

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended October 29, 2022

OR

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

For the transition period from _____ to _____.

Commission File Number 001-36107



BURLINGTON STORES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

2006 Route 130 North
Burlington, New Jersey
(Address of Principal Executive Offices)

Registrant's Telephone Number, Including Area Code: (609) 387-7800

80-0895227
(I.R.S. Employer
Identification No.)

08016
(Zip Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock	BURL	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 during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

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

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

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

The registrant had 65,191,267 shares of common stock outstanding as of October 29, 2022.

BURLINGTON STORES, INC.

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PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

BURLINGTON STORES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(All amounts in thousands, except per share data)

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 29,</u> <u>2022</u>	<u>October 30,</u> <u>2021</u>	<u>October 29,</u> <u>2022</u>	<u>October 30,</u> <u>2021</u>
REVENUES:				
Net sales	\$ 2,035,927	\$ 2,299,610	\$ 5,945,459	\$ 6,703,089
Other revenue	4,760	4,431	12,862	10,159
Total revenue	2,040,687	2,304,041	5,958,321	6,713,248
COSTS AND EXPENSES:				
Cost of sales	1,198,126	1,347,559	3,546,340	3,869,432
Selling, general and administrative expenses	726,926	759,785	2,092,756	2,126,904
Costs related to debt issuances and amendments	—	89	—	3,419
Depreciation and amortization	67,634	64,663	201,908	183,087
Impairment charges - long-lived assets	10,599	1,488	17,556	3,235
Other income - net	(2,828)	(3,055)	(18,833)	(10,267)
Loss on extinguishment of debt	—	86,362	14,657	117,756
Interest expense	17,412	15,609	47,454	52,710
Total costs and expenses	2,017,869	2,272,500	5,901,838	6,346,276
Income before income tax expense	22,818	31,541	56,483	366,972
Income tax expense	6,035	17,922	11,560	79,769
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Net income per common share:				
Common stock - basic	\$ 0.26	\$ 0.20	\$ 0.68	\$ 4.31
Common stock - diluted	\$ 0.26	\$ 0.20	\$ 0.68	\$ 4.21
Weighted average number of common shares:				
Common stock - basic	65,362	66,740	65,815	66,591
Common stock - diluted	65,504	68,205	66,058	68,228

See Notes to Condensed Consolidated Financial Statements.

BURLINGTON STORES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)
(All amounts in thousands)

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>October 29, 2022</u>	<u>October 30, 2021</u>	<u>October 29, 2022</u>	<u>October 30, 2021</u>
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Other comprehensive income, net of tax:				
Interest rate derivative contracts:				
Net unrealized gain arising during the period	22,402	6,509	35,693	2,251
Net reclassification into earnings during the period	851	2,984	5,772	7,662
Other comprehensive income, net of tax	<u>23,253</u>	<u>9,493</u>	<u>41,465</u>	<u>9,913</u>
Total comprehensive income	<u>\$ 40,036</u>	<u>\$ 23,112</u>	<u>\$ 86,388</u>	<u>\$ 297,116</u>

See Notes to Condensed Consolidated Financial Statements.

BURLINGTON STORES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(All amounts in thousands, except share and per share data)

	October 29, 2022	January 29, 2022	October 30, 2021
ASSETS			
Current assets:			
Cash and cash equivalents	\$ 428,583	\$ 1,091,091	\$ 1,185,383
Restricted cash and cash equivalents	6,582	6,582	6,582
Accounts receivable—net	80,641	54,089	90,705
Merchandise inventories	1,445,087	1,021,009	1,059,749
Assets held for disposal	7,054	4,358	4,358
Prepaid and other current assets	131,834	370,515	425,288
Total current assets	<u>2,099,781</u>	<u>2,547,644</u>	<u>2,772,065</u>
Property and equipment—net	1,666,523	1,552,237	1,499,780
Operating lease assets	2,951,614	2,638,473	2,653,776
Tradenames	238,000	238,000	238,000
Goodwill	47,064	47,064	47,064
Deferred tax assets	3,643	3,959	4,119
Other assets	94,885	62,136	63,023
Total assets	<u>\$ 7,101,510</u>	<u>\$ 7,089,513</u>	<u>\$ 7,277,827</u>
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities:			
Accounts payable	\$ 953,680	\$ 1,080,802	\$ 1,174,252
Current operating lease liabilities	391,056	358,793	346,167
Other current liabilities	520,145	493,695	544,852
Current maturities of long term debt	13,528	14,357	14,224
Total current liabilities	<u>1,878,409</u>	<u>1,947,647</u>	<u>2,079,495</u>
Long term debt	1,464,563	1,541,102	1,614,645
Long term operating lease liabilities	2,828,574	2,539,420	2,560,663
Other liabilities	68,687	80,904	94,507
Deferred tax liabilities	222,549	220,023	211,710
Commitments and contingencies (Note 11)			
Stockholders' equity:			
Preferred stock, \$0.0001 par value: authorized: 50,000,000 shares; no shares issued and outstanding	—	—	—
Common stock, \$0.0001 par value:			
Authorized: 500,000,000 shares;			
Issued: 81,933,895 shares, 81,677,315 shares and 81,605,876 shares, respectively;			
Outstanding: 65,191,267 shares, 66,491,555 shares and 66,765,122 shares, respectively	7	7	7
Additional paid-in-capital	1,984,821	1,927,554	1,914,086
Accumulated earnings	459,215	414,292	292,656
Accumulated other comprehensive income (loss)	37,024	(4,441)	(13,102)
Treasury stock, at cost	(1,842,339)	(1,576,995)	(1,476,840)
Total stockholders' equity	<u>638,728</u>	<u>760,417</u>	<u>716,807</u>
Total liabilities and stockholders' equity	<u>\$ 7,101,510</u>	<u>\$ 7,089,513</u>	<u>\$ 7,277,827</u>

See Notes to Condensed Consolidated Financial Statements.

BURLINGTON STORES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(All amounts in thousands)

	Nine Months Ended	
	October 29, 2022	October 30, 2021
OPERATING ACTIVITIES		
Net income	\$ 44,923	\$ 287,203
Adjustments to reconcile net income to net cash provided by operating activities		
Depreciation and amortization	201,908	183,087
Impairment charges—long-lived assets	17,556	3,235
Amortization of deferred financing costs	2,731	4,293
Accretion of long term debt instruments	713	650
Deferred income taxes	(12,339)	46,725
Loss on extinguishment of debt	14,657	117,756
Non-cash stock compensation expense	51,195	53,356
Non-cash lease expense	674	(6,997)
Cash received from landlord allowances	9,799	24,552
Changes in assets and liabilities:		
Accounts receivable	(26,801)	(27,223)
Merchandise inventories	(424,078)	(318,961)
Prepaid and other current assets	238,680	(111,135)
Accounts payable	(133,305)	307,684
Other current liabilities	20,163	31,280
Other long term assets and long term liabilities	(1,135)	1,332
Other operating activities	4,236	11,530
Net cash provided by operating activities	9,577	608,367
INVESTING ACTIVITIES		
Cash paid for property and equipment	(338,979)	(238,468)
Lease acquisition costs	(3,515)	(559)
Proceeds from sale of property and equipment and assets held for sale	23,383	5,746
Net cash (used in) investing activities	(319,111)	(233,281)
FINANCING ACTIVITIES		
Proceeds from long term debt—Term B-6 Loans	—	956,608
Principal payments on long term debt—Term B-6 Loans	(7,211)	(2,404)
Principal payments on long term debt—Term B-5 Loans	—	(961,415)
Principal payment on long term debt—Convertible Notes	(78,236)	(92,289)
Principal payments on long term debt—Secured Notes	—	(323,905)
Purchase of treasury shares	(265,344)	(166,473)
Proceeds from stock option exercises	6,073	31,610
Deferred financing costs	—	(601)
Other financing activities	(8,256)	(11,110)
Net cash (used in) financing activities	(352,974)	(569,979)
(Decrease) in cash, cash equivalents, restricted cash and restricted cash equivalents	(662,508)	(194,893)
Cash, cash equivalents, restricted cash and restricted cash equivalents at beginning of period	1,097,673	1,386,858
Cash, cash equivalents, restricted cash and restricted cash equivalents at end of period	\$ 435,165	\$ 1,191,965
Supplemental disclosure of cash flow information:		
Interest paid	\$ 36,944	\$ 47,373
Income tax (refund) payments - net	\$ (228,107)	\$ 129,624
Non-cash investing and financing activities:		
Shares issued to repurchase Convertible Notes	\$ -	\$ 151,206
Finance lease modification	\$ (6,042)	\$ -
Accrued purchases of property and equipment	\$ 75,746	\$ 50,696

See Notes to Condensed Consolidated Financial Statements.

BURLINGTON STORES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
October 29, 2022
(Unaudited)

1. Summary of Significant Accounting Policies

Basis of Presentation

As of October 29, 2022, Burlington Stores, Inc., a Delaware corporation (collectively with its subsidiaries, the Company), through its indirect subsidiary Burlington Coat Factory Warehouse Corporation (BCFWC), operated 893 retail stores.

These unaudited Condensed Consolidated Financial Statements include the accounts of Burlington Stores, Inc. and its subsidiaries. All inter-company accounts and transactions have been eliminated in consolidation. The Condensed Consolidated Financial Statements are unaudited, but in the opinion of management reflect all adjustments (which are of a normal and recurring nature) necessary for the fair presentation of the results of operations for the interim periods presented. Certain information and note disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) have been condensed or omitted. These Condensed Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended January 29, 2022 (Fiscal 2021 10-K). The balance sheet at January 29, 2022 presented herein has been derived from the audited Consolidated Financial Statements contained in the Fiscal 2021 10-K. Because the Company's business is seasonal in nature, the operating results for the three and nine month periods ended October 29, 2022 are not necessarily indicative of results for the fiscal year.

Accounting policies followed by the Company are described in Note 1, "Summary of Significant Accounting Policies," included in Part II, Item 8 of the Fiscal 2021 10-K.

Fiscal Year

The Company defines its fiscal year as the 52- or 53-week period ending on the Saturday closest to January 31. The current fiscal year ending January 28, 2023 (Fiscal 2022) and the prior fiscal year ended January 29, 2022 (Fiscal 2021) both consist of 52 weeks.

Recently Adopted Accounting Standards

There were no new accounting standards that had a material impact on the Company's Condensed Consolidated Financial Statements and notes thereto during the three and nine month periods ended October 29, 2022, and there were no new accounting

standards or pronouncements that were issued but not yet effective as of October 29, 2022 that the Company expects to have a material impact on its financial position or results of operations upon becoming effective.

2. Stockholders' Equity

Activity for the three and nine month periods ended October 29, 2022 and October 30, 2021 in the Company's stockholders' equity is summarized below:

<i>(in thousands, except share data)</i>								
	Common Stock		Additional Paid-in Capital	Accumulated Earnings	Accumulated Other Comprehensive (Loss) Income	Treasury Stock		Total
	Shares	Amount				Shares	Amount	
Balance at January 29, 2022	81,677,315	\$ 7	\$ 1,927,554	\$ 414,292	\$ (4,441)	(15,185,760)	\$ (1,576,995)	\$ 760,417
Net income	—	—	—	16,174	—	—	—	16,174
Stock options exercised	41,673	—	4,721	—	—	—	—	4,721
Shares used for tax withholding	—	—	—	—	—	(30,090)	(5,673)	(5,673)
Shares purchased as part of publicly announced program	—	—	—	—	—	(512,905)	(99,090)	(99,090)
Vesting of restricted shares, net of forfeitures of 199 restricted shares	81,832	—	—	—	—	—	—	—
Stock based compensation	—	—	16,705	—	—	—	—	16,705
Unrealized gains on interest rate derivative contracts, net of related taxes of \$7.4 million	—	—	—	—	20,060	—	—	20,060
Amount reclassified from accumulated other comprehensive income into earnings, net of related taxes of \$1.1 million	—	—	—	—	2,842	—	—	2,842
Balance at April 30, 2022	81,800,820	7	1,948,980	430,466	18,461	(15,728,755)	(1,681,758)	716,156
Net income	—	—	—	11,966	—	—	—	11,966
Stock options exercised	23,088	—	1,230	—	—	—	—	1,230
Shares used for tax withholding	—	—	—	—	—	(34,028)	(6,923)	(6,923)
Shares purchased as part of publicly announced program	—	—	—	—	—	(598,278)	(101,035)	(101,035)
Vesting of restricted shares	83,620	—	—	—	—	—	—	—
Stock based compensation	—	—	17,173	—	—	—	—	17,173
Unrealized losses on interest rate derivative contracts, net of related taxes of \$2.6 million	—	—	—	—	(6,769)	—	—	(6,769)
Amount reclassified from accumulated other comprehensive income into earnings, net of related taxes of \$0.8 million	—	—	—	—	2,079	—	—	2,079
Balance at July 30, 2022	81,907,528	7	1,967,383	442,432	13,771	(16,361,061)	(1,789,716)	\$ 633,877
Net income	—	—	—	16,783	—	—	—	16,783
Stock options exercised	984	—	121	—	—	—	—	121
Shares used for tax withholding	—	—	—	—	—	(10,968)	(1,535)	(1,535)
Shares purchased as part of publicly announced program	—	—	—	—	—	(370,599)	(51,088)	(51,088)
Vesting of restricted shares	25,383	—	—	—	—	—	—	—
Stock based compensation	—	—	17,317	—	—	—	—	17,317
Unrealized gains on interest rate derivative contracts, net of related taxes of \$8.2 million	—	—	—	—	22,402	—	—	22,402
Amount reclassified from accumulated other comprehensive income into earnings, net of related taxes of \$0.3 million	—	—	—	—	851	—	—	851
Balance at October 29, 2022	81,933,895	7	1,984,821	459,215	37,024	(16,742,628)	(1,842,339)	\$ 638,728

(in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Accumulated (Deficit) Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Total
	Shares	Amount				Shares	Amount	
Balance at January 30, 2021			1,809,83			(14,275,1	(1,310,36	
	80,661,453	\$ 7	\$ 1	\$ (11,702)	\$ (23,015)	22)	\$ (7)	\$ 464,754
Net income	—	—	—	171,030	—	—	—	171,030
Stock options exercised	181,683	—	16,089	—	—	—	—	16,089
Shares used for tax withholding	—	—	—	—	—	(41,768)	(13,083)	(13,083)
Vesting of restricted shares, net of forfeitures of 883 restricted shares	53,914	—	—	—	—	—	—	—
Stock based compensation	—	—	12,879	—	—	—	—	12,879
Unrealized gains on interest rate derivative contracts, net of related taxes of \$0.3 million	—	—	—	—	825	—	—	825
Amount reclassified from accumulated other comprehensive income into earnings, net of related taxes of \$0.8 million	—	—	—	—	2,159	—	—	2,159
Adoption of ASU 2020-06	—	—	(131,916)	17,155	—	—	—	(114,761)
Balance at May 1, 2021	80,897,050	7	1,706,883	176,483	(20,031)	(14,316,890)	(1,323,450)	539,892
Net income	—	—	—	102,554	—	—	—	102,554
Stock options exercised	139,274	—	12,811	—	—	—	—	12,811
Shares used for tax withholding	—	—	—	—	—	(603)	(178)	(178)
Vesting of restricted shares, net of forfeitures of 1,101 restricted shares	5,645	—	—	—	—	—	—	—
Stock based compensation	—	—	23,180	—	—	—	—	23,180
Unrealized losses on interest rate derivative contracts, net of related taxes of \$1.9 million	—	—	—	—	(5,083)	—	—	(5,083)
Amount reclassified from accumulated other comprehensive loss into earnings, net of related taxes of \$0.9 million	—	—	—	—	2,519	—	—	2,519
Balance at July 31, 2021	81,041,969	7	1,742,874	279,037	(22,595)	(14,317,493)	(1,323,628)	675,695
Net income	—	—	—	13,619	—	—	—	13,619
Stock options exercised	25,479	—	2,709	—	—	—	—	2,709
Shares used for tax withholding	—	—	—	—	—	(10,898)	(3,202)	(3,202)
Shares purchased as part of publicly announced program	—	—	—	—	—	(512,363)	(150,010)	(150,010)
Vesting of restricted shares, net of forfeitures of 382 restricted shares	24,437	—	—	—	—	—	—	—
Stock based compensation	—	—	17,297	—	—	—	—	17,297
Shares issued to redeem Convertible Notes	513,991	—	151,206	—	—	—	—	151,206
Unrealized gains on interest rate derivative contracts, net of related taxes of \$2.4 million	—	—	—	—	6,509	—	—	6,509
Amount reclassified from accumulated other comprehensive loss into earnings, net of related taxes of \$1.1 million	—	—	—	—	2,984	—	—	2,984
Balance at October 30, 2021	81,605,876	7	1,914,086	292,656	(13,102)	(14,840,754)	(1,476,840)	716,807

3. Lease Commitments

The Company's leases primarily consist of stores, distribution facilities and office space under operating and finance leases that will expire principally during the next 30 years. The leases typically include renewal options at five year intervals and escalation clauses. Lease renewals are only included in the lease liability to the extent that they are reasonably assured of being exercised. Some of the Company's leases provide for contingent rentals based on a percentage of gross sales. Contingent rentals are not included in the lease liability, and they are recognized as variable lease cost when incurred.

