enforcing the Company's (or any of its Affiliates', as applicable) rights therein. The Executive hereby appoints the Company as his attorney-in-fact to execute on his behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company, the Company's (and any of its Affiliates', as applicable) rights to any Work Product.

As used in this Agreement, "Affiliate" of the Company means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. As used in this definition, the term "control," including the correlative terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person. As used in this Section 2.1 and the following provisions of this Agreement, the term "Person" shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

**Restriction on Competition.** The Executive agrees that if the Executive were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Affiliates during the twelve (12) month period following the Severance Date, it would be very difficult for the Executive not to rely on or use the Company's and its Affiliates' trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Company's and its Affiliates' trade secrets and confidential information, and to protect such trade secrets and confidential information and the Company's and its Affiliates' relationships and goodwill with customers, during the Period of Employment and for a period of twelve (12) months after the Severance Date, the Executive will not directly or indirectly through any other Person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase "directly or indirectly through any other Person engage in" shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, licensor of technology or otherwise. For purposes of this Agreement, "Competing Business" means only the following: (a) the businesses commonly known as Bass Pro Shops, Cabela's, Scheels, Field and Stream Stores, and REI CO-OP; (b) any successor to any business identified in clause (a); and (c) any affiliate of a business identified in clause (a) or clause (b); provided, however, that a "Competing Business" shall not include a parent company or sister company of a business identified in clause (a) or clause (b) if both (x) such parent company is also engaged (directly or through other affiliates) in businesses that are not competitive with any business described in clause (a) or clause (b) (or, in the case of a sister company, such sister company is not engaged in any business that is competitive with any business described in clause (a) or clause (b)), and (y) the Executive's position, services and responsibilities with such entity are limited to the distribution of merchandise that is not

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competitive with any business described in clause (a) or clause (b) and the Executive does not participate in any way in any business identified in clause (a) or clause (b). For example, and to clarify the foregoing proviso based on circumstances as in effect on the date of this Agreement, the Field and Stream Stores are a division of Dick's Sporting Goods, Inc., and Dick's Sporting Goods, Inc. would not be considered a "Competing Business" for purposes of this Agreement so long as (x) Dick's Sporting Goods, Inc. also engaged (directly or through other affiliates) in businesses that are not competitive with any business described in clause (a) or clause (b) of the preceding sentence, and (y) the Executive's position, services and responsibilities with Dick's Sporting Goods, Inc. (or an affiliate) were limited to the distribution of merchandise that is not competitive with any business described in clause (a) or clause (b) of the preceding sentence and the Executive did not participate in any way in the business of the Field and Stream Stores or any other business described in clause (a) or clause (b) of the preceding sentence. Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a Competing Business which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

**No Conflicting Employment.** The Executive hereby agrees that, during the Period of Employment, the Executive will not engage in any other employment, occupation or consulting directly related to the business in which the Company or any of its Affiliates is now involved or becomes involved during the Period of Employment, nor will the Executive engage in any other activities that conflict with the Executive's obligations to the Company or any of its Affiliates.

**Non-Solicitation of Employees and Consultants.** During the Period of Employment and for a period of twenty four (24) months after the Severance Date, the Executive will not directly or indirectly through any other Person solicit, induce or encourage, or attempt to solicit, induce or encourage, any employee or independent contractor of the Company or any Affiliate of the Company to leave the employ or service, as applicable, of the Company or such Affiliate, or become employed or engaged by any third party, or in any way interfere with the relationship between the Company or any such Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand.

**2.2 Return of Items.** Upon termination of this Agreement, the Executive will promptly deliver to the Company all Company equipment and other materials relating to the Company's business and in the Executive's possession or control.

**Non-Disparagement.** The Executive shall not, during the Period of Employment or at any time thereafter, publish or communicate (other than statements made while employed by the Company or one of its affiliates in connection with carrying out the Executive's duties and responsibilities for the Company or any of its affiliates), in a manner intended to be public or that should reasonably be expected to become public (including, without limitation, through social media), disparaging or derogatory statements or opinions about the Company or any of its affiliates, stockholders, officers, employees, directors, or customers; provided that it shall not be a breach of this Section 2.6 for the Executive to testify truthfully in any judicial or administrative proceeding, to make statements or allegations in legal filings that are based on the Executive's reasonable belief and are not made in bad faith, or to make statements to a

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federal, state, or local government official, either directly or indirectly, and solely for the purpose of reporting or investigating a suspected violation of law.

