

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

FORM 10-Q

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

For the quarterly period ended April 2, 2023

OR

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

For the transition period from to

Utz Brands, Inc.

(Exact name of registrant as specified in its charter)

Delaware	001-38686	85-2751850
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

900 High Street

Hanover, PA 17331

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (717) 637-6644

N/A

(Former name or former address, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.0001 per share	UTZ	New York Stock Exchange

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

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

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

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

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

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

As of May 8, 2023, 81,088,189 Class A Common Stock, par value \$0.0001 per share, and 59,349,000 shares of Class V Common Stock, par value \$0.0001 per share, were issued and outstanding.

INTRODUCTORY NOTE

On August 28, 2020, Utz Brands, Inc. (formerly Collier Creek Holdings) (the "Company"), consummated a business combination (the "Business Combination") with Utz Brands Holdings, LLC ("UBH") pursuant to the terms of the Business Combination Agreement, dated as of June 5, 2020 (the "Business Combination Agreement"), entered into by and among the Company, UBH, and Series U of UM Partners, LLC ("Series U") and Series R of UM Partners, LLC ("Series R" and together with Series U, the "Continuing Members"). Additional information about the Business Combination can be found in our Annual Report on Form 10-K for the year ended January 1, 2023.

Throughout this Quarterly Report on Form 10-Q, unless otherwise noted the "Company", "we", "us", "our", "UBI" and "Utz" refer to Utz Brands, Inc. and its consolidated subsidiaries.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements relate to expectations for future financial performance, business strategies or expectations for the Company's business. Specifically, forward-looking statements may include statements relating to:

- The financial position, capital structure, indebtedness, business strategy and plans and objectives of management for future operations;
- The benefits of acquisitions, dispositions and similar transactions;
- The future performance of, and anticipated financial impact on, the Company;
- Expansion plans and opportunities;
- The impact of inflation and supply chain disruptions on the Company's business;
- The value of routes that collateralize the independent operator ("IO") routes for which loans are made and for which the Company guarantees repayment;
- The impact of plant optimization on the Company's operations, including but not limited to closing manufacturing plants; and
- Other statements preceded by, followed by or that include the words "may," "can," "should," "will," "estimate," "plan," "project," "forecast," "intend," "expect," "anticipate," "believe," "seek," "target" or similar expressions.

These forward-looking statements are based on information available as of the date of this Quarterly Report on Form 10-Q and the Company management's current expectations, forecasts and assumptions, and involve a number of judgments, known and unknown risks and uncertainties and other factors, many of which are outside the control of the Company and its directors, officers and affiliates. Accordingly, forward-looking statements should not be relied upon as representing the Company's views as of any subsequent date. The Company does not undertake any obligation to update, add or to otherwise correct any forward-looking statements contained herein to reflect events or circumstances after the date they were made, whether as a result of new information, future events, inaccuracies that become apparent after the date hereof or otherwise, except as may be required under applicable securities laws.

As a result of a number of known and unknown risks and uncertainties, the Company's results or performance may be materially different from those expressed or implied by these forward-looking statements. Some factors that could cause actual results to differ are described under Part I, Item 1A "Risk Factors" in our Annual Report on Form 10-K for the year ended January 1, 2023. There have been no material changes to our risk factors since the filing of the Annual Report on Form 10-K for the year ended January 1, 2023.

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PART I – FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

Utz Brands, Inc.
CONSOLIDATED BALANCE SHEETS
April 2, 2023 and January 1, 2023
(In thousands)

	As of April 2, 2023	As of January 1, 2023		
	(Unaudited)			
ASSETS				
Current Assets				
Cash and cash equivalents	\$ 57,921	\$ 72,930		
Accounts receivable, less allowance of \$1,952 and \$1,815, respectively	137,056	136,985		
Inventories	123,456	118,006		
Prepaid expenses and other assets	33,713	34,991		
Current portion of notes receivable	9,081	9,274		
Total current assets	<u>361,227</u>	<u>372,186</u>		
Non-current Assets				
Property, plant and equipment, net	346,976	345,198		
Goodwill	915,295	915,295		
Intangible assets, net	1,089,885	1,099,565		
Non-current portion of notes receivable	11,395	12,794		
Other assets	91,261	95,328		
Total non-current assets	<u>2,454,812</u>	<u>2,468,180</u>		
Total assets	<u>\$ 2,816,039</u>	<u>\$ 2,840,366</u>		
LIABILITIES AND EQUITY				
Current Liabilities				
Current portion of term debt	\$ 19,207	\$ 18,472		
Current portion of other notes payable	11,893	12,589		
Accounts payable	111,010	114,360		
Accrued expenses and other	71,357	92,012		
Total current liabilities	<u>213,467</u>	<u>237,433</u>		
Non-current portion of term debt and revolving credit facility	910,083	893,335		
Non-current portion of other notes payable	18,362	20,339		
Non-current accrued expenses and other	70,366	67,269		
Non-current warrant liability	47,736	45,504		
Deferred tax liability	125,159	124,802		
Total non-current liabilities	<u>1,171,706</u>	<u>1,151,249</u>		
Total liabilities	<u>1,385,173</u>	<u>1,388,682</u>		
Commitments and Contingencies				
Equity				
Shares of Class A Common Stock, \$0.0001 par value; 1,000,000,000 shares authorized; 81,012,868 and 80,882,334 shares issued and outstanding as of April 2, 2023 and January 1, 2023, respectively.	8	8		
Shares of Class V Common Stock, \$0.0001 par value; 61,249,000 shares authorized; 59,349,000 shares issued and outstanding as of April 2, 2023 and January 1, 2023.	6	6		
Additional paid-in capital	930,964	926,919		
Accumulated deficit	(263,747)	(254,564)		
Accumulated other comprehensive income	24,819	30,777		
Total stockholders' equity	<u>692,050</u>	<u>703,146</u>		
Noncontrolling interest	738,816	748,538		
Total equity	<u>1,430,866</u>	<u>1,451,684</u>		
Total liabilities and equity	<u>\$ 2,816,039</u>	<u>\$ 2,840,366</u>		

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

Utz Brands, Inc.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
For the thirteen weeks ended April 2, 2023 and April 3, 2022
(In thousands, except share information)
(Uaudited)

	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Net sales	\$ 351,433	\$ 340,767
Cost of goods sold	246,937	236,960
Gross profit	104,496	103,807
 Selling, distribution, and administrative expenses		
Selling and distribution	65,046	88,110
Administrative	41,040	38,551
Total selling, distribution, and administrative expenses	106,086	126,661
 (Loss) gain on sale of assets, net	(508)	367
 Loss from operations	(2,098)	(22,487)
 Other (expense) income		
Interest expense	(14,378)	(9,103)
Other income	1,615	520
(Loss) gain on remeasurement of warrant liability	(2,232)	1,944
Other expense, net	(14,995)	(6,639)
 Loss before taxes	(17,093)	(29,126)
 Income tax (benefit) expense	(2,611)	2,772
 Net loss	(14,482)	(31,898)
 Net loss attributable to noncontrolling interest	5,355	14,328
 Net loss attributable to controlling interest	\$ (9,127)	\$ (17,570)
 Earnings (loss) per Class A Common stock: (in dollars)		
Basic & diluted	\$ (0.11)	\$ (0.22)
 Weighted-average shares of Class A Common stock outstanding		
Basic & diluted	80,978,008	78,572,404
 Net loss	\$ (14,482)	\$ (31,898)
 Other comprehensive (loss) income:		
Change in fair value of interest rate swap	(10,325)	27,809
 Comprehensive loss	(24,807)	(4,089)
Net comprehensive loss attributable to noncontrolling interest	9,722	2,362
Net comprehensive loss attributable to controlling interest	\$ (15,085)	\$ (1,727)

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

Utz Brands, Inc.
CONSOLIDATED STATEMENTS OF EQUITY
For the thirteen weeks ended April 2, 2023 and April 3, 2022
(In thousands, except share data)
(Unaudited)

	Class A Common Stock		Class V Common Stock		Additional Paid-in Capital	Accumulated (Deficit)	Other Comprehensive Income	Total Stockholders' Equity	Non- controlling Interest	Total Equity
	Shares	Amount	Shares	Amount						
Balance at January 2, 2022	77,644,645	\$ 8	59,349,000	\$ 6	\$ 912,574	\$ (236,598)	\$ 3,715	\$ 679,705	\$ 754,968	\$ 1,434,673
Payments of tax withholding requirements for employee stock awards	—	—	—	—	(6,217)	—	—	(6,217)	—	(6,217)
Share-based compensation	952,530	—	—	—	1,379	—	—	1,379	—	1,379
Tax impact arising from share issuance	—	—	—	—	1,408	—	—	1,408	—	1,408
Net loss	—	—	—	—	(17,570)	—	—	(17,570)	(14,328)	(31,898)
Other comprehensive income	—	—	—	—	—	—	15,843	15,843	11,966	27,809
Balance at April 3, 2022	78,597,175	\$ 8	59,349,000	\$ 6	\$ 909,144	\$ (254,168)	\$ 19,558	\$ 674,548	\$ 752,606	\$ 1,427,154
Balance at January 1, 2023	80,882,334	\$ 8	59,349,000	\$ 6	\$ 926,919	\$ (254,564)	\$ 30,777	\$ 703,146	\$ 748,538	\$ 1,451,684
Share-based compensation	130,534	—	—	—	4,634	—	—	4,634	—	4,634
Payments of tax withholding requirements for employee stock awards	—	—	—	—	(589)	—	—	(589)	—	(589)
Net loss	—	—	—	—	(9,127)	—	—	(9,127)	(5,355)	(14,482)
Cash dividends declared	—	—	—	—	(56)	—	—	(56)	—	(56)
Other comprehensive loss	—	—	—	—	—	—	(5,958)	(5,958)	(4,367)	(10,325)
Balance at April 2, 2023	81,012,868	\$ 8	59,349,000	\$ 6	\$ 930,964	\$ (263,747)	\$ 24,819	\$ 692,050	\$ 738,816	\$ 1,430,866

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

Utz Brands, Inc.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the thirteen weeks ended April 2, 2023 and April 3, 2022
(In thousands)
(Unaudited)

	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Cash flows from operating activities		
Net loss	\$ (14,482)	\$ (31,898)
Adjustments to reconcile net loss to net cash used in operating activities:		
Impairment and other charges	1,945	3,319
Depreciation and amortization	20,094	22,121
Loss (gain) on remeasurement of warrant liability	2,232	(1,944)
Loss (gain) on sale of assets	508	(367)
Share-based compensation	4,634	1,379
Deferred taxes	357	1,912
Deferred financing costs	5	341
Changes in assets and liabilities:		
Accounts receivable, net	(71)	(17,044)
Inventories	(5,450)	(14,261)
Prepaid expenses and other assets	(2,123)	(26)
Accounts payable and accrued expenses and other	(16,092)	464
Net cash used in operating activities	<u>(8,443)</u>	<u>(36,004)</u>
Cash flows from investing activities		
Acquisitions, net of cash acquired	—	(75)
Purchases of property and equipment	(13,906)	(8,137)
Proceeds from sale of property and equipment	451	1,138
Proceeds from sale of routes	6,127	4,604
Proceeds from the sale of IO notes	867	—
Proceeds from insurance claims for capital investments	—	2,000
Notes receivable, net	(7,557)	(4,633)
Net cash used in investing activities	<u>(14,018)</u>	<u>(5,103)</u>
Cash flows from financing activities		
Line of credit borrowings, net	20,000	20,000
Borrowings on term debt and notes payable	2,331	8,726
Repayments on term debt and notes payable	(6,244)	(4,212)
Payments of tax withholding requirements for employee stock awards	(589)	(6,217)
Dividends	(4,663)	(4,189)
Distribution to noncontrolling interest	(3,383)	—
Net cash provided by financing activities	<u>7,452</u>	<u>14,108</u>
Net decrease in cash and cash equivalents	<u>(15,009)</u>	<u>(26,999)</u>
Cash and cash equivalents at beginning of period	<u>72,930</u>	<u>41,898</u>
Cash and cash equivalents at end of period	<u>\$ 57,921</u>	<u>\$ 14,899</u>

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

Utz Brands, Inc.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

1. OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation – The accompanying consolidated financial statements comprise the financial statements of Utz Brands, Inc. ("UBI" or the "Company", formerly Collier Creek Holdings ("CCH")) and its wholly owned subsidiaries. The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial statements and pursuant to the accounting and disclosure rules and regulations of the U.S. Securities and Exchange Commission (the "SEC"). They do not include all information and notes required by U.S. GAAP for annual financial statements. However, except as disclosed herein, there has been no material change in the information disclosed in the Notes to Consolidated Financial Statements included in the Company's financial statements for the year ended January 1, 2023. The balance sheet as of January 1, 2023 has been derived from the audited combined financial statements as of and for the year ended January 1, 2023. In the opinion of management, such financial information reflects all normal and recurring adjustments necessary for a fair presentation of the financial position and the results of operations for such interim periods in accordance with the U.S. GAAP. Operating results for the interim period are not necessarily indicative of the results that may be expected for any future period or for the full year. The consolidated interim financial statements, including our significant accounting policies, should be read in conjunction with the audited combined financial statements and notes thereto for the year ended January 1, 2023.

All intercompany transactions and balances have been eliminated in consolidation.

Reclassification – Certain prior year amounts have been reclassified for consistency with the current year presentation.

Operations – The Company through its subsidiary, Utz Quality Foods, LLC ("UQF"), has been a premier producer, marketer and distributor of snack food products since 1921. The Company has steadily expanded its distribution channels to where it now sells products to supermarkets, mass merchants, club stores, dollar and discount stores, convenience stores, independent grocery stores, drug stores, food service, vending, military, and other channels in most regions of the United States through routes to market, that include direct-store-delivery, ("DSD"), direct to warehouse, and third-party distributors. The Company manufactures and distributes a full line of high-quality salty snack items, such as potato chips, tortilla chips, pretzels, cheese balls, pork skins, party mixes, and popcorn. The Company also sells dips, crackers, dried meat products and other snack food items packaged by other manufacturers.

Cash and Cash Equivalents – The Company considers all highly-liquid investments purchased with an original maturity of three months or less to be cash equivalents. The majority of the Company's cash is held in financial institutions with insurance provided by the Federal Deposit Insurance Corporation ("FDIC") of \$250,000 per depositor. At various times, account balances may exceed federally insured limits.

Accounts Receivables – Accounts receivable are reported at net realizable value. The net realizable value is based on Company management's estimate of the amount of receivables that will be collected based on analysis of historical data and trends, as well as review of significant customer accounts. Accounts receivable are considered to be past due when payments are not received within the customer's credit terms. The Company's methodology to measure the provision for credit losses requires an estimation of loss rates based upon historical loss experience adjusted for factors that are relevant to determining the expected collectability of accounts receivable. Some of these factors include current market conditions, delinquency trends, aging behavior of receivables, and customer classes or individual customers.

The Company's estimates are reviewed and revised periodically based on the ongoing evaluation of credit quality indicators. Historically, actual write-offs for uncollectible accounts have not significantly differed from prior estimates.

Inventories – Inventories are stated at the lower of cost (first-in, first-out) or net realizable value. Inventory write-downs are recorded for shrinkage, damaged, stale and slow-moving items.

Property, Plant and Equipment – Property, plant and equipment are stated at cost net of accumulated depreciation. Major additions and betterments are recorded to the asset accounts, while maintenance and repairs, which do not improve or extend the lives of the assets, are charged to expense accounts as incurred. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is reflected in operations in the disposal period. Depreciation is determined utilizing the straight-line method over the estimated useful lives of the various assets, which generally range from 2 to 20 years for machinery and equipment, 3 to 10 years for transportation equipment and 8 to 40 years for buildings. Assets held for sale are reported at the lower of the carrying amount or fair value less costs to sell. The Company assesses for impairment on property, plant and equipment upon the occurrence of a triggering event.

Income Taxes – The Company accounts for income taxes pursuant to the asset and liability method of Accounting Standards Codification ("ASC") 740, Income Taxes, which requires it to recognize current tax liabilities or receivables for the amount of taxes it estimates are payable or refundable for the current year, and deferred tax assets and liabilities for the expected future tax consequences attributable to temporary differences between the financial statement carrying amounts and their respective tax bases of assets and liabilities and the expected benefits of net operating loss and credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period enacted. A valuation allowance is provided when it is more likely than not that a portion or all of a deferred tax asset will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income and the reversal of deferred tax liabilities during the period in which related temporary differences become deductible.

The Company follows the provisions of ASC 740-10 related to accounting for uncertainty in income taxes recognized in an enterprise's financial statements. ASC 740-10 prescribes a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns.