The following is a schedule of the Company's future lease payments:

Fiscal Year	(in thousands)	
	Operating Leases	Finance Leases
2022 (remainder)	\$ 121,195	\$ 1,460
2023	554,017	5,906
2024	521,395	5,733
2025	487,318	3,604
2026	449,970	3,640
2027	411,946	3,640
Thereafter	1,359,967	24,233
Total future minimum lease payments	3,905,808	48,216
Amount representing interest	(686,178)	(13,830)
Total lease liabilities	3,219,630	34,386
Less: current portion of lease liabilities	(391,056)	(3,914)
Total long term lease liabilities	\$ 2,828,574	\$ 30,472
Weighted average discount rate	4.8%	6.1%
Weighted average remaining lease term (years)	8.2	12.0

The above schedule excludes approximately \$394.5 million for 69 stores that the Company has committed to open or relocate but has not yet taken possession of the space. The discount rates used in valuing the Company's leases are not readily determinable, and are based on the Company's incremental borrowing rate on a fully collateralized basis.

The following is a schedule of net lease costs for the periods indicated:

	(in thousands)			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Finance lease cost:				
Amortization of finance lease asset (a)	\$ 1,052	\$ 1,140	\$ 3,333	\$ 3,414
Interest on lease liabilities (b)	627	768	2,046	2,366
Operating lease cost (c)	132,984	119,858	387,318	346,789
Variable lease cost (c)	52,141	49,445	152,689	142,356
Total lease cost	186,804	171,211	545,386	494,925
Less all rental income (d)	(1,507)	(1,386)	(4,195)	(4,015)
Total net rent expense (e)	\$ 185,297	\$ 169,825	\$ 541,191	\$ 490,910

- (a) Included in the line item "Depreciation and amortization" in the Company's Condensed Consolidated Statements of Income.
- (b) Included in the line item "Interest expense" in the Company's Condensed Consolidated Statements of Income.
- (c) Includes real estate taxes, common area maintenance, insurance and percentage rent. Included in the line item "Selling, general and administrative expenses" in the Company's Condensed Consolidated Statements of Income.
- (d) Included in the line item "Other revenue" in the Company's Condensed Consolidated Statements of Income.
- (e) Excludes an immaterial amount of short-term lease cost.

Supplemental cash flow disclosures related to leases are as follows:

	(in thousands)	
	Nine Months Ended	
	October 29, 2022	October 30, 2021
Cash paid for amounts included in the measurement of lease liabilities:		
Cash payments arising from operating lease liabilities (a)	\$ 387,209	\$ 381,006
Cash payments for the principal portion of finance lease liabilities (b)	\$ 3,517	\$ 2,980
Cash payments for the interest portion of finance lease liabilities (a)	\$ 2,046	\$ 2,366
Supplemental non-cash information:		
Operating lease liabilities arising from obtaining right-of-use assets (c)	\$ 609,567	\$ 440,874

- (a) Included within operating activities in the Company's Condensed Consolidated Statements of Cash Flows.
- (b) Included within financing activities in the Company's Condensed Consolidated Statements of Cash Flows.
- (c) Includes additions arising from lease modifications.

4. Long Term Debt

Long term debt consists of:

	<i>(in thousands)</i>		
	October 29, 2022	January 29, 2022	October 30, 2021
Senior secured term loan facility (Term B-6 Loans), LIBOR (with a floor of 0.00%) plus 2.00%, matures on June 24, 2028	\$ 944,178	\$ 950,676	\$ 952,841
Convertible senior notes, 2.25%, matures on April 15, 2025	507,687	572,322	644,627
ABL senior secured revolving facility, SOFR plus spread based on average outstanding balance, matures on December 22, 2026	—	—	—
Finance lease obligations	34,386	43,945	45,039
Unamortized deferred financing costs	(8,160)	(11,484)	(13,638)
Total debt	1,478,091	1,555,459	1,628,869
Less: current maturities	(13,528)	(14,357)	(14,224)
Long term debt, net of current maturities	<u>\$ 1,464,563</u>	<u>\$ 1,541,102</u>	<u>\$ 1,614,645</u>

Term Loan Facility

On June 24, 2021, BCFWC entered into Amendment No. 9 (the Ninth Amendment) to the credit agreement, dated February 24, 2011, among BCFWC the guarantors signatory thereto, and JPMorgan Chase Bank, N.A., as administrative agent and as collateral agent, the lenders party thereto, J.P. Morgan Securities LLC and Goldman Sachs Lending Partners LLC, as joint bookrunners, and J.P. Morgan Securities LLC, Goldman Sachs Lending Partners LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC, as joint arrangers (as amended from time to time, the Term Loan Credit Agreement) governing the senior secured term loan facility (the Term Loan Facility). The Ninth Amendment, among other things, extended the maturity date from November 17, 2024 to June 24, 2028, and changed the interest rate margins applicable to the Term Loan Facility from 0.75% to 1.00%, in the case of prime rate loans, and from 1.75% to 2.00%, in the case of LIBOR loans, with a 0.00% LIBOR floor. This amendment also requires quarterly principal payments of \$2.4 million. In connection with the execution of the Ninth Amendment, the Company incurred fees of \$3.3 million, primarily related to legal and placement fees, which were recorded in the line item “Costs related to debt issuances and amendments” in the Company’s Condensed Consolidated Statement of Income. Additionally, the Company recognized a loss on the extinguishment of debt of \$1.2 million, representing the write-off of unamortized deferred financing costs and original issue discount, which was recorded in the line item “Loss on extinguishment of debt” in the Company’s Condensed Consolidated Statement of Income.

The Term Loan Facility is collateralized by a first lien on the Company's leases, real estate and property & equipment and a second lien on the Company's inventory and receivables. Interest rates for the Term Loan Facility are based on: (i) for LIBOR rate loans for any interest period, at a rate per annum equal to the greater of (x) the LIBOR rate, as determined by the Term Loan Facility Administrative Agent, for such interest period multiplied by the Statutory Reserve Rate (as defined in the Term Loan Credit Agreement), and (y) 0.00% (the Term Loan Adjusted LIBOR Rate), plus an applicable margin; and (ii) for prime rate loans, a rate per annum equal to the highest of (a) the variable annual rate of interest then announced by JPMorgan Chase Bank, N.A. at its head office as its “prime rate,” (b) the federal reserve bank of New York rate in effect on such date plus 0.50% per annum, and (c) the Term Loan Adjusted LIBOR Rate for the applicable class of term loans for one-month plus 1.00%, plus, in each case, an applicable margin.

At October 29, 2022 and October 30, 2021, the interest rate related to the Term Loan Facility was 5.1% and 2.1%, respectively.

Convertible Notes

On April 16, 2020, the Company issued \$805.0 million of its 2.25% Convertible Senior Notes due 2025 (Convertible Notes). The Convertible Notes are general unsecured obligations of the Company. The Convertible Notes bear interest at a rate of 2.25% per year, payable semi-annually in cash, in arrears, on April 15 and October 15 of each year, beginning on October 15, 2020. The Convertible Notes will mature on April 15, 2025, unless earlier converted, redeemed or repurchased.

During the second half of Fiscal 2021, the Company entered into separate, privately negotiated exchange agreements with certain holders of the Convertible Notes. Under the terms of the exchange agreements, the holders exchanged \$232.7 million in aggregate principal amount of Convertible Notes held by them for a combination of an aggregate of \$199.8 million in cash and 513,991 shares of the Company's common stock.

During the first quarter of Fiscal 2022, the Company entered into separate, privately negotiated exchange agreements with certain holders of the Convertible Notes. Under the terms of the exchange agreements, the holders exchanged \$64.6 million in aggregate principal amount of Convertible Notes held by them for \$78.2 million in cash.

These exchanges resulted in aggregate pre-tax debt extinguishment charges of \$14.7 million and \$86.4 million during the nine month period ended October 29, 2022 and the nine month period ended October 30, 2021, respectively.

Prior to the close of business on the business day immediately preceding January 15, 2025, the Convertible Notes will be convertible at the option of the holders only upon the occurrence of certain events and during certain periods. Thereafter, the Convertible Notes will be convertible at the option of the holders at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. The Convertible Notes have an initial conversion rate of 4.5418 shares per \$1,000 principal amount of Convertible Notes (equivalent to an initial conversion price of approximately \$220.18 per share of the Company's common stock), subject to adjustment if certain events occur. The initial conversion price represents a conversion premium of approximately 32.50% over \$166.17 per share, the last reported sale price of the Company's common stock on April 13, 2020 (the pricing date of the offering) on the New York Stock Exchange. During the first quarter of Fiscal 2021, the Company made an irrevocable settlement election for any conversions of the Convertible Notes. Upon conversion, the Company will pay cash for the principal amount. For any excess above principal, the Company will deliver shares of its common stock. The Company may not redeem the Convertible Notes prior to April 15, 2023. On or after April 15, 2023, the Company will be able to redeem for cash all or any portion of the Convertible Notes, at its option, if the last reported sale price of the Company's common stock is equal to or greater than 130% of the conversion price for a specified period of time, at a redemption price equal to 100% of the principal aggregate amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

Holders of the Convertible Notes may require the Company to repurchase their Convertible Notes upon the occurrence of certain events that constitute a fundamental change under the indenture governing the Convertible Notes at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but excluding, the date of repurchase. In connection with certain corporate events or if the Company issues a notice of redemption, it will, under certain circumstances, increase the conversion rate for holders who elect to convert their Convertible Notes in connection with such corporate event or during the relevant redemption period for such Convertible Notes. The effective interest rate is 2.8%.

The Convertible Notes consist of the following components as of the dates indicated:

	<i>(in thousands)</i>		
	October 29, 2022	January 29, 2022	October 30, 2021
Principal	\$ 507,687	\$ 572,322	\$ 644,627
Unamortized deferred debt costs	(6,644)	(9,761)	(11,845)
Net carrying amount	<u>\$ 501,043</u>	<u>\$ 562,561</u>	<u>\$ 632,782</u>

Interest expense related to the Convertible Notes consists of the following as of the periods indicated:

	<i>(in thousands)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Coupon interest	\$ 2,854	\$ 3,967	\$ 8,711	\$ 12,988
Amortization of deferred debt costs	647	941	2,065	2,948
Convertible Notes interest expense	<u>\$ 3,501</u>	<u>\$ 4,908</u>	<u>\$ 10,776</u>	<u>\$ 15,936</u>

Secured Notes

On April 16, 2020, BCFWC issued \$300.0 million of 6.25% Senior Secured Notes due 2025 (Secured Notes). The Secured Notes were senior, secured obligations of BCFWC, and interest was payable semiannually in cash, in arrears, at a rate of 6.25% per annum on April 15 and October 15 of each year, beginning on October 15, 2020. The Secured Notes were guaranteed on a senior secured basis by Burlington Coat Factory Holdings, LLC, Burlington Coat Factory Investments Holdings, Inc. and BCFWC's subsidiaries that guarantee the loans under the Term Loan Facility.

On June 11, 2021, BCFWC redeemed the full \$300.0 million aggregate principal amount of the Secured Notes. The redemption price of the Secured Notes was \$323.7 million, plus accrued and unpaid interest to, but not including, the date of redemption. This redemption resulted in a pre-tax debt extinguishment charge of \$30.2 million in the third quarter of Fiscal 2021.

ABL Line of Credit

On July 20, 2022, BCFWC entered into a Fourth Amendment to Second Amended and Restated Credit Agreement (the “Amendment”). The Amendment increased the aggregate principal amount of the commitments of its current asset-based lending facility (the ABL Line of Credit) from \$650.0 million to \$900.0 million and replaced the LIBOR-based interest rate benchmark provisions with interest rate benchmark provisions based on a term secured overnight financing rate (SOFR) or a daily SOFR rate (in the case of daily SOFR, available for borrowings up to \$100 million, or up to the full amount of the commitments if the term SOFR rate is not available).

At October 29, 2022, the Company had \$850.0 million available under the ABL Line of Credit. There were no borrowings under the ABL Line of Credit during the three and nine month periods ended October 29, 2022.

At October 30, 2021, the Company had \$541.0 million available under the ABL Line of Credit. There were no borrowings under the ABL Line of Credit during the three and nine month periods ended October 30, 2021.

5. Derivative Instruments and Hedging Activities

The Company accounts for derivatives and hedging activities in accordance with ASC 815, “Derivatives and Hedging” (ASC 815). As required by ASC 815, the Company records all derivatives on the balance sheet at fair value and adjusts to market on a quarterly basis. In addition, to comply with the provisions of ASC 820, “Fair Value Measurements” (ASC 820), credit valuation adjustments, which consider the impact of any credit enhancements to the contracts, are incorporated in the fair values to account for potential nonperformance risk. In adjusting the fair value of its derivative contracts for the effect of nonperformance risk, the Company has considered any applicable credit enhancements such as collateral postings, thresholds, mutual puts, and guarantees. In accordance with ASC 820, the Company made an accounting policy election to measure the credit risk of its derivative financial instruments that are subject to master netting agreements on a net basis by counterparty portfolio. There is no impact of netting, because the Company has only one derivative. The Company classifies its derivative valuations in Level 2 of the fair value hierarchy.

On December 17, 2018, the Company entered into an interest rate swap, which hedged \$450 million of the variable rate exposure under the Term Loan Facility at a rate of 2.72%. On June 24, 2021, the Company terminated this previous interest rate swap, and entered into a new interest rate swap, which hedges \$450 million of the variable rate exposure on the Term Loan Facility at a blended rate of 2.19%, and is designated as a cash flow hedge.

The amount of loss deferred for the previous interest rate swap was \$26.9 million. The Company is amortizing this amount from accumulated other comprehensive income into interest expense over the original life of the previous interest rate swap, which had an original maturity date of December 29, 2023. The new interest rate swap had a liability fair value at inception of \$26.9 million. The Company will accrete this amount into accumulated other comprehensive income as a benefit to interest expense over the life of the new interest rate swap, which has a maturity date of June 24, 2028.

Cash Flow Hedges of Interest Rate Risk

The Company’s objectives in using interest rate derivatives are to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish these objectives, the Company primarily uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable-rate amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount.

