

TOWN SPORTS INTERNATIONAL HOLDINGS INC

Form DEF 14A

April 15, 2008

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**SCHEDULE 14A
(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for use of the Commission (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement only
- Definitive Additional Materials
- Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12

TOWN SPORTS INTERNATIONAL HOLDINGS, INC.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment, of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
 - (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- o Fee paid previously with preliminary materials.
- o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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April 15, 2008

Dear Stockholders:

On behalf of the Board of Directors of Town Sports International Holdings, Inc., I cordially invite you to attend our Annual Meeting of Stockholders, which will be held on Thursday, May 15, 2008 at 10:00 a.m. (local time) at New York Sports Club, 30 Wall Street 4th Floor, New York, NY 10005.

The formal Notice of Annual Meeting and the Proxy Statement follow. It is important that your shares be represented and voted at the meeting, regardless of the size of your holdings. Accordingly, please mark, sign and date the enclosed Proxy Card and return it promptly in the enclosed envelope to ensure that your shares will be represented.

If you plan to attend the Annual Meeting, please bring this letter and valid picture identification (such as a driver's license or passport) with you to the meeting, as this letter and your picture identification will serve as your admittance pass to the meeting. If you return the enclosed Proxy Card and later decide to attend the Annual Meeting and wish to change your proxy vote, you may do so automatically by voting in person at the Annual Meeting.

The Proxy Statement and the enclosed Proxy Card are first being mailed on or about April 15, 2008 to stockholders entitled to vote. Our 2007 Annual Report to Stockholders is being mailed with the Proxy Statement.

We look forward to seeing you at the Annual Meeting.

Sincerely,

/s/ ALEXANDER ALIMANESTIANU
Alexander Alimanestianu
Chief Executive Officer and President

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**TOWN SPORTS INTERNATIONAL HOLDINGS, INC.
5 Penn Plaza (4th Floor)
New York, New York 10001**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD AT 10:00 A.M. MAY 15, 2008**

TO THE STOCKHOLDERS OF TOWN SPORTS INTERNATIONAL HOLDINGS, INC.:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders (the Annual Meeting) of Town Sports International Holdings, Inc., a Delaware corporation (the Company), will be held at New York Sports Club, 30 Wall Street 4th Floor, New York, NY 10005 on Thursday, May 15, 2008 at 10:00 a.m. (local time) for the following purposes:

- (1) To elect nine members of the Company's Board of Directors;
- (2) To ratify the Audit Committee's appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2008;
- (3) To approve the amendment and restatement of, and performance goals under, the Company's 2006 Stock Incentive Plan; and
- (4) To transact such other business as may properly come before the Annual Meeting or any adjournments of such meeting that may take place.

Only stockholders of record at the close of business on April 1, 2008 will be entitled to notice of, and to vote at, the Annual Meeting. The stock transfer books of the Company will remain open between the record date and the date of the Annual Meeting. A list of stockholders entitled to vote at the Annual Meeting will be available for inspection at the Annual Meeting and for a period of 10 days prior to the meeting during regular business hours at the offices of the Company.

All stockholders are cordially invited to attend the Annual Meeting in person. Whether or not you plan to attend the Annual Meeting in person, your vote is important. To assure your representation at the Annual Meeting, please sign and date the enclosed Proxy Card and return it promptly in the enclosed envelope, which requires no additional postage if mailed in the United States or Canada. Should you receive more than one Proxy Card because your shares are registered in different names and addresses, each Proxy Card should be signed and returned to assure that all your shares will be voted. You may revoke your proxy in the manner described in the Proxy Statement at any time prior to it being voted at the Annual Meeting. If you attend the Annual Meeting and vote by ballot, your proxy will be revoked automatically and only your vote at the Annual Meeting will be counted.

By Order of the Board of Directors

/s/ ALEXANDER ALIMANESTIANU
Alexander Alimanestianu
Chief Executive Officer and President

New York, New York
April 15, 2008

YOUR VOTE IS VERY IMPORTANT

REGARDLESS OF THE NUMBER OF SHARES YOU OWN. PLEASE READ THE ATTACHED PROXY STATEMENT CAREFULLY, COMPLETE, SIGN AND DATE THE ENCLOSED PROXY CARD AS PROMPTLY AS POSSIBLE AND RETURN IT IN THE ENCLOSED ENVELOPE.