The benefit of tax positions taken or expected to be taken in the Company's income tax returns is recognized in the financial statements if such positions are more likely than not of being sustained upon examination by taxing authorities. Differences between tax positions taken or expected to be taken in a tax return and the benefit recognized and measured pursuant to the interpretation are referred to as "unrecognized benefits". A liability is recognized (or the amount of net operating loss carryover or the amount of tax refundable is reduced) for an unrecognized tax benefit because it represents an enterprise's potential future obligation to the taxing authority for a tax position that was not recognized as a result of applying the provisions of ASC 740-10. Interest costs and penalties related to unrecognized tax benefits are required to be calculated, if applicable. The Company's policy is to classify assessments, if any, for tax related interest as interest expense and penalties as selling, distribution, and administrative expenses. As of April 2, 2023 and January 1, 2023, no liability for unrecognized tax benefits was required to be reported. The Company does not expect any significant changes in its unrecognized tax benefits in the next fiscal year.

Goodwill and Other Identifiable Intangible Assets – The Company allocates the cost of acquired companies to the identifiable tangible and intangible assets acquired and liabilities assumed, with the remaining amount classified as goodwill. The identification and valuation of these intangible assets and the determination of the estimated useful lives at the time of acquisition, as well as the completion of impairment tests, require significant management judgments and estimates. These estimates are made based on, among other factors, review of projected future operating results and business plans, economic projections, anticipated highest and best use of future cash flows and the cost of capital. The use of alternative estimates and assumptions could increase or decrease the estimated fair value of goodwill and other intangible assets, and potentially result in a different impact to the Company's results of operations. Further, changes in business strategy and/or market conditions may significantly impact these judgments and thereby impact the fair value of these assets, which could result in an impairment of the goodwill or intangible assets.

Finite-lived intangible assets consist of distribution/customer relationships, technology, certain master distribution rights and certain trademarks. These assets are being amortized over their estimated useful lives. Finite-lived intangible assets are tested for impairment only when management has determined that potential impairment indicators are present.

Goodwill and other indefinite-lived intangible assets (including certain trade names, certain master distribution rights and Company-owned sales routes) are not amortized but are tested for impairment at least annually and whenever events or circumstances change that indicate impairment may have occurred. The Company tests goodwill for impairment at the reporting unit level. The Company has identified the existing snack food operations as its sole reporting unit.

In accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Update ("ASU") No. 2017-04, Intangibles - Goodwill and Other ("Topic 350"): Simplifying the Test for Goodwill Impairment, the Company is required to record an impairment charge based on the excess of a reporting unit's carrying amount over its fair value.

Topic 350 also permits an entity to first assess qualitative factors to determine whether it is necessary to perform quantitative impairment tests for goodwill and indefinite-lived intangibles. If an entity believes, as a result of each qualitative assessment, it is more likely than not that the fair value of goodwill or an indefinite-lived intangible asset exceeds its carrying value then a quantitative impairment test is not required.

For the latest qualitative analysis performed, which took place on the first day of the fourth quarter of 2022, we had taken into consideration all the events and circumstances listed in Topic 350, Intangibles—Goodwill and Other, in addition to other entity-specific factors that had taken place. We have determined that there was no significant impact that affected the fair value of the reporting unit through April 2, 2023. Therefore, we have determined that it was not necessary to perform a quantitative goodwill impairment test for the reporting unit.

Fair Value of Financial Instruments – Financial instruments held by the Company include cash and cash equivalents, accounts receivable, hedging instruments, purchase commitments on commodities, accounts payable and debt. The carrying value of all cash and cash equivalents, accounts receivable and accounts payable approximate their fair value due to their short-term nature. The carrying value of the debt is also estimated to approximate its fair value based upon current market conditions and interest rates. The fair value of the hedging instruments are revalued at each reporting period.

Revenue Recognition – The Company's revenues primarily consist of the sale of salty snack items to customers, including supermarkets, mass merchants, club stores, dollar and discount stores, convenience stores, independent grocery stores, drug stores, food service, vending, military, and other channels. The Company sells its products in most regions of the United States primarily through its DSD network, direct to warehouse shipments, and third-party distributors. These revenue contracts generally have a single performance obligation. Revenue, which includes shipping and handling charges billed to the customer, is reported net of variable consideration and consideration payable to customers, including applicable discounts, returns, allowances, trade promotion, consumer coupon redemption, unsaleable product, and other costs. Amounts billed and due from customers are classified as accounts receivables and require payment on a short-term basis and, therefore, the Company does not have any significant financing components.

The Company recognizes revenue when (or as) performance obligations are satisfied by transferring control of the goods to customers. Control is transferred upon delivery of the goods to the customer. Shipping and/or handling costs that occur before the customer obtains control of the goods are deemed to be fulfillment activities and are accounted for as fulfillment costs. Applicable shipping and handling are included in customer billing and are recorded as revenue as the products' control is transferred to customers. The Company assesses the goods promised in customer purchase orders and identifies a performance obligation for each promise to transfer a good that is distinct.

The Company offers various forms of trade promotions and the methodologies for determining these provisions are dependent on local customer pricing and promotional practices, which range from contractually fixed percentage price reductions to provisions based on actual occurrence or performance. The Company's promotional activities are conducted either through the retail trade or directly with consumers and include activities such as in store displays and events, feature price discounts, consumer coupons, and loyalty programs. The costs of these activities are recognized at the time the related revenue is recorded, which normally precedes the actual cash expenditure. The recognition of these costs therefore requires management judgment regarding the volume of promotional offers that will be redeemed by either the retail trade customer or consumer. These estimates are made using various techniques including historical data on performance of similar promotional programs. The Company has reserves in place of \$39.7 million as of April 2, 2023, which include adjustments taken by customers of \$28.9 million that are awaiting final processing, and reserves of \$ 46.3 million as of January 1, 2023, which include adjustments taken by customers of \$32.8 million that are awaiting final processing. Differences between estimated expense and actual redemptions are recognized as a change in management estimate as actual redemptions are incurred.

Business Combinations – The Company evaluates acquisitions of assets and other similar transactions to assess whether or not the transaction should be accounted for as a business combination or asset acquisition by first applying a screen test to determine if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. If the screen is met, the transaction is accounted for as an asset acquisition. If the screen is not met, further determination is required as to whether or not the Company has acquired inputs and processes that have the ability to create outputs which would meet the definition of a business. Significant judgment is required in the application of the screen test to determine whether an acquisition is accounted for as a business combination or an acquisition of assets.

The Company uses the acquisition method of accounting for acquired businesses. Under the acquisition method, the Company's financial statements reflect the operations of an acquired business starting from the completion of the acquisition. The assets acquired and liabilities assumed are recorded at their respective estimated fair values at the date of the acquisition. Any excess of the purchase price over the estimated fair values of the identifiable net assets acquired is recorded as goodwill.

Distributor Buyouts - During the first fiscal quarter of 2022, the Company bought out and terminated the contracts of multiple third-party distributors who had previously been providing services to the Company. These transactions were accounted for as contract terminations and resulted in expense of \$23.0 million for thirteen weeks ended April 3, 2022, and are included within selling and distribution expense on the Consolidated Statement of Operations and Comprehensive Loss.

Use of Estimates – Management uses estimates and assumptions in preparing the consolidated financial statements in accordance with U.S. GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Some examples, but not a comprehensive list, include sales and promotional allowances, customer returns, allowances for doubtful accounts, inventory valuations, useful lives of fixed assets and related impairment, long-term investments, hedge transactions, goodwill and intangible asset valuations and impairments, incentive compensation, income taxes, self-insurance, contingencies, litigation, and inputs used to calculate deferred tax liabilities, tax valuation allowances, and tax receivable agreements. Actual results could vary materially from the estimates that were used.

Recently Issued Accounting Standards – In June 2016, ASU No. 2016-13, Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments ("Topic 326") was issued. Topic 326 requires entities to measure the impairment of certain financial instruments, including accounts receivables, based on expected losses rather than incurred losses. Topic 326 is effective for the Company for fiscal years beginning after December 15, 2022, with early adoption permitted, and was adopted by the Company on January 2, 2023 under the modified retrospective transition method, which resulted in no cumulative-effect adjustment to retained earnings.

2. INVENTORIES

Inventories consisted of the following:

(in thousands)	As of April 2, 2023	As of January 1, 2023
Finished goods	\$ 72,681	\$ 67,386
Raw materials	41,663	42,204
Maintenance parts	9,112	8,416
Total inventories	<u>\$ 123,456</u>	<u>\$ 118,006</u>

3. PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment, net, consisted of the following:

(in thousands)	As of April 2, 2023	As of January 1, 2023
Land	\$ 35,639	\$ 30,582
Buildings	128,602	129,824
Machinery and equipment	255,888	255,505
Land improvements	3,577	3,756
Building improvements	3,708	3,709
Construction-in-progress	29,734	21,934
	<u>457,148</u>	<u>445,310</u>
Less: accumulated depreciation	(110,172)	(100,112)
Property, plant and equipment, net	<u>\$ 346,976</u>	<u>\$ 345,198</u>

Depreciation expense was \$10.4 million and \$12.4 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. Depreciation expense is classified in cost of goods sold, selling, distribution, and administrative expenses on the

Consolidated Statements of Operations and Comprehensive Loss. During the thirteen weeks ended April 2, 2023 the Company recognized expense of \$1.9 million related to the impairment of equipment.

4. GOODWILL AND INTANGIBLE ASSETS, NET

There were no changes to goodwill during the thirteen weeks ended April 2, 2023.

Intangible assets, net, consisted of the following:

<i>(in thousands)</i>	<u>As of April 2, 2023</u>	<u>As of January 1, 2023</u>
Subject to amortization:		
Distributor/customer relationships	\$ 677,930	\$ 677,930
Trademarks	63,850	63,850
Amortizable assets, gross	741,780	741,780
Accumulated amortization	(92,155)	(82,738)
Amortizable assets, net	649,625	659,042
Not subject to amortization:		
Trade names	434,513	434,513
Route assets	5,747	6,010
Intangible assets, net	<u>\$ 1,089,885</u>	<u>\$ 1,099,565</u>

Previously, the Company was granted certain exclusive distribution rights for certain products manufactured by another manufacturer. During the first fiscal quarter of 2022, the Company shifted the relationship with that manufacturer and converted that shelf space to Company-branded products. As a result, the Company recorded impairment expense of \$2.0 million and the amortizable master distribution rights decreased by \$ 2.2 million during the thirteen weeks ended April 3, 2022. There were no significant changes to intangible assets during the thirteen weeks ended April 2, 2023 other than those which arise from the normal course of business of buying and selling of Company-owned route assets and amortization.

Amortization of the distributor/customer relationships, technology, and trade names amounted to \$ 9.4 million and \$9.4 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. The expense related to the amortization of intangibles is classified in administrative expenses on the Consolidated Statements of Operations and Comprehensive Loss.

5. NOTES RECEIVABLE

The Company has undertaken a program in recent years to sell Company-managed DSD distribution routes to independent operators ("IOs"). Contracts are executed between the Company and the IOs for the sale of the product distribution route, including a note in favor of the Company, in certain cases. The notes bear interest at rates ranging from 0.00% to 10.40% with terms ranging generally from one to ten years. The notes receivable balances due from IOs at April 2, 2023 and January 1, 2023 totaled \$20.4 million and \$22.0 million, respectively, and are collateralized by the routes for which the loans are made. During the thirteen weeks ended April 2, 2023, the loss recorded by the Company on note receivables for which the Company reclaimed the collateral due to credit losses was less than \$0.1 million. The Company has a corresponding notes payable liability, related to the IOs notes receivables, of \$19.5 million and \$21.1 million at April 2, 2023 and January 1, 2023, respectively. The related notes payable liability is discussed in further detail within Note 7. "Long-Term Debt."

Other notes receivable totaled \$0.1 million and \$0.1 million as of April 2, 2023 and January 1, 2023, respectively.

6. ACCRUED EXPENSES AND OTHER

Current accrued expenses and other consisted of the following:

(in thousands)	As of January 1,	
	As of April 2, 2023	2023
Accrued compensation and benefits	\$ 28,079	\$ 38,974
Operating right of use liability	12,485	12,389
Insurance liabilities	5,888	6,701
Accrued freight and manufacturing related costs	12,590	10,817
Acquisition tax consideration	1,131	1,131
Accrued dividends and distributions	—	7,989
Accrued interest	1,116	1,151
Other accrued expenses	10,068	12,860
Total accrued expenses and other	\$ 71,357	\$ 92,012

Non-current accrued expenses and other consisted of the following:

(in thousands)	As of January 1,	
	As of April 2, 2023	2023
Operating right of use liability	\$ 36,634	\$ 35,331
Tax Receivable Agreement liability	24,184	25,426
Supplemental retirement and salary continuation plans	6,372	6,512
Long term hedge	3,176	—
Total accrued expenses and other	\$ 70,366	\$ 67,269

7. LONG-TERM DEBT

Revolving Credit Facility

On November 21, 2017, UBH entered into an asset based revolving credit facility (as amended, the "ABL facility"), pursuant to the terms of that certain First Lien Term Loan Credit Agreement, dated November 21, 2017 (the "Credit Agreement"). On September 22, 2022, the ABL facility was amended to further increase the credit limit up to \$175.0 million and replaced the interest rate benchmark from LIBOR to SOFR. As of April 2, 2023 and January 1, 2023, \$20.0 million and \$0.0 million, respectively, were outstanding under this facility. Availability under the ABL facility is based on a monthly accounts receivable and inventory borrowing base certification, which is net of outstanding letters of credit. As of April 2, 2023 and January 1, 2023, \$140.8 million and \$163.0 million, respectively, was available for borrowing, net of letters of credit. The ABL facility is also subject to unused line fees (0.5% at April 2, 2023) and other fees and expenses.

Standby letters of credit in the amount of \$ 12.0 million have been issued as of April 2, 2023 and January 1, 2023. The standby letters of credit are primarily issued for insurance purposes.

Term Loans

On December 14, 2020, the Company entered into a Bridge Credit Agreement with a syndicate of banks, led by Bank of America, N.A. (the "Bridge Credit Agreement"). The proceeds of the Bridge Credit Agreement were used to fund the Company's acquisition of Truco and the IP Purchase (each as defined below) from OTB Acquisition, LLC, in which the Company withdrew \$490.0 million to finance the acquisition of Truco Holdco Inc. ("Truco" and such acquisition, the "Truco Acquisition") and certain intellectual property from OTB Acquisition, LLC (the "IP Purchase"). The Bridge Credit Agreement bears interest at an annual rate based on 4.25% plus 1 month LIBOR with scheduled incremental increases to the base rate, as defined in the Bridge Credit Agreement.

On January 20, 2021, the Company entered into Amendment No. 2 to the Bridge Credit Agreement ("Amendment No. 2") which provided additional operating flexibility and revisions to certain restrictive covenants. Pursuant to the terms of Amendment No. 2, the Company raised \$720 million in aggregate principal of Term Loan B ("Term Loan B") which bore interest at LIBOR plus 3.00%, and extended the maturity of the Bridge Credit Agreement to January 20, 2028. The proceeds were used, together with cash on hand and proceeds from our exercised warrants, to redeem the outstanding principal amount of Term Loan B and Bridge Credit Agreement of \$410 million and \$358 million, respectively. The refinancing was accounted for as an extinguishment. The Company incurred debt issuance costs and original issuance discounts of \$8.4 million.

On June 22, 2021, the Company entered into Amendment No. 3 to the Bridge Credit Agreement ("Amendment No. 3"). Pursuant to the terms of Amendment No. 3, the Company increased the principal balance of Term Loan B by \$75.0 million to bring the aggregated balance of Term Loan B proceeds to \$795.0 million. The Company incurred additional debt issuance costs and original issuance discounts of \$ 0.7 million related to the incremental funding.

On October 12, 2022, the Company, through its subsidiaries UQF, Kennedy and Condor Snack Foods, LLC (together with UQF and Kennedy, the "Real Estate Financing Borrowers"), entered into a loan agreement (the "Real Estate Term Loan") with City National Bank which was secured by a majority of the Real Estate Financing Borrowers' real estate assets. The Real Estate Term Loan holds a principal balance of \$88.1 million, with net proceeds of approximately \$85.0 million after transaction fees and expenses. The Real Estate Term Loan has a ten-year maturity and amortizes approximately \$3.5 million in principal annually, with a balloon payment due at maturity. The Company used a portion of the proceeds from the Real Estate Term Loan to pay off the ABL facility. The Real Estate Term Loan contains a single financial maintenance covenant consisting of a fixed charge coverage ratio that is tested quarterly only during a covenant trigger period consistent with the existing ABL facility. Concurrent with the closing of the Real Estate Term Loan, UQF entered into an interest rate swap transaction to fix the effective interest rate at approximately 5.929%, as discussed in further detail within "Note 8. Derivative Financial Instruments and Purchase Commitments".