**2.3 Cooperation.** Following the termination of the Executive's employment for any reason, the Executive will reasonably cooperate with the Company in connection with (a) any internal or governmental investigation or administrative, regulatory, arbitral or judicial proceeding involving the Company with respect to matters as to which the Executive had responsibility or knowledge arising out of the Executive's employment with, or service as a member of the Board of, the Company (collectively, "Litigation"); (b) any audit of the financial statements of the Company with respect to the period of time when the Executive was employed by the Company ("Audit"); (c) any regulatory filings that relate to a period of time when the Executive was employed by the Company; and (d) the transition of the Executive's position and duties (or former position and duties, as the case may be). To the extent (if any) the Company requests such services from the Executive, or the Executive is compelled by a governmental authority to provide services in a matter that does not involve the Executive, the Company will: (i) reimburse the Executive for reasonable travel and other expenses incurred in connection with providing his services under this Section 2.7, and (ii) compensate the Executive for each hour that the Executive provides services pursuant to this Section 2.7 at the rate of \$350 per hour. With respect to any month during which the Executive provides services pursuant to this Section 2.7, the Executive will submit a written invoice to the Company that details the amount of time and a description of the services rendered and expenses incurred during such month. The Executive will submit such invoice to the Company not later than fifteen (15) days after the end of such month, and the Company will pay any such invoice within fifteen (15) days after its receipt of such invoice from the Executive.

**2.4 Understanding of Covenants.** The Executive acknowledges that, in the course of his employment with the Company and/or its affiliates and their predecessors, he will become familiar with the Company's and its affiliates' and their predecessors' trade secrets and with other confidential and proprietary information concerning the Company, its affiliates and their respective predecessors and that his services will be of special, unique and extraordinary value to the Company and its affiliates. The Executive agrees that the foregoing covenants set forth (or referred to, as the case may be) in this Section 2 (together, the "Restrictive Covenants") are reasonable and necessary to protect the Company's and its affiliates' trade secrets and other confidential and proprietary information, good will, stable workforce, and customer relations.

Without limiting the generality of the Executive's agreement in the preceding paragraph, the Executive (i) represents that he is familiar with and has carefully considered the Restrictive Covenants, (ii) represents that he is fully aware of his obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its affiliates currently conduct business throughout North America, and (v) agrees that the Restrictive Covenants will continue in effect for the applicable periods contemplated by the Restrictive Covenants regardless of whether the Executive is then entitled to receive severance pay or benefits from the Company. The Executive understands that the Restrictive Covenants may limit his ability to earn a livelihood in a business similar to the business of the Company and any of its affiliates, but he nevertheless believes that he has received and will receive sufficient

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consideration and other benefits as an employee of the Company and as otherwise provided hereunder or as described in the recitals hereto to clearly justify such restrictions which, in any event (given his education, skills and ability), the Executive does not believe would prevent him from otherwise earning a living. The Executive agrees that the Restrictive Covenants do not confer a benefit upon the Company disproportionate to the detriment of the Executive.

**2.5 Enforcement.** The Executive agrees that the Executive's services are unique and that he has access to confidential information of the Company and its affiliates. Accordingly, the Executive agrees that a breach by the Executive of any of the Restrictive Covenants may cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Executive agrees that in the event of any breach or threatened breach of any Restrictive Covenant, the Company shall be entitled, in addition to and without limitation upon all other remedies the Company may have under this Agreement or otherwise, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the Restrictive Covenants, or require the Executive to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of the Restrictive Covenants, if and when final judgment of a court of competent jurisdiction is so entered against the Executive.