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**TOWN SPORTS INTERNATIONAL HOLDINGS, INC.
5 Penn Plaza (4th Floor)
New York, New York 10001**

PROXY STATEMENT

General

This Proxy Statement is furnished to the stockholders of record of Town Sports International Holdings, Inc., a Delaware corporation (Town Sports or the Company), as of April 1, 2008, in connection with the solicitation of proxies on behalf of the Board of Directors of the Company for use at the Annual Meeting of Stockholders to be held on Thursday, May 15, 2008, and at any adjournments of such meeting that may take place. The Annual Meeting will be held at 10:00 a.m. (local time) at New York Sports Club, 30 Wall Street 4th Floor, New York, NY 10005. This Proxy Statement and the accompanying Proxy Card and Notice of Annual Meeting of Stockholders are first being mailed on or about April 15, 2008 to all stockholders entitled to vote at the Annual Meeting.

Voting

The specific matters to be considered and acted upon at the Annual Meeting are:

- (i) the election of nine members of the Company's Board of Directors (the Board);
- (ii) the ratification of the Audit Committee's appointment of PricewaterhouseCoopers LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2008;
- (iii) the approval of an amendment to, and performance goals under, the Company's 2006 Stock Incentive Plan; and
- (iv) to act upon such other business as may properly come before the Annual Meeting.

These matters are described in more detail in this Proxy Statement.

On April 1, 2008, the record date for determination of stockholders entitled to notice of and to vote at the Annual Meeting, 26,385,853 shares of the Company's common stock were issued and outstanding. No shares of the Company's Preferred Stock were outstanding. Each stockholder is entitled to one vote for each share of common stock held by such stockholder on April 1, 2008. Stockholders may not aggregate their votes in the election of directors.

The stock transfer books of the Company will remain open between the record date and the date of the Annual Meeting. A list of stockholders entitled to vote at the Annual Meeting will be available for inspection at the Annual Meeting and for a period of ten days prior to the meeting during regular business hours at the offices of the Company.

The presence, in person or by proxy, of the holders of a majority of the issued and outstanding shares of common stock at the Annual Meeting is necessary to constitute a quorum in connection with the transaction of business at the Annual Meeting. Abstentions, broker non-votes and withheld votes are each counted as present for the purpose of determining the presence of a quorum.

Abstentions: Abstentions are counted as shares present and entitled to be voted with respect to the matter being voted on and will not affect the outcome of the vote with respect to the election of directors. Pursuant to applicable Delaware law, abstentions will have the effect of a vote against the other matters being voted on at the Annual Meeting.

Broker Non-Votes: Broker non-votes occur when shares held by a broker are not voted with respect to a proposal because (1) the broker has not received voting instructions from the stockholder and (2) the broker

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lacks the authority to vote the shares at his/her discretion. Broker non-votes are not counted as shares present and entitled to be voted with respect to the matter on which the broker has not voted expressly. Accordingly, broker non-votes will not affect the outcome of any of the matters being voted upon at the meeting.

Withheld Votes: With respect to the election of directors, votes may be cast in favor of or withheld from each nominee. Votes that are withheld will be excluded entirely from the vote with respect to the nominee from which they are withheld and will have no effect on the outcome of such vote.

All votes will be tabulated by the inspector of election appointed for the meeting.

With respect to the election of the members of the Board, if a quorum is present at the Annual Meeting, the nine nominees who receive the greatest number of votes properly cast (in person or by proxy) will be elected as directors. All other proposals must be approved by the affirmative vote of the holders of a majority of the shares of the common stock present at the Annual Meeting, in person or by proxy, and entitled to vote thereon.

Under the General Corporation Law of the State of Delaware, stockholders are not entitled to dissenter's rights with respect to any matter to be considered and voted on at the Annual Meeting, and the Company will not independently provide stockholders with any such right.

Proxies

If the enclosed Proxy Card is properly signed and returned, the shares represented thereby will be voted at the Annual Meeting in accordance with the instructions specified thereon. If a signed and returned Proxy Card does not specify how the shares represented thereby are to be voted, the proxy will be voted **FOR** the election of all the nominated directors, unless the authority to vote for the election of such directors is withheld. In addition, if no contrary instructions are given, the proxy will be voted **FOR** the approval of Proposal 2 and Proposal 3 described in this Proxy Statement and as the proxy holders deem advisable for all other matters as may properly come before the Annual Meeting. You may revoke or change your proxy at any time before the Annual Meeting by filing with the Secretary of the Company, at the Company's principal executive offices at 5 Penn Plaza (4th Floor), New York, New York 10001, a notice of revocation or another signed Proxy Card with a later date. You may also revoke your proxy by attending the Annual Meeting and voting in person.