The Term Loan B and the ABL facility are collateralized by substantially all of the assets and liabilities of UBH and its subsidiaries excluding the real estate assets secured by the Real Estate Term Loan, including equity interests in certain of UBH's subsidiaries. The credit agreements contain certain affirmative and negative covenants as to operations and the financial condition of UBH and its subsidiaries. UBH and its subsidiaries were in compliance with its financial covenants as of April 2, 2023.

Debt (in thousands)	Issue Date	Principal		January 1,	
		Balance	Maturity Date	April 2, 2023	2023
Term loan B ⁽¹⁾	June-21	\$ 795,000	January-28	\$ 777,298	\$ 779,286
Real Estate Loan	October-22	\$ 88,140	October-32	87,259	88,140
Equipment loans ⁽²⁾				54,400	54,053
ABL facility ⁽³⁾				20,000	—
Net impact of debt issuance costs and original issue discounts				(9,667)	(9,672)
Total long-term debt				929,290	911,807
Less: current portion				(19,207)	(18,472)
Long term portion of term debt and financing obligations				\$ 910,083	\$ 893,335

(1) On September 22, 2022, the Company entered into Amendment No. 4 to the Bridge Credit Agreement ("Amendment No. 4"), which replaced the interest rate benchmark from LIBOR to SOFR. The weighted average interest rate on the Term Loan B debt for the thirteen weeks ended April 2, 2023 was 7.61%.

(2) In July 2021, the Company entered into two separate finance lease obligations with Banc of America Leasing & Capital, LLC, which have been treated as secured borrowing. The Company made a series of draws upon these agreements throughout fiscal year 2021 totaling \$26.5 million and has drawn a total of \$32.4 million in fiscal year 2022 and \$2.3 million in fiscal year 2023. These draws bear interest ranging from 3.26% through 6.73% and have varying maturities up through 2028.

(3) The facility bore interest at an annual rate based on LIBOR, or SOFR plus a 0.10% credit spread adjustment after the amendment on September 22, 2022, plus an applicable margin of 1.50% (ranging from 1.50% to 2.00% based on availability) or the prime rate plus an applicable margin of 0.50% (ranging from 0.50% to 1.00%). The Company generally utilizes the prime rate for amounts that the Company expects to pay down within 30 days. The interest rate on the facility as of April 2, 2023 was 8.50%, under the prime rate. The Company elects to use the LIBOR, prior to the amendment on September 22, 2022 which changed the reference rate to SOFR as described above, for balances that are expected to be carried longer than 30 days. The interest rate on the ABL facility as of April 2, 2023 was 6.26%.

Other Notes Payable and Capital Leases

During the first fiscal quarter of 2022, the Company bought out and terminated the contracts of multiple distributors who had previously been providing services to the Company. These transactions were accounted for as contract terminations and resulted in expense of \$23.0 million for the thirteen weeks ended April 3, 2022. The outstanding balance of these transactions was \$0.5 million as of January 1, 2023, and was paid off during the thirteen weeks ended April 2, 2023.

During the first fiscal quarter of 2020, the Company purchased intellectual property that include a deferred purchase price of \$ 0.5 million, of which \$0.2 million and \$0.3 million was outstanding as of April 2, 2023 and January 1, 2023, respectively.

Amounts outstanding under notes payable consisted of the following:

(in thousands)	As of April 2, 2023	As of January 1, 2023
Note payable – IO notes	\$ 19,508	\$ 21,098
Finance lease obligations	10,547	10,995
Other	200	835
Total notes payable	30,255	32,928
Less: current portion	(11,893)	(12,589)
Long term portion of notes payable	<u>\$ 18,362</u>	<u>\$ 20,339</u>

From time to time, the Company sells notes receivable from IOs to a financial institution. During the thirteen weeks ended April 2, 2023, the Company sold an additional \$1.0 million of notes receivable from IOs on its books for \$ 0.9 million to a financial institution. Due to the structure of these transactions, they did not qualify for sale accounting treatment and the Company has recorded the notes payable obligation owed by the IOs to the financial institution on its books; the corresponding notes receivable also remained on the Company's books. The Company services the loans for the financial institution by collecting principal and interest from the IOs and passing it through to the institution. The underlying notes have various maturity dates through June 2032. The Company partially guarantees the outstanding loans, as discussed in further detail within Note 10. "Contingencies." These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon any event of default.

Interest Expense

Interest expense consisted of the following:

(in thousands)	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Company's term loans, ABL facility, and other long-term debt	\$ 14,142	\$ 8,331
Amortization of deferred financing fees	5	341
IO loans	231	431
Total interest	<u>\$ 14,378</u>	<u>\$ 9,103</u>

8. DERIVATIVE FINANCIAL INSTRUMENTS AND PURCHASE COMMITMENTS

Derivative Financial Instruments

To reduce the effect of interest rate fluctuations, the Company entered into a three-year interest rate swap contract on September 6, 2019, with an effective date of September 30, 2019, with a counter-party to make a series of payments based on a fixed interest rate of 1.339% and receive a series of payments based on the greater of LIBOR or 0.00%. Both the fixed and floating payment streams were based on a notional amount of \$ 250 million. On December 21, 2021, with an effective date of December 31, 2021, the Company entered into an accreting interest rate swap contract with a counter-party to make a series of payments based on a fixed interest rate of 1.3885% and receive a series of payments based on the greater of LIBOR or 0.00%. Both the fixed and floating payment streams were based on a notional amount of \$250 million and have accreted to \$500 million, and mature on September 30, 2026. Effective on September 30, 2022 the Company amended the swap contract to reference the 1-month SOFR plus a credit spread adjustment ("CSA") of 11.448 basis points, as well as setting the new fixed rate to 1.408%; under this amended swap agreement the Company will receive a series of payments based on the greater of SOFR plus CSA, or 0.00%.

On October 12, 2022 and effective on November 1, 2022, the Company entered into a 10-year swap contract, with an effective date of November 1, 2022, with a counter-party to make a series of payments based on a fixed interest rate of 3.83% and receive a series of payments based on the greater of the 1-month SOFR or 0.00%. The agreement covers \$87.3 million as of April 2, 2023. This swap effectively fixes the rate of the Real Estate Term Loan to 5.93%. The balance that the hedge covers is designed to abate as principal payments on the Real Estate Term Loan are made. The Company entered into these transactions to reduce its exposure to changes in cash flows associated with the Real Estate Term Loan and has designated this derivative as a cash flow hedge.

At April 2, 2023, the effective fixed interest rate on the long-term debt hedged by these contracts was 5.56%. For further treatment of the Company's interest rate swap, refer to "Note 9. Fair Value Measurements" and "Note 11. Accumulated Other Comprehensive (Loss) Income."

Warrant Liabilities

The Company has outstanding warrants which are accounted for as derivative liabilities pursuant to ASC 815-40. See Note 14. "Warrants" for additional information on our warrant liabilities. A reconciliation of the changes in the warrant liability during the thirteen weeks ended April 2, 2023 is as follows:

(in thousands)

Fair value of warrant liabilities as of January 1, 2023	\$ 45,504
Loss on remeasurement of warrant liability	2,232
Fair value of warrant liabilities as of as of April 2, 2023	\$ 47,736

Purchase Commitments

The Company has outstanding purchase commitments for specific quantities at fixed prices for certain key ingredients to economically hedge commodity input prices. These purchase commitments totaled \$73.1 million as of April 2, 2023. The Company accrues for losses on firm purchase commitments in a loss position at the end of each reporting period to the extent that there is an active observable market. The Company has recorded purchase commitment (losses) gains totaling \$(2.7) million for the thirteen weeks ended April 2, 2023 and \$ 0.0 million for the thirteen weeks ended April 3, 2022, respectively.

9. FAIR VALUE MEASUREMENTS

The Company follows the guidance relating to fair value measurements and disclosures with respect to financial assets and liabilities that are re-measured and reported at fair value each reporting period, and with respect to non-financial assets and liabilities that are not required to be measured at fair value on a recurring basis. The guidance establishes a fair value hierarchy that prioritizes the inputs to the valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level I) and the lowest priority to unobservable pricing inputs (Level III). A financial asset or liability's level within the fair value hierarchy is based upon the lowest level of any input that is significant to the fair value measurement in its entirety. The three levels of the fair value hierarchy are described below:

Level I - Valuations are based on unadjusted quoted prices in active markets for identical, unrestricted assets or liabilities;

Level II - Valuations are based on quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active. Financial asset or liabilities which are included in this category are securities where all significant inputs are observable, either directly or indirectly; and

Level III - Prices or valuations that are unobservable and where there is little, if any, market activity for these financial assets or liabilities. The inputs into the determination of fair value inputs for these investments require significant management judgment or estimation. The availability of observable inputs can vary depending on the financial asset or liability and is affected by a wide variety of factors. To the extent that valuation is based on inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment.

The fair values of the Company's Level 2 derivative instruments were determined using valuation models that use market observable inputs including interest rate curves and both forward and spot prices for commodities. Derivative assets and liabilities included in Level 2 primarily represent commodity and interest rate swap contracts.

The following table presents the Company's financial assets and liabilities measured at fair value on a recurring basis based upon the level within the fair value hierarchy in which the fair value measurements fall, as of April 2, 2023:

(in thousands)	Level 1	Level 2	Level 3	Total
Assets:				
Cash and cash equivalents	\$ 57,921	\$ —	\$ —	\$ 57,921
Commodity contracts	—	759	—	759
Interest rate swaps	—	34,829	—	34,829
Total assets	\$ 57,921	\$ 35,588	\$ —	\$ 93,509
Liabilities:				
Commodity contracts	—	2,996	—	2,996
Private placement warrants	—	47,736	—	47,736
Debt	—	929,290	—	929,290
Total liabilities	\$ —	\$ 980,022	\$ —	\$ 980,022

The following table presents the Company's financial assets and liabilities measured at fair value on a recurring basis based upon the level within the fair value hierarchy in which the fair value measurements fall, as of January 1, 2023:

(in thousands)	Level 1	Level 2	Level 3	Total
Assets:				
Cash and cash equivalents	\$ 72,930	\$ —	\$ —	\$ 72,930
Commodity contracts	—	1,586	—	1,586
Interest rate swaps	—	45,088	—	45,088
Total assets	\$ 72,930	\$ 46,674	\$ —	\$ 119,604
Liabilities:				
Private placement warrants	—	45,504	—	45,504
Debt	—	911,807	—	911,807
Total liabilities	\$ —	\$ 957,311	\$ —	\$ 957,311

10. CONTINGENCIES

Litigation Matters

The Company is involved in litigation and other matters incidental to the conduct of its business, the results of which, in the opinion of management, are not likely to be material to the Company's financial condition, results of operations or cash flows.

Tax Matters

The Company received an assessment from the Commonwealth of Pennsylvania pursuant to a sales and use tax audit for the period from January 1, 2014 through December 31, 2016. As of January 2, 2022, the Company had a reserve of \$1.3 million to cover the assessment. On January 7, 2022, the Company settled the audit with the Commonwealth of Pennsylvania for \$0.9 million.

Guarantees

The Company partially guarantees loans made to IOs by Cadence Bank for the purchase of routes. The outstanding balance of loans guaranteed was \$1.1 million and \$1.5 million at April 2, 2023 and January 1, 2023, respectively, all of which was recorded by the Company as off balance sheet arrangements. The maximum amount of future payments the Company could be required to make under the guarantees equates to 25% of the outstanding loan balance up to \$2.0 million. These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon default.

The Company partially guarantees loans made to IOs by Bank of America for the purchase of routes. The outstanding balance of loans guaranteed that were issued by Bank of America was \$40.2 million and \$36.0 million at April 2, 2023 and January 1, 2023, respectively, which are off balance sheet arrangements. As discussed in Note 7. "Long-Term Debt", the Company also sold notes receivable on its books to Bank of America during fiscal years 2019, 2021, and 2022, which the Company partially

guarantees. The outstanding balance of notes purchased by Bank of America at April 2, 2023 and January 1, 2023 was \$ 16.8 million and \$17.9 million, respectively. Due to the structure of the transactions, the sale did not qualify for sale accounting treatment, and as such the Company records the notes payable obligation owed by the IOs to the financial institution on its Consolidated Balance Sheets; the corresponding note receivable also remained on the Company's Consolidated Balance Sheets. The maximum amount of future payments the Company could be required to make under these guarantees equates to 25% of the outstanding loan balance on the first day of each calendar year plus 25% of the amount of any new loans issued during such calendar year. These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon default.

The Company guarantees loans made to IOs by M&T Bank for the purchase of routes. The agreement with M&T Bank was amended in January 2020 so that the Company guaranteed up to 25% of the greater of the aggregate principal amount of loans outstanding on the payment date or January 1st of the subject year. The outstanding balance of loans guaranteed was \$3.1 million and \$3.4 million at April 2, 2023 and January 1, 2023, respectively, all of which were included in the Company's Consolidated Balance Sheets. These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon default.

11. ACCUMULATED OTHER COMPREHENSIVE INCOME

Total accumulated other comprehensive income was \$ 40.7 million as of April 2, 2023 and \$ 51.0 million as of January 1, 2023. Total accumulated other comprehensive income consists solely of unrealized gains from the Company's derivative financial instruments accounted for as cash flow hedges.

Changes to the balance in accumulated other comprehensive income were as follows:

<i>(in thousands)</i>	Gain on Cash Flow Hedges
Balance as of January 2, 2022	\$ 3,715
Unrealized gain on cash flow hedges	27,809
Balance as of April 3, 2022	31,524
Less balance attributable to noncontrolling interest as of April 3, 2022	11,966
Balance attributable to controlling interest as of April 3, 2022	<u>\$ 19,558</u>
Balance as of January 1, 2023	\$ 50,994
Unrealized gain on cash flow hedges	(10,325)
Balance as of April 2, 2023	40,669
Less balance attributable to noncontrolling interest as of April 2, 2023	15,850
Balance attributable to controlling interest as of April 2, 2023	<u>\$ 24,819</u>

12. SUPPLEMENTARY CASH FLOW INFORMATION

<i>(in thousands)</i>	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Cash paid for interest	\$ 14,408	\$ 9,627
Refunds related to income taxes	\$ 63	\$ 4,075
Payments for income taxes	\$ 6	\$ 107

13. INCOME TAXES

The Company is subject to federal and state income taxes with respect to our allocable share of any taxable income or loss of UBH, as well as any standalone income or loss the Company generates. UBH is treated as a partnership for federal income tax purposes, and for most applicable state and local income tax purposes, and generally does not pay income taxes in most jurisdictions. Instead, UBH's taxable income or loss is passed through to its members, including the Company. Despite its partnership treatment, UBH is liable for income taxes in those states not recognizing its pass-through status and for certain of its subsidiaries not taxed as pass-through entities. The Company has acquired various domestic entities taxed as corporations, which are now wholly-owned by us or our subsidiaries. Where required or allowed, these subsidiaries also file and pay tax as a consolidated group for federal and state income tax purposes. The Company anticipates this structure to remain in existence for the foreseeable future.

The Company recorded income tax benefit of \$2.6 million and expense of \$2.8 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. The effective tax rates for the thirteen weeks ended April 2, 2023 and April 3, 2022 were 15.3% and (9.5)%, respectively. The Company's effective tax rates differ from the federal statutory rate of 21% primarily due to the impact of UBH, which is a partnership, is not taxed at the Company level, and is required to allocate some of its taxable results to the Continuing Members, as well as state taxes and the fair value impact of warrant liabilities. The Company's effective tax rate for the thirteen weeks ended April 2, 2023 was 17.8% before consideration of any discrete items. During the thirteen weeks ended April 2, 2023, the effective tax rate was impacted by statutory state tax rate changes which resulted in a nominal discrete tax expense.

The Company regularly evaluates valuation allowances established for deferred tax assets ("DTA's") for which future realization is uncertain. The Company assessed the available positive and negative evidence to estimate whether future taxable income would be generated to permit use of the existing DTA's. As of April 2, 2023, a significant piece of objective negative evidence evaluated was the twelve-quarter cumulative loss before taxes. Such objective evidence limits the ability to consider other subjective evidence, such as projections for future growth. The Company determined that there is uncertainty regarding the utilization of certain DTA's such as the investment in UBH, federal operating losses subject to annual limitations due to "change in ownership" provisions, and state net operating losses where the Company does not expect to continue to have nexus. Therefore, a valuation allowance has been recorded against the DTA's for which it is more likely than not they will not be realized. The Company has DTA's related to its investment in the partnership that are expected to be realized in the ordinary course of operations or generate future net operating losses for which a portion will have an indefinite carryforward period. Additionally, the Company has deferred tax liabilities ("DTL's") related to its investment in the partnership that will not reverse in the ordinary course of business and will only reverse when the partnership is sold or liquidated. The Company has no intention of disposing of or liquidating the partnership and therefore has not considered the indefinite lived DTL as a source of income to offset other DTA's. In weighing positive and negative evidence, both objective and subjective, including its twelve-quarter cumulative loss, the Company has recorded a valuation allowance against its DTA's related to net operating losses and deductible book/tax differences and recorded a DTL primarily related to the book over tax basis in the investment in the partnership that will not reverse in the ordinary course of business. The Company considered that an indefinite lived DTL may be considered as a source of taxable income for an indefinite lived DTA; however, given our indefinite lived DTL will only reverse upon sale or liquidation, the Company determined that it was more appropriate to record a valuation allowance against a portion of its DTA's. The amount of DTA considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as projections for growth.