**No Breach of Contract.** The Executive hereby represents to the Company and agrees that: (i) the execution and delivery of this Agreement by the Executive and the Company, the Executive's employment by the Company, and the performance by the Executive of the Executive's duties to the Company do not and shall not constitute a breach of, conflict with, or otherwise contravene or cause a default under, the terms of any other agreement or policy to which the Executive is a party or otherwise bound or any judgment, order or decree to which the Executive is subject; (ii) the Executive will not enter into any new agreement that would or reasonably could contravene or cause a default by the Executive under this Agreement; (iii) the Executive has no information (including, without limitation, confidential information and trade secrets) relating to any other Person which would prevent, or be violated by, the Executive entering into this Agreement or carrying out his duties hereunder; (iv) the Executive is not bound by any employment, consulting, non-compete, non-solicitation, confidentiality, trade secret or similar agreement (other than this Agreement) with any other Person; (v) to the extent the Executive has any confidential or similar information that he is not free to disclose to the Company, he will not disclose such information to the extent such disclosure would violate applicable law or any other agreement or policy to which the Executive is a party or by which the Executive is otherwise bound; and (vi) the Executive understands the Company will rely upon the accuracy and truth of the representations and warranties of the Executive set forth herein and the Executive consents to such reliance.

### **3. Miscellaneous**

**3.1 No Assignment by the Executive.** This Agreement is personal to the Executive and will not be assignable by the Executive.

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**3.2 Legal Counsel; Mutual Drafting.** Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Each party has cooperated in the drafting, negotiation and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language. The Executive agrees and acknowledges that he has read and understands this Agreement, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Agreement and has had ample opportunity to do so.

### **3.3 Arbitration.**

**3.3.1 Scope.** Subject to Section 2.9, any controversy or claim arising out of or relating to (a) the Executive's employment with the Company, (b) the termination of that employment, (c) this Agreement, (d) the interpretation or enforcement of this Agreement, (f) any alleged breach, default, or misrepresentation in connection with this Agreement, or (g) any other dispute or claim between the Executive and the Company, whether arising in contract, tort, common law or statute, or because of an alleged breach, default, or misrepresentation in connection with any of the provisions of any such agreement, including (without limitation) any state or federal statutory claims, shall be submitted to arbitration in Salt Lake City, Utah, before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc. or its successor ("JAMS"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association; provided, however, that provisional injunctive relief may, but need not, be sought in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This arbitration provision covers all disputes or claims that the Executive may have against the Company and any affiliated party, and also covers any claims that the Company may have against the Executive. The parties agree that the arbitrator will not impose punitive damages or any similar penalty and hereby waive any right to make a claim for any such damages. The parties acknowledge and agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other in connection with any matter whatsoever arising out of or in any way connected with any of the matters referenced in the first sentence of this paragraph.

**3.3.2 Arbitrator's Authority.** The arbitrator will have exclusive authority to (a) resolve any dispute as to whether any claim or matter is subject to this Section 3.3; (b) supervise discovery; (c) rule on pre-hearing disputes; (d) rule on motions, including motions for summary adjudication; (e) conduct hearings, and (f) make a final decision on the claim or matter being arbitrated. Remedies, substantive law and statutes of limitations will be the same as they would be in a court. The arbitrator will render a final decision in writing, together with a summary statement of the conclusions upon which the decision is based.

**3.3.3 Costs.** The Company will pay the forum costs of the arbitration itself (including arbitration fees and the fees and expenses of the arbitrator and court reporters). Each party will pay the costs of presenting its case, including the fees and expenses of its counsel, unless an applicable statute requires otherwise. Unless otherwise required or limited by statute, the

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arbitrator shall have the discretion to award the party prevailing in the arbitration, in addition to all other relief, reasonable attorneys' fees and expenses relating to the arbitration (other than the forum costs referred to in the first sentence of this paragraph).