Solicitation

We engaged BNY Mellon Shareowner Services to act as proxy solicitor in connection with the Annual Meeting, for a fee of approximately \$5,000, plus reasonable expenses. The Company will bear the entire cost of solicitation, including the preparation, assembly, printing and mailing of this Proxy Statement, the enclosed Proxy Card and any additional solicitation materials furnished to the stockholders. Copies of solicitation materials will be furnished to brokerage houses, fiduciaries and custodians holding shares in their names that are beneficially owned by others so that they may forward this solicitation material to such beneficial owners. In addition, the Company may reimburse such persons for their costs in forwarding the solicitation materials to such beneficial owners. The original solicitation of proxies by mail may be supplemented by a solicitation by telephone, telegram, facsimile, or other means (including by directors, officers or employees of the Company, to whom no additional compensation will be paid for any such services).

Deadline for Receipt of Stockholder Proposals

In order to be considered for inclusion in the Company's Proxy Statement and Proxy Card relating to the 2009 Annual Meeting of Stockholders, any proposal by a stockholder submitted pursuant to Rule 14a-8 of the Securities Exchange

Act of 1934, as amended, must be received by the Company at its principal executive offices in New York, New York, on or before December 17, 2008.

Under the Company's Amended and Restated By-Laws (the By-Laws), any proposal for consideration at the 2009 Annual Meeting of Stockholders submitted by a stockholder (other than for inclusion in the Company's Proxy Statement pursuant to Rule 14a-8) will be considered timely if it is delivered to or mailed

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and received at the principal executive offices of the Company not less than 60 days nor more than 90 days prior to the date of the 2009 Annual Meeting; *provided, however*, that in the event that less than 70 days notice or prior public disclosure of the date of the 2009 Annual Meeting is given or made to stockholders, notice by the stockholder will be considered timely if it is so received not later than the close of business on the 10th day following the day on which such notice of the date of the 2009 Annual Meeting was mailed or such public disclosure was made; and in any event such proposals will be considered timely only if it is otherwise in compliance with the requirements set forth in the By-Laws. The proxy solicited by the Board for the 2009 Annual Meeting of Stockholders will confer discretionary authority to vote as the proxy holders deem advisable on such stockholder proposals which are considered untimely.

MATTERS TO BE CONSIDERED AT ANNUAL MEETING**PROPOSAL ONE ELECTION OF DIRECTORS****General**

Upon the recommendation of the Nominating and Corporate Governance Committee of the Board (the Nominating and Corporate Governance Committee), the Board has proposed for election at the Annual Meeting the nine individuals listed below to serve, subject to the By-Laws, as directors of the Company. All directors are elected annually, and serve until the next Annual Meeting of the Stockholders and until the election and qualification of their successors. If any director is unwilling or unable to stand for re-election (which is not anticipated), the Board may reduce its size or designate a substitute. If a substitute is designated, proxy votes in favor of the original director candidate will be counted for the substituted candidate. All of the nominees for director currently serve as directors.

All of the nominees have consented to be named and, if elected, to serve, and management has no reason to believe that any of them will be unavailable to serve. If any of the nominees is unable or declines to serve as a director at the time of the Annual Meeting, the proxies may be voted in the discretion of the persons acting pursuant to the proxy for the election of other nominees. The enclosed proxy, if executed and returned, will be voted for the election of all such persons except to the extent the proxy is specifically marked to withhold such authority with respect to one or more of such persons. The proxies solicited by this Proxy Statement cannot be voted for a greater number of persons than the number of nominees named. Set forth below is certain information concerning the nominees, as of April 15, 2008.

YOUR BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR EACH OF THESE DIRECTORS.

Name	Age	Position
Alexander A. Alimanestianu	49	Chief Executive Officer, President and Director
Keith E. Alessi	53	Director
Paul N. Arnold	61	Chairman of the Board
Bruce C. Bruckmann	54	Director
J. Rice Edmonds	37	Director
Jason M. Fish	50	Director
Thomas J. Galligan III	63	Director
Robert J. Giardina	50	Director
Kevin McCall	54	Director

Alexander A. Alimanestianu joined us in 1990 as Vice President and General Counsel and was appointed Executive Vice President, Development in 1995 and Chief Development Officer in January 2002. He was named President and Chief Development Officer in March 2006 and President and Chief Executive Officer in November 2007, when he

also was elected as a director. Before joining the Company, Mr. Alimanestianu worked at a law firm that was our outside counsel. He has been involved in the development or acquisition of virtually all the Company's existing clubs.