As of April 2, 2023, tax years 2019 through 2023 remain open and subject to examination by the Internal Revenue Service and in the majority of the states where the Company has nexus, and tax years 2018 through 2023 remain open and subject to examination in selected states that have a longer statute of limitations.

Upon audit, tax authorities may challenge all or part of a tax position. A tax position successfully challenged by a taxing authority could result in an adjustment to our provision for income taxes in the period in which a final determination is made. The Company did not maintain any unrecognized tax benefits as of April 2, 2023 and January 1, 2023.

Tax receivable agreement liability

Pursuant to an election under section 754 of the Internal Revenue Code, the Company obtained an increase in its share of the tax basis in the net assets of UBH when it was deemed to purchase UBH units from third party members and purchased UBH units from the Continuing Members per the Business Combination. Following the Business Combination, the Continuing Members may exchange UBH units along with the forfeiture of a corresponding number of Class V Common Stock of the Company for Class A Common Stock of the Company. The Company intends to treat any such exchanges as direct purchases for U.S. federal income tax purposes, which is expected to further increase its share of the tax basis in the net assets of UBH. The increases in tax basis may reduce the amounts the Company would otherwise pay in the future to various tax authorities. They may also decrease gains (or increase losses) on future dispositions of certain capital assets to the extent tax basis is allocated to those capital assets.

Pursuant to the Business Combination Agreement, the Company entered into the Tax Receivable Agreement in connection with the Business Combination (the "TRA"), which provides for the payment by the Company of 85% of the amount of any tax benefits realized as a result of (i) increases in the share of the tax basis in the net assets of UBH resulting from the Business Combination and any future exchanges by the Continuing Members of UBH units for UBI common stock; (ii) tax basis increases attributable to payments made under the TRA; and (iii) tax amortization deductions attributable to the acquisition of Kennedy Endeavors, LLC and the election to treat the transaction as an asset deal for tax purposes. The rights of each party under the TRA other than the Company are assignable, subject to certain restrictions. The timing and amount of aggregate payments due under the TRA may vary based on a number of factors, including the timing and amount of taxable income generated by the Company each year, as well as the tax rate then applicable, among other factors.

As of April 2, 2023 and January 1, 2023, the Company had a liability of \$ 24.2 million and \$25.4 million, respectively, related to its projected obligations under the TRA, which is reflected as non-current accrued expenses in the Consolidated Balance Sheets.

14. WARRANTS

Prior to the Business Combination, CCH issued 15,833,332 warrants that were initially sold by CCH in its initial public offering of securities (the "Public Warrants"), including 1,166,666 warrants issued pursuant to those certain Forward Purchase Agreements entered into by CCH, CCH's Sponsor (the "Sponsor"), and the independent directors of CCH (the "Forward Purchase Agreements") that were issued at the closing of the Business Combination as part of the Forward Purchase Agreement (the "Forward Purchase Warrants"), and 7,200,000 warrants initially sold to the Sponsor simultaneously with the closing of its initial public offering (the "Private Placement Warrants," collectively, with the Public Warrants and Forward Purchase Warrants, the "Warrants"). As a result of the Business Combination, the Company assumed the CCH warrants and such warrants are now exercisable for shares of UBI Class A Common Stock instead of Class A ordinary shares of CCH. All other features of the warrants remain unchanged. On December 14, 2020, the Company provided notice to the holders of the Public Warrants and Forward Purchase Warrants that their warrants would be redeemed in accordance with the original terms on January 14, 2021. As of April 2, 2023 and January 1, 2023, there were 7,200,000 Private Placement Warrants outstanding and all Public Warrants and Forward Purchase Warrants have been exercised (except for the Public Warrants that were redeemed by the Company on January 14, 2021).

The Private Placement Warrants and the shares of Class A Common Stock issuable upon the exercise of the Private Placement Warrants were not transferable, assignable or salable until after the completion of the Business Combination, subject to certain limited exceptions. Additionally, the Private Placement Warrants are exercisable on a cashless basis, at the holder's option, and are non-redeemable by the Company so long as they are held by the initial purchasers or their permitted transferees. If the Private Placement Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Placement Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants.

The Warrants are accounted for as derivative liabilities in accordance with ASC 815-40, Derivatives and Hedging—Contracts in Entity's Own Equity ("ASC 815-40"), due to certain settlement provisions in the corresponding warrant agreement that do not meet the criteria to be classified in stockholders' equity. Pursuant to ASC 815-40, the Warrants are now classified as a liability at fair value on the Company's Consolidated Balance Sheet, and the change in the fair value of such liability in each period is recognized as a non-cash gain or loss in the Company's Consolidated Statements of Operations and Comprehensive Loss. The Warrants are deemed equity instruments for income tax purposes, and accordingly, there is no tax accounting relating to changes in the fair value of the Warrants recognized.

The remeasurement of the warrant liability resulted in a gain (loss) of \$(2.2) million and \$1.9 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively.

15. EQUITY

Class A Common Stock

The Company is authorized to issue 1,000,000,000 shares of Class A Common Stock, par value \$ 0.0001 per share, of which 81,012,868 and 80,882,334 shares of UBI were issued and outstanding on April 2, 2023 and January 1, 2023, respectively.

Class V Common Stock

The Company is also authorized to issue 61,249,000 shares of Class V Common Stock, par value of \$ 0.0001 all of which were issued to the Continuing Members in connection with the closing of the Business Combination. Each of the Continuing Members' common limited liability company units of UBI along with a share of Class V Common Stock may be exchanged for one share of Class A Common Stock of the Company upon certain restrictions being satisfied. As of April 2, 2023 and January 1, 2023, there were 59,349,000 shares of Class V Common Stock outstanding.

16. EARNINGS (LOSS) PER SHARE

Basic earnings (loss) per share is based on the weighted average number of shares of Class A Common Stock issued and outstanding during the periods. Diluted earnings (loss) per share is based on the weighted average number shares of Class A Common Stock issued and outstanding and the effect of all dilutive common stock equivalents and potentially dilutive share-based awards outstanding during the periods.

The following table reconciles the numerators and denominators used in the computations of both basic and diluted earnings per share:

	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
<i>(in thousands, except share data)</i>		
Basic and diluted earnings per share:		
Numerator:		
Net loss attributable to common stockholders	\$ (9,127)	\$ (17,570)
Denominator:		
Weighted average Class A Common Stock shares, basic	80,978,008	78,572,404
Basic and diluted earnings (loss) per share	<hr/> \$ (0.11)	<hr/> \$ (0.22)
Anti-dilutive securities excluded from diluted earnings per share calculation:		
Warrants	2,196,193	1,901,376
RSUs	180,908	57,914
PSUs	104,102	40,545
Stock options	1,601	—
Total	<hr/> 2,482,804	<hr/> 1,999,835
Class V Common Stock not subject to earnings per share calculation	59,349,000	59,349,000
Net loss attributable to noncontrolling interest	\$ (5,355)	\$ (14,328)

The diluted earnings (loss) per share computation excludes the effect of certain restricted stock units ("RSUs"), performance stock units ("PSUs"), and stock options granted to directors and management which convert to Class A Common Stock upon vesting or being exercised, as their inclusion would have been anti-dilutive.

Shares of the Company's Class V Common Stock do not participate in earnings or losses of the Company and, therefore, are not participating securities. The PSUs and RSUs, were not considered participating securities in the Successor period despite the holders of these stock-based compensation awards being entitled to participate in dividends declared on Class A Common Stock, if and when declared, on a one-to-one per-share basis, because the dividends are only payable upon full vesting of the

awards, and as such, the dividend is forfeitable. As of April 2, 2023 and January 1, 2023, the Continuing Members held all 59,349,000 shares of Class V Common Stock issued and outstanding and also held an equal number of common limited liability company units of UBH, which comprise the noncontrolling interest.

17. SUBSEQUENT EVENTS

On April 24, 2023, as announced in the Form 8-K filed with the SEC on April 26, 2023, the Company made the decision to permanently cease operations at the Company's manufacturing facility located in Birmingham, Alabama (the "Birmingham Facility") effective on or around July 3, 2023 (the "Manufacturing Closure"). Golden Flake® and other products currently being produced at the Birmingham Facility will continue to be produced at other manufacturing facilities following the ceasing of manufacturing operations at the Birmingham Facility. The Birmingham Facility employs approximately 275 individuals. While manufacturing at the Birmingham Facility is being permanently ceased, approximately 100 employees will continue to be employed by the Company and continue working in Birmingham in the Company's distribution center.

The Company currently expects to incur pre-tax cash charges of approximately \$ 3.0 million to \$5.0 million in connection with the Manufacturing Closure in fiscal year 2023, which is expected to include \$1.5 million in severance costs and \$1.5 million to \$3.5 million in closing and transfer of production costs. The Company also expects to incur non-cash charges of approximately \$8.5 million to \$11.0 million in asset impairments. The estimates of the charges and expenditures that the Company expects to incur in connection, and the timing thereof, are subject to a number of assumptions, including local law requirements, and actual amounts may differ materially from estimates. In addition, the Company may incur other charges or cash expenditures not currently contemplated due to unanticipated events that may occur, including in connection with this decision to permanently cease manufacturing at the Birmingham Facility.

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

The following management's discussion and analysis of our financial condition and results of operations ("MD&A") should be read in conjunction with our unaudited combined interim consolidated financial statements as of and for the thirteen weeks ended April 2, 2023, together with our audited combined consolidated financial statements for our most recently completed fiscal year set forth under Item 8 of our Annual Report on Form 10-K for the year ended January 1, 2023. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in Item 1A "Risk Factors" of our Annual Report on Form 10-K for the year ended January 1, 2023 and other filings under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Our fiscal year end is the Sunday closest to December 31. Our fiscal year 2022 ended January 1, 2023 and was a fifty-two-week fiscal year, our fiscal year 2023 will end on December 31, 2023 and is a fifty-two-week fiscal year. Our fiscal quarters are comprised of thirteen weeks each, except for fifty-three-week fiscal years for which the fourth quarter is comprised of fourteen weeks, and end on the thirteenth Sunday of each quarter (fourteenth Sunday of the fourth quarter, when applicable).

Overview

We are a leading U.S. manufacturer of branded salty snacks. We produce a broad offering of salty snacks, including potato chips, tortilla chips, pretzels, cheese snacks, pork skins, pub/party mixes, and other snacks. Our iconic portfolio of authentic, craft, and "better for you" brands, which includes Utz®, ON THE BORDER®, Zapp's®, Golden Flake®, Good Health®, Boulder Canyon®, Hawaiian® Brand, and TORTIYAHIS!®, among others, enjoys strong household penetration in the U.S., where our products can be found in approximately 48% of U.S. households. We operate 16 manufacturing facilities across the U.S. with a broad range of capabilities, and our products are distributed nationally to grocery, mass merchant, club, convenience, drug and other retailers through direct shipments, distributors, and approximately 2,200 DSD routes. Our company was founded in 1921 in Hanover, Pennsylvania, and benefits from over 100 years of brand awareness and heritage in the salty snack industry. We have historically expanded our geographic reach and product portfolio organically and through acquisitions. Based on 2022 retail sales, we are the second-largest producer of branded salty snacks in our core geographies.

Key Developments and Trends

Our management team monitors a number of developments and trends that could impact our revenue and profitability objectives.

Long-Term Demographics, Consumer Trends, and Demand – We participate in the attractive and growing \$36 billion U.S. salty snacks category, within the broader approximately \$121 billion market for U.S. snack foods as of April 2, 2023. Retail sales of

the salty snacks category has grown 14.8% over the thirteen weeks ended April 2, 2023. A recent study from Circana cites that 54% of consumers eat snacks to add excitement to their daily diet, up two points versus two years ago and that 49% of consumers snack three or more times per day, up four points versus two years ago. Additionally, the salty snacks category has historically benefited from favorable competitive dynamics, including low private label penetration and category leaders competing primarily through marketing and innovation. We expect these consumer trends to continue to drive consistent retail sales growth for salty snacks for the foreseeable future.

For the thirteen weeks ended April 2, 2023, U.S. retail sales for salty snacks based on Circana data increased by 14.8% versus the comparable prior year period. In the same period, our retail sales increased 9.4% over the thirteen weeks ended April 2, 2023.

Competition – The salty snack industry is highly competitive and includes many diverse participants. Our products primarily compete with other salty snacks but also compete more broadly for certain eating occasions with other snack foods. We believe that the principal competitive factors in the salty snack industry include taste, convenience, product variety, product quality, price, nutrition, consumer brand awareness, media and promotional activities, in-store merchandising execution, customer service, cost-efficient distribution, and access to retailer shelf space. We believe we compete effectively with respect to each of these factors.

Operating Costs – Our operating costs include raw materials, labor, manufacturing overhead, selling, distribution, and administrative expenses. We manage these expenses through annual cost saving and productivity initiatives, sourcing and hedging programs, pricing actions, refinancing and tax optimization. Additionally, we maintain ongoing efforts led by our project management office, to expand our profitability, including implementing significant reductions to our operating cost structure in both supply chain and overhead costs.

Taxes – On March 27, 2020, The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted which included various tax provisions with retroactive effect. The CARES Act is an approximately \$2 trillion emergency economic stimulus package in response to the COVID-19 outbreak, which among other things contains numerous income tax provisions. Some of these tax provisions are effective retroactively for years ending before the date of enactment. We deferred \$7.8 million of payroll tax deposits per the CARES Act. The deferred payroll taxes must be deposited in two installments, with the first installment of \$3.9 million paid as of December 31, 2021, and the remaining \$3.9 million was paid at the start of fiscal year 2023. We continue to evaluate the impact of the CARES Act; however, we believe it is unlikely to have a material effect on our consolidated financial position, results of operations, and cash flow.

On August 16, 2022, the U.S. enacted the Inflation Reduction Act of 2022, which, among other things, implemented a 15% minimum tax on book income of certain large corporations, a 1% excise tax on net stock repurchases and several tax incentives to promote clean energy. The Company continues to evaluate the impact of the Inflation Reduction Act of 2022; however, we believe it is unlikely to have a material effect on our consolidated financial position, results of operations, and cash flow.

Financing Costs and Exposure to Interest Rate Changes – As of April 2, 2023, we had \$884.6 million in variable rate indebtedness, up from \$867.4 million at January 1, 2023. As of April 2, 2023 our variable rate indebtedness is benchmarked to the Term SOFR Screen Rate ('SOFR'). As of April 2, 2023, we have entered into interest rate hedges covering \$587.3 million of debt, of which, \$500.0 million is covered through September 30, 2026 and a hedge that covers the outstanding principal balance of the Real Estate Term Loan through September 2032. Our interest rate hedge strategy has limited some of our exposure to changes in interest rates. We regularly evaluate our variable and fixed-rate debt. We continue to use low-cost, short- and long-term debt to finance our ongoing working capital, capital expenditures and other investments and dividends. Our weighted average interest rate for the thirteen weeks ended April 2, 2023 was 5.6%, up from 3.9% during the thirteen weeks ended April 3, 2022. We have used interest rate swaps to help manage some of our exposure to interest rate changes, which can drive cash flow variability related to our debt. Refer to Note 7. "Long-Term Debt" and Note 8. "Derivative Financial Instruments and Purchase Commitments" to our unaudited condensed consolidated financial statements included under Part I, Item 1 of this filing for additional information on debt, derivative and purchase commitment activity. The Company has experienced the effect of increased interest rates on the portion of its debt that is not hedged and, continued rising interest rates could negatively impact our net income.