As of October 29, 2022, the Company had the following outstanding interest rate derivative that was designated as a cash flow hedge of interest rate risk:

Interest Rate Derivative	Number of Instruments	Notional Aggregate Principal Amount	Interest Swap Rate	Maturity Date
Interest rate swap contract	One	\$450.0 million	2.19%	June 24, 2028

Tabular Disclosure

The table below presents the fair value of the Company's derivative financial instruments on a gross basis as well as their classification on the Company's Condensed Consolidated Balance Sheets:

Derivatives Designated as Hedging Instruments	<i>(in thousands)</i>					
	Fair Values of Derivative Instruments					
	October 29, 2022		January 29, 2022		October 30, 2021	
	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Interest rate swap contracts	Other assets	\$ 41,687	Other liabilities	\$ 10,968	Other liabilities	\$ 20,439

The following table presents the unrealized gains and losses deferred to accumulated other comprehensive income resulting from the Company's derivative financial instruments for each of the reporting periods.

Interest Rate Derivatives:	<i>(in thousands)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Unrealized gains, before taxes	\$ 30,599	\$ 8,936	\$ 48,746	\$ 3,096
Income tax benefit	(8,197)	(2,427)	(13,053)	(845)
Unrealized gains, net of taxes	\$ 22,402	\$ 6,509	\$ 35,693	\$ 2,251

The following table presents information about the reclassification of gains and losses from accumulated other comprehensive income into earnings related to the Company's derivative instruments for each of the reporting periods.

Component of Earnings:	<i>(in thousands)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Interest expense	\$ 1,162	\$ 4,096	\$ 7,901	\$ 10,519
Income tax benefit	(311)	(1,112)	(2,129)	(2,857)
Net reclassification into earnings	\$ 851	\$ 2,984	\$ 5,772	\$ 7,662

The Company estimates that approximately \$4.8 million will be reclassified from accumulated other comprehensive income as a reduction to interest expense during the next twelve months.

6. Fair Value Measurements

The Company accounts for fair value measurements in accordance with ASC 820, which defines fair value, establishes a framework for measurement and expands disclosure about fair value measurements. ASC 820 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price), and classifies the inputs used to measure fair value into the following hierarchy:

Level 1: Quoted prices for identical assets or liabilities in active markets.

Level 2: Quoted market prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

Level 3: Pricing inputs that are unobservable for the assets and liabilities and include situations where there is little, if any, market activity for the assets and liabilities.

The inputs into the determination of fair value require significant management judgment or estimation.

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

Refer to Note 5, "Derivative Instruments and Hedging Activities," for further discussion regarding the fair value of the Company's interest rate swap contract.

Financial Assets

The fair values of the Company's financial assets and the hierarchy of the level of inputs as of October 29, 2022, January 29, 2022 and October 30, 2021 are summarized below:

	(in thousands)		
	Fair Value Measurements at		
	October 29, 2022	January 29, 2022	October 30, 2021
Level 1			
Cash equivalents (including restricted cash equivalents)	\$ 92,424	\$ 701,638	\$ 701,607

Long-lived assets are measured at fair value on a non-recurring basis for purposes of calculating impairment using the fair value hierarchy of ASC 820. The fair value of the Company's long-lived assets is calculated using a discounted cash-flow model that used level 3 inputs. In calculating future cash flows, the Company makes estimates regarding future operating results and market rent rates, based on its experience and knowledge of market factors in which the retail location is located.

Impairment charges on long-lived assets were \$10.6 million during the third quarter of Fiscal 2022, related to two owned stores expected to be sold below net carrying value and declines in revenue and operating results for eight stores. Impairment charges on long-lived assets were \$1.5 million during the third quarter of Fiscal 2021, primarily related to store-level assets at four stores.

Impairment charges on long-lived assets were \$17.6 million during the nine months ended October 29, 2022, related to three owned stores expected to be sold below net carrying value, declines in revenue and operating results for eight stores, and unrecoverable fixed assets at two relocating stores. Impairment charges on long-lived assets were \$3.2 million during the nine months ended October 30, 2021, primarily related to declines in revenues and operating results at certain stores. During the nine months ended October 29, 2022 and the nine months ended October 30, 2021, the assets impaired had a remaining carrying value after impairments of \$69.4 million and \$13.9 million, respectively.

Financial Liabilities

The fair values of the Company's financial liabilities are summarized below:

	(in thousands)					
	October 29, 2022		January 29, 2022		October 30, 2021	
	Principal Amount	Fair Value	Principal Amount	Fair Value	Principal Amount	Fair Value
Term B-6 Loans	\$ 949,397	\$ 911,421	\$ 956,608	\$ 955,412	\$ 959,011	\$ 953,017
Convertible Notes	507,687	513,982	572,322	724,703	644,627	915,048
ABL Line of Credit (a)	—	—	—	—	—	—
Total debt (b)	<u>\$ 1,457,084</u>	<u>\$ 1,425,403</u>	<u>\$ 1,528,930</u>	<u>\$ 1,680,115</u>	<u>\$ 1,603,638</u>	<u>\$ 1,868,065</u>

(a) To the extent the Company has any outstanding borrowings under the ABL Line of Credit, the fair value would approximate its reported value, because the interest rate is variable and reflects current market rates, due to its short term nature.

(b) The table above excludes finance lease obligations, debt discount and deferred debt costs.

The fair values presented herein are based on pertinent information available to management as of the respective period end dates. The estimated fair values of the Company's debt are classified as Level 2 in the fair value hierarchy, and are based on current market quotes received from inactive markets.

7. Income Taxes

Income tax expense was \$6.0 million during the third quarter of Fiscal 2022 compared with \$17.9 million during the third quarter of Fiscal 2021. The effective tax rate for the third quarter of Fiscal 2022 was 26.4% compared with 56.8% during the third quarter of Fiscal 2021. The higher income tax expense and tax rate in the prior year period is primarily driven by higher pre-tax income and the disallowance of certain debt extinguishment costs related to partial repurchase of the Convertible Notes during the third quarter of Fiscal 2021.

Income tax expense was \$11.6 million during the nine month period ended October 29, 2022 compared with \$79.8 million during the nine month period ended October 30, 2021. The effective tax rate for the nine month period ended October 29, 2022 was 20.5% compared with 21.7% during the nine month period ended October 30, 2021. The decrease in income tax expense in the nine months ended October 29, 2022 was a result of lower pre-tax income.

Net deferred taxes are as follows:

	<i>(in thousands)</i>		
	October 29, 2022	January 29, 2022	October 30, 2021
Deferred tax asset	\$ 3,643	\$ 3,959	\$ 4,119
Deferred tax liability	222,549	220,023	211,710
Net deferred tax liability	<u>\$ 218,906</u>	<u>\$ 216,064</u>	<u>\$ 207,591</u>

Net deferred tax assets relate to Puerto Rico deferred balances that have a future net benefit for tax purposes. Net deferred tax liabilities primarily relate to intangible assets and depreciation expense where the Company has a future obligation for tax purposes.

As of October 29, 2022, the Company had a deferred tax asset related to net operating losses of \$14.6 million, inclusive of \$14.3 million related to state net operating losses that expire at various dates between 2023 and 2041, as well as \$0.3 million related to Puerto Rico net operating losses that will expire in 2025.

As of October 29, 2022, the Company had a deferred tax asset related to tax credit carry-forwards of \$7.8 million, inclusive of \$7.1 million of state tax credit carry-forwards, which will begin to expire in 2023, and \$0.7 million of deferred tax assets recorded for Puerto Rico alternative minimum tax credits that have an indefinite life.

As of October 29, 2022, January 29, 2022 and October 30, 2021, valuation allowances amounted to \$10.6 million, \$12.9 million and \$12.1 million, respectively, related to state and Puerto Rico net operating losses and state tax credit carry-forwards. The Company believes that it is more likely than not that this portion of state and Puerto Rico net operating losses and state tax credit carry-forwards will not be realized.

8. Capital Stock

Treasury Stock

The Company accounts for treasury stock under the cost method.

Shares Used to Satisfy Tax Withholding

During the nine month period ended October 29, 2022, the Company acquired 75,086 shares of common stock from employees for approximately \$14.1 million to satisfy their minimum statutory tax withholdings related to the vesting of restricted stock and restricted stock unit awards, which was recorded in the line item "Treasury stock" on the Company's Condensed Consolidated Balance Sheets, and the line item "Purchase of treasury shares" on the Company's Condensed Consolidated Statements of Cash Flows.

Share Repurchase Program

On August 18, 2021, the Company's Board of Directors authorized the repurchase of up to \$400.0 million of common stock, which was authorized to be executed through August 2023. This authorization was completed during the second quarter of Fiscal 2022.

On February 16, 2022, the Company's Board of Directors authorized the repurchase of up to \$500.0 million of common stock, which is authorized to be executed through February 2024.

These repurchase programs are funded using the Company's available cash and borrowings under the ABL Line of Credit.

During the nine month period ended October 29, 2022, the Company repurchased 1,481,782 shares of common stock for \$251.2 million under these repurchase programs, which was recorded in the line item "Treasury stock" on the Company's Condensed Consolidated Balance Sheets, and the line item "Purchase of treasury shares" on the Company's Condensed Consolidated Statements of Cash Flows. As of October 29, 2022, the Company had \$398.8 million remaining under its share repurchase authorization.

9. Net Income Per Share

Basic net income per share is calculated by dividing net income by the weighted-average number of common shares outstanding. Diluted net income per share is calculated by dividing net income by the weighted-average number of common shares and potentially dilutive securities outstanding during the period using the treasury stock method for the Company's stock option,

restricted stock and restricted stock unit awards, and the if-converted method for the Convertible Notes. The following table presents the computation of basic and diluted net income per share:

	<i>(in thousands, except per share data)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
<i>Basic net income per share</i>				
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Weighted average number of common shares – basic	65,362	66,740	65,815	66,591
Net income per common share – basic	\$ 0.26	\$ 0.20	\$ 0.68	\$ 4.31
<i>Diluted net income per share</i>				
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Shares for basic and diluted net income per share:				
Weighted average number of common shares – basic	65,362	66,740	65,815	66,591
Assumed exercise of stock options and vesting of restricted stock	142	577	243	666
Assumed conversion of convertible debt	—	888	—	971
Weighted average number of common shares – diluted	65,504	68,205	66,058	68,228
Net income per common share – diluted	\$ 0.26	\$ 0.20	\$ 0.68	\$ 4.21

Approximately 1,498,000 and 1,132,000 shares of the Company’s stock-based compensation grants were excluded from diluted net income per share for the three and nine month periods ended October 29, 2022, respectively, since their effect was anti-dilutive.

Approximately 242,000 and 144,000 shares related to the Company’s stock-based compensation grants were excluded from diluted net income per share for the three and nine month periods ended October 30, 2021, respectively, since their effect was anti-dilutive.

During the three and nine months ended October 29, 2022, respectively, shares of common stock issuable upon conversion of the Convertible Notes have been excluded from the computation of diluted earnings per share as the effect would be anti-dilutive, since the conversion price of \$220.18 exceeded the average market price of the Company’s common stock during the periods.

10. Stock-Based Compensation

As of October 29, 2022, there were 6,287,228 shares of common stock available for issuance under the Company’s 2022 Omnibus Incentive Plan.

Non-cash stock compensation expense is as follows:

Type of Non-Cash Stock Compensation	<i>(in thousands)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Restricted stock and restricted stock unit grants (a)	\$ 9,736	\$ 8,192	\$ 28,519	\$ 22,132
Stock option grants (a)	4,851	4,815	15,144	13,891
Performance stock unit grants (a)	2,730	4,290	7,532	17,333
Total (b)	\$ 17,317	\$ 17,297	\$ 51,195	\$ 53,356

- (a) Included in the line item “Selling, general and administrative expenses” in the Company’s Condensed Consolidated Statements of Income.
- (b) The amounts presented in the table above exclude taxes. For the three and nine month periods ended October 29, 2022, the tax benefit related to the Company’s non-cash stock compensation was approximately \$3.2 million and \$9.5 million,

respectively. For the three and nine month periods ended October 30, 2021, the tax benefit related to the Company's non-cash stock compensation was approximately \$3.1 million and \$9.2 million, respectively.

Stock Options

Stock option transactions during the nine month period ended October 29, 2022 are summarized as follows:

	Number of Shares	Weighted Average Exercise Price Per Share
Options outstanding, January 29, 2022	1,097,558	\$ 181.17
Options granted	326,483	202.09
Options exercised (a)	(65,745)	92.37
Options forfeited	(30,453)	225.28
Options outstanding, October 29, 2022	<u>1,327,843</u>	<u>\$ 189.70</u>

(a) Options exercised during the nine month period ended October 29, 2022 had a total intrinsic value of \$6.4 million.

The following table summarizes information about the stock options vested and expected to vest during the contractual term of such options as of October 29, 2022:

	Options	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Aggregate Intrinsic Value (in millions)
Options vested and expected to vest	1,327,843			
	<u>3</u>	<u>7.0</u>	<u>\$ 189.70</u>	<u>\$ 9.4</u>
Options exercisable	<u>726,860</u>	<u>5.5</u>	<u>\$ 161.97</u>	<u>\$ 9.3</u>

The fair value of each stock option granted during the nine month period ended October 29, 2022 was estimated using the Black Scholes option pricing model using the following assumptions:

	Nine Months Ended October 29, 2022
Risk-free interest rate	1.13% - 2.78%
Expected volatility	32% - 34%
Expected life (years)	6.25
Contractual life (years)	10.0
Expected dividend yield	0%
Weighted average grant date fair value of options issued	\$ 75.64

The expected dividend yield was based on the Company's expectation of not paying dividends in the near term. To evaluate its volatility factor, the Company uses the historical volatility of its stock price, as well as the historical volatility of the stock price of peer companies that are publicly traded over the expected life of the options. The risk free interest rate was based on the U.S. Treasury rates for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the awards being valued. For grants issued during the nine month period ended October 29, 2022, the expected life of the options was calculated using the simplified method. The simplified method defines the life as the average of the contractual term of the options and the weighted average vesting period for all option tranches. This methodology was utilized due to the relatively short length of time the Company's common stock has been publicly traded.

Restricted Stock

Prior to May 1, 2019, the Company granted shares of restricted stock. Grants made on and after May 1, 2019 are in the form of restricted stock units. Restricted stock transactions during the nine month period ended October 29, 2022 are summarized as follows:

	Number of Shares	Weighted Average Grant Date Fair Value Per Award
Non-vested awards outstanding, January 29, 2022	368,158	\$ 233.00
Awards granted	247,768	201.96
Awards vested (a)	(131,261)	205.03
Awards forfeited	(20,429)	234.13
Non-vested awards outstanding, October 29, 2022	<u>464,236</u>	<u>224.29</u>

- (a) Restricted stock awards vested during the nine month period ended October 29, 2022 had a total intrinsic value of \$24.9 million.

The fair value of each share of restricted stock granted during the nine month period ended October 29, 2022 was based upon the closing price of the Company's common stock on the grant date.

Performance Stock Units

The Company grants performance-based restricted stock units to its senior executives. Vesting of the performance stock units granted in Fiscal 2020 and Fiscal 2021 is based on continued service and the achievement of pre-established EBIT margin expansion and sales compounded annual growth rate (CAGR) goals (each weighted equally) over a three-year performance period. Vesting of the performance stock units granted in Fiscal 2022 will be based on continued service and the achievement of pre-established adjusted net income per share growth over a three-year performance period. Based on the Company's achievement of these goals, each award may be earned up to 200% of the target award. In the event that actual performance is below threshold, no award will be made. Compensation costs recognized on the performance stock units are adjusted, as applicable, for performance above or below the target specified in the award.

Performance stock unit transactions during the nine month period ended October 29, 2022 are summarized as follows:

	Number of Shares	Weighted Average Grant Date Fair Value Per Award
Non-vested awards outstanding, January 29, 2022	186,436	\$ 215.90
Awards granted (a)	105,783	204.38
Awards vested (a) (b)	(81,440)	173.84
Awards forfeited	(10,094)	228.67
Non-vested awards outstanding, October 29, 2022	<u>200,685</u>	<u>226.25</u>

- (a) Inclusive of awards distributed in connection with the final settlement of the performance-based stock awards granted in Fiscal 2019.
(b) Performance-based stock awards vested during the nine month period ended October 29, 2022 had a total intrinsic value of \$15.4 million.