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Keith E. Alessi has served as a director since April 1997. Since May 2007, Mr. Alessi has been the interim President and Chief Executive Officer of Westmoreland Coal Company. Mr. Alessi has been an adjunct lecturer at The Ross School of Business at the University of Michigan since 2001. From 2003 to 2006, Mr. Alessi was the Chairman of Lifestyles Improvement Centers LLC. From 1999 to 2007, Mr. Alessi was an adjunct professor at Washington and Lee University School of Law. Mr. Alessi served as Chairman and Chief Executive Officer of Telespectrum Worldwide, Inc. from April 1998 to February 2000, and as Chairman and Chief Executive Officer of Jackson Hewitt, Inc. from May 1996 to March 1998. Mr. Alessi currently serves as a director and chairman of the audit committee for H&E Equipment Services, Inc. and serves as a director of MWI Veterinary Supply, Inc.

Paul N. Arnold has served as a director since April 1997. Mr. Arnold was appointed Chairman of the Board in May 2006. Mr. Arnold has served as Chairman and Chief Executive Officer of Cort Business Services, Inc., a Berkshire Hathaway company, since 2000. From 1992 to 2000, Mr. Arnold served as President, Chief Executive Officer and Director of Cort Business Services. Prior to 1992, Mr. Arnold held various positions over a 24-year period within Cort Furniture Rental, a division of Mohasco Industries. Mr. Arnold is currently a director of H&E Equipment Services, Inc.

Bruce C. Bruckmann has served as a director since December 1996. Since 1994, Mr. Bruckmann has served as Managing Director of Bruckmann, Rosser, Sherrill & Co., LP, which we refer to in this Proxy Statement as BRS. From 1983 until 1994, Mr. Bruckmann served as an officer and subsequently a Managing Director of Citicorp Venture Capital, Ltd. Mr. Bruckmann is currently a director of Mohawk Industries, Inc., H&E Equipment Services, Inc. and MWI Veterinary Supply, Inc. and several private companies.

J. Rice Edmonds has served as a director since July 2002. Mr. Edmonds is a Managing Director of BRS. Prior to joining BRS in 1996, Mr. Edmonds worked in the high yield finance group of Bankers Trust. Mr. Edmonds is currently a director of McCormick & Schmick's Seafood Restaurants, Inc., The Sheridan Group, Inc. and several private companies.

Jason M. Fish has served as a director since December 1996. In March 2008, Mr. Fish joined Meritage Group LP. From September 2000 through December 2006, Mr. Fish was employed by CapitalSource Inc., of which he was a co-founder, as its President through 2005 and as its Chief Investment Officer and Vice Chairman in 2006. From January 2007 through February 2008, Mr. Fish acted a consultant to CapitalSource. He remains its Vice Chairman of the Board of Directors. Prior to founding CapitalSource, Mr. Fish was employed from 1990 to 2000 by Farallon Capital Management, L.L.C., serving as a managing member from 1992 to 2000. Before joining Farallon, Mr. Fish worked at Lehman Brothers Inc., where he was a Senior Vice President responsible for its financial institution investment banking coverage on the West Coast.

Thomas J. Galligan III has served as a director since March 2007. Mr. Galligan is Chairman, President, Chief Executive Officer and a member of the board of directors of Papa Gino's Holdings Corp. Prior to joining Papa Gino's, Mr. Galligan held executive positions at Morse Shoe, Inc. and PepsiCo, Inc. Mr. Galligan is currently a director of Bay State Milling Co., Dental Service of Massachusetts, Inc., the Greater Boston Chamber of Commerce and the Massachusetts Restaurant Association and a Board Advisor to the Boston College Carroll School of Management.

Robert J. Giardina joined us in 1981 and served as President and Chief Operating Officer from 1992 to 2001, and as Chief Executive Officer from January 2002 through October 2007. Starting on April 1, 2008, Mr. Giardina will provide consulting services to us. Mr. Giardina was elected as a director in March 2006.

Kevin McCall has served as a director since March 2007. Mr. McCall is President and Chief Executive Officer of Paradigm Properties, LLC and its investment management affiliate, Paradigm Capital Advisors, LLC. Prior to forming Paradigm in 1997, Mr. McCall held positions as a director of Aldrich, Eastman & Waltch, L.P. (now AEW Capital

Management, L.P.) and as a Partner and Senior Vice President of Spaulding & Slye Company. Mr. McCall serves as a director of the Boston Center for Community & Justice, the Boston Museum, MetroLacrosse, Hearth, Inc., Building Impact and the National Association of Industrial & Office Parks Massachusetts Chapter.