Recent Developments and Significant Items Affecting Comparability

Commodity Trends

We regularly monitor worldwide supply and commodity costs so we can cost-effectively secure ingredients, packaging and fuel required for production. A number of external factors such as weather, which may be impacted in unanticipated ways due to climate change, commodity market conditions, and the effects of governmental, agricultural or other programs affect the cost and availability of raw materials and agricultural materials used in our products. We address commodity costs primarily through the use of buying-forward, which locks in pricing for key materials between three and 18 months in advance. Other methods include hedging, net pricing adjustments to cover longer term cost inflation, and manufacturing and overhead cost control. Our hedging techniques, such as forward contracts, limit the impact of fluctuations in the cost of our principal raw materials; however, we may not be able to fully hedge against commodity cost changes, where there is a limited ability to hedge, and our hedging strategies may not protect us from increases in specific raw material costs. Toward the end of fiscal year 2020, we began to experience an increase in pricing in certain commodity costs that continued to rise throughout fiscal years 2021 and 2022, and have continued to rise in the first quarter of 2023. Continued commodity cost increases may adversely impact our net income. Additionally, the Company has experienced rising costs related to fuel and freight rates as well as rising labor costs which have negatively impacted profitability. Transportation costs have been on the rise since early in 2021 and may continue to rise which may also adversely impact net income. The Company looks to offset rising costs through increasing manufacturing and distribution efficiencies as well as through price increases to our customers, although it is unclear whether historic customer sales levels will be maintained at these higher prices. Due to competitive or market conditions, planned trade or promotional incentives, or other factors, our pricing actions may also lag commodity cost changes.

While the costs of our principal raw materials fluctuate, we believe there will continue to be an adequate supply of the raw materials we use and that they will generally remain available from numerous sources. Market factors including supply and demand may result in higher costs of sourcing those materials.

Independent Operator Conversions

Our DSD distribution is executed via Company-owned routes operated by route sales professionals ("RSP" or "RSPs"), and third-party routes managed by IOs. We have used the IO and RSP models for more than a decade. In fiscal year 2017, we embarked on a multi-year strategy to convert all company-owned RSP routes to the IO model. The mix between IOs and RSPs was approximately 96% and 4%, respectively, as of April 2, 2023 versus 89% and 11% ratio for IOs and RSPs, respectively, as of April 3, 2022. We anticipate continuing to work to complete substantially all remaining RSPs conversions during fiscal year 2023. The conversion process involves selling distribution rights of a defined route to an IO. As we convert a large number of routes in a year, there is a meaningful decrease in the selling, distribution administrative costs that we previously incurred on RSPs and a corresponding increase in discounts paid to IOs to cover their costs to distribute our product. The net impact is a reduction in selling and distribution expenses and a decrease in net sales and gross profit. Conversions also impact our balance sheet resulting in cash proceeds to us as a result of selling the route to an IO, or by creating notes receivable related to the sale of the routes.

Results of Operations

Overview

The following tables present selected unaudited financial data for the thirteen weeks ended April 2, 2023 and April 3, 2022.

(in thousands)	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Net sales	\$ 351,433	\$ 340,767
Cost of goods sold	246,937	236,960
Gross profit	104,496	103,807
Selling, distribution, and administrative expenses		
Selling and distribution	65,046	88,110
Administrative	41,040	38,551
Total selling, distribution, and administrative expenses	106,086	126,661
(Loss) gain on sale of assets, net	(508)	367
Loss from operations	(2,098)	(22,487)
Other (expense) income		
Interest expense	(14,378)	(9,103)
Other income	1,615	520
(Loss) gain on remeasurement of warrant liability	(2,232)	1,944
Other expense, net	(14,995)	(6,639)
Loss before taxes	(17,093)	(29,126)
Income tax (benefit) expense	(2,611)	2,772
Net loss	(14,482)	(31,898)
Net loss attributable to noncontrolling interest	5,355	14,328
Net loss attributable to controlling interest	\$ (9,127)	\$ (17,570)

Thirteen weeks ended April 2, 2023 versus thirteen weeks ended April 3, 2022

Net sales

Net sales was \$351.4 million and \$340.8 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. Net sales for the thirteen weeks ended April 2, 2023 increased \$10.7 million or 3.1% over the comparable period in 2022. The increase in net sales for the thirteen weeks ended April 2, 2023 was primarily related to the flow through of pricing action that were taken in 2022 in response to inflationary pressures accounted for a 9.7% increase in net sales, offset by volume/mix decline of 5.7%, as well as 0.9% decline in net sales related to continued IO conversions.

IO discounts increased to \$42.2 million for the thirteen weeks ended April 2, 2023 from \$34.2 million for the corresponding thirteen weeks ended April 3, 2022. Excluding the impacts of increased IO discounts related to RSP to IO conversion, organic net sales increased 4.0% for the thirteen weeks ended April 2, 2023 versus the corresponding period in 2022.

Net sales are evaluated based on classification as Power and Foundation brands. Power brands include our iconic heritage *Utz* brand and iconic *ON THE BORDER*® brand; craft brands such as *Zapp's*®, *Golden Flake*® Pork Skins, *TORTIYAHIS!*, and *Hawaiian*®; "better for you" brands such as *Good Health*® and *Boulder Canyon*®; and select licensed brands such as *TGI Fridays*®. Our Foundation brands are comprised of several regional brands, including *Bachman*®, *Golden Flake*® Chips and Cheese, *Tim's Cascade*® Snacks, *Snyder of Berlin*®, and "Dirty" Potato Chips®, *R.W. Garcia*®, as well as other partner and private label brands.

For the thirteen weeks ended April 2, 2023 Power brand sales increased by approximately 8.7%, while Foundation brand sales decreased by approximately 4.9% from the thirteen weeks ended April 3, 2022. The increase in Power brand sales is due primarily to favorable pricing action, offset by volume decline and continued IO conversions. Foundation brand sales decrease was primarily driven by volume decline and continued IO conversion, offset by certain pricing initiatives. The Company's volume declined for the thirteen weeks ended April 2, 2023 compared to the lapping of a very strong thirteen weeks ended April 3, 2022. In addition, volume was also impacted by weight outs and price pack architecture, as well as SKU rationalization focused on a reduction in private label and partner brand products.

Cost of goods sold and Gross profit

Gross profit was \$104.5 million and \$103.8 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. The increase in gross profit for thirteen weeks ended April 2, 2023 was driven by pricing initiatives which were put in place to help reduce the impact of continued commodity, transportation, and wage inflation which hindered gross profit partially offset by volume decline.

Our gross profit margin was 29.7% for the thirteen weeks ended April 2, 2023 versus 30.5% for the thirteen weeks ended April 3, 2022. The decline in gross profit margin was primarily driven by commodity and wage inflation and lower fixed overhead absorption, offset by the impact of productivity initiatives. Additionally, IO discounts increased to \$42.2 million for the thirteen weeks ended April 2, 2023 from \$34.2 million for the thirteen weeks ended April 3, 2022. IO conversions contributed to a gross profit decline of \$3.0 million, or a gross profit margin of 0.9%, and the remaining IO discount growth was driven pricing actions. Apart from the IO discount impact growth the Company's margins over the thirteen weeks ended April 2, 2023 was comparable to margins for the thirteen weeks ended April 3, 2022.

Selling, distribution, and administrative expense

Selling, distribution, and administrative expenses were \$106.1 million and \$126.7 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively resulting in a decrease of \$(20.6) million or (16.2)% over the corresponding period in fiscal year 2022. The decrease in expenses for the thirteen weeks ended April 2, 2023 compared to the thirteen weeks ended April 3, 2022 was primarily attributable to the comparable period having higher acquisition and integration costs related to the buyout of multiple distributors, which were accounted for as contract terminations, and resulted in expense of \$23.0 million during the thirteen weeks ended April 3, 2022. The thirteen weeks ended April 2, 2023 included impairments of \$1.9 million related to the impairment of fixed assets that were damaged in a natural disaster. The thirteen weeks ended April 3, 2022 included other contract termination expense and related impairments which totaled \$2.6 million. Excluding these items selling, distribution, and administrative expenses increased by 3.1% for the thirteen weeks ended April 2, 2023 compared to the corresponding period in fiscal year 2022. We believe that the distributor buyouts will help drive increased future profitability and allow us to better serve our customers. Rising labor and higher stock based compensation costs were partially offset by the reductions of selling costs related to the continued conversion out of Company owned RSP to IO routes.

(Loss) gain on sale of assets

(Loss) gain on sale of assets was \$(0.5) million and \$0.4 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. The Company has continued to convert company-owned routes to IO routes during the first fiscal quarter of 2022, offsetting the sales price by the respective route intangible asset. The loss during the thirteen weeks ended April 2, 2023 was primarily related to some small distributor buyouts where a buyout premium was allocated to an asset purchase and sold.

Other expense, net

Other expense, net was \$15.0 million and \$6.6 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively. The decrease in expense for the thirteen weeks ended April 2, 2023 was primarily due to a \$2.2 million loss from the remeasurement of warrant liability for the thirteen weeks ended April 2, 2023 versus a gain of \$1.9 million for the thirteen weeks ended April 3, 2022. Also significant was interest expense of \$14.4 million for the thirteen weeks ended April 2, 2023 compared to \$9.1 million for the thirteen weeks ended April 3, 2022. The additional increase in interest expense is primarily attributable to the additional equipment loan and the Real Estate Loan. Another significant driver increasing interest expense relates to an increase in interest rates, which impacted the portion of debt that the Company has not hedged.

Income taxes

Income tax (benefit) expense was \$(2.6) million and \$2.8 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively.

Non-GAAP Financial Measures

We use non-GAAP financial information and believe it is useful to investors as it provides additional information to facilitate comparisons of historical operating results, identifies trends in our underlying operating results and provides additional insight and transparency on how we evaluate the business. We use non-GAAP financial measures to budget, make operating and strategic decisions, and evaluate our performance. We have detailed the non-GAAP adjustments that we make in our non-GAAP definitions below. The adjustments generally fall within the categories of non-cash items, acquisition and integration costs, business transformation initiatives, and financing-related costs. We believe the non-GAAP measures should always be considered along with the related U.S. GAAP financial measures. We have provided the reconciliations between the U.S. GAAP and non-GAAP financial measures below, and we also discuss our underlying U.S. GAAP results throughout this MD&A section.

Our primary non-GAAP financial measures are listed below and reflect how we evaluate our current and prior-year operating results. As new events or circumstances arise, these definitions could change. When the definitions change, we will provide the updated definitions and present the related non-GAAP historical results on a comparable basis.

EBITDA and Adjusted EBITDA

We define EBITDA as Net Income before Interest, Income Taxes, and Depreciation and Amortization.

We define Adjusted EBITDA as EBITDA further adjusted to exclude certain non-cash items, such as accruals for long-term incentive programs, hedging and purchase commitments adjustments, remeasurement of warrant liabilities, and asset impairments; acquisition and integration costs; business transformation initiatives; and financing-related costs.

Adjusted EBITDA is one of the key performance indicators we use in evaluating our operating performance and in making financial, operating, and planning decisions. We believe EBITDA and Adjusted EBITDA are useful to investors in the evaluation of our operating performance compared to other companies in the salty snack industry, as similar measures are commonly used by companies in this industry, however, we caution that other companies may use different definitions from us and such figures may not be directly comparable to our figures. We have also historically reported an Adjusted EBITDA metric to investors and lenders for covenant compliance. We also report Adjusted EBITDA as a percentage of Net Sales as an additional measure for investors to evaluate our Adjusted EBITDA margins on Net Sales.

The following table provides a reconciliation from net (loss) to EBITDA and Adjusted EBITDA for the thirteen weeks ended April 2, 2023 and April 3, 2022:

(dollars in millions)	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Net loss	\$ (14.5)	\$ (31.9)
Plus non-GAAP adjustments:		
Income Tax (Benefit) Expense	(2.6)	2.8
Depreciation and Amortization	20.1	22.1
Interest Expense, Net	14.4	9.1
Interest Income (IO loans) ⁽¹⁾	(0.4)	(0.5)
EBITDA	17.0	1.6
Certain Non-Cash Adjustments ⁽²⁾	9.2	3.5
Acquisition and Integration ⁽³⁾	3.7	28.8
Business Transformation Initiatives ⁽⁴⁾	8.2	4.4
Financing-Related Costs ⁽⁵⁾	0.1	0.1
Loss (Gain) on Remeasurement of Warrant Liability ⁽⁶⁾	2.2	(1.9)
Adjusted EBITDA	\$ 40.4	\$ 36.5
Adjusted EBITDA as a % of Net Sales	11.5 %	10.7 %

(1) Interest Income from IO loans refers to Interest Income that we earn from IO notes receivable that have resulted from our initiatives to transition from RSP distribution to IO distribution ("Business Transformation Initiatives"). There is a notes payable recorded that mirrors most of the IO notes receivable, and the interest expense associated with the notes payable is part of the Interest Expense, Net adjustment.

(2) Certain Non-Cash Adjustments are comprised primarily of the following:

Incentive programs – The Company incurred \$4.6 million and \$1.4 million of share-based compensation expense, that was awarded to associates and directors, and compensation expense associated with the employee stock purchase plan for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively.

Asset Impairments and Write-Offs — For the thirteen weeks ended April 2, 2023, the Company recorded an adjustment for an impairment of \$1.9 million related to fixed assets. During the thirteen weeks ended April 3, 2022, the Company recorded an impairment of \$2.0 million related to the termination of distribution agreements.

Purchase Commitments and Other Adjustments – We have purchase commitments for specific quantities at fixed prices for certain of our products' key ingredients. To facilitate comparisons of our underlying operating results, this adjustment was made to remove the volatility of purchase commitment related unrealized gains and losses. The adjustment related to Purchase Commitment and Other non-cash adjustments were \$2.7 million and \$0.1 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively.

(3) Adjustment for Acquisition and Integration Costs – This is comprised of consulting, transaction services, and legal fees incurred for acquisitions and certain potential acquisitions, in addition to expenses associated with integrating recent acquisitions. Such expenses were \$4.9 million for the thirteen weeks ended April 2, 2023, as well as \$1.2 million of income for the reduction of the Tax Receivable Agreement Liability associated with the Business Combination. Charges related to the buyout of multiple distributors, which was accounted for as a contract termination resulting in expense of \$23.0 million for the thirteen weeks ended April 3, 2022, along with other acquisitions an integration cost of \$5.8 million.

(4) Business Transformation Initiatives Adjustment – This adjustment is related to consultancy, professional, and legal fees incurred for specific initiatives and structural changes to the business that do not reflect the cost of normal business operations. In addition, gains and losses realized from the sale of distribution rights to IOs and the subsequent disposal of trucks, severance costs associated with the elimination of RSP positions, and ERP transition costs, fall into this category. The Company incurred such costs of \$8.2 million and \$4.4 million for the thirteen weeks ended April 2, 2023 and April 3, 2022, respectively.

(5) Financing-Related Costs – These costs include adjustments for various items related to raising debt and equity capital or debt extinguishment costs.

(6) Gains and losses related to the changes in the remeasurement of warrant liabilities are not expected to be settled in cash, and when exercised would result in a cash inflow to the Company with the Warrants converting to Class A Common Stock with the liability being extinguished and the fair value of the Warrants at the time of exercise being recorded as an increase to equity.

Liquidity and Capital Resources

The following table presents net cash provided by operating activities, investing activities and financing activities for the thirteen weeks ended April 2, 2023 and April 3, 2022.

(in thousands)	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Net cash used in operating activities	\$ (8,443)	\$ (36,004)
Net cash used in investing activities	\$ (14,018)	\$ (5,103)
Net cash provided by financing activities	\$ 7,452	\$ 14,108

For the thirteen weeks ended April 2, 2023, our consolidated cash balance, including cash equivalents, was \$57.9 million or \$15.0 million lower than at January 1, 2023. Net cash used in operating activities for the thirteen weeks ended April 2, 2023 was \$8.4 million compared to \$36.0 million thirteen weeks ended April 3, 2022, with the difference largely driven by the payment of \$20.2 million in the first quarter of 2022 related to the buyout of multiple distributors, which were accounted for as contract terminations. The thirteen weeks ended April 2, 2023 also included a larger cash outflow related to the building of inventory compared to the prior year comparable period. Cash used in investing activities for the thirteen weeks ended April 2, 2023 was \$14.0 million driven by purchases of property and equipment, versus cash used in investing activity of \$5.1 million for the thirteen weeks ended April 3, 2022. Net cash provided by financing activities was \$7.5 million for the thirteen weeks ended April 2, 2023, driven by a draw on the line of credit of \$20.0 million, offset by the payment of dividends and distribution, and repayments on term debt and notes payable, versus net cash used in financing activities of \$14.1 million for the thirteen weeks ended April 3, 2022, which was primarily a result of a draw on the line of credit of \$20.0 million and other borrowings offset by payments of dividends and distributions.

Financing Arrangements

The primary objective of our financing strategy is to maintain a prudent capital structure that provides us flexibility to pursue our growth objectives. We use short-term debt as management determines is reasonable, principally to finance ongoing operations, including our seasonal requirements for working capital (generally accounts receivable, inventory, and prepaid expenses and other current assets, less accounts payable, accrued payroll, and other accrued liabilities), and a combination of equity and long-term debt to finance both our base working capital needs and our non-current assets.