11. Commitments and Contingencies

Legal

In the course of business, the Company is party to class or collective actions alleging violations of federal and state wage and hour and other labor statutes, representative claims under the California Private Attorneys' General Act and various other lawsuits and regulatory proceedings from time to time including, among others, commercial, product, employee, customer, intellectual property, privacy and other claims. Actions against us are in various procedural stages. Many of these proceedings raise factual and legal issues and are subject to uncertainties. While no assurance can be given as to the ultimate outcome of these matters, the Company believes

that the final resolution of these actions will not have a material adverse effect on the Company's results of operations, financial position, liquidity or capital resources.

Letters of Credit

The Company had letters of credit arrangements with various banks in the aggregate amount of \$50.0 million, \$55.4 million and \$59.0 million as of October 29, 2022, January 29, 2022 and October 30, 2021, respectively. Among these arrangements, as of October 29, 2022, January 29, 2022 and October 30, 2021, the Company had letters of credit outstanding in the amount of \$47.4 million, \$48.4 million and \$46.8 million, respectively, guaranteeing performance under various insurance contracts and utility agreements. In addition, the Company had outstanding letters of credit arrangements in the amounts of \$2.6 million, \$7.1 million and \$12.3 million at October 29, 2022, January 29, 2022 and October 30, 2021, respectively, related to certain merchandising agreements. Based on the terms of the agreement governing the ABL Line of Credit, the Company had the ability to enter into letters of credit up to \$850.0 million, \$594.6 million and \$541.0 million as of October 29, 2022, January 29, 2022 and October 30, 2021, respectively.

Purchase Commitments

The Company had \$1,157.0 million of purchase commitments related to goods that were not received as of October 29, 2022.

Death Benefits

In November 2005, the Company entered into agreements with three of the Company's former executives whereby upon each of their deaths the Company will pay \$1.0 million to each respective designated beneficiary.

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

The following discussion summarizes the significant factors affecting our consolidated operating results, financial condition, liquidity and cash flows as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the Condensed Consolidated Financial Statements and notes thereto included elsewhere in this report and the Consolidated Financial Statements and notes thereto in our Annual Report on Form 10-K for the fiscal year ended January 29, 2022 (Fiscal 2021 10-K).

In addition to historical information, this discussion and analysis contains forward-looking statements based on current expectations that involve risks, uncertainties and assumptions, such as our plans, objectives, expectations and intentions. Our actual results or other events may differ materially from those anticipated in these forward-looking statements due to various factors, including those discussed under the section of this Item 2 entitled “Safe Harbor Statement.”

Executive Summary

Introduction

We are a nationally recognized off-price retailer of high-quality, branded merchandise at everyday low prices. We opened our first store in Burlington, New Jersey in 1972, selling primarily coats and outerwear. Since then, we have expanded our store base to 893 stores as of October 29, 2022 in 46 states and Puerto Rico. We have diversified our product categories by offering an extensive selection of in-season, fashion-focused merchandise at up to 60% off other retailers’ prices, including: women’s ready-to-wear apparel, menswear, youth apparel, baby, beauty, footwear, accessories, home, toys, gifts and coats. We sell a broad selection of desirable, first-quality, current-brand, labeled merchandise acquired directly from nationally-recognized manufacturers and other suppliers.

Fiscal Year

Fiscal 2022 is defined as the 52-week year ending January 28, 2023. Fiscal 2021 is defined as the 52-week year ended January 29, 2022.

Store Openings, Closings, and Relocations

During the nine month period ended October 29, 2022, we opened 74 new stores, inclusive of 17 relocations, and permanently closed four stores, exclusive of the aforementioned relocations, bringing our store count as of October 29, 2022 to 893 stores.

Ongoing Initiatives for Fiscal 2022-2023

We continue to focus on a number of ongoing initiatives aimed at increasing our overall profitability. These initiatives include, but are not limited to:

- **Driving Comparable Store Sales Growth.**

We strive to increase comparable store sales through the following initiatives:

- *More Effectively Chasing the Sales Trend.* We plan sales using conservative comparable store sales growth, holding and controlling liquidity, closely analyzing the sales trend by business, and remaining ready to chase that trend. We believe that these actions will also allow us to take more advantage of great opportunistic buys.
- *Operating with Leaner Inventories.* We are planning to carry less inventory in our stores going forward compared to historical levels, which we believe should result in the customer finding a higher mix of fresh receipts and great merchandise values. We believe that this should drive faster turns and lower markdowns, while simultaneously improving our customers’ shopping experience.
- *Making a Greater Investment in Merchandising Capabilities.* We intend to invest in incremental headcount, especially in growing or under-developed businesses, training and coaching, improved tools and reporting, and other forms of merchant support. We believe that these investments should improve our ability to develop vendor

relationships, source great merchandise buys, more accurately assess value, and better forecast and chase the sales trend.

- *Enhancing Existing Categories and Introducing New Categories.* We have opportunities to expand the depth and breadth of certain existing categories, such as ladies' apparel, children's products, bath and cosmetic merchandise, housewares, décor for the home and beauty as we continue to de-weather our business, and maintain the flexibility to introduce new categories as we expand our merchandising capabilities.

- **Expanding and Enhancing Our Retail Store Base.**

We intend to expand and enhance our retail store base through the following initiatives:

- *Adhering to a Market Focused and Financially Disciplined Real Estate Strategy.* We have grown our store base consistently since our founding in 1972, developing more than 99% of our stores organically. We believe there is significant opportunity to expand our retail store base in the United States. As a result of our smaller store prototype, we have identified numerous market opportunities that we believe will allow us to operate 2,000 stores over the long term.
- *Maintaining Focus on Unit Economics and Returns.* We have adopted a market focused approach to new store openings in more productive retail locations, with a specific focus on maximizing sales while achieving attractive unit economics and returns. Additionally, as we continue to execute our smaller store prototype, we believe we can reduce occupancy and operating expenses.
- *Enhancing the Store Experience.* We continue to invest in select store relocations and downsizes to improve the customer experience, taking into consideration the age, size, sales, and location of a store. Relocations provide an opportunity, upon lease expirations, to right-size our stores, improve our competitive positioning, incorporate our new prototype store designs and reduce occupancy costs. Downsizes provide an opportunity to right-size our stores, within our existing space, improve co-tenancy, incorporate our new store designs and reduce occupancy costs.

- **Enhancing Operating Margins.**

We intend to increase our operating margins through the following initiatives:

- *Improving Operational Flexibility.* Our store and supply chain teams must continue to respond to the challenge of becoming more responsive to the sales chase, enhancing their ability at flexing up and down based on trends. Their ability to appropriately flex based on the ongoing trends allows us to maximize leverage on sales, regardless of the trend.
- *Optimizing Markdowns.* We believe that our markdown system allows us to maximize sales and gross margin dollars based on forward-looking sales forecasts, sell-through targets and exit dates. Additionally, as we plan to carry less inventory in our stores compared to historical levels, we expect to drive faster turns, which in turn should reduce the amount of markdowns taken.
- *Enhancing Purchasing Power.* We believe that increasing our store footprint and expanding our east and west coast buying offices provides us with the opportunity to capture incremental buying opportunities and realize economies of scale in our merchandising and non-merchandising purchasing activities.
- *Challenging Expenses to Drive Operating Leverage.* We believe that we will be able to leverage our growing sales over the fixed costs of our business. In addition, by more conservatively planning our comparable store sales growth, we are forcing even tighter expense control throughout all areas of our business. We believe that this should put us in a strong position to drive operating leverage on any sales ahead of the plan. Additionally, we plan to continue challenging the processes and operating norms throughout the organization with the belief that this will lead to incremental efficiency improvements and savings.

Uncertainties and Challenges

As we strive to increase profitability, there are uncertainties and challenges that we face that could have a material impact on our revenues or income. Some of these uncertainties and challenges are summarized below. For a further discussion, please refer to the description under the heading "Risk Factors" in the Fiscal 2021 10-K.

General Economic Conditions. Consumer spending habits, including spending for the merchandise that we sell, are affected by, among other things, prevailing global economic conditions, inflation, including the costs of basic necessities and other goods, levels of employment, salaries and wage rates, prevailing interest rates, housing costs, energy costs, commodities pricing, income tax rates and

policies, consumer confidence and consumer perception of economic conditions. In addition, consumer purchasing patterns may be influenced by consumers' disposable income, credit availability and debt levels.

A broad, protracted slowdown in the U.S. economy, an extended period of high unemployment rates, inflation rates, an uncertain global economic outlook or a credit crisis could adversely affect consumer spending habits resulting in lower net sales and profits than expected on a quarterly or annual basis. Consumer confidence is also affected by the domestic and international political situation. Our financial condition and operations could be impacted by changes in government regulations in areas including, but not limited to, taxes and healthcare. Ongoing international trade and tariff negotiations could have a direct impact on our income and an indirect impact on consumer prices. The outbreak or escalation of war, or the occurrence of terrorist acts or other hostilities in or affecting the U.S., or public health issues such as pandemics or epidemics, including the continuing COVID-19 pandemic, could lead to a decrease in spending by consumers. In addition, natural disasters, public health issues, industrial accidents and acts of war in various parts of the world, such as the current war in Ukraine, could have the effect of disrupting supplies and raising prices globally which, in turn, may have adverse effects on the world and U.S. economies and lead to a downturn in consumer confidence and spending.

We closely monitor our net sales, gross margin and expenses. We have performed scenario planning such that if our net sales decline for an extended period of time, we have identified variable costs that could be reduced to partially mitigate the impact of these declines. If we were to experience adverse economic trends and/or if our efforts to counteract the impacts of these trends are not sufficiently effective, there could be a negative impact on our financial performance and position in future fiscal periods.

Seasonality of Sales and Weather Conditions. Our business, like that of most retailers, is subject to seasonal influences. In the second half of the year, which includes the back-to-school and holiday seasons, we generally realize a higher level of sales and net income.

Weather continues to be a contributing factor to the sale of our merchandise. Generally, our sales are higher if the weather is cold during the Fall and warm during the early Spring. Sales of cold weather clothing are increased by early cold weather during the Fall, while sales of warm weather clothing are improved by early warm weather conditions in the Spring. Although we have diversified our product offerings, we believe traffic to our stores is still driven, in part, by weather patterns.

Competition and Margin Pressure. We believe that in order to remain competitive with retailers, including off-price retailers and discount stores, we must continue to offer brand-name merchandise at a discount to prices offered by other retailers as well as an assortment of merchandise that is appealing to our customers.

The U.S. retail apparel and home furnishings markets are highly fragmented and competitive. We compete for business with department stores, off-price retailers, internet retailers, specialty stores, discount stores, wholesale clubs, and outlet stores as well as with certain traditional, full-price retail chains that have developed off-price concepts. At various times throughout the year, traditional full-price department store chains and specialty shops offer brand-name merchandise at substantial markdowns, which can result in prices approximating those offered by us at our Burlington Stores. We anticipate that competition will increase in the future. Therefore, we will continue to look for ways to differentiate our stores from those of our competitors.

The U.S. retail industry continues to face increased pressure on margins as overall challenging retail conditions have led consumers to be more value conscious. Our strategy to chase the sales trend allows us the flexibility to purchase less pre-season merchandise with the balance purchased in-season and opportunistically. It also provides us with the flexibility to shift purchases between suppliers and categories. This enables us to obtain better terms with our suppliers, which we expect to help offset any rising costs of goods.

Industry-wide supply chain issues led to increased freight and labor costs during Fiscal 2021 and continue to add pressure on margins in Fiscal 2022. These costs significantly impacted results in Fiscal 2021 and the nine months ended October 29, 2022, and there remains significant uncertainty around when and if freight costs will return to pre-pandemic levels. Additionally, the higher our sales volume is, and the more sales we chase above our initial plans, the more these increased supply chain costs will impact our margins.

We have also experienced inflationary pressure in our supply chain and with respect to raw materials and finished goods, as well as in occupancy and other operating costs. There can be no assurance that we will be able to offset inflationary pressure in the future by increasing prices or through other means, or that our business will not be negatively affected by continued inflation in the future.

Key Performance and Non-GAAP Measures

We consider numerous factors in assessing our performance. Key performance and non-GAAP measures used by management include net income, Adjusted Net Income, Adjusted EBITDA, Adjusted EBIT, comparable store sales, gross margin, inventory, store payroll and liquidity.

Net income. We earned net income of \$16.8 million during the three month period ended October 29, 2022 compared with net income of \$13.6 million during the three month period ended October 30, 2021. This increase was primarily driven by loss on debt extinguishment charges during the third quarter of Fiscal 2021 for debt transactions that did not recur during the third quarter of Fiscal 2022, partially offset by lower sales and gross margin rate during the third quarter of Fiscal 2022. We earned net income of \$44.9 million during the nine month period ended October 29, 2022 compared with a net income of \$287.2 million during the nine month period ended October 30, 2021. This decrease was primarily driven by lower sales, as well as decreased gross margin rate, partially offset by decreased loss on debt extinguishment charges. Refer to the section below entitled “Results of Operations” for further explanation.

Adjusted Net Income, Adjusted EBITDA and Adjusted EBIT: Adjusted Net Income, Adjusted EBITDA and Adjusted EBIT are non-GAAP financial measures of our performance.

We define Adjusted Net Income as net income, exclusive of the following items, if applicable: (i) net favorable lease costs; (ii) loss on extinguishment of debt; (iii) impairment charges; (iv) costs related to debt issuances and amendments; (v) amounts related to certain litigation matters; and (vi) other unusual, non-recurring or extraordinary expenses, losses, charges or gains, all of which are tax effected to arrive at Adjusted Net Income.

We define Adjusted EBITDA as net income, exclusive of the following items, if applicable: (i) interest expense; (ii) interest income; (iii) costs related to debt issuances and amendments; (iv) loss on extinguishment of debt; (v) income tax expense; (vi) depreciation and amortization; (vii) impairment charges; (viii) amounts related to certain litigation matters; and (ix) other unusual, non-recurring or extraordinary expenses, losses, charges or gains.

We define Adjusted EBIT as net income, exclusive of the following items, if applicable: (i) interest expense; (ii) interest income; (iii) costs related to debt issuances and amendments; (iv) loss on extinguishment of debt; (v) income tax expense; (vi) impairment charges; (vii) net favorable lease costs; (viii) amounts related to certain litigation matters; and (ix) other unusual, non-recurring or extraordinary expenses, losses, charges or gains.

We present Adjusted Net Income, Adjusted EBITDA and Adjusted EBIT, because we believe they are useful supplemental measures in evaluating the performance of our business and provide greater transparency into our results of operations. In particular, we believe that excluding certain items that may vary substantially in frequency and magnitude from what we consider to be our core operating results are useful supplemental measures that assist investors and management in evaluating our ability to generate earnings and leverage sales, and to more readily compare core operating results between past and future periods.

We believe that these non-GAAP measures provide investors helpful information with respect to our operations and financial condition. Other companies in the retail industry may calculate these non-GAAP measures differently such that our calculation may not be directly comparable.

Adjusted Net Income has limitations as an analytical tool, and should not be considered either in isolation or as a substitute for net income or other data prepared in accordance with GAAP. Among other limitations, Adjusted Net Income does not reflect the following items, net of their tax effect:

- net favorable lease costs;
- costs related to debt issuances and amendments;
- losses on extinguishment of debt;
- impairment charges on long-lived assets;
- amounts charged for certain litigation matters; and
- other unusual, non-recurring or extraordinary expenses, losses, charges or gains.