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Required Vote

Directors are elected by the affirmative vote of a plurality of the shares of the common stock present in person or represented by proxy and entitled to vote on the election of directors. Pursuant to applicable Delaware law, abstentions and broker non-votes will have no effect on the outcome of the vote with respect to the election of directors.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE ELECTION OF THE NOMINEES LISTED ABOVE.

PROPOSAL TWO RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

General

The Audit Committee of the Board (the Audit Committee) has appointed the firm of PricewaterhouseCoopers LLP to serve as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2008, including each quarterly interim period, and the Board is asking the stockholders to ratify this appointment.

Although stockholder ratification of the Audit Committee's appointment of PricewaterhouseCoopers LLP is not required, the Board considers it desirable for the stockholders to pass upon the selection of the independent registered public accounting firm. If the stockholders fail to ratify the appointment, the Audit Committee will reconsider its selection. Even if the selection is ratified, the Audit Committee in its discretion may direct the appointment of a different independent registered public accounting firm at any time during the year if the Audit Committee believes that such a change would be in the best interests of the Company and its stockholders.

A representative from PricewaterhouseCoopers LLP is expected to be present at the Annual Meeting, will have the opportunity to make a statement if he or she desires to do so and will be available to respond to appropriate questions.

Fees Billed to the Company by PricewaterhouseCoopers LLP

The aggregate fees billed by PricewaterhouseCoopers LLP for professional services rendered for the audit of the Company's annual financial statements for the fiscal years ended December 31, 2006 and 2007, for the reviews of the financial statements included in the Company's Quarterly Reports on Form 10-Q for those fiscal years and for other services rendered during those fiscal years on behalf of the Company were as follows:

Category	2006	2007
Audit Fees(1)	\$ 902,193	\$ 1,193,300
Audit-Related Fees(2)	\$ 58,060	\$ 177,000
Tax Fees(3)	\$ 95,000	\$ 131,000

(1) Audit fees are for fees and expenses associated with professional services rendered by PricewaterhouseCoopers in connection with (i) the audits of the Company's annual consolidated financial statements and internal control

over financial reporting, including services related to statutory audits of certain of our subsidiaries, (ii) reviews of unaudited interim financial statements included in the Company's quarterly reports on Form 10-Q and (iii) reviews of documents filed with the SEC. The audit fees increased in 2007 over 2006 primarily due to the Company's 2007 compliance with Section 404 of the Sarbanes-Oxley Act of 2002.

- (2) Audit-related fees are for the audits of our employee benefit plan and due diligence related to acquisitions and divestitures and assurance and related services that were reasonably related to the performance of the

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audits or reviews of the Company's financial statements and not reported under the heading "Audit Fees" above.

(3) Tax fees are for tax compliance, tax consulting and tax planning services.

The Audit Committee has determined that the provision of services discussed above is compatible with maintaining the independence of PricewaterhouseCoopers LLP from the Company.

Pre-Approval Policies and Procedures

The Audit Committee pre-approves all audit and permissible non-audit services. The Audit Committee has authorized each of its members to pre-approve audit, audit-related, tax and non-audit services, provided that such approved service is reviewed with the full Audit Committee at its next meeting.

As early as practicable in each fiscal year, the independent registered public accounting firm provides the Audit Committee with a schedule of the audit and other services that it expects to provide or may provide during the fiscal year. The schedule is specific as to the nature of the proposed services, the proposed fees and other details that the Audit Committee may request. The Audit Committee by resolution authorizes or declines the proposed services. Upon approval, the schedule serves as the budget for fees by specific activity or service for the fiscal year.

A schedule of additional services proposed to be provided by the independent registered public accounting firm or proposed revisions to services already approved, along with associated proposed fees, may be presented to the Audit Committee for its consideration and approval at any time. The schedule is required to be specific as to the nature of the proposed service, the proposed fee, and other details that the Audit Committee may request. The Audit Committee intends by resolution to authorize or decline authorization for each proposed new service.

The Audit Committee pre-approved 100% of the audit fees, audit-related fees, tax fees and all other fees for the fiscal years ended December 31, 2007 and 2006.

Required Vote

The affirmative vote of the holders of a majority of the shares of common stock present in person or represented by proxy and entitled to vote on the subject matter hereof is required to ratify the Audit Committee's selection of PricewaterhouseCoopers LLP. Pursuant to applicable Delaware law, abstentions will have the effect of a vote against this proposal, whereas broker non-votes will not be counted for purposes of determining whether this proposal has been approved.

Recommendation of the Board of Directors

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE RATIFICATION OF THE AUDIT COMMITTEE'S SELECTION OF PRICEWATERHOUSECOOPERS LLP TO SERVE AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2008.