- 3.4 Binding on Successors.** This Agreement will inure to the benefit of and be binding upon the Company and its successors and assigns. Any such successor or assignee will be deemed substituted for the Company under the terms of this Agreement for all purposes. As used in this Agreement, "successor" and "assignee" will include any person or business entity that at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the equity of the Company or to which the Company assigns this Agreement by operation of law or otherwise.
- 3.5 Amendments.** This Agreement cannot be amended or modified other than by a written agreement executed by the Executive and by an officer of the Company (other than the Executive) authorized by the Board (or a committee thereof) to execute such amendment or modification on the Company's behalf.
- 3.6 Severability.** It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If any provision of this Agreement or its application is held by a court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions or applications of this Agreement that can be given effect without the invalid or unenforceable provisions or applications. To this end, the provisions of this Agreement are declared severable. Furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn (as to geographic scope, period of duration or otherwise) so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 3.7 Waiver of Breach.** No waiver of any breach of any provision of this Agreement will be construed to be, or will be, a waiver of any other breach of this Agreement. No waiver will be binding unless in writing and signed by the party waiving the breach.
- 3.8 Notices.** Either party can change its address for notice purposes by giving written notice to the other party. Any notice or other communication required or permitted to be given under this Agreement will be in writing and will be sent by (a) nationally-recognized courier service; or (b) certified United States mail, return receipt requested, postage prepaid, and will be addressed to the parties at the following mailing addresses:
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If to the Company:  
The Board of Directors of Sportsman's Warehouse, Inc.  
7035 South High Tech Drive  
Midvale, Utah 84047

If to the Executive, to the Executive at his last address reflected in the Company's records.

Any notice or other communication will be deemed to be given, as applicable, (a) on the third day after the date of deposit in the United States mail; or (b) the date of delivery by nationally-recognized courier service.

- 3.9 Entire Agreement.** This Agreement constitutes and contains the entire agreement and final understanding between the parties concerning the Executive's employment with the Company and the related subject matters addressed in this Agreement. It supersedes and replaces all prior negotiations and all agreements, written or oral, concerning the Executive's employment by the Company and such other subject matters. Any prior negotiations, correspondence, agreements, proposals or understandings relating to any such matter shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.
- 3.10 Governing Law.** Utah law (without regard to conflict-of-laws principles of the laws of the State of Utah or any other jurisdiction) will govern this Agreement and its interpretation and enforcement.
- 3.11 Withholding.** The Company may withhold from any payments due the Executive under this Agreement the amounts required by applicable tax or other laws.
- 3.12 Section 409A.**
- (a) It is intended that any amounts payable under this Agreement will comply with and avoid the imputation of any tax, penalty or interest under Section 409A of the Internal Revenue Code of 1986, as amended (including the Treasury Regulations and other published guidance related thereto) ("Section 409A"). This Agreement will be construed and interpreted consistent with that intent. Any installment payments provided for in this Agreement shall be treated as a series of separate payments for purposes of Code Section 409A.
- (b) To the extent that any reimbursement pursuant to this Agreement is taxable to the Executive, the Executive will provide the Company with documentation of the related expenses promptly so as to facilitate the timing of the reimbursement payment contemplated by this paragraph, and any reimbursement payment due to the Executive pursuant to such provision will be paid to the Executive on or before the last day of the Executive's taxable year following the taxable year in which the
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related expense was incurred. Such reimbursement obligations pursuant to this Agreement are not subject to liquidation or exchange for another benefit and the amount of such benefits that the Executive receives in one taxable year will not affect the amount of such benefits that the Executive receives in any other taxable year.

- (c) For purposes of this Agreement, a termination of employment will mean a separation from service as defined in Treasury Regulations Section 1.409A-1(h) without regard to any optional alternative definitions available under that section.
- (d) If Executive is a “specified employee” within the meaning of Section 409A as of the date of the Executive’s “separation from service” (as defined under Section 409A), Executive shall not be entitled to any payment or benefit pursuant to this Agreement until the earlier of (i) the date which is six (6) months after Executive’s separation from service for any reason other than death, or (ii) the date of the death. The provisions of this paragraph shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Code Section 409A. Any amounts otherwise payable to Executive upon or in the six (6) month period following Executive’s separation from service that are not so paid by reason of this paragraph shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after Executive’s separation from service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of Executive’s death).
- (e) None of the Company, its affiliates or any of their respective officers, directors, employees, owners or shareholders shall be held liable for any taxes, interest, penalties or other amounts owed by Executive as a result of the compensation and benefits contemplated by this Agreement (including, without limitation, by application of Section 409A), subject to the Company’s withholding right pursuant to Section 3.11.

**3.13 Number and Gender; Examples.** Where the context requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all other genders. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates.

**3.14 Section Headings.** The section headings of, and titles of paragraphs and subparagraphs contained in, this Agreement are for the purpose of convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation thereof.