During the three and nine months ended October 29, 2022, Adjusted Net Income decreased \$64.9 million to \$28.0 million and decreased \$314.9 million to \$87.0 million, respectively, compared to the same periods in the prior year. These decreases were

primarily driven by lower sales, as well as decreased gross margin rate. Refer to the section below entitled “Results of Operations” for further explanation.

The following table shows our reconciliation of net income to Adjusted Net Income for the three and nine months ended October 29, 2022 compared with the three and nine months ended October 30, 2021:

	<i>(unaudited)</i>			
	<i>(in thousands)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Reconciliation of net income to Adjusted Net Income:				
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Net favorable lease costs (a)	4,791	5,275	14,262	17,188
Costs related to debt issuances and amendments (b)	—	89	—	3,419
Loss on extinguishment of debt (c)	—	86,362	14,657	117,756
Impairment charges - long-lived assets	10,599	1,488	17,556	3,235
Litigation matters (d)	—	—	10,500	—
Tax effect (e)	(4,148)	(13,891)	(14,867)	(26,835)
Adjusted Net Income	\$ 28,025	\$ 92,942	\$ 87,031	\$ 401,966

- (a) Net favorable lease cost represents the non-cash expense associated with favorable and unfavorable leases that were recorded as a result of purchase accounting related to the April 13, 2006 Bain Capital acquisition of Burlington Coat Factory Warehouse Corporation (the Merger Transaction). These expenses are recorded in the line item “Selling, general and administrative expenses” in our Condensed Consolidated Statements of Income.
- (b) Represents certain costs incurred to refinance our senior secured term loan facility (the Term Loan Facility).
- (c) Fiscal 2022 amounts relate to the partial repurchases of the Convertible Note in the first quarter of Fiscal 2022. Fiscal 2021 amounts relate to the partial repurchase of the Convertible Notes, the redemption of the Secured Notes, as well as the refinancing of the Term Loan Facility.
- (d) Represents amounts charged for certain litigation matters.
- (e) Tax effect is calculated based on the effective tax rates (before discrete items) for the respective periods, adjusted for the tax effect for the impact of items (a) through (d).

Adjusted EBITDA has limitations as an analytical tool, and should not be considered either in isolation or as a substitute for net income or other data prepared in accordance with GAAP. Among other limitations, Adjusted EBITDA does not reflect:

- interest expense on our debt;
- interest income;
- losses on the extinguishment of debt;
- costs related to debt issuances and amendments;
- amounts charged for certain litigation matters;
- cash requirements for replacement of assets. Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will likely have to be replaced in the future;
- impairment charges on long-lived assets;
- income tax expense; and
- other unusual, non-recurring or extraordinary expenses, losses, charges or gains.

During the three and nine months ended October 29, 2022, Adjusted EBITDA decreased \$82.4 million to \$122.6 million and decreased \$385.6 million to \$358.6 million, respectively, compared to the same periods in the prior year. These decreases were primarily driven by lower sales, as well as decreased gross margin rate. Refer to the section below entitled “Results of Operations” for further explanation.

The following table shows our reconciliation of net income to Adjusted EBITDA for the three and nine months ended October 29, 2022 compared with the three and nine months ended October 30, 2021:

	<i>(unaudited)</i>			
	<i>(in thousands)</i>			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Reconciliation of net income to Adjusted EBITDA:				
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Interest expense	17,412	15,609	47,454	52,710
Interest income	(658)	(38)	(4,242)	(156)
Loss on extinguishment of debt (a)	—	86,362	14,657	117,756
Costs related to debt issuances and amendments (b)	—	89	—	3,419
Litigation matters (c)	—	—	10,500	—
Depreciation and amortization (d)	72,425	69,938	216,170	200,275
Impairment charges - long-lived assets	10,599	1,488	17,556	3,235
Income tax expense	6,035	17,922	11,560	79,769
Adjusted EBITDA	\$ 122,596	\$ 204,989	\$ 358,578	\$ 744,211

- (a) Fiscal 2022 amounts relate to the partial repurchases of the Convertible Note in the first quarter of Fiscal 2022. Fiscal 2021 amounts relate to the partial repurchase of the Convertible Notes, the redemption of the Secured Notes, as well as the refinancing of the Term Loan Facility.
- (b) Represents certain costs incurred to execute refinancing of the Term Loan Facility.
- (c) Represents amounts charged for certain litigation matters.
- (d) Includes \$4.8 million and \$14.3 million of favorable lease cost included in the line item "Selling, general and administrative expenses" in our Condensed Consolidated Statements of Income for the three and nine months ended October 29, 2022 and \$5.3 million and \$17.2 million for the three and nine months ended October 30, 2021, respectively. Net favorable lease cost represents the non-cash expense associated with favorable and unfavorable leases that were recorded as a result of the Merger Transaction.

Adjusted EBIT has limitations as an analytical tool, and should not be considered either in isolation or as a substitute for net income or other data prepared in accordance with GAAP. Among other limitations, Adjusted EBIT does not reflect:

- interest expense on our debt;
- interest income;
- losses on the extinguishment of debt;
- costs related to debt issuances and amendments;
- net favorable lease cost;
- impairment charges on long-lived assets;
- amounts charged for certain litigation matters;
- income tax expense; and
- other unusual, non-recurring or extraordinary expenses, losses, charges or gains.

During the three and nine months ended October 29, 2022, Adjusted EBIT decreased \$85.4 million to \$55.0 million and decreased \$404.5 million to \$156.7 million, respectively, compared to the same periods in the prior year. These decreases were primarily driven by lower sales, as well as decreased gross margin rate. Refer to the section below entitled "Results of Operations" for further explanation.

The following table shows our reconciliation of net income to Adjusted EBIT for the three and nine months ended October 29, 2022 compared with the three and nine months ended October 30, 2021:

	(unaudited)			
	(in thousands)			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Reconciliation of net income to Adjusted EBIT:				
Net income	\$ 16,783	\$ 13,619	\$ 44,923	\$ 287,203
Interest expense	17,412	15,609	47,454	52,710
Interest income	(658)	(38)	(4,242)	(156)
Loss on extinguishment of debt (a)	—	86,362	14,657	117,756
Costs related to debt issuances and amendments (b)	—	89	—	3,419
Net favorable lease costs (c)	4,791	5,275	14,262	17,188
Impairment charges - long-lived assets	10,599	1,488	17,556	3,235
Litigation matters (d)	—	—	10,500	—
Income tax expense	6,035	17,922	11,560	79,769
Adjusted EBIT	\$ 54,962	\$ 140,326	\$ 156,670	\$ 561,124

- (a) Fiscal 2022 amounts relate to the partial repurchases of the Convertible Note in the first quarter of Fiscal 2022. Fiscal 2021 amounts relate to the partial repurchase of the Convertible Notes, the redemption of the Secured Notes, as well as the refinancing of the Term Loan Facility.
- (b) Represents certain costs incurred to execute refinancing of the Term Loan Facility.
- (c) Net favorable lease cost represents the non-cash expense associated with favorable and unfavorable leases that were recorded as a result of the Merger Transaction. These expenses are recorded in the line item “Selling, general and administrative expenses” in our Condensed Consolidated Statements of Income.
- (d) Represents amounts charged for certain litigation matters.

Comparable Store Sales. Comparable store sales measure performance of a store during the current reporting period against the performance of the same store in the corresponding period of a prior year. Due to the impact of the COVID-19 pandemic, including the temporary closing of all stores during Fiscal 2020, we are using Fiscal 2019 as the comparable previous year period when calculating comparable store sales for Fiscal 2021. The method of calculating comparable store sales varies across the retail industry. As a result, our definition of comparable store sales may differ from other retailers.

For Fiscal 2022, we define comparable store sales as merchandise sales of those stores commencing on the first day of the fiscal month one year after the end of their grand opening activities, which normally conclude within the first two months of operations. If a store is closed for seven or more days during a month, our policy is to remove that store from our calculation of comparable store sales for any such month, as well as during the month(s) of their grand re-opening activities. The change in our comparable store sales was as follows:

	Three Months Ended	Nine Months Ended
October 29, 2022	-17%	-17%
October 30, 2021	16%	18%

Various factors affect comparable store sales, including, but not limited to, weather conditions, current economic conditions, the timing of our releases of new merchandise and promotional events, the general retail sales environment, consumer preferences and buying trends, changes in sales mix among distribution channels, competition, and the success of marketing programs.

Gross Margin. Gross margin is the difference between net sales and the cost of sales. Our cost of sales and gross margin may not be comparable to those of other entities, since some entities may include all of the costs related to their buying and distribution functions, certain store-related costs and other costs, in cost of sales. We include certain of these costs in the line items “Selling, general and administrative expenses” and “Depreciation and amortization” in our Condensed Consolidated Statements of Income. We include in our “Cost of sales” line item all costs of merchandise (net of purchase discounts and certain vendor allowances), inbound freight, distribution center outbound freight and certain merchandise acquisition costs, primarily commissions and import fees.

Gross margin as a percentage of net sales decreased to 41.2% during the three month period ended October 29, 2022, compared with 41.4% during the three month period ended October 30, 2021, driven primarily by decreased merchandise margins, primarily due to higher markdowns and increased shortage, partially offset by decreased freight costs. Product sourcing costs, which are included in selling, general and administrative expenses, increased approximately 120 basis points as a percentage of net sales.

Gross margin as a percentage of net sales decreased to 40.4% during the nine months ended October 29, 2022, compared with 42.3% during nine months ended October 30, 2021, driven primarily by decreased merchandise margins, primarily due to higher markdowns and increased shortage, as well as increased freight costs. Product sourcing costs, which are included in selling, general and administrative expenses, increased approximately 140 basis points as a percentage of net sales.

Inventory. Inventory at October 29, 2022 increased to \$1,445.1 million compared with \$1,059.7 million at October 30, 2021. The increase was attributable primarily to increased inventory in our warehouses, inclusive of reserve inventory, as well as 61 net new stores opened since the end of the third quarter of Fiscal 2021, and an 8% increase in comparable store inventory. Reserve inventory was 31% of total inventory as of October 29, 2022, compared with 30% as of October 30, 2021.

The difference between inventory and comparable store inventory is primarily the result of the latter not including distribution center and warehouse inventory or inventory at new and non-comparable stores. Inventory held at our warehouses and distribution centers includes merchandise being readied for shipment to our stores and reserve inventory acquired opportunistically for future store release. The magnitude of reserve inventory, at any one point in time, is dependent on the buying opportunities identified in the marketplace.

Reserve inventory includes all inventory that is being stored for release either later in the season, or in a subsequent season. We intend to use our reserve merchandise to effectively chase sales trends. Inventory at January 29, 2022 was \$1,021.0 million.

In order to better serve our customers and maximize sales, we continue to refine our merchandising mix and inventory levels within our stores. By appropriately managing our inventories, we believe we will be better able to deliver a continual flow of fresh merchandise to our customers.

Store Payroll as a Percentage of Net Sales. Store payroll as a percentage of net sales measures our ability to manage our payroll in accordance with increases or decreases in net sales. The method of calculating store payroll varies across the retail industry. As a result, our store payroll as a percentage of net sales may differ from other retailers. We define store payroll as regular and overtime payroll for all store personnel as well as regional and territory personnel, exclusive of payroll charges related to corporate and warehouse employees. Store payroll as a percentage of net sales was 8.1% and 8.1% during the three and nine month periods ended October 29, 2022, respectively, compared with 8.4% and 8.1% during the three and nine month periods ended October 30, 2021, respectively.

Liquidity. Liquidity measures our ability to generate cash. Management measures liquidity through cash flow, which is the measure of cash generated from or used in operating, financing, and investing activities. Cash and cash equivalents, including restricted cash and cash equivalents, decreased \$662.5 million during the nine months ended October 29, 2022, compared with a decrease of \$194.9 million during the nine months ended October 30, 2021. Refer to the section below entitled “Liquidity and Capital Resources” for further explanation.

Results of Operations

The following table sets forth certain items in the Condensed Consolidated Statements of Income as a percentage of net sales for the three and nine months ended October 29, 2022 and the three and nine months ended October 30, 2021.

	Percentage of Net Sales			
	Three Months Ended		Nine Months Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Net sales	100.0%	100.0%	100.0%	100.0%
Other revenue	0.2	0.2	0.2	0.2
Total revenue	100.2	100.2	100.2	100.2
Cost of sales	58.8	58.6	59.6	57.7
Selling, general and administrative expenses	35.7	33.0	35.2	31.7
Costs related to debt issuances and amendments	—	0.0	—	0.1
Depreciation and amortization	3.3	2.8	3.4	2.7
Impairment charges - long-lived assets	0.5	0.1	0.3	0.0
Other income - net	(0.1)	(0.1)	(0.3)	(0.2)
Loss on extinguishment of debt	—	3.8	0.2	1.8
Interest expense	0.9	0.7	0.8	0.8
Total costs and expenses	99.1	98.9	99.2	94.6
Income before income tax expense	1.1	1.3	1.0	5.6
Income tax expense	0.3	0.8	0.2	1.2
Net income	0.8%	0.5%	0.8%	4.4%

Three Month Period Ended October 29, 2022 Compared With the Three Month Period Ended October 30, 2021

Net sales

Net sales decreased \$263.7 million, or 11.5%, to \$2,035.9 million during the third quarter of Fiscal 2022, primarily driven by a decrease of 17% in comparable store sales during the third quarter of Fiscal 2022, on top of a 16% increase in the third quarter of Fiscal 2021. We believe this decrease in comparable store sales was driven by strong results in the prior period, as well as economic pressure on our core customers and promotional activity throughout the retail environment, which we did not respond to quickly enough. The decrease in net sales was partially offset by 61 net new stores since the end of the third quarter of Fiscal 2021.

Cost of sales

Cost of sales as a percentage of net sales increased to 58.8% during the third quarter of Fiscal 2022, compared to 58.6% during the third quarter of Fiscal 2021. This increase was primarily driven by decreased merchandise margins, primarily due to higher markdowns and increased shortage, partially offset by decreased freight costs. On a dollar basis, cost of sales decreased \$149.4 million, or 11.1%, primarily driven by our overall decrease in sales. Product sourcing costs, which are included in selling, general and administrative expenses, increased approximately 120 basis points as a percentage of net sales.

Selling, general and administrative expenses

The following table details selling, general and administrative expenses for the three month period ended October 29, 2022 compared with the three month period ended October 30, 2021. Prior year amounts have been reclassified to conform to the current period presentation.

	(in millions)					
	Three Months Ended			Three Months Ended		
	October 29, 2022	Percentage of Net Sales	October 30, 2021	Percentage of Net Sales	\$ Variance	% Change
Store related costs	\$ 432.7	21.3%	\$ 454.3	19.8%	\$ (21.6)	(4.8)%
Product sourcing costs	177.9	8.7	172.7	7.5	5.2	3.0
Corporate costs	78.0	3.8	85.7	3.7	(7.7)	(9.0)
Marketing and strategy costs	12.4	0.6	17.9	0.8	(5.5)	(30.7)
Other selling, general and administrative expenses	25.9	1.3	29.2	1.2	(3.3)	(11.3)
Selling, general and administrative expenses	\$ 726.9	35.7%	\$ 759.8	33.0%	\$ (32.9)	-4.3%

The increase in selling, general and administrative expenses as a percentage of net sales was primarily driven by deleverage from comparable sales decrease and increased product sourcing costs, partially offset by decreased store payroll costs. On a dollar basis, the decrease in selling, general and administrative expenses was primarily driven by decreases in store payroll costs and incentive compensation, partially offset by increases in occupancy costs.

Depreciation and amortization

Depreciation and amortization expense amounted to \$67.6 million during the third quarter of Fiscal 2022 compared with \$64.7 million during the third quarter of Fiscal 2021. The increase in depreciation and amortization expense was primarily driven by capital expenditures related to our new and non-comparable stores.

Impairment charges – long-lived assets

Impairment charges on long-lived assets were \$10.6 million during the third quarter of Fiscal 2022, primarily related to two owned stores expected to be sold below net carrying value. Impairment charges on long-lived assets were \$1.5 million during the third quarter of Fiscal 2021, related to store-level assets at four stores.

The recoverability assessment related to these store-level assets requires various judgments and estimates, including estimates related to future revenues, gross margin rates, store expenses and other assumptions. We base these estimates upon our past and expected future performance. We believe our estimates are appropriate in light of current market conditions. However, future impairment charges could be required if we do not achieve our current revenue or cash flow projections for each store. Refer to Note 6, “Fair Value Measurements,” for further discussion regarding impairment charges.

Loss on Extinguishment of Debt

During the third quarter of Fiscal 2021, we incurred a debt extinguishment charge of \$86.4 million related to the partial repurchase of the Convertible Notes. Refer to Note 4, “Long Term Debt,” for further discussion regarding our debt transactions.

Interest expense

Interest expense increased \$1.8 million during the third quarter of Fiscal 2022 to \$17.4 million, compared to the same period in the prior year. The increase was driven by the increase in LIBOR rates on the unhedged portion of our Term Loan Facility, partially offset by the repurchase of Convertible Notes.

The average interest rates and average balances related to our variable rate debt for the third quarter of Fiscal 2022 compared with the third quarter of Fiscal 2021, are summarized in the table below:

	Three Months Ended	
	October 29, 2022	October 30, 2021
Average balance – ABL Line of Credit (in millions)	\$ —	\$ —
Average interest rate – ABL Line of Credit	—	—
Average balance – Term Loan Facility (in millions) (a)	\$ 951.0	\$ 960.6
Average interest rate – Term Loan Facility	4.7%	2.1%

(a) Excludes original issue discount.

Income tax expense

Income tax expense was \$6.0 million during the third quarter of Fiscal 2022 compared with income tax expense of \$17.9 million during the third quarter of Fiscal 2021. The effective tax rate for the third quarter of Fiscal 2022 was 26.4% compared with 56.8% during the third quarter of Fiscal 2021. The higher income tax expense and tax rate in the prior year period is primarily driven by higher pre-tax income and the disallowance of certain debt extinguishment costs related to partial repurchase of the Convertible Notes during the third quarter of Fiscal 2021.

At the end of each interim period we are required to determine the best estimate of our annual effective tax rate and then apply that rate in providing for income taxes on a current year-to-date (interim period) basis. Use of this methodology during the third quarter of Fiscal 2022 resulted in an annual effective income tax rate of approximately 28% (before discrete items) as our best estimate.

Net income

We earned net income of \$16.8 million for the third quarter of Fiscal 2022 compared with \$13.6 million for the third quarter of Fiscal 2021. This increase was primarily driven by loss on debt extinguishment charges during the third quarter of Fiscal 2021 for debt transactions that did not recur during the third quarter of Fiscal 2022, offset by lower sales and gross margin rate during the third quarter of Fiscal 2022.

Nine Month Period Ended October 29, 2022 Compared With the Nine Month Period Ended October 30, 2021

Net sales

Net sales decreased \$757.6 million, or 11.3%, to \$5,945.5 million during the nine months ended October 29, 2022, primarily driven by a decrease of 17% in comparable stores sales during the nine months ended October 29, 2022, on top of an 18% increase during the nine months ended October 30, 2021. We believe this decrease in comparable store sales was driven by strong results in the prior period, as well as economic pressure on our core customers and promotional activity throughout the retail environment, which we did not respond to quickly enough. The decrease in net sales was partially offset by 61 net new stores since the end of the third quarter of Fiscal 2021.

Cost of sales

Cost of sales as a percentage of net sales increased to 59.6% during the nine months ended October 29, 2022, compared to 57.7% during the nine months ended October 30, 2021. This increase was primarily driven by decreased merchandise margins, primarily due to higher markdowns and increased shortage, as well as increased freight costs. On a dollar basis, cost of sales decreased \$323.1 million, or 8.3%, primarily driven by our overall decrease in sales. Product sourcing costs, which are included in selling, general and administrative expenses, increased approximately 140 basis points as a percentage of net sales.

Selling, general and administrative expenses

The following table details selling, general and administrative expenses for the nine month period ended October 29, 2022 compared with the nine month period ended October 30, 2021. Prior year amounts have been reclassified to conform to the current period presentation.

	<i>(in millions)</i>					
	Nine Months Ended					
	October 29, 2022	Percentage of Net Sales	October 30, 2021	Percentage of Net Sales	\$ Variance	% Change
Store related costs	\$ 1,257.5	21.2%	\$ 1,298.6	19.4%	\$ (41.1)	(3.2)%
Product sourcing costs	491.9	8.2	459.1	6.8	32.8	7.1
Corporate costs	235.6	4.0	246.5	3.7	(10.9)	(4.4)
Marketing and strategy costs	33.1	0.6	42.9	0.6	(9.8)	(22.8)
Other selling, general and administrative expenses	74.7	1.2	79.8	1.2	(5.1)	(6.4)
Selling, general and administrative expenses	\$ 2,092.8	35.2%	\$ 2,126.9	31.7%	\$ (34.1)	(1.6)%

The increase in selling, general and administrative expenses as a percentage of net sales was primarily driven by deleverage from comparable sales decrease as well as increased product sourcing costs and litigation accrual. On a dollar basis, the decrease in selling, general and administrative expenses was primarily driven by decreases in store payroll costs, incentive compensation, and marketing costs, partially offset by increases in occupancy costs and product sourcing costs.

Depreciation and amortization

Depreciation and amortization expense amounted to \$201.9 million during the nine months ended October 29, 2022 compared with \$183.1 million during the nine months ended October 30, 2021. The increase in depreciation and amortization expense was primarily driven by capital expenditures related to our new and non-comparable stores.

Impairment charges – long-lived assets

Impairment charges on long-lived assets were \$17.6 million during the nine months ended October 29, 2022, related to three owned stores expected to be sold below net carrying value, declines in revenue and operating results for eight stores, and unrecoverable fixed assets at two relocating stores. Impairment charges on long-lived assets were \$3.2 million during the nine months ended October 30, 2021, related to the expected sale of one store, as well as declines in revenues and operating results for five stores.

The recoverability assessment related to these store-level assets requires various judgments and estimates, including estimates related to future revenues, gross margin rates, store expenses and other assumptions. We base these estimates upon our past and expected future performance. We believe our estimates are appropriate in light of current market conditions. However, future impairment charges could be required if we do not achieve our current revenue or cash flow projections for each store. Refer to Note 6, “Fair Value Measurements,” for further discussion regarding impairment charges.

Other income - net

Other income - net improved \$8.6 million to \$18.8 million during the nine months ended October 29, 2022, compared to the same period in the prior year. The increase was primarily driven by the gain on sale of real estate related assets and interest income on a tax refund.

Loss on Extinguishment of Debt

During the nine months ended October 29, 2022, we entered into separate, privately negotiated exchange agreements with certain holders of the Convertible Notes. Under the terms of the exchange agreements, the holders exchanged \$64.6 million in aggregate principal amount of Convertible Notes held by them for \$78.2 million in cash. These exchanges resulted in aggregate pre-tax debt extinguishment charges of \$14.7 million.

During the nine months ended October 30, 2021, we incurred a debt extinguishment charge of \$86.4 million related to the partial repurchase of the Convertible Notes, \$30.2 million related to the premium paid on redemption of the Secured Notes, as well as \$1.2 million related to the refinancing of our Term Loan Facility. Refer to Note 4, “Long Term Debt,” for further discussion regarding our debt transactions.

Interest expense

Interest expense decreased \$5.3 million during the nine months ended October 29, 2022 to \$47.5 million, compared to the same period in the prior year. The decrease was driven by the redemption in full of the \$300.0 million aggregate principal amount of Secured Notes, repurchase of \$297.3 million of Convertible Notes, partially offset by the increase in LIBOR rates on the unhedged portion of our Term Loan Facility.

The average interest rates and average balances related to our variable rate debt for the nine months ended October 29, 2022 compared with the nine months ended October 30, 2021, are summarized in the table below:

	Nine Months Ended	
	October 29, 2022	October 30, 2021
Average balance – ABL Line of Credit (in millions)	\$ —	\$ —
Average interest rate – ABL Line of Credit	—	—
Average balance – Term Loan Facility (in millions) (a)	\$ 953.4	\$ 961.2
Average interest rate – Term Loan Facility	3.4%	2.0%

(a) Excludes original issue discount.

Income tax expense

Income tax expense was \$11.6 million during the nine months ended October 29, 2022 compared with income tax expense of \$79.8 million during the nine months ended October 30, 2021. The effective tax rate for the nine months ended October 29, 2022 was 20.5% compared with 21.7% during the nine months ended October 30, 2021. The decrease in income tax expense in the nine months ended October 29, 2022 was a result of lower pre-tax income.

At the end of each interim period we are required to determine the best estimate of our annual effective tax rate and then apply that rate in providing for income taxes on a current year-to-date (interim period) basis. Use of this methodology during the nine

months ended October 29, 2022 resulted in an annual effective income tax rate of approximately 28% (before discrete items) as our best estimate.

Net income

We earned net income of \$44.9 million for the nine months ended October 29, 2022 compared with \$287.2 million for the nine months ended October 30, 2021. This decrease was primarily driven by lower sales, as well as decreased gross margin rate, partially offset by a smaller debt extinguishment charge.

Liquidity and Capital Resources

Our ability to satisfy interest payment and future principal payment obligations on our outstanding debt will depend largely on our future performance which, in turn, is subject to prevailing economic conditions and to financial, business and other factors beyond our control. If we do not have sufficient cash flow to service interest payment and future principal payment obligations on our outstanding indebtedness and if we cannot borrow or obtain equity financing to satisfy those obligations, our business and results of operations will be materially adversely affected. We cannot be assured that any replacement borrowing or equity financing could be successfully completed on terms similar to our current financing agreements, or at all.

On June 11, 2021, we redeemed the full \$300.0 million aggregate principal amount of the Secured Notes. The redemption price of the Secured Notes was \$323.7 million, plus accrued and unpaid interest to, but not including, the date of redemption. Additionally, we repurchased \$232.7 million of principal on the Convertible Notes during the second half of Fiscal 2021. During the first quarter of Fiscal 2022, we repurchased an additional \$64.6 million of principal on the Convertible Notes. During the second quarter of Fiscal 2022, we finalized an increase to the aggregate principal amount of the commitments of our current asset-based lending facility (the ABL Line of Credit) from \$650.0 million to \$900.0 million.

We believe that cash generated from operations, along with our existing cash and our ABL Line of Credit, will be sufficient to fund our expected cash flow requirements and planned capital expenditures for at least the next twelve months as well as the foreseeable future. However, there can be no assurance that we would be able to offset declines in our comparable store sales with savings initiatives in the event that the economy declines.

As market conditions warrant, we may, from time to time, repurchase our outstanding debt securities in the open market, in privately negotiated transactions, by tender offer, by exchange transaction or otherwise. Such repurchases, if any, will depend on prevailing market conditions, our liquidity and other factors and may be commenced or suspended at any time. The amounts involved and total consideration paid may be material.

Cash Flow for the Nine Month Period Ended October 29, 2022 Compared With the Nine Month Period Ended October 30, 2021

We used \$662.5 million of cash during the nine month period ended October 29, 2022 compared with \$194.9 million during the nine month period ended October 30, 2021.

Net cash provided by operating activities amounted to \$9.6 million during the nine month period ended October 29, 2022, compared with \$608.4 million during the nine month period ended October 30, 2021. The decrease in our operating cash flows was primarily driven by lower sales and decreased gross margin rate, as well as changes in working capital, primarily decreased accounts payable and increased inventory. The decrease was partially offset by a \$245.5 million tax refund received during Fiscal 2022.

Net cash used in investing activities was \$319.1 million during the nine month period ended October 29, 2022 compared with \$233.3 million during the nine month period ended October 30, 2021. This change was primarily the result of an increase in capital expenditures related to our stores (new stores, remodels and other store expenditures).

Net cash used in financing activities was \$353.0 million during the nine month period ended October 29, 2022 compared with \$570.0 million during the nine month period ended October 30, 2021. This change was primarily driven by higher debt redemptions in Fiscal 2021 compared to Fiscal 2022, partially offset by more share repurchases in Fiscal 2022.

Changes in working capital also impact our cash flows. Working capital equals current assets (exclusive of restricted cash) minus current liabilities. We had working capital at October 29, 2022 of \$214.8 million compared with \$686.0 million at October 30, 2021. The decrease in working capital was primarily due to a decrease in cash and cash equivalents, primarily driven by payments on the Convertible Notes and share repurchases, as well as decreased prepaid income taxes, partially offset by decreased accounts payable and increased inventory. We had working capital at January 29, 2022 of \$593.4 million.

Capital Expenditures

For the nine month period ended October 29, 2022, cash spend for capital expenditures, net of \$9.8 million of landlord allowances, amounted to \$332.7 million.

We estimate that we will spend approximately \$510 million, net of approximately \$15 million of landlord allowances, in capital expenditures during Fiscal 2022, including approximately \$230 million, net of the previously mentioned landlord allowances, for store expenditures (new stores, remodels and other store expenditures). In addition, we estimate that we will spend approximately \$150 million to support our supply chain initiatives, with the remaining capital used to support our information technology and other business initiatives.

Share Repurchase Program

On August 18, 2021, our Board of Directors authorized the repurchase of up to \$400.0 million of common stock, which was authorized to be executed through August 2023. This authorization was completed during the second quarter of Fiscal 2022.

On February 16, 2022, our Board of Directors authorized the repurchase of up to an additional \$500.0 million of common stock, which is authorized to be executed through February 2024.

During the nine months ended October 29, 2022, we repurchased 1,481,782 shares of common stock for \$251.2 million under these repurchase programs. As of October 29, 2022, we had \$398.8 million remaining under our share repurchase authorization.

We are authorized to repurchase shares of our outstanding common stock from time to time on the open market or in privately negotiated transactions under our repurchase program. The timing and amount of stock repurchases will depend on a variety of factors, including the market conditions as well as corporate and regulatory considerations. Our share repurchase program may be suspended, modified or discontinued at any time, and we have no obligation to repurchase any amount of our common stock under the program.

Dividends

We currently do, and intend to continue to, retain all available funds and any future earnings to fund all of the Company's capital expenditures, business initiatives, and to support any potential opportunistic capital structure initiatives. Therefore, at this time, we do not anticipate paying cash dividends in the near term. Our ability to pay dividends on our common stock will be limited by restrictions on the ability of our subsidiaries to pay dividends or make distributions under the terms of current and any future agreements governing our indebtedness. Any future determination to pay dividends will be at the discretion of our Board of Directors, subject to compliance with covenants in our current and future agreements governing our indebtedness, and will depend upon our results of operations, financial condition, capital requirements and other factors that our Board of Directors deems relevant.

In addition, since we are a holding company, substantially all of the assets shown on our Condensed Consolidated Balance Sheets are held by our subsidiaries. Accordingly, our earnings, cash flow and ability to pay dividends are largely dependent upon the earnings and cash flows of our subsidiaries and the distribution or other payment of such earnings to us in the form of dividends.

Operational Growth

During the nine month period ended October 29, 2022, we opened 74 new stores, inclusive of 17 relocations, and closed four stores, exclusive of the aforementioned relocations, bringing our store count as of October 29, 2022 to 893 stores. During Fiscal 2022, we plan to open 87 net new stores.

We have identified numerous market opportunities that we believe will allow us to operate 2,000 stores over the long-term. We believe that our ability to find satisfactory locations for our stores is essential for the continued growth of our business. The opening of stores generally is contingent upon a number of factors including, but not limited to, the availability of desirable locations with suitable structures and the negotiation of acceptable lease terms. There can be no assurance, however, that we will be able to find suitable locations for new stores or that we will be able to open the number of new stores presently planned, even if such locations are

found and acceptable lease terms are obtained. Assuming that appropriate locations are identified, we believe that we will be able to execute our growth strategy without significantly impacting our current stores.

Debt and Hedging

As of October 29, 2022, our obligations, inclusive of original issue discount, include \$944.2 million under our Term Loan Facility, \$507.7 million of Convertible Notes and no outstanding borrowings on our ABL Line of Credit. Our debt obligations also include \$34.4 million of finance lease obligations as of October 29, 2022.

Term Loan Facility

On June 24, 2021, Burlington Coat Factory Warehouse Corporation, an indirect subsidiary of the Company (BCFWC), entered into Amendment No. 9 (the Ninth Amendment) to the Term Loan Credit Agreement governing the Term Loan Facility. The Ninth Amendment, among other things, extended the maturity date from November 17, 2024 to June 24, 2028, and changed the interest rate margins applicable to the Term Loan Facility from 0.75% to 1.00%, in the case of prime rate loans, and from 1.75% to 2.00%, in the case of LIBOR loans, with a 0.00% LIBOR floor. Refer to Note 4, "Long Term Debt," for further discussion regarding our debt transactions.

At October 29, 2022, our borrowing rate related to the Term Loan Facility was 5.1%.

ABL Line of Credit

On July 20, 2022, we entered into a Fourth Amendment to the Second Amended and Restated Credit Agreement (the "Amendment"), by and among BCFWC, as lead borrower and the other borrowers party thereto, the facility guarantors party thereto, the lenders party thereto and Bank of America, N.A., as administrative agent and collateral agent, which Amendment amends that certain Second Amended and Restated Credit Agreement dated as of September 2, 2011, by and among the BCFWC, the other borrowers party thereto, the facility guarantors party thereto, the lenders party thereto and Bank of America, N.A., as administrative agent and collateral agent. The Amendment increased the aggregate principal amount of the commitments of the ABL Line of Credit from \$650.0 million to \$900.0 million and replaced the LIBOR-based interest rate benchmark provisions with interest rate benchmark provisions based on a term secured overnight financing rate (SOFR) or a daily SOFR rate (in the case of daily SOFR, available for borrowings up to \$100 million, or up to the full amount of the commitments if the term SOFR rate is not available).

At October 29, 2022, we had \$850.0 million available under the ABL Line of Credit. There were no borrowings on the ABL Line of Credit during the nine month period ended October 29, 2022.

Convertible Notes

On April 16, 2020, we issued \$805.0 million of Convertible Notes. The Convertible Notes have an initial conversion rate of 4.5418 shares per \$1,000 principal amount of Convertible Notes (equivalent to an initial conversion price of approximately \$220.18 per share of the Company's common stock), subject to adjustment if certain events occur.

The Convertible Notes are general unsecured obligations of the Company. The Convertible Notes bear interest at a rate of 2.25% per year, payable semi-annually in cash, in arrears on April 15 and October 15 of each year, beginning on October 15, 2020. The Convertible Notes will mature on April 15, 2025, unless earlier converted, redeemed or repurchased.

During the second half of Fiscal 2021, we entered into separate, privately negotiated exchange agreements with certain holders of the Convertible Notes. Under the terms of these exchange agreements, the holders exchanged \$232.7 million in aggregate principal amount of Convertible Notes held by them for a combination of an aggregate of \$199.8 million in cash and 513,991 shares of our common stock. These exchanges resulted in aggregate pre-tax debt extinguishment charges of \$124.6 million in Fiscal 2021.

During the first quarter of Fiscal 2022, we entered into separate, privately negotiated exchange agreements with certain holders of the Convertible Notes. Under the terms of the exchange agreements, the holders exchanged \$64.6 million in aggregate principal amount of Convertible Notes held by them for \$78.2 million in cash. These exchanges resulted in aggregate pre-tax debt extinguishment charges of \$14.7 million.

On April 16, 2020, BCFWC issued \$300.0 million of Secured Notes. The Secured Notes are senior, secured obligations of BCFWC, and interest was payable semiannually in cash at a rate of 6.25% per annum on April 15 and October 15 of each year, beginning on October 15, 2020. The Secured Notes were guaranteed on a senior secured basis by Burlington Coat Factory Holdings, LLC, Burlington Coat Factory Investments Holdings, Inc. and BCFWC's subsidiaries that guarantee the loans under the Term Loan Facility and ABL Line of Credit.

On June 11, 2021, BCFWC redeemed the full \$300.0 million aggregate principal amount of the Secured Notes. The redemption price of the Secured Notes was \$323.7 million, plus accrued and unpaid interest to, but not including, the date of redemption. Refer to Note 4, "Long Term Debt," for further discussion regarding our debt transactions.

Hedging

On June 24, 2021, the Company terminated its previous interest rate swap and entered into a new interest rate swap. The new interest rate swap, which hedges \$450 million of variable rate exposure under our Term Loan Facility, is designated as a cash flow hedge and expires on June 24, 2028. Refer to Note 5, "Derivative Instruments and Hedging Activities," for further discussion regarding our derivative transactions.

Certain Information Concerning Contractual Obligations

We had \$1,157.0 million of purchase commitments related to goods that were not received as of October 29, 2022, and had \$3,905.8 million of future minimum lease payments under operating leases as of October 29, 2022. Additionally, during the first quarter of Fiscal 2022, we repurchased \$64.6 million in aggregate principal amount of the Convertible Notes. See Note 4, "Long Term Debt," for additional information related to our debt transactions. There were no other significant changes regarding our obligations to make future payments under current contracts from those included in our Fiscal 2021 10-K.

Critical Accounting Policies and Estimates

Our Condensed Consolidated Financial Statements have been prepared in accordance with GAAP. We believe there are several accounting policies that are critical to understanding our historical and future performance as these policies affect the reported amounts of revenues and other significant areas that involve management's judgments and estimates. The preparation of our Condensed Consolidated Financial Statements requires management to make estimates and assumptions that affect (i) the reported amounts of assets and liabilities; (ii) the disclosure of contingent assets and liabilities at the date of the Condensed Consolidated Financial Statements; and (iii) the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates and judgments, including those related to revenue recognition, inventories, long-lived assets, intangible assets, goodwill, insurance reserves and income taxes. Historical experience and various other factors that are believed to be reasonable under the circumstances form the basis for making estimates and judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. A critical accounting estimate meets two criteria: (1) it requires assumptions about highly uncertain matters and (2) there would be a material effect on the consolidated financial statements from either using a different, although reasonable, amount within the range of the estimate in the current period or from reasonably likely period-to-period changes in the estimate.

Our critical accounting policies and estimates are consistent with those disclosed in Note 1, "Summary of Significant Accounting Policies," to the audited Consolidated Financial Statements, included in Part II, Item 8 of the Fiscal 2021 10-K.

Safe Harbor Statement

This report contains forward-looking statements that are based on current expectations, estimates, forecasts and projections about us, the industry in which we operate and other matters, as well as management's beliefs and assumptions and other statements regarding matters that are not historical facts. For example, when we use words such as "projects," "expects," "anticipates," "intends," "plans," "believes," "seeks," "estimates," "should," "would," "could," "will," "opportunity," "potential" or "may," variations of such words or other words that convey uncertainty of future events or outcomes, we are making forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (Exchange Act). Our forward-looking statements are subject to risks and uncertainties. Such statements may include, but are not limited to, future impacts of the COVID-19 pandemic, proposed store openings and closings, proposed capital expenditures, projected financing requirements, proposed developmental projects, projected sales and earnings, our ability to maintain selling margins, and the effect of the adoption of recent accounting pronouncements on our consolidated financial position, results of

operations and cash flows. Actual events or results may differ materially from the results anticipated in these forward-looking statements as a result of a variety of factors. While it is impossible to identify all such factors, factors that could cause actual events or results to differ materially from those we expected include: the impact of the COVID-19 pandemic and actions taken to slow its spread and the related impacts on economic activity, financial markets, labor markets and the global supply chain; general economic conditions, including inflation, and the related impact on consumer confidence and spending; competitive factors, including pricing and promotional activities of major competitors and an increase in competition within the markets in which we compete; weather patterns, including changes in year-over-year temperatures; the reduction in traffic to, or the closing of, the other destination retailers in the shopping areas where our stores are located; changing consumer preferences and demand; industry trends, including changes in buying, inventory and other business practices; natural and man-made disasters, including fire, snow and ice storms, flood, hail, hurricanes and earthquakes; our ability to successfully implement one or more of our strategic initiatives and growth plans; the availability, selection and purchasing of attractive merchandise on favorable terms; the availability of desirable store locations on suitable terms; industry trends, including changes in buying, inventory and other business practices; terrorist attacks, particularly attacks on or within markets in which we operate; our ability to attract, train and retain quality employees and temporary personnel in appropriate numbers; our ability to control costs and expenses; the solvency of parties with whom we do business and their willingness to perform their obligations to us; import risks, including tax and trade policies, tariffs and government regulations; our dependence on vendors for our merchandise; domestic and international events affecting the delivery of merchandise to our stores; unforeseen cyber-related problems or attacks; regulatory and tax changes; issues with merchandise safety and shrinkage; any unforeseen material loss or casualty or the existence of adverse litigation; the impact of current and future laws and the interpretation of such laws; our substantial level of indebtedness and related debt-service obligations; consequences of the failure to comply with covenants in our debt agreements; the availability of adequate financing; and other risks discussed from time to time in our filings with the Securities and Exchange Commission (SEC), including those under the heading “Risk Factors” in the Fiscal 2021 10-K.

Many of these factors, including the ultimate impact of the COVID-19 pandemic, are beyond our ability to predict or control. In addition, as a result of these and other factors, our past financial performance should not be relied on as an indication of future performance. The cautionary statements referred to in this section also should be considered in connection with any subsequent written or oral forward-looking statements that may be issued by us or persons acting on our behalf. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this report might not occur. Furthermore, we cannot guarantee future results, events, levels of activity, performance or achievements.

Recent Accounting Pronouncements

Refer to Note 1, “Summary of Significant Accounting Policies,” to our Condensed Consolidated Financial Statements in Part I, Item 1 for a discussion of recent accounting pronouncements and their impact on our Condensed Consolidated Financial Statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There were no material changes to our quantitative and qualitative disclosures about market risk from those included in our Fiscal 2021 10-K.

Item 4. Controls and Procedures.

Our management team, under the supervision and with the participation of our principal executive officer and our principal financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act, as of the last day of the fiscal period covered by this report, October 29, 2022. The term disclosure controls and procedures means our controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our principal executive and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of October 29, 2022.

During the quarter ended October 29, 2022, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

In the course of business, the Company is party to class or collective actions alleging violations of federal and state wage and hour and other labor statutes, representative claims under the California Private Attorneys' General Act and various other lawsuits and regulatory proceedings from time to time including, among others, commercial, product, employee, customer, intellectual property, privacy and other claims. Actions against us are in various procedural stages. Many of these proceedings raise factual and legal issues and are subject to uncertainties. Refer to Note 11, "Commitments and Contingencies," to our Condensed Consolidated Financial Statements for further detail.

Item 1A. Risk Factors.

There have been no material changes in our risk factors from those disclosed in Part I, Item 1A of our Fiscal 2021 10-K.

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

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The following table provides information regarding our purchases of common stock during the three fiscal months ended October 29, 2022:

Month	Total Number of Shares Purchased(1)	Average Price Paid Per Share(2)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs(3)	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Programs (in thousands)
July 31, 2022 through August 27, 2022	69,242	\$ 157.12	69,214	\$ 438,985
August 28, 2022 through October 1, 2022	209,908	\$ 139.81	209,895	\$ 409,638
October 2, 2022 through October 29, 2022	91,490	\$ 118.77	91,490	\$ 398,772
Total	<u>370,640</u>		<u>370,599</u>	

- (1) The number of shares purchased between July 31, 2022 and August 27, 2022, between August 28, 2022 and October 1, 2022 and between October 2, 2022 and October 29, 2022 include 28 shares, 13 shares and zero shares, respectively, which were withheld for tax payments due upon the vesting of employee restricted stock awards, and do not reduce the dollar value that may yet be purchased under our publicly announced share repurchase programs.
- (2) Includes commissions for the shares repurchased under our publicly announced share repurchase programs.
- (3) On August 18, 2021, our Board of Directors authorized the repurchase of up to \$400.0 million of common stock, which was authorized to be executed through August 2023. This authorization was completed during the second quarter of Fiscal 2022. On February 16, 2022, our Board of Directors authorized the repurchase of an additional \$500.0 million of common stock, which is authorized to be executed through February 2024. As of October 29, 2022, we had \$398.8 million remaining under our share repurchase authorization. For a further discussion of our share repurchase programs, see "Part I, Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Share Repurchase Programs."

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

On November 16, 2022, the Board of Directors of Burlington Stores, Inc. approved and adopted an amendment to and restatement of the Company's Amended and Restated Bylaws (Restated Bylaws), which became effective immediately. The Restated Bylaws were amended and restated as follows:

- **Advance Notice.** Provisions of the Restated Bylaws relating to advance notice of director nominations and other business at annual stockholder meetings were amended to update, enhance and clarify the notice requirements and the information required to be provided to the Company, including addressing matters related to Rule 14a-19 under the Securities Exchange Act of 1934, as amended.
- **Proxy Access.** The Restated Bylaws were updated to permit a stockholder, or a group of up to 20 stockholders, owning at least 3% of the Company's outstanding common stock continuously for at least three years, to nominate and include in the Company's proxy materials for an annual meeting of stockholders director nominees constituting up to the greater of two nominees or 20% of the number of directors in office. The stockholders' proxy access rights are subject to the satisfaction of conditions and other requirements by the stockholders and the director nominees as specified in the Restated Bylaws.
- **Other Amendments.** In addition to certain other ministerial changes, clarifications, technical edits and updates, the Restated Bylaws include (i) provisions that would operate in the event of an emergency and permit calling special meetings of the Board of Directors with less than 24 hours' notice, and (ii) certain changes to conform to recent amendments to the Delaware General Corporation Law.

The foregoing summary of the Restated Bylaws does not purport to be a complete description of the amendments made to the Company's Amended and Restated Bylaws. It is qualified in its entirety by reference to the complete text of the Restated Bylaws which is attached as Exhibit 3.1 to this Quarterly Report on Form 10-Q and is incorporated by reference herein.

Item 6. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference	
		Form	Filing Date
3.1†	Amended and Restated Bylaws of Burlington Stores, Inc. effective November 16, 2022		
31.1†	Certification of Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.		
31.2†	Certification of Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.		
32.1†	Certification of Principal Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.		
32.2†	Certification of Principal Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.		
101.INS†	Inline XBRL Instance Document – the instance document does not appear in Interactive Data File, because its XBRL tags are embedded within the Inline XBRL document.		
101.SCH†	Inline XBRL Taxonomy Extension Schema Document		
101.CAL†	Inline XBRL Taxonomy Extension Calculation Linkbase Document		
101.DEF†	Inline XBRL Taxonomy Extension Definition Linkbase Document		
101.LAB†	Inline XBRL Taxonomy Extension Label Linkbase Document		
101.PRE†	Inline XBRL Taxonomy Extension Presentation Linkbase Document		
104†	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)		

† Filed or furnished herewith.

SIGNATURES

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

BURLINGTON STORES, INC.

/s/ Michael O'Sullivan

Michael O'Sullivan
Chief Executive Officer
(Principal Executive Officer)

/s/ Kristin Wolfe

Kristin Wolfe
Chief Financial Officer
(Principal Financial Officer)

Date: November 22, 2022

**AMENDED AND RESTATED BYLAWS
OF BURLINGTON STORES, INC.**

A Delaware corporation

(Adopted as of November 16, 2022)

ARTICLE I.
OFFICES

Section 1. Registered Office. The address of the registered office of Burlington Stores, Inc. (the “Corporation”) in the State of Delaware, and the name of the Corporation’s registered agent at such address, shall be as set forth in the Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the “Certificate of Incorporation”). The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors of the Corporation (the “Board of Directors”).

Section 2. Other Offices. The Corporation may have an office or offices other than said registered office at such place or places, either within or outside the State of Delaware, as the Board of Directors shall from time to time determine or the business of the Corporation may from time to time require.

ARTICLE II.
MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. All meetings of stockholders shall be held at such place, if any, as may be designated from time to time by the Board of Directors. The Board of Directors may designate such place of meeting, either within or outside the State of Delaware, or the Board of Directors may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a) of the General Corporation Law of the State of Delaware.

Section 2. Annual Meeting. An annual meeting of the stockholders shall be held on such date and at such time as is specified by the Board of Directors. At the annual meeting, stockholders shall elect directors and transact such other business as may be properly brought before the annual meeting pursuant to Section 11 of ARTICLE II hereof. The Board of Directors may postpone, reschedule or cancel any previously scheduled annual meeting of the stockholders.

Section 3. Special Meetings. Special meetings of the stockholders may only be called in the manner provided in the Certificate of Incorporation. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the Corporation’s notice of the meeting given by or at the direction of the Board of Directors or by the Secretary (solely to the extent and in the manner provided by the Certificate of Incorporation). The Board

of Directors may postpone, reschedule or cancel any previously scheduled special meeting of stockholders.

Section 4. Notice.

(a) Timing; Contents. Whenever stockholders are required or permitted to take action at a meeting, written notice of each annual and special meeting of stockholders stating the date, time and place, if any, of the meeting, the means of remote communication, if any, by which stockholders and proxyholders 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 than the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by or at the direction of the Board of Directors or by the Secretary (solely to the extent and in the manner provided by the Certificate of Incorporation), to each stockholder of record entitled to vote thereat not less than ten (10) nor more than sixty (60) days before the date of the meeting except as otherwise required by law.

(b) Form of Notice. All such notices shall be delivered in writing or by a form of electronic transmission (if permitted under the circumstances by the General Corporation Law of the State of Delaware). If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. If given by facsimile telecommunication, such notice shall be deemed given when directed to a number at which the stockholder has consented to receive notice by facsimile. Subject to the limitations of Section 4(d) of this ARTICLE II, if given by electronic transmission, such notice shall be deemed given: (i) by electronic mail, when directed to an electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited under the General Corporation Law of the State of Delaware; (ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (x) such posting and (y) the giving of such separate notice by United States mail or facsimile transmission; and (iii) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or an Assistant Secretary of the Corporation, the transfer agent of the Corporation or any other agent of the Corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

(c) Waiver of Notice. Whenever notice is required to be given under any provisions of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the stockholder entitled to notice, or a waiver by electronic transmission by the person or entity entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any meeting of stockholders of the Corporation need be specified in any waiver of notice of such meeting. Attendance of a stockholder of the Corporation at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends 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.

(d) Notice by Electronic Delivery. Without limiting the manner by which notice otherwise may be given effectively to stockholders of the Corporation pursuant to the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Bylaws, any notice to stockholders of the Corporation given by the Corporation under any provision of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission under the circumstances permitted by the General Corporation Law of the State of Delaware. For purposes of these Bylaws, except as otherwise limited by applicable law, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 5.List of Stockholders. The Corporation shall prepare at least 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 10 days before the meeting date, 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. Nothing contained in this section shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days ending on the day before the meeting: (a) 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 (b) during ordinary business hours, at the principal place of business of the Corporation. In the event 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. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this section or to vote in person or by proxy at any meeting of stockholders.

Section 6.Quorum. Except as otherwise provided by the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the shares of capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication, if any, or represented by proxy at the meeting, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If a quorum is not present, the holders of a majority of the shares present in person, present by means of remote communication, if any, or represented by proxy at the meeting and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. Where a separate vote by a class or classes or series of capital stock is required by law or by the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of capital stock issued and outstanding and entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on the matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 7. Adjourned Meetings. Any meeting of stockholders, annual or special, may be adjourned from time to time to any other time and to any other place by the chair of the meeting or by the stockholders present or represented at the meeting and entitled to vote thereon, although less than a quorum. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person or represented by proxy and vote at such adjourned or recessed meeting, are (a) announced at the meeting at which the adjournment is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of meeting given in accordance with these Bylaws. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the General Corporation Law of the State of Delaware, 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 fixed for notice of such adjourned meeting.

Section 8. Vote Required. When a quorum is present at any meeting of stockholders, the affirmative vote of the holders of a majority in voting power of the shares of capital stock present in person, present by means of remote communication, if any, or represented by proxy at the meeting and entitled to vote on the subject matter shall decide any question brought before the meeting, unless by express provisions of an applicable law or regulation applicable to the Corporation or its securities or of the rules or regulations of any stock exchange applicable to the Corporation or of the Certificate of Incorporation or of these Bylaws a different vote is required, in which case such express provision shall govern and control the decision of such question. Each director of the Corporation shall be elected by a majority of the votes cast by the shares present in person, present by means of remote communication, if any, or represented by proxy at the meeting and entitled to vote in the election of such directors; provided, however, in any contested election of directors (as defined below), the directors shall be elected by a plurality of the votes of the shares present in person, present by means of remote communication, if any, or represented by proxy at the meeting and entitled to vote on the election of directors. For purposes of this Article II, Section 8, (a) a “contested election of directors” shall mean an annual or special meeting of the Corporation with respect to which (i) the Secretary of the Corporation receives a notice that a stockholder has nominated or intends to nominate a person for election to the Board in compliance with the requirements for stockholder nominees for director set forth in Article II of these Bylaws, and (ii) such nomination has not been withdrawn by such stockholder on or prior to the tenth (10th) day before the Corporation first mails its notice of meeting for such meeting to the stockholders; and (b) a “majority of the votes cast” means that the number of votes cast “for” the election of a director must exceed the number of votes cast “against” the election of that director (with “abstentions” and “broker non-votes” not counted as a vote cast either “for” or “against” that director’s election).

Section 9. Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware or the Certificate of Incorporation (including any certificate of designation in respect of any series of preferred stock), each holder of record of capital stock shall at every meeting of the stockholders be entitled to one vote for each share of capital stock held by such stockholder on the record date for voting for such meeting.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy executed or transmitted in a manner permitted by applicable law, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed 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 proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. At each meeting of stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 11. Business Brought Before a Meeting of the Stockholders.

(a) Annual Meetings.

- (1) At an annual meeting of the stockholders, only such nominations of persons for election to the Board of Directors shall be considered and such other business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations and other business must be a proper matter for stockholder action under Delaware law and must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) brought before the meeting by or at the direction of the Board of Directors, (c) properly brought before the meeting by a stockholder who (i) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed or such nomination or nominations are made, only if such beneficial owner is the beneficial owner of shares of the Corporation) both at the time the notice provided for in paragraph (a) of this Section 11 of ARTICLE II is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the annual meeting of stockholders, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in paragraph (a) of this Section 11 of ARTICLE II or (d) properly brought by an Eligible Stockholder (as defined below) with respect to the nomination of a director for election pursuant to and in compliance with Section 12 of ARTICLE II. For nominations or other business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing and in proper form to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received 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 there was no annual meeting in the

prior year or the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall any adjournment, deferral or postponement of an annual meeting or the public announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(2) A stockholder's notice providing for the nomination of a person or persons for election as a director or directors of the Corporation shall set forth:

- (A) as to the stockholder giving the notice, the beneficial owner(s), if any, on whose behalf the nomination is made and any Stockholder Associated Person (as defined below) (and for purposes of clauses (ii) through (xx) below, including any interests described therein held by any affiliates or associates (each within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act") for purposes of these Bylaws) of such stockholder or beneficial owner or by any member of such stockholder's or beneficial owner's immediate family sharing the same household, in each case as of the date of such stockholder's notice):
- (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner(s),
 - (ii) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) (provided that a person shall in all events be deemed to beneficially own any shares of any class or series and number of shares of capital stock of the Corporation as to which such person has a right to acquire beneficial ownership at any time in the future, whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition) or owned of record by such stockholder, beneficial owner, or Stockholder Associated Person and the date or dates on which such shares were acquired, and the investment intent of such acquisition,
 - (iii) the class or series, if any, and number of options, warrants, puts, calls, convertible securities, stock appreciation rights, or similar rights, obligations or commitments with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares or other securities of the Corporation or with a value derived in whole or in part from the value of any class or series of shares or other securities of the Corporation, whether or not such instrument, right, obligation or commitment shall be subject to settlement in the underlying class or series of shares or other securities of the Corporation, which are,

directly or indirectly, beneficially owned by such stockholder, beneficial owner or Stockholder Associated Person,

- (iv) any agreement, arrangement, understanding, or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such stockholder, beneficial owner or Stockholder Associated Person, the purpose or effect of which is to mitigate loss, reduce economic risk (of ownership or otherwise), manage the risk of price changes, or maintain, increase or decrease the voting power of such stockholder, beneficial owner or Stockholder Associated Person with respect to any class or series of capital stock or other securities of the Corporation, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of any class or series of capital stock or other securities of the Corporation,
- (v) a description of any other direct or indirect opportunity to profit or share in any profit (including any performance-based fees) derived from any increase or decrease in the value of shares or other securities of the Corporation (each of the matters referred to in the foregoing clauses (iii) through (v), a “Derivative Security”),
- (vi) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder, beneficial owner or Stockholder Associated Person has a right to vote any shares or other securities of the Corporation,
- (vii) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder, beneficial owner or Stockholder Associated Person that are separated or separable from the underlying shares of the Corporation,
- (viii) any proportionate interest in shares of the Corporation or Derivative Securities held, directly or indirectly, by a general or limited partnership, limited liability company or similar entity in which such stockholder, beneficial owner or Stockholder Associated Person (A) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership or (B) is the manager, managing member or, directly or indirectly, beneficially owns an interest in a manager or managing member of such limited liability company or similar entity,
- (ix) a description of all agreements, arrangements, and understandings (including the name(s) of any parties) (A) between such stockholder, beneficial owner or Stockholder Associated Person, or (B) between such stockholder, beneficial owner or Stockholder Associated Person and any other person(s) in connection with or related to the Corporation or the

ownership or voting of capital stock of the Corporation or Derivative Securities,

- (x) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) under the Exchange Act or an amendment pursuant to Rule 13d-2(a) under the Exchange Act if such a statement were required to be filed under the Exchange Act by such stockholder, beneficial owner or Stockholder Associated Person, or such stockholder's, beneficial owner's or Stockholder Associated Person's associates, with respect to the Corporation (regardless of whether such person or entity is actually required to file a Schedule 13D), including a description of any agreement, arrangement or understanding that would be required to be disclosed by such stockholder, beneficial owner or Stockholder Associated Person or any of their respective associates pursuant to Item 5 or Item 6 of Schedule 13D,
- (xi) a statement as to whether such stockholder, beneficial owner or Stockholder Associated Person intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to elect such stockholder's nominees and/or otherwise to solicit proxies from the stockholders in support of such nomination,
- (xii) a representation that the stockholder is a holder of record of shares of the Corporation entitled to vote at such meeting and intends to appear or cause a qualified representative (as defined below) of such stockholder to appear in person, by proxy or by remote communication (if applicable) at the meeting to propose such nomination, and an acknowledgment that, if such stockholder (or a qualified representative of such stockholder) does not appear to present such nominees at such meeting, the Corporation need not present such nominees for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation,
- (xiii) any significant equity interests or any Derivative Securities in any principal competitor of the Corporation held by such stockholder, beneficial owner or Stockholder Associated Person,
- (xiv) any direct or indirect interest of such stockholder, beneficial owner or Stockholder Associated Person in any contract or arrangement with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including any employment agreement, collective bargaining agreement or consulting agreement),
- (xv) a complete and accurate description of any performance-related fees (other than asset-based fees) to which such stockholder, beneficial owner or Stockholder Associated Person may be entitled as a result of any

increase or decrease in the value of the Corporation's securities or any Derivative Securities, including any such fees to which members of any such person's immediate family sharing the same household may be entitled,

- (xvi) (A) if such stockholder or beneficial owner is not a natural person, the identity of each natural person associated with such stockholder or beneficial owner responsible for the formulation of and decision to propose the business or nomination to be brought before the meeting (such person or persons, the "Responsible Person"), the manner in which such Responsible Person was selected, any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such stockholder or beneficial owner, the qualifications and background of such Responsible Person and any material interests or relationships of such Responsible Person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the capital stock of the Corporation and that reasonably could have influenced the decision of such stockholder or beneficial owner to propose such business or nomination to be brought before the meeting and (B) if such stockholder or beneficial owner is a natural person, the qualifications and background of such natural person and any material interests or relationships of such natural person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the capital stock of the Corporation and that reasonably could have influenced the decision of such stockholder or beneficial owner to propose such business or nomination to be brought before the meeting,
- (xvii) the names and addresses of other stockholders (including beneficial owners) known by such stockholder to support the nomination(s) submitted by such stockholder and, to the extent known, the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s),
- (xviii) a representation from such stockholder as to whether such stockholder, beneficial owner or Stockholder Associated Person intends or is part of a group that intends to (A) solicit proxies in support of the election of any such nominee in accordance with Rule 14a-19 under the Exchange Act or (B) engage in a solicitation (within the meaning of Exchange Act Rule 14a-1(l)) with respect to such nominations and if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation,
- (xix) any other information relating to such stockholder, beneficial owner or Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election

pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, and

- (xx) such additional information that the Corporation may reasonably request regarding such stockholder, beneficial owner or Stockholder Associated Person, and

(B) as to each person whom the stockholder proposes to nominate for election or reelection as a director:

- (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the Corporation's proxy statement and form of proxy as a nominee and to serving as a director if elected, including a written statement of such person's intention to serve as a director for the full term for which such person is to stand for election),
- (ii) a description of all direct and indirect compensation and other material agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder, the beneficial owner(s), if any, on whose behalf the nomination is made or Stockholder Associated Persons, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if such stockholder or beneficial owner(s), or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant,
- (iii) a completed and signed questionnaire regarding the background and qualifications of such person to serve as a director, a copy of which shall be requested in writing from the Secretary and which the Secretary shall provide to such stockholder within ten (10) days after receiving such request,
- (iv) all information with respect to such person that would be required to be set forth in a stockholder's notice pursuant to this Section 11 of ARTICLE II if such person were a stockholder submitting a notice providing for the nomination of a person or persons for election as a director or directors of the Corporation in accordance with this Section 11 of ARTICLE II or a beneficial owner on whose behalf the nomination was made,

- (v) a written representation and agreement completed by such person in the form required by the Corporation (which form such stockholder shall request in writing from the Secretary of the Corporation and which the Secretary of the Corporation shall provide to such stockholder within ten (10) days after receiving such request) providing that such person: (A) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law; (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the Corporation; (C) will, if elected as a director of the Corporation, comply with all applicable rules of any securities exchanges upon which the Corporation's securities are listed, the Certificate of Incorporation, these Bylaws, all applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality, stock ownership and trading policies and all other guidelines and policies of the Corporation generally applicable to directors (which other guidelines and policies will be provided to such person within five (5) business days after the Secretary receives any written request therefor from such person), and all applicable fiduciary duties under state law; and (D) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct and that do not and will not omit to state any fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, and
 - (vi) such additional information that the Corporation may reasonably request to determine the eligibility or qualifications of such person to serve as a director or an independent director of the Corporation, or that could be material to a reasonable stockholder's understanding of the qualifications and/or independence, or lack thereof, of such person as a director.
- (3) A stockholder's notice regarding business proposed to be brought before a meeting of stockholders other than the nomination of persons for election to the Board of Directors shall set forth:
- (A) a brief description