Revolving Credit Facility

On November 21, 2017, UBH entered into an asset based revolving credit facility (as amended, the "ABL facility"), pursuant to the terms of that certain First Lien Term Loan Credit Agreement, dated November 21, 2017 (the "Credit Agreement"). On September 22, 2022, the ABL facility was amended to further increase the credit limit up to \$175.0 million and replaced the interest rate benchmark from LIBOR to SOFR. As of April 2, 2023 and January 1, 2023, \$20.0 million and \$0.0 million, respectively, were outstanding under this facility. Availability under the ABL facility is based on a monthly accounts receivable and inventory borrowing base certification, which is net of outstanding letters of credit. As of April 2, 2023 and January 1, 2023, \$140.8 million and \$163.0 million, respectively, was available for borrowing, net of letters of credit. The ABL facility is also subject to unused line fees (0.5% at April 2, 2023) and other fees and expenses.

Standby letters of credit in the amount of \$12.0 million have been issued as of April 2, 2023 and January 1, 2023. The standby letters of credit are primarily issued for insurance purposes.

Term Loans

On December 14, 2020, the Company entered into a Bridge Credit Agreement with a syndicate of banks, led by Bank of America, N.A. (the "Bridge Credit Agreement"). The proceeds of the Bridge Credit Agreement were used to fund the Company's acquisition of Truco and the IP Purchase (each as defined below) from OTB Acquisition, LLC, in which the Company withdrew \$490.0 million to finance the acquisition of Truco Holdco Inc. ("Truco" and such acquisition, the "Truco Acquisition") and certain intellectual property from OTB Acquisition, LLC (the "IP Purchase"). The Bridge Credit Agreement bears interest at an annual rate based on 4.25% plus 1 month LIBOR with scheduled incremental increases to the base rate, as defined in the Bridge Credit Agreement.

On January 20, 2021, the Company entered into Amendment No. 2 to the Bridge Credit Agreement ("Amendment No. 2") which provided additional operating flexibility and revisions to certain restrictive covenants. Pursuant to the terms of Amendment No. 2, the Company raised \$720 million in aggregate principal of Term Loan B ("Term Loan B") which bore interest at LIBOR plus 3.00%, and extended the maturity of the Bridge Credit Agreement to January 20, 2028. The proceeds were used, together with cash on hand and proceeds from our exercised warrants, to redeem the outstanding principal amount of Term Loan B and Bridge Credit Agreement of \$410 million and \$358 million, respectively. The refinancing was accounted for as an extinguishment. The Company incurred debt issuance costs and original issuance discounts of \$8.4 million.

On June 22, 2021, the Company entered into Amendment No. 3 to the Bridge Credit Agreement ("Amendment No. 3"). Pursuant to the terms of Amendment No. 3, the Company increased the principal balance of Term Loan B by \$75.0 million to bring the aggregated balance of Term Loan B proceeds to \$795.0 million. The Company incurred additional debt issuance costs and original issuance discounts of \$0.7 million related to the incremental funding.

On October 12, 2022, the Company, through its subsidiaries UQF, Kennedy and Condor Snack Foods, LLC (together with UQF and Kennedy, the "Real Estate Financing Borrowers"), entered into a loan agreement (the "Real Estate Term Loan") with City National Bank which was secured by a majority of the Real Estate Financing Borrowers' real estate assets. The Real Estate Term Loan holds a principal balance of \$88.1 million, with net proceeds of approximately \$85.0 million after transaction fees and expenses. The Real Estate Term Loan has a ten-year maturity and amortizes approximately \$3.5 million in principal annually, with a balloon payment due at maturity. The Company used a portion of the proceeds from the Real Estate Term Loan to pay off the ABL facility. The Real Estate Term Loan contains a single financial maintenance covenant consisting of a fixed charge coverage ratio that is tested quarterly only during a covenant trigger period consistent with the existing ABL facility. Concurrent with the closing of the Real Estate Term Loan, UQF entered into an interest rate swap transaction to fix the effective interest rate at approximately 5.93%, as discussed in further detail within "Note 8. Derivative Financial Instruments and Purchase Commitments".

The Term Loan B and the ABL facility are collateralized by substantially all of the assets and liabilities of UBH and its subsidiaries excluding the real estate assets secured by the Real Estate Term Loan, including equity interests in certain of UBH's subsidiaries. The credit agreements contain certain affirmative and negative covenants as to operations and the financial condition of UBH and its subsidiaries. UBH and its subsidiaries were in compliance with its financial covenants as of April 2, 2023.

Debt (in thousands)	Issue Date	Principal		January 1,	
		Balance	Maturity Date	April 2, 2023	2023
Term loan B ⁽¹⁾	June-21	\$ 795,000	January-28	\$ 777,298	\$ 779,286
Real Estate Loan	October-22	\$ 88,140	October-32	87,259	88,140
Equipment loans ⁽²⁾				54,400	54,053
ABL facility ⁽³⁾				20,000	—
Net impact of debt issuance costs and original issue discounts				(9,667)	(9,672)
Total long-term debt				929,290	911,807
Less: current portion				(19,207)	(18,472)
Long term portion of term debt and financing obligations				\$ 910,083	\$ 893,335

(1) On September 22, 2022, the Company entered into Amendment No. 4 to the Bridge Credit Agreement ("Amendment No. 4"), which replaced the interest rate benchmark from LIBOR to SOFR. The weighted average interest rate on the Term Loan B debt for the thirteen weeks ended April 2, 2023 was 7.61%.

(2) In July 2021, the Company entered into two separate finance lease obligations with Banc of America Leasing & Capital, LLC, which have been treated as secured borrowing. The Company made a series of draws upon these agreements throughout fiscal year 2021 totaling \$26.5 million and has drawn a total of \$32.4 million in fiscal year 2022 and \$2.3 million in fiscal year 2023. These draws bear interest ranging from 3.26% through 6.73% and have varying maturities up through 2028.

(3) The facility bore interest at an annual rate based on LIBOR, or SOFR plus a 0.10% credit spread adjustment after the amendment on September 22, 2022, plus an applicable margin of 1.50% (ranging from 1.50% to 2.00% based on availability) or the prime rate plus an applicable margin of 0.50% (ranging from 0.50% to 1.00%). The Company generally utilizes the prime rate for amounts that the Company expects to pay down within 30 days. The interest rate on the facility as of April 2, 2023 was 8.50%, under the prime rate. The Company elects to use the LIBOR, prior to the amendment on September 22, 2022 which changed the reference rate to SOFR as described above, for balances that are expected to be carried longer than 30 days. The interest rate on the ABL facility as of April 2, 2023 was 6.26%.

Other Notes Payable and Capital Leases

During the first fiscal quarter of 2022, the Company bought out and terminated the contracts of multiple distributors who had previously been providing services to the Company. These transactions were accounted for as contract terminations and resulted in expense of \$23.0 million for the thirteen weeks ended April 3, 2022. The outstanding balance of these transactions was \$0.5 million as of January 1, 2023, and was paid off during the thirteen weeks ended April 2, 2023.

During the first fiscal quarter of 2020, the Company purchased intellectual property that include a deferred purchase price of \$0.5 million, of which \$0.2 million and \$0.3 million was outstanding as of April 2, 2023 and January 1, 2023, respectively.

Amounts outstanding under notes payable consisted of the following:

(in thousands)	As of April 2, 2023	As of January 1, 2023
Note payable – IO notes	\$ 19,508	\$ 21,098
Finance lease obligations	10,547	10,995
Other	200	835
Total notes payable	30,255	32,928
Less: current portion	(11,893)	(12,589)
Long term portion of notes payable	\$ 18,362	\$ 20,339

From time to time, the Company sells notes receivable from IOs to a financial institution. During the thirteen weeks ended April 2, 2023, the Company sold an additional \$1.0 million of notes receivable from IOs on its books for \$0.9 million to a financial institution. Due to the structure of these transactions, they did not qualify for sale accounting treatment and the Company has recorded the notes payable obligation owed by the IOs to the financial institution on its books; the corresponding notes receivable also remained on the Company's books. The Company services the loans for the financial institution by collecting principal and interest from the IOs and passing it through to the institution. The underlying notes have various maturity dates through June 2032. The Company partially guarantees the outstanding loans, as discussed in further detail within Note 10. "Contingencies." These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon any event of default.

Interest Expense

Interest expense consisted of the following:

<i>(in thousands)</i>	Thirteen weeks ended April 2, 2023	Thirteen weeks ended April 3, 2022
Company's term loans, ABL facility, and other long-term debt	\$ 14,142	\$ 8,331
Amortization of deferred financing fees	5	341
IO loans	231	431
Total interest	<u>\$ 14,378</u>	<u>\$ 9,103</u>

Off-Balance Sheet Arrangements

Purchase Commitments

The Company has outstanding purchase commitments for specific quantities at fixed prices for certain key ingredients to economically hedge commodity input prices. These purchase commitments totaled \$73.1 million as of April 2, 2023. The Company accrues for losses on firm purchase commitments in a loss position at the end of each reporting period to the extent that there is an active observable market. The Company has recorded purchase commitment (losses) gains totaling \$(2.7) million for the thirteen weeks ended April 2, 2023 and \$0.0 million for the thirteen weeks ended April 3, 2022, respectively.

IO Guarantees-Off-Balance Sheet

The Company partially guarantees loans made to IOs by Cadence Bank for the purchase of routes. The outstanding balance of loans guaranteed was \$1.1 million and \$1.5 million at April 2, 2023 and January 1, 2023, respectively, all of which was recorded by the Company as off balance sheet arrangements. The maximum amount of future payments the Company could be required to make under the guarantees equates to 25% of the outstanding loan balance up to \$2.0 million. These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon default.

The Company partially guarantees loans made to IOs by Bank of America for the purchase of routes. The outstanding balance of loans guaranteed that were issued by Bank of America was \$40.2 million and \$36.0 million at April 2, 2023 and January 1, 2023, respectively, which are off balance sheet arrangements. As discussed in Note 7. "Long-Term Debt", the Company also sold notes receivable on its books to Bank of America during fiscal years 2019, 2021, and 2022, which the Company partially guarantees. The outstanding balance of notes purchased by Bank of America at April 2, 2023 and January 1, 2023 was \$16.8 million and \$17.9 million, respectively. Due to the structure of the transactions, the sale did not qualify for sale accounting treatment, and as such the Company records the notes payable obligation owed by the IOs to the financial institution on its Consolidated Balance Sheets; the corresponding note receivable also remained on the Company's Consolidated Balance Sheets. The maximum amount of future payments the Company could be required to make under these guarantees equates to 25% of the outstanding loan balance on the first day of each calendar year plus 25% of the amount of any new loans issued during such calendar year. These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon default.

The Company guarantees loans made to IOs by M&T Bank for the purchase of routes. The agreement with M&T Bank was amended in January 2020 so that the Company guaranteed up to 25% of the greater of the aggregate principal amount of loans outstanding on the payment date or January 1st of the subject year. The outstanding balance of loans guaranteed was \$3.1 million and \$3.4 million at April 2, 2023 and January 1, 2023, respectively, all of which were included in the Company's Consolidated Balance Sheets. These loans are collateralized by the routes for which the loans are made. Accordingly, the Company has the ability to recover substantially all of the outstanding loan value upon default.

New Accounting Pronouncements

See Note 1. "Operations and Summary of Significant Accounting Policies," to the unaudited condensed consolidated financial statements contained in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Application of Critical Accounting Policies and Estimates

General

Our consolidated financial statements have been prepared in accordance with U.S. GAAP. While the majority of our revenue, expenses, assets and liabilities are not based on estimates, there are certain accounting principles that require management to make estimates regarding matters that are uncertain and susceptible to change. Critical accounting policies are defined as those policies that are reflective of significant judgments, estimates and uncertainties, which could potentially result in materially different results under different assumptions and conditions. Management regularly reviews the estimates and assumptions used in the preparation of our financial statements for reasonableness and adequacy. Our significant accounting policies are discussed in Note 1. "Operations and Summary of Significant Accounting Policies", of the unaudited Consolidated Financial Statements contained in Part I, Item 1 of this Quarterly Report on Form 10-Q; however, the following discussion pertains to accounting policies we believe are most critical to the portrayal of our financial condition and results of operations and that require significant, difficult, subjective or complex judgments. Other companies in similar businesses may use different estimation policies and methodologies, which may affect the comparability of our financial condition, results of operations and cash flows to those of other companies.

Revenue Recognition

Our revenues primarily consist of the sale of salty snack items that are sold through DSD and direct-to-warehouse distribution methods, either directly to retailers or via distributors. We sell to supermarkets, mass merchandisers, club warehouses, convenience stores and other large-scale retailers, merchants, distributors, brokers, wholesalers, and IOs (which are third party businesses). These revenue contracts generally have a single performance obligation. Revenue, which includes shipping and handling charges billed to the customer, is reported net of variable consideration and consideration payable to customers, including applicable discounts, returns, allowances, trade promotion, consumer coupon redemption, unsaleable product, and other costs. Amounts billed and due from customers are classified as receivables and require payment on a short-term basis and, therefore, we do not have any significant financing components.

We recognize revenue when (or as) performance obligations are satisfied by transferring control of the goods to customers. Control is transferred upon delivery of the goods to the customer. Shipping and/or handling costs that occur before the customer obtains control of the goods are deemed to be fulfillment activities and are accounted for as fulfillment costs. Applicable shipping and handling are included in customer billing and are recorded as revenue as products' control is transferred to customers. We assess the goods promised in customers' purchase orders and identify a performance obligation for each promise to transfer a good that is distinct.

We offer various forms of trade promotions and the methodologies for determining these provisions are dependent on local customer pricing and promotional practices, which range from contractually fixed percentage price reductions to provisions based on actual occurrence or performance. Our promotional activities are conducted either through the retail trade or directly with consumers and include activities such as in store displays and events, feature price discounts, consumer coupons, and loyalty programs. The costs of these activities are recognized at the time the related revenue is recorded, which normally precedes the actual cash expenditure. The recognition of these costs therefore requires management judgment regarding the volume of promotional offers that will be redeemed by either the retail trade or consumer. These estimates are made using various techniques including historical data on performance of similar promotional programs. In 2019, we implemented a system that improves our ability to analyze and estimate the reserve for unpaid costs relating to our promotional activities. Differences between estimated expense and actual redemptions are recognized as a change in management estimate as the actual redemption incurred.

Distribution Route Purchase and Sale Transactions

We purchase and sell distribution routes as a part of our maintenance of our DSD network. As new IOs are identified, we either sell our existing routes to the IOs or sell routes that were previously purchased by us to the IOs. Gain/loss from the sale of a distribution route is recorded upon the completion of the sale transaction and signing of the relevant documents and is calculated based on the difference between the sale price of the distribution route and the asset carrying value of the distribution route as of the date of sale. We record intangible assets for distribution routes that we purchase based on the payment that we make to acquire the route and record the purchased distribution routes as indefinite-lived intangible assets under Financial Accounting Standards Board ASC 350, Intangibles – Goodwill and Other. The indefinite lived intangible assets are subject to annual impairment testing.

Goodwill and Indefinite-Lived Intangibles

We allocate the cost of acquired companies to the identifiable tangible and intangible assets acquired and liabilities assumed, with the remaining amount classified as goodwill. The identification and valuation of these intangible assets and the determination of the estimated useful lives at the time of acquisition, as well as the completion of impairment tests, require significant management judgments and estimates. These estimates are made based on, among other factors, review of projected future operating results and business plans, economic projections, anticipated highest and best use of future cash flows and the cost of capital. The use of alternative estimates and assumptions could increase or decrease the estimated fair value of goodwill and other intangible assets, and potentially result in a different impact to our results of operations. Further, changes in business strategy and/or market conditions may significantly impact these judgments and thereby impact the fair value of these assets, which could result in an impairment of the goodwill or intangible assets.

Finite-lived intangible assets consist of distribution/customer relationships, technology, trademarks and non-compete agreements. These assets are being amortized over their estimated useful lives. Finite-lived intangible assets are tested for impairment only when management has determined that potential impairment indicators are present.

Goodwill and other indefinite-lived intangible assets (including trade names, master distribution rights and Company-owned routes) are not amortized but are tested for impairment at least annually and whenever events or circumstances change that indicate impairment may have occurred. We test goodwill for impairment at the reporting unit level.

As we have early adopted Accounting Standards Update 2017-04, Simplifying the Test for Goodwill Impairment, we will record an impairment charge based on the excess of a reporting unit's carrying amount over our fair value.

ASC 350, *Goodwill and Other Intangible Assets* also permits an entity to first assess qualitative factors to determine whether it is necessary to perform quantitative impairment tests for goodwill and indefinite-lived intangibles. If an entity believes, as a result of each qualitative assessment, it is more likely than not that goodwill or an indefinite-lived intangible asset is not impaired, a quantitative impairment test is not required.

We have identified the existing snack food operations as our sole reporting unit. For the qualitative analysis performed, which took place on the first day of the fourth quarter of 2022, we have taken into consideration all the events and circumstances listed in FASB ASC 350, Intangibles—Goodwill and Other, in addition to other entity-specific factors that have taken place. We have determined that there was no significant impact that affected the fair value of the reporting unit through April 2, 2023. Therefore, we have determined that it was not necessary to perform a quantitative goodwill impairment test for the reporting unit.

Income Taxes

We account for income taxes pursuant to the asset and liability method of ASC 740, Income Taxes, which require us to recognize current tax liabilities or receivables for the amount of taxes we estimate are payable or refundable for the current year, and deferred tax assets and liabilities for the expected future tax consequences attributable to temporary differences between the financial statement carrying amounts and their respective tax bases of assets and liabilities and the expected benefits of net operating loss and credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period enacted. A valuation allowance is provided when it is more likely than not that a portion or all of a deferred tax asset will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income and the reversal of deferred tax liabilities during the period in which related temporary differences become deductible.

We follow the provisions of ASC 740-10 related to the accounting for uncertainty in income taxes recognized in an enterprise's financial statements. ASC 740-10 prescribes a comprehensive model for the financial statement recognition, measurement, presentation and disclosure of uncertain tax positions taken or expected to be taken in income tax returns.

The benefit of tax positions taken or expected to be taken in our income tax returns is recognized in the financial statements if such positions are more likely than not of being sustained upon examination by taxing authorities. Differences between tax positions taken or expected to be taken in a tax return and the benefit recognized and measured pursuant to the interpretation are referred to as "unrecognized benefits." A liability is recognized (or amount of net operating loss carryover or amount of tax refundable is reduced) for an unrecognized tax benefit because it represents an enterprise's potential future obligation to the taxing authority for a tax position that was not recognized as a result of applying the provisions of ASC 740-10. Interest costs and related penalties related to unrecognized tax benefits are required to be calculated, if applicable. Our policy is to classify assessments, if any, for tax related interest as interest expense and penalties as selling and administrative expenses. As of April 2, 2023 and January 1, 2023, no liability for unrecognized tax benefits was required to be reported. We do not expect any significant changes in our unrecognized tax benefits in the next year.

Business Combinations

We evaluate acquisitions of assets and other similar transactions to assess whether or not the transaction should be accounted for as a business combination or asset acquisition by first applying a screen test to determine if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. If the screen is met, the transaction is accounted for as an asset acquisition. If the screen is not met, further determination is required as to whether or not we have acquired inputs and processes that have the ability to create outputs which would meet the definition of a business. Significant judgment is required in the application of the screen test to determine whether an acquisition is accounted for as a business combination or an acquisition of assets.

We use the acquisition method in accounting for acquired businesses. Under the acquisition method, our financial statements reflect the operations of an acquired business starting from the completion of the acquisition. The assets acquired and liabilities assumed are recorded at their respective estimated fair values at the date of the acquisition. Any excess of the purchase price over the estimated fair values of the identifiable net assets acquired is recorded as goodwill.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

For quantitative and qualitative disclosures about market risk, see Item 7A. "Quantitative and Qualitative Disclosures About Market Risk" of our Annual Report on Form 10-K for the year ended January 1, 2023. Our exposures to market risk have not changed materially since January 1, 2023.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We have established disclosure controls and procedures (as defined in Rules 13a-15e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to provide reasonable assurance that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and that information relating to the Company is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that our current disclosure controls and procedures are effective at a level of reasonable assurance.

Changes in Internal Control over Financial Reporting

There was no other change in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, its internal control over financial reporting.

PART II – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time we are named as a defendant in legal actions arising from our normal business activities. Although we cannot predict with certainty the ultimate resolution of lawsuits, investigations and claims asserted against us, we do not believe any currently pending legal proceeding to which we are a party will have a material adverse effect on our business, prospects, financial condition, cash flows or results of operations.

Item 1A. Risk Factors

Our risk factors are set forth under the "Risk Factors" section of our Annual Report on Form 10-K filed on March 2, 2023. There have been no material changes to our risk factors since the filing of the Annual Report on Form 10-K.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

The exhibits listed in the following exhibit index are furnished as part of this report.

EXHIBIT INDEX

Exhibit Number	Exhibit Description
<u>3.1</u>	<u>Certificate of Domestication of the Company (incorporated by reference to Exhibit 3.1 of Utz Brands, Inc.'s Current Report on Form 8-K (File No. 001-38686) filed with the Commission on September 3, 2020).</u>
<u>3.2</u>	<u>Certificate of Incorporation of the Company (incorporate by reference to Exhibit 3.2 of Utz Brands, Inc.'s Current Report on Form 8-K (File No. 001-38686) filed with the Commission on September 3, 2020).</u>
<u>3.3*</u>	<u>Bylaws of the Company, as Amended and Restated.</u>
<u>31.1*</u>	<u>Certification of Chief Executive Officer pursuant to Rule 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.</u>
<u>31.2*</u>	<u>Certification of Chief Financial Officer pursuant to Rule 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934.</u>
<u>32.1**</u>	<u>Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted to Section 906 of Sarbanes-Oxley Act of 2002.</u>
<u>32.2**</u>	<u>Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted to Section 906 of Sarbanes-Oxley Act of 2002.</u>
101.INS*	Inline XBRL Instance Document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith

** Furnished herewith
+ Indicated a management or compensatory plan.

SIGNATURES

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

Date: May 11, 2023 UTZ BRANDS, INC.

By: /s/ Ajay Kataria
Name: Ajay Kataria
Title: Executive Vice President, Chief Financial Officer

AMENDED AND RESTATED BY-LAWS

OF

UTZ BRANDS, INC.

(EFFECTIVE AS OF MARCH 21, 2023)

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AMENDED AND RESTATED BY-LAWS

OF

UTZ BRANDS, INC.

(EFFECTIVE AS OF MARCH 21, 2023)

ARTICLE I
STOCKHOLDERS

Section 1. Annual Meetings.

The annual meeting of the stockholders of Utz Brands, Inc. (the "Corporation") for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place, if any, within or without the State of Delaware, or by means of remote communications pursuant to paragraph (E)(2) of Section 12, as may be designated from time to time by the Board of Directors of the Corporation (the "Board"). The Corporation may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled.

Section 2. Special Meetings.

Except as otherwise required by the General Corporation Law of the State of Delaware (the "DGCL") or the certificate of incorporation of the Corporation (as amended or restated from time to time, the "Certificate of Incorporation"), and subject to the rights of the holders of any class or series of Preferred Stock (as defined in the Certificate of Incorporation), special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation. The Corporation may postpone, reschedule or cancel any special meeting of stockholders previously scheduled. Special meetings may be held either at a place, within or without the State of Delaware, or by means of remote communications pursuant to paragraph (E)(2) of Section 12 as the Board may determine.

Section 3. Notice of Meetings of Stockholders.

Except as otherwise provided by the DGCL, the Certificate of Incorporation or these By-Laws, notice of the date, time, place (if any), the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes of the meeting of stockholders shall be given not more than sixty (60), nor less than ten (10), days previous thereto (unless a different time is specified by law), to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 4. Quorum; Adjournment and Recess of Meetings.

(a) Quorum. The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided herein, by applicable law or by the Certificate of Incorporation; but if at any meeting of stockholders there shall be less than a quorum present, the chairman of the meeting or, by a majority in voting power thereof, the stockholders present (either in person or by proxy) may, to the extent permitted by law, adjourn the meeting from time to time without further notice other than announcement at the meeting of the date, time

and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting, until a quorum shall be present or represented. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

(b) Adjournment and Recess of Meetings. At any adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the original meeting. Notice need not be given of any adjourned meeting if the time, date and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided, however,* that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

Section 5. Conduct of Meetings.

The Chairman of the Board, or in the absence of the Chairman of the Board or at the Chairman of the Board's direction, the Chief Executive Officer, or in the Chief Executive Officer's absence or at the Chief Executive Officer's direction, any officer of the Corporation shall call all meetings of the stockholders to order and shall act as chairman of any such meetings. The Secretary of the Corporation or, in such officer's absence, an Assistant Secretary, shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint a secretary of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Unless otherwise determined by the Board prior to the meeting, the chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, convening the meeting and (for any or no reason) recessing or adjourning the meeting (whether or not a quorum is present), announcing the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote, imposing restrictions on the persons (other than stockholders of record of the Corporation or their duly appointed proxies) who may attend any such meeting, establishing procedures for the transaction of business at the meeting (including the dismissal of business not properly presented), maintaining order at the meeting and safety of those present, restricting entry to the meeting after the time fixed for commencement thereof and limiting the circumstances in which any person may make a statement or ask questions at any meeting of stockholders. Unless and to the extent determined by the Board or the chairman over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. Proxies.

(a) At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, subject to applicable law. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to the DGCL, the following shall constitute a valid means by which a stockholder may grant such authority: (1) a stockholder or the stockholder's authorized officer, director, employee or agent may execute a document authorizing another person or persons to act for the stockholder as proxy; or (2) a stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing by means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such means of electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. If it is determined that such electronic transmissions are valid, the inspector or inspectors of stockholder votes or, if there are no such inspectors, such other persons making that determination shall specify the information upon which they relied.

(b) A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the document created pursuant to the preceding paragraphs of this Section 6 (including any electronic transmission) may be substituted or used in lieu of the document for any and all purposes for which the original document could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original document.

(d) Proxies shall be filed with the secretary of the meeting prior to or at the commencement of the meeting to which they relate.

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

Section 7. Voting.

When a quorum is present at any meeting, the vote of the holders of a majority of the votes cast shall decide any question brought before such meeting, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws or the DGCL a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required and a quorum is present, the affirmative vote of a majority of the votes cast by shares of such class or series or classes or series shall be the act of such class or series or classes or series, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws or the DGCL a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing, the vote required for the election of directors shall be as provided in Section 1 of Article II of these By-Laws.

Section 8. Record Date.

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

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

Section 9. Action Without a Meeting.

At any time when action by one or more classes or series of stockholders of the Corporation is permitted to be taken by written consent pursuant to the terms and limitations set forth in the Certificate of Incorporation, the provisions of this section shall apply. All consents properly delivered in accordance with the Certificate of Incorporation and the DGCL shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation as required by the DGCL, written consents signed by the holders of a sufficient number of shares to take such corporate action are so delivered to the Corporation in accordance with the applicable provisions of the DGCL. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided in the applicable provisions of the DGCL. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof. In order that the Corporation may determine the stockholders entitled to consent to a corporate action without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to a corporate action without a meeting, when no prior action by the Board is required by the DGCL, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by the DGCL, the record date for determining stockholders entitled to consent to a corporate action without a meeting shall be at the Close of Business on the day on which the Board adopts the resolution taking such prior action.

Section 10. Stock List.

The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting, ending on the day before the meeting date: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 10 or to vote in person or by proxy at any meeting of the stockholders. Nothing contained in this Section 10 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list of stockholders.

Section 11. Inspectors of Election.

The Board, in advance of all meetings of the stockholders, shall appoint one or more inspectors of stockholder votes, who may be employees or agents of the Corporation or stockholders or their proxies, but who shall not be directors of the Corporation or candidates for election as directors. In the event that the Board fails to so appoint one or more inspectors of stockholder votes or, in the event that one or more inspectors of stockholder votes previously designated by the Board fails to appear or act at the meeting of

stockholders, the chairman of the meeting may appoint one or more inspectors of stockholder votes to fill such vacancy or vacancies. Inspectors of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall take and sign an oath to faithfully execute the duties of inspector of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law.

Section 12. Business at Annual and Special Meetings.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) as provided in the Investor Rights Agreement (as defined in the Certificate of Incorporation), (b) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Article I, Section 3 of these By-Laws, (c) by or at the direction of the Board or any authorized committee thereof or (d) by any stockholder of the Corporation who is entitled to vote on such election or such other business at the meeting, who has complied with the notice procedures set forth in subparagraphs (2) and (3) of this paragraph (A) of this Section 12 and who was a stockholder of record at the time such notice was delivered to the Secretary of the Corporation.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Article I, Section 12(A)(1)(d) of these By-laws, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation (even if such matter is already the subject of any notice to the stockholders or a public announcement from the Board), and, in the case of business other than nominations of persons for election to the Board, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to (and received by) the Secretary at the principal executive offices of the Corporation not later than the Close of Business on the ninetieth (90th) day nor earlier than the Close of Business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is scheduled for more than thirty (30) days before, or more than seventy (70) days following, such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered (and received) not later than the Close of Business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of one or more stockholders giving the notice on behalf of a beneficial owner, the number of nominees such stockholder may collectively nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. For purposes of the application of Rule 14a-4(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision), the date for notice specified in this paragraph (A) (2) shall be the earlier of the date calculated as hereinbefore provided or the date specified in paragraph (c)(1) of Rule 14a-4.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board is increased, effective after the time period for which nominations would otherwise be due under paragraph (A)(2) of this Section 12, and there is no public announcement naming all of the

nominees for director or specifying the size of the increased Board made by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 12 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the Close of Business on the tenth day following the day on which a public announcement of such increase is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Article I, Section 3 of these By-Laws. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board or a committee thereof or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is entitled to vote on such election at the meeting, who has complied with the notice procedures set forth in this Section 12 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required by paragraph (C) of this Section 12 is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the Close of Business on the 120th day prior to such special meeting and not later than the Close of Business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. The number of nominees a stockholder may nominate for election at the special meeting at which directors are to be elected (or in the case of one or more stockholders giving the notice on behalf of a beneficial owner, the number of nominees such stockholders may collectively nominate for election at the special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting.

(c) A stockholder's notice delivered pursuant to, and in accordance with the requirements of, paragraph (A)(2) and paragraph (B) of this Section 12 for an annual meeting or special meeting, respectively, shall set forth

(1) as to each person whom the stockholder proposes to nominate for election or re-election as a director: (1) the name, age, business address, and residence address of such person, (2) the principal occupation or employment of such person, (3) the class or series and number of shares of capital stock of the Corporation which are owned directly or indirectly, beneficially and of record by such person and any Disclosable Interest (as defined in paragraph (E)(3)(c) of this Section 12 below) of such person, (4) all other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, and (5) all written and signed representations and agreements and all completed and signed questionnaires required pursuant to Section 13 below;

(2) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the specific proposal to be made or business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), if any, on whose behalf the proposal is made;

(3) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books and records, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are owned directly or indirectly, beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder giving such notice is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting, will appear in person or through a qualified representative at the meeting to propose such business or nomination, and intends to remain a stockholder of the Corporation through the meeting, (iv) a representation whether the stockholder or the beneficial owner, if any, intends to be or is part of a group which intends to (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee, (B) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, and/or (C) otherwise solicit proxies in support of any proposed director nominees other than the Corporation's director nominees in accordance with Rule 14a-19 promulgated under the Exchange Act (v) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation and (vi) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder;

(4) a description in reasonably detail of any agreement, arrangement or understanding, written or oral and formal or informal, with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation (a) between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons") or (b) between or among any proponent persons and any other person or entity (naming each such person or entity) in connection with or related to the nomination or proposal, including without limitation (i) any understanding, formal or informal, written or oral, that any proponent persons may have reached with any stockholder of the Corporation (including their names) with respect to how such stockholder will vote its shares in the Corporation at any meeting of the Corporation's stockholder or take other action in support of or related to the nomination or any business proposed, or other action to be taken, by the proponent persons, and (ii) any agreements that would be required to be disclosed by any proponent persons or any other person or entity pursuant to Item 5 or Item 6 of Schedule 13D that would be filed pursuant to the Exchange Act (including the rules and regulations promulgated thereunder), regardless of whether the requirement to file a Schedule 13D is applicable to the proponent person or other person or entity; and

(5) a description of any agreement, arrangement or understanding (including without limitation any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) the intent or effect of which may be (i) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (ii) to increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (iii) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation.

The proponent person shall also promptly, but in any event within five (5) business days after such request (or by the day prior to the day of the meeting, if earlier) provide to the Corporation such additional information as the Corporation may reasonable request. A stockholder providing notice of a

proposed nomination for election to the Board or other business proposed to be brought before a meeting (whether given pursuant to paragraph (A)(2) or paragraph (B) of this Section 12) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, provided that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or any adjournment or postponement thereof) and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior the date of the meeting or any adjournment or postponement thereof). Notwithstanding any update or supplement so delivered, it is understood that providing any such update or supplement shall not be deemed to cure any defect or limit the Corporation's right to omit a director nominee or other proposal from its form of proxy as provided in this Section 12. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules. As a condition to serving on the Board, each director nominee shall submit to interviews with the Board or a committee thereof, if requested by the Board, and each director nominee shall make himself or herself available for any such interviews on or prior to the later of (i) ten (10) days following any reasonable request therefor from the Board (or any committee thereof) and (ii) the 30th day prior to such director nominee's election to the Board.

The foregoing notice requirements of this paragraph (C) of this Section 12 shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this paragraph (C) of this Section 12 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(d) Notwithstanding anything to the contrary in these By-laws, unless otherwise required by applicable law, if any stockholder or proponent person (i) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and (ii) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Exchange Act (or fails to timely provide documentation reasonably satisfactory to the Corporation that such stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence), then such nomination shall be disregarded and no vote on such nominee proposed by such stockholder or proposing person shall occur, notwithstanding that the nomination is set forth in the notice of meeting or any other proxy materials and notwithstanding that proxies or votes in respect of the election of such proposed nominee may have been received by the Corporation (which proxies and votes shall be disregarded). Upon request by the Corporation, any stockholder or any proponent person that has provided notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting, documentation reasonably satisfactory to the Corporation demonstrating that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(e) General.

(1) Only persons who are nominated in accordance with the procedures set forth in this Section 12 shall be eligible to be elected to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 12. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 12 and, if any proposed nomination or business is not in compliance with this Section 12, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted. If a matter of business or a nomination is not properly brought before the annual or special meeting in accordance with these By-laws or otherwise, the chairman of the meeting shall declare to the meeting and any such business or nomination not properly brought before the annual or special meeting shall not be transacted. For the avoidance of doubt, unless required by applicable law, a nomination for director by a stockholder giving notice under paragraph (C) of this Section 12 or any other business or nominations submitted by a stockholder giving notice under paragraph (A)(2) or paragraph (B) of this Section 12 is not properly brought before the annual or special meeting in accordance with these By-laws if the Board or the chairman of an annual or special meeting determines that (i) such stockholder or any such proponent person breaches any of its agreements, representations or warranties set forth in the notice given by such stockholder or otherwise submitted pursuant to Section 12, (ii) any of the information in such stockholder notice or otherwise submitted by such stockholder or proponent person was not, when provided, true, correct and complete, or (iii) any such stockholder or proponent person otherwise fails to comply with its obligations pursuant to these By-laws. Notwithstanding the foregoing provisions of this Section 12 and notwithstanding that the proposal or nominations is set forth in the notice of meeting or other proxy materials (unless required by law), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies or votes in respect of such nomination or proposed business may have been received by the Corporation. For purposes of this Section 12, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Corporation and proxyholders not physically present at a meeting of stockholders of the Corporation may, by means of remote communication participate in a meeting of stockholders of the Corporation and be deemed present in person and vote at a meeting of stockholders of the Corporation whether such meeting is to be held at a designated place or solely by means of remote communication; *provided, however,* that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Corporation or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders of the Corporation and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Corporation, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder of the Corporation or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(3) For purposes of this Section 12,

(i) “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service, in a document publicly filed or furnished by the

Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act or otherwise disseminated in a manner constituting "public disclosure" under Regulation FD promulgated by the Securities and Exchange Commission.

(ii) "Close of Business" means 5:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day.

(iii) "Disclosable Interest" means (i) any agreement, arrangement, or understanding (including any option, warrant, convertible security, stock appreciation right, derivative, swap, or other similar rights, conversion privileges or transaction or series of such transactions) engaged in, directly or indirectly, by such proponent person, the purpose or effect of which is to give such proponent person economic risk similar to ownership of shares of any class or series of capital stock of the Corporation, including due to the fact that the value of such option, warrant, convertible security, stock appreciation right, derivative, swap, or other similar rights, conversion privileges or transactions are determined by reference to the price, value, or volatility of any shares of any class or series of capital stock of the Corporation, (ii) any agreement, arrangement, or understanding (including any option, warrant, convertible security, stock appreciation right, derivative, swap, or other similar rights, conversion privileges or transactions or series of such transactions) that provides, directly or indirectly, the opportunity to profit from, or to mitigate loss, manage risk, or benefit from, any increase or decrease in the price or value of shares of any class or series of capital stock of the Corporation, or (iii) any agreement, arrangement, or understanding (including any option, warrant, convertible security, stock appreciation right, derivative, swap, or other similar rights, conversion privileges or transactions or series of such transactions) that has the effect or intent, directly or indirectly, of maintaining, increasing, or decreasing the voting power of such proponent person with respect to shares of any class or series of capital stock of the Corporation.

(iv) No adjournment or postponement or notice of adjournment or postponement of any meeting shall be deemed to constitute a new notice (or extend any notice time period) of such meeting for purposes of this Section 12, and in order for any notification required to be delivered by a stockholder pursuant to this Section 12 to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(v) Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 12; *provided, however, that, to the fullest extent permitted by law, any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 12 (including paragraphs (A)(1)(d) and (B) hereof), and compliance with paragraphs (A)(1)(d) and (B) of this Section 12 shall be the exclusive means for a stockholder to make nominations or submit other business. Nothing in this Section 12 shall apply to the right, if any, of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.*

(vi) Notwithstanding anything to the contrary contained herein, for as long as the Investor Rights Agreement (as defined in the Certificate of Incorporation) remains in effect with respect to the Stockholder Parties (as

defined in the Certificate of Incorporation), the Stockholder Parties (to the extent then subject to the Investor Rights Agreement) shall not be subject to the notice procedures set forth in paragraphs (A)(2), (A)(3) or (B) of this Section 12 with respect to any annual or special meeting of stockholders to the extent necessary to effect the transactions and rights set forth in the Investor Rights Agreement.

Section 13. Submission of Information by Director Nominees.

(a) To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver to the Secretary at the principal executive offices of the Corporation the following information: (i) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person: (A) consents to serving as a director if elected and to being named in the Corporation's form of proxy and proxy statement as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; (B) is not and shall not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, shall act or vote on any issue or question that has not been disclosed to the Corporation, or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) is not and shall not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the Corporation; and (D) if elected as a director, shall comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors (which shall be provided to such person promptly following a request therefor); and (ii) all completed and signed questionnaires required of the Corporation's nominees (which shall be provided to such person promptly following a request therefor).

(b) A nominee for election or re-election as a director of the Corporation shall also provide to the Corporation such additional information as the Corporation may reasonably request. The Corporation may request such additional information as necessary to permit the Board to determine the eligibility of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) All written and signed representations and agreements and all completed and signed questionnaires required pursuant to paragraph (A) of this Section 13, and the additional information described in paragraph (B) of this Section 13, shall be considered timely for a nominee for election or re-election as a director of the Corporation under paragraph (C) of Section 12 above if provided to the Corporation by the deadlines specified in paragraph (A)(2) and paragraph (B) of Section 12 above, as applicable. All information provided pursuant to this Section 13 by a nominee for election or re-election as a director of the Corporation under paragraph (C) of Section 12 above shall be deemed part of the stockholder's notice submitted pursuant to paragraph (C) of Section 12.

ARTICLE II
BOARD OF DIRECTORS

Section 1. Number, Election, Quorum and Vote at Meetings.

The Board shall consist, subject to the Certificate of Incorporation and the Investor Rights Agreement, of such number of directors as shall from time to time be fixed exclusively by resolution adopted by the Board. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships and except as otherwise expressly provided in the Certificate of Incorporation) be elected by the holders of a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of such directors in accordance with the terms of the Certificate of Incorporation and the Investor Rights Agreement, as applicable. A majority of the total number of directors then in office shall constitute a quorum for the transaction of business. Except as otherwise provided by law, these By-Laws, by the Certificate of

Incorporation or by the Investor Rights Agreement, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. Directors need not be stockholders.

Section 2. Vacancies and Newly Created Directorships.

Subject to the Certificate of Incorporation and the Investor Rights Agreement, unless otherwise required by the DGCL or Article II, Section 4 of these By-Laws, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, removal, retirement, disqualification or otherwise) shall be filled only by a majority of the directors then in office, although less than a quorum, by any authorized committee of the Board or by a sole remaining director. In the event that one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have resigned, shall have power to fill the vacancy or vacancies, the vote to take effect when such resignation or resignations become effective, and each director chosen shall hold office until the next election of directors, and until the director's successor is elected and qualified, or until the director's earlier death, resignation or removal. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

Section 3. Meetings and Notice of Meetings.

Meetings of the Board shall be held at such place, if any, within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings may be held at any time upon the call of the Chairman of the Board, the Chief Executive Officer, or by a majority of the total number of directors then in office, by written notice, including facsimile, e-mail or other means of electronic transmission, duly served on or sent and delivered to each director in accordance with Article X, Section 2. Notice of each special meeting of the Board shall be given, as provided in Article X, Section 2, to each director (i) at least twenty-four (24) hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two (2) days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five (5) days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place, if any, at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting (except when the director attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 4. Rights of Holders of Preferred Stock to Elect Directors.

Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, and other features of such directorships shall be governed by the terms of the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the total number of directors fixed by the Board pursuant to the Certificate of Incorporation and these By-Laws. Except as otherwise expressly provided in the terms of such series, the number of directors that may be so elected by the holders of any such series of stock shall be elected for terms expiring at the next annual meeting of stockholders, and vacancies among directors so elected by the separate vote of the holders of any such series of Preferred Stock shall be filled by the affirmative vote of a majority of the remaining directors elected by such series, or, if there are no such remaining directors, by the holders of such series in the same manner in which such series initially elected a director.

Section 5. Board Committees.

The Board may from time to time establish one or more committees of the Board to serve at the pleasure of the Board, which shall be comprised of such members of the Board, subject to the Investor Rights Agreement, and have such duties as the Board shall from time to time determine. Any director may belong to any number of committees of the Board. Subject to the Certificate of Incorporation and the Investor Rights Agreement, the Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member, subject to the Investor Rights Agreement. Subject to the Certificate of Incorporation and the Investor Rights Agreement, unless otherwise provided in the Certificate of Incorporation, these By-Laws or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to a subcommittee any or all of the powers and authority of the committee.

Section 6. Action Without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing (including by electronic transmission). After an action is taken, the consent or consents related thereto shall be filed with the minutes of proceedings of the Board.

Section 7. Participation in Meetings by Conference Telephone or Other Communications Equipment.

The members of the Board or any committee thereof may participate in a meeting of such Board or committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such a meeting.

Section 8. Compensation.

The Board may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the Corporation.

**ARTICLE III
OFFICERS**

Section 1. General.

The Board shall elect officers of the Corporation, including a Chief Executive Officer, a President and a Secretary. The Board may also from time to time elect such other officers as it may deem proper or may delegate to any elected officer of the Corporation the power to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive, Senior or Corporate, or may be given such other designation or combination of designations as the Board or the Chief Executive Officer may determine. Any two or more offices may be held by the same person. The Board may also elect or appoint a Chairman of the Board, who may or may not also be an officer of the Corporation. The Board may elect or appoint co-Chairmen of the Board, co-Presidents or co-Chief Executive Officers and, in such case, references in these By-Laws to the Chairman of the Board, the President or the Chief Executive Officer shall refer to either such co-Chairman of the Board, co-President or co-Chief Executive Officer, as the case may be.

Section 2. Term and Removal.

All officers of the Corporation elected by the Board shall hold office for such terms as may be determined by the Board or, except with respect to his or her own office, the Chief Executive Officer, or until their respective successors are chosen and qualified or until his or her earlier resignation or removal. Any officer may be removed from office at any time either with or without cause by the Board, or, in the case of appointed officers, by the Chief Executive Officer or any elected officer upon whom such power of removal shall have been conferred by the Board.

Section 3. Duties and Powers.

Each of the officers of the Corporation elected by the Board or appointed by an officer in accordance with these By-Laws shall have the powers and duties prescribed by law, by these By-Laws or by the Board and, in the case of appointed officers, the powers and duties prescribed by the appointing officer, and, unless otherwise prescribed by these By-Laws or by the Board or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office.

Section 4. Delegation of Authority.

Unless otherwise provided in these By-Laws, in the absence or disability of any officer of the Corporation, the Board or the Chief Executive Officer may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

ARTICLE IV **INDEMNIFICATION AND ADVANCEMENT OF EXPENSES**

Section 1. Indemnification.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative or any other type whatsoever (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; except as provided in Section 3 of this Article IV with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 2. Advancement of Expenses.

In addition to the right to indemnification conferred in Section 1 of this Article IV, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article IV (which shall be governed by Section 3 of this Article IV) (hereinafter an "advancement of expenses"); *provided, however, that, if (x) the DGCL requires or (y) in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement,*

an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made solely upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined after final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to indemnification under this Article IV or otherwise.

Section 3. Claims.

If a claim under Section 1 or 2 of this Article IV is not paid in full by the Corporation within (i) sixty (60) days after a written claim for indemnification has been received by the Corporation or (ii) twenty (20) days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if the indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense of the Corporation that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article IV or otherwise shall be on the Corporation.

Section 4. General.

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

(b) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation or as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article IV, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by the indemnitee-related entities and no right of advancement, indemnification or recovery the indemnitee may have from the indemnitee-related entities

shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation under this Article IV. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 4(B) of Article IV, entitled to enforce this Section 4(B) of Article IV.

For purposes of this Section 4(B) of Article IV, the following terms shall have the following meanings:

(1) The term "indemnitee-related entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(2) The term "jointly indemnifiable claims" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to applicable law, any agreement, certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

Section 5. Contract Rights.

The rights conferred upon indemnitees in this Article IV shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article IV that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 6. Insurance.

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

Section 7. Indemnification and Advancement of Expenses for Employees and Agents.

The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article IV with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE V CORPORATE BOOKS

The books of the Corporation may be kept inside or outside of the State of Delaware at such place or places as the Board may from time to time determine.

ARTICLE VI CHECKS, NOTES, PROXIES, ETC.

All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be authorized from time to time by the Board or such officer or officers who may be delegated such authority. Proxies to vote and consents with respect to securities of other corporations or other entities owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, or by such officers as the Chairman of the Board, Chief Executive Officer or the Board may from time to time determine.

ARTICLE VII SHARES AND OTHER SECURITIES OF THE CORPORATION

Section 1. Certificated and Uncertificated Shares.

The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 2. Signatures.

Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two authorized officers of the Corporation, which authorized officers shall include, without limitation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Secretary or any Assistant Secretary of the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 3. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall, to the fullest extent permitted by law, be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 4. Transfer of Stock.

(a) Transfers of record of shares of stock of the Corporation shall be made only upon the books administered by or on behalf of the Corporation and only upon proper transfer instructions, including by Electronic Transmission, pursuant to the direction of the registered holder thereof, such person's attorney lawfully constituted in writing, or from an individual presenting proper evidence of succession, assignment or authority to transfer the shares of stock; or, in the case of stock represented by certificate(s) upon delivery of a properly endorsed certificate(s) for a like number of shares or accompanied by a duly executed stock transfer power.

(b) The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 5. Registered Stockholders.

Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 6. Regulations.

The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

**ARTICLE VIII
FISCAL YEAR**

The fiscal year of the Corporation shall end on the Sunday that is closest to December 31, unless otherwise determined by resolution of the Board.

**ARTICLE IX
CORPORATE SEAL**

The corporate seal shall have inscribed thereon the name of the Corporation. In lieu of the corporate seal, when so authorized by the Board or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

**ARTICLE X
GENERAL PROVISIONS**

Section 1. Waiver of Notice.

Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting need not be given to any person who shall attend such meeting (except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or

convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 2. Means of Giving Notice.

Except as otherwise set forth in any applicable law or any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting shall be given by the following means:

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Electronic Transmission. "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(c) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(d) Exceptions to Notice Requirements.

(1) Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(2) Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (x) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (y) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities

during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230 (b) of the DGCL. The exception in subsection (x) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 3.

Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 4.

In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation or the DGCL, the provision of these By-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE XI
AMENDMENTS

These By-Laws may be made, amended, altered, changed, added to or repealed as set forth in the Certificate of Incorporation.

**CERTIFICATION PURSUANT TO RULES 13A-14 AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Howard Friedman, certify that:

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

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 11, 2023

By: /s/ Howard Friedman
Name: Howard Friedman
Title: Chief Executive Officer

**CERTIFICATION PURSUANT TO RULES 13A-14 AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ajay Kataria, certify that:

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

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 11, 2023

By: /s/ Ajay Kataria
Name: Ajay Kataria
Title: Chief Financial Officer

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

In connection with the Quarterly Report of Utz Brands, Inc. (the "Company") on Form 10-Q for the period ending April 2, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Howard Friedman, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

Dated: May 11, 2023

By: /s/ Howard Friedman
Name: Howard Friedman
Title: Chief Executive Officer

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

In connection with the Quarterly Report of Utz Brands, Inc. (the "Company") on Form 10-Q for the period ending April 2, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ajay Kataria, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

Dated: May 11, 2023

By: /s/ Ajay Kataria
Name: Ajay Kataria
Title: Chief Financial Officer