**3.15 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

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

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The parties have executed this Agreement as of the Effective Date.

/s/ Robert Julian

Print Name: Robert Julian

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

By: /s/ Jon Barker

Jon Barker

Its: Chief Executive Officer

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## INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of \_\_\_\_\_, 20[\_\_\_] by and between Sportsman’s Warehouse Holdings, Inc., a Delaware corporation (the “Company”), and \_\_\_\_\_ (“Indemnatee”). This Agreement supersedes and replaces any and all previous Agreements between the Company and Indemnatee covering the subject matter of this Agreement.

### RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Amended and Restated Bylaws of the Company (the “Bylaws”) and the Amended and Restated Certificate of Incorporation of the Company (the “Certificate of Incorporation” and, together with the Bylaws, the “Organizational Documents”) require indemnification of the officers and directors of the Company;

WHEREAS, Indemnatee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the “DGCL”) and the Organizational Documents and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Organizational Documents and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnatee thereunder;

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnatee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnatee agrees to serve as an [officer and director] of the Company. Indemnatee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnatee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnatee. Indemnatee specifically acknowledges that Indemnatee’s employment with the Company (or any of its subsidiaries or any Enterprise), if any, is at will, and the Indemnatee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any existing or future written employment contract between Indemnatee and the Company (or any of its subsidiaries or any Enterprise), other applicable formal severance policies duly adopted by the Board, or,

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with respect to service as [a director or officer] of the Company, by the Organizational Documents and the DGCL. The foregoing notwithstanding, this Agreement shall continue in force after Indemnitee has ceased to serve as [an officer and director] of the Company, as provided in Section 16 hereof.

Section 2. Definitions. As used in this Agreement:

(a) References to “agent” shall mean any person who is or was a director, officer, or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) A “Change in Control” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

i. *Acquisition of Stock by Third Party*. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty percent (30%) or more of the combined voting power of the Company’s then outstanding securities unless the change in relative Beneficial Ownership of the Company’s securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. *Change in Board of Directors*. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. *Corporate Transactions*. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

iv. *Liquidation*. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets; and

v. *Other Events*. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 2(b), the following terms shall have the following meanings:

(A) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended from time to time.

(B) “Person” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any

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trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(C) “Beneficial Owner” shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(D) “Affiliate” shall mean, with respect to any Person, any other Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, such Person.

(E) “Control” means, (including, with correlative meaning, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or investment decisions of such Person, whether through the ownership of voting securities, by contract or otherwise.

(c) “Corporate Status” describes the status of a person who is or was a director, officer, employee or agent of the Company or of any other corporation, limited liability company, partnership or joint venture, trust or other enterprise which such person is or was serving at the request of the Company.

(d) “Disinterested Director” shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “Enterprise” shall mean the Company and any other corporation, limited liability company, partnership, joint venture, trust or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) “Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee’s counsel as being reasonable shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past three years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not

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include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(h) The term "Proceeding" shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him (or a failure to take action by him) or of any action (or failure to act) on his part while acting pursuant to his Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(i) Reference to "other enterprise" shall include employee benefit plans; references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and, subject to Section 11(c), amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that his conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Organizational Documents, vote of its stockholders or disinterested directors or applicable law.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter

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as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court (as hereinafter defined) or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of his Corporate Status, a witness or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and, subject to Section 11(c), amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding.

(b) For purposes of Section 8(a), the meaning of the phrase “to the fullest extent permitted by applicable law” shall include, but not be limited to:

i. to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and

ii. to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification payment in connection with any claim made against Indemnitee:

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(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, or (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or

(c) except as provided in Section 14(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary (other than Section 14(d)), the Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee, and such advancement shall be made as soon as possible but in any event no later than thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. The Company shall, in accordance with such request for advancement (but without duplication), either (i) pay such Expenses on behalf of Indemnitee, or (ii) reimburse Indemnitee for such Expenses. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In accordance with Section 14(d), advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that the Indemnitee undertakes to repay the amounts advanced (without interest) to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. This Section 10 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

Section 11. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. The omission by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying

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the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power, to the extent that doing so is consistent with the exercise of the Indemnitee's rights under the federal and state Constitutions. Company shall provide Indemnitee with such information and cooperation as Indemnitee may reasonably require, to the extent that doing so is consistent with the Company's obligation to cooperate with regulatory or law enforcement agencies.