**PROPOSAL THREE APPROVAL OF
THE AMENDED AND RESTATED TOWN SPORTS INTERNATIONAL HOLDINGS, INC.
2006 STOCK INCENTIVE PLAN AND SECTION 162(m) PERFORMANCE
GOALS THEREUNDER**

General

We maintain our 2006 Stock Incentive Plan for the benefit of eligible employees, consultants and non-employee directors of the Company. The proposed Amended and Restated 2006 Stock Incentive Plan, which was unanimously adopted by the Board, subject to stockholder approval at the Annual Meeting, would increase the aggregate number of shares of our common stock issuable under the 2006 Stock Incentive Plan by

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1,200,000 shares from 1,300,000 shares to a total of 2,500,000 shares. This increase of 1,200,000 shares represents approximately 5% of the outstanding shares of common stock of the Company as of April 1, 2008. The Board believes that it is desirable to increase the total number of shares available under the 2006 Stock Incentive Plan in order to attract, motivate and retain employees and non-employee directors of, and consultants to, the Company because the current share reserve under the 2006 Stock Incentive Plan is expected to be fully utilized in the near term.

In addition to the foregoing, the stockholders of the Company are being asked to approve the Section 162(m) performance goals under the 2006 Stock Incentive Plan (as described below) so that certain incentive awards granted under the 2006 Stock Incentive Plan to executive officers of the Company may qualify as exempt performance-based compensation under Section 162(m) of the Code, which otherwise generally disallows the corporate tax deduction for certain compensation paid in excess of \$1,000,000 annually to each of the chief executive officer and the four other most highly paid executive officers of publicly-held companies. Section 162(m) of the Code generally requires such performance goals to be approved by stockholders every five years. To date, the Company has relied on an exemption under Section 162(m) of the Code applicable to publicly-held companies during a transition period following their initial public offerings. During this transition period, the Company was exempt from the limitations of Section 162(m) of the Code. However, as a result of the material modification of the 2006 Stock Incentive Plan proposed in this Proxy Statement, the transition period under Section 162(m) of the Code will expire, and the Company is now required to have the performance goals under the 2006 Stock Incentive Plan approved by the Company's stockholders.

The Amended and Restated 2006 Stock Incentive Plan also reflects the following other modifications to the 2006 Stock Incentive Plan:

Deletion of the share recycling provision under the 2006 Stock Incentive Plan, which allowed shares of our common stock that were delivered or exchanged by a participant as full or partial payment to the Company for payment of the exercise price or for payment of withholding taxes to again be available for issuance pursuant to awards granted under the 2006 Stock Incentive Plan;

Deletion of the provisions in the 2006 Stock Incentive Plan that allowed the Company to offer to buy out an award previously granted based upon such terms as the Company established and communicated to the participant at the time such offer was made; and

Certain other minor clarifying amendments to the 2006 Stock Incentive Plan to reflect developments in applicable law and equity compensation practices.

If the requisite stockholder approval of the Amended and Restated 2006 Stock Incentive Plan and the Section 162(m) performance goals is not obtained, the Amended and Restated 2006 Stock Incentive Plan will not take effect. If such approval is not obtained, the Company may continue to grant awards under the 2006 Stock Incentive Plan in accordance with its terms and the current share reserve under the 2006 Stock Incentive Plan. However, awards under the 2006 Stock Incentive Plan (other than stock options and stock appreciation rights) will not constitute performance-based compensation under Section 162(m) of the Code after the expiration of the applicable transition period under Section 162(m) of the Code, and accordingly, may not be deductible by the Company depending on the facts and circumstances.

The following description of the Amended and Restated 2006 Stock Incentive Plan is a summary of its principal provisions and is qualified in its entirety by reference to the Amended and Restated 2006 Stock Incentive Plan attached hereto as Exhibit A.

Description of the Amended and Restated 2006 Stock Incentive Plan

Administration. The Amended and Restated 2006 Stock Incentive Plan is administered by a committee (the Committee), which is intended to consist of two or more non-employee directors, each of whom is, to the extent required, a non-employee director as defined in Rule 16b-3 of the Securities Exchange Act of 1934, as amended, an outside director as defined under Section 162(m) of the Code and an independent director as defined under NASD Rule 4200(a)(15); provided that with respect to the application of the Amended and Restated 2006 Stock

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Incentive Plan to non-employee directors, the Amended and Restated 2006 Stock Incentive Plan will be administered by the Board (and references to the Committee include the Board for this purpose). Currently, the compensation committee of the Board serves as the Committee under the 2006 Stock Incentive Plan.

The Committee has full authority to administer and interpret the Amended and Restated 2006 Stock Incentive Plan, to grant discretionary awards under the Amended and Restated 2006 Stock Incentive Plan, to determine the persons to whom awards will be granted, to determine the types of awards to be granted, to determine the terms and conditions of each award, to determine the number of shares of common stock to be covered by each award and to make all other determinations in connection with the Amended and Restated 2006 Stock Incentive Plan and the awards thereunder as the Committee, in its sole discretion, deems necessary or desirable. The terms and conditions of individual awards are set forth in written agreements that are consistent with the terms of the Amended and Restated 2006 Stock Incentive Plan. Awards under the Amended and Restated 2006 Stock Incentive Plan may not be made on or after May 30, 2016, except that awards (other than stock options or stock appreciation rights) that are intended to be performance-based under Section 162(m) of the Code will not be made after the fifth anniversary of the date of the last stockholder approval of the performance goals set forth in the Amended and Restated 2006 Stock Incentive Plan as described below (*i.e.*, May 15, 2013, assuming the Section 162(m) performance goals described below are approved by the Company's stockholders at the Annual Meeting).

Eligibility and Types of Awards. All the Company's employees, consultants and non-employee directors are eligible to be granted nonqualified stock options, stock appreciation rights, performance shares, restricted stock, and other stock-based awards. In addition, the Company's employees and employees of the Company's affiliates that qualify as subsidiaries or parent corporations (as defined under Section 424 of the Code) are eligible to be granted incentive stock options under the Amended and Restated 2006 Stock Incentive Plan.

Available Shares. The aggregate number of shares of common stock which may be issued or used for reference purposes under the Amended and Restated 2006 Stock Incentive Plan or with respect to which awards may be granted may not exceed 2,500,000 shares, which may be either authorized and unissued shares of our common stock or shares of common stock held in or acquired for the treasury of the Company. In general, if awards under the Amended and Restated 2006 Stock Incentive Plan are for any reason cancelled, or expire or terminate unexercised, the shares covered by such awards will again be available for the grant of awards under the Amended and Restated 2006 Stock Incentive Plan.

The maximum number of shares of our common stock with respect to which any stock option, stock appreciation right or shares of restricted stock that are subject to the attainment of specified performance goals and intended to satisfy Section 162(m) of the Code and may be granted under the Amended and Restated 2006 Stock Incentive Plan during any fiscal year to any eligible employee or consultant will be 250,000 shares (per type of award). The total number of shares of our common stock with respect to all awards that may be granted under the Amended and Restated 2006 Stock Incentive Plan during any fiscal year to any eligible employee or consultant will be 250,000 shares. There are no annual limits on the number of shares of our common stock with respect to an award of restricted stock that are not subject to the attainment of specified performance goals to eligible employees or consultants. The maximum value at grant of shares of our common stock with respect to any award of performance shares to an eligible employee or consultant during any fiscal year is \$1,000,000. The maximum number of shares of our common stock with respect to which any stock option (other than incentive stock options), stock appreciation right, or other stock-based award that may be granted under the Amended and Restated 2006 Stock Incentive Plan during any fiscal year to any non-employee director will be 250,000 shares (per type of award). The total number of shares of our common stock with respect to all awards that may be granted under the Amended and Restated 2006 Stock Incentive Plan during any fiscal year to any non-employee director will be 250,000 shares.

The Amended and Restated 2006 Stock Incentive Plan requires that the Committee appropriately adjust the individual maximum share limitations described in the immediately preceding paragraph, the aggregate number of shares of our common stock available for the grant of awards and the exercise price of an award to reflect any change in the Company's capital structure or business by reason of certain corporate transactions or events.

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Awards Under the Amended and Restated 2006 Stock Incentive Plan. The following types of awards are available under the 2006 Stock Incentive Plan:

Stock Options. The Committee may grant nonqualified stock options and incentive stock options (only to eligible employees) to purchase shares of our common stock. The Committee will determine the number of shares of our common stock subject to each option, the term of each option (which may not exceed ten years (or five years in the case of an incentive stock option granted to a 10% stockholder)), the exercise price, the vesting schedule (if any), and the other material terms of each option. No incentive stock option or nonqualified stock option may have an exercise price less than the fair market value of a share of our common stock at the time of grant (or, in the case of an incentive stock option granted to a 10% stockholder, 110% of such share's fair market value).

Options will be exercisable at such time or times and subject to such terms and conditions as determined by the Committee at grant and the exercisability of such options may be accelerated by the Committee in its sole discretion. Upon the exercise of an option, the participant must make payment of the full exercise price (i) in cash, check, bank draft or money order, (ii) solely to the extent permitted by law, through the delivery of irrevocable instructions to a broker reasonably acceptable to the Company to deliver promptly to the Company an amount equal to the purchase price, or (iii) on such other terms and conditions as may be acceptable to the Committee.

Stock Appreciation Rights. The Committee may grant stock appreciation rights (which are referred to herein as SARs) either with a stock option, which may be exercised only at such times and to the extent the related option is exercisable (which is referred to herein as a Tandem SAR), or independent of a stock option (which is referred to herein as a Non-Tandem SARs). An SAR is a right to receive a payment in shares of our common stock or cash (as determined by the Committee) equal in value to the excess of the fair market value of one share of our common stock on the date of exercise over the exercise price per share established in connection with the grant of the SAR. The term of each SAR may not exceed ten years. The exercise price per share covered by an SAR will be the exercise price per share of the related option in the case of a Tandem SAR and will be the fair market value of our common stock on the date of grant in the case of a Non-Tandem SAR. The Committee may also grant limited SARs, either as Tandem SARs or Non-Tandem SARs, which may become exercisable only upon the occurrence of a change in control (as defined in the Amended and Restated 2006 Stock Incentive Plan) or such other event as the Committee may, in its sole discretion, designate at the time of grant or thereafter.

Restricted Stock. The Committee may award shares of restricted stock. Except as otherwise provided by the Committee upon the award of restricted stock, the recipient generally has the rights of a stockholder with respect to such shares, including the right to receive dividends, the right to vote the shares of restricted stock and, conditioned upon full vesting of shares of restricted stock, the right to tender such shares, subject to the conditions and restrictions generally applicable to restricted stock or specifically set forth in the recipient's restricted stock agreement. The Committee may determine at the time of award that the payment of dividends, if any, will be deferred until the expiration of the applicable restriction period.

Recipients of restricted stock are required to enter into a restricted stock agreement with the Company that states the restrictions to which the shares are subject, which may include satisfaction of pre-established performance goals, and the criteria or date or dates on which such restrictions will lapse.

If the grant of restricted stock or the lapse of the relevant restrictions is based on the attainment of performance goals, the Committee will establish for each recipient the applicable performance goals, formulae or standards and the applicable vesting percentages with reference to the attainment of such goals or satisfaction of such formulae or standards while the outcome of the performance goals are substantially uncertain. Section 162(m) of the Code requires that performance awards be based upon objective performance measures. The performance goals for performance-based restricted stock will be based on one or more of the objective criteria set forth on Exhibit A to the

Amended and Restated 2006 Stock Incentive Plan and discussed in general below.

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Performance Shares. The Committee may award performance shares. A performance share is the equivalent of one share of our common stock. The performance goals for performance shares will be set by the Committee and will be based on one or more of the objective criteria set forth on Exhibit A to the Amended and Restated 2006 Stock Incentive Plan and discussed in general below. A minimum level of acceptable achievement will also be established by the Committee. If, by the end of the performance period, the recipient has achieved the specified performance goals, he or she will be deemed to have fully earned the performance shares. To the extent earned, the performance shares will be paid to the recipient at the time and in the manner determined by the Committee in cash, shares of our common stock or any combination thereof.

Other Stock-Based Awards. The Committee may, subject to limitations under applicable law, make a grant of such other stock-based awards (including, without limitation, performance units, dividend equivalent units, stock equivalent units, restricted stock units and deferred stock units) under the Amended and Restated 2006 Stock Incentive Plan that are payable in cash or denominated or payable in or valued by shares of our common stock or factors that influence the value of such shares. The Committee shall determine the terms and conditions of any such other awards, which may include the achievement of certain minimum performance goals for purposes of compliance with Section 162(m) of the Code and/or a minimum vesting period. The performance goals for such other stock-based awards will be based on one or more of the objective criteria set forth on Exhibit A to the Amended and Restated 2006 Stock Incentive Plan and discussed in general below.

Performance Goals. The Committee may grant awards of restricted stock, performance shares, and other stock-based awards that are intended to qualify as performance-based compensation for purposes of Section 162(m) of the Code. These awards may be granted, vest and be paid based on attainment of specified performance goals established by the Committee. These performance goals will be based on the attainment of a certain target level of, or a specified increase or decrease in, one or more of the following criteria selected by the Committee:

earnings per share;

operating income;

net income;

cash flow;

gross profit;

gross profit return on investment;

gross margin;

gross margin return on investment;

working capital;

earnings before interest and taxes;

earnings before interest, taxes, depreciation and amortization;

return on equity;