(b) The Company shall be entitled to participate in the defense of any Proceeding entitled to indemnification under this Agreement or to assume the defense thereof, with counsel chosen by the Company and reasonably satisfactory to Indemnitee (not to be unreasonably withheld) upon delivery to Indemnitee of written notice of the Company's election to do so; provided, however, that if Indemnitee believes, after consultation with counsel selected by Indemnitee, that (i) the use of counsel chosen by the Company to represent Indemnitee would present such counsel with an actual or potential conflict of interest, (ii) the named parties in such Proceeding (including any impleaded parties) include both the Company and Indemnitee and the Indemnitee concludes that there may be one or more legal defense available to him that are different from or in addition to those available to the Company, or (iii) any such representation by such counsel would be precluded under the applicable standards of professional conduct then prevailing, then Indemnitee shall be entitled to retain separate counsel that is selected by Indemnitee and approved by the Company (which approval shall not be unreasonably delayed, conditioned or withheld) (but not more than one law firm plus, if applicable, local counsel in respect of any particular Proceeding), and all Expenses related to such separate counsel shall be borne by the Company.

(c) The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Proceeding pursuant to which the Indemnitee is entitled to indemnification and that is effected without the Company's prior written consent, which shall not be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of the Indemnitee for amounts paid in settlement if an Independent Counsel has approved the settlement. The Company shall not settle any Proceeding pursuant to which the Indemnitee is entitled to indemnification in any manner that would impose any Expenses, claims, liabilities and/or damages on the Indemnitee without the Indemnitee's prior written consent.

#### Section 12. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 11(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne

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by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee and approved by the Company (which approval shall not be unreasonably delayed, conditioned or withheld). In the event no Change in Control has occurred and Independent Counsel is selected by the Board in accordance with the foregoing, Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

### Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 14(e), if the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law,

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be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 13(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Enterprise. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

#### Section 14. Remedies of Indemnitee.

(a) Subject to Section 14(e), in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6 or 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Section 3, 4 or 8 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to

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deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of his entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 14(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company shall, to the fullest extent permitted by law, indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Organizational Documents, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any

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provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Organizational Documents and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company will use commercially reasonable efforts (taking into account the scope and amount of coverage available related to the cost thereof) to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust or other enterprise.

Section 16. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as an officer and director of the Company or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and

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shall inure to the benefit of Indemnitee and his or her spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

Section 17. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 18. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Organizational Documents and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 19. Section 409A. If Indemnitee's right to payment or reimbursement of indemnification or expenses pursuant to this Agreement would not be exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") pursuant to Treasury Regulation Section 1.0409A-1(b)(10), then (a) the payment or reimbursement of indemnification and expenses provided or advanced to or for Indemnitee pursuant to this Agreement in one taxable year shall not affect the amount of indemnification and expenses provided or advanced to or for Indemnitee in any other taxable year, (b) any reimbursement to Indemnitee of expenses under this Agreement shall be paid to Indemnitee on or before the last day of Indemnitee's taxable year following the taxable year in which the expense was incurred and (c) the right to advancement, reimbursement or payment of indemnification and expenses under this Agreement may not be liquidated or exchanged for any other benefit. In addition, to the extent that this Agreement is subject to Section 409A of the Code, this Agreement shall be interpreted and enforced so as to avoid any tax, penalty or interest under Section 409A of the Code. For purposes of this Section 19, expenses shall be deemed to include in addition to those items included in the definition thereof in Section 2, any liability, loss, judgment, fine and amounts paid in settlement.

Section 20. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 21. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

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Section 22. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Company.

(b) If to the Company to

Sportsman's Warehouse Holdings, Inc.  
7035 South High Tech Drive  
Midvale, UT 84047  
Attention: [\_\_\_\_\_] ]  
Facsimile: (801) 304-4388

or to any other address as may have been furnished to Indemnitee by the Company.

Section 23. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 24. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 25. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute

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one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 26. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed as of the day and year first above written.

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

**INDEMNITEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Office: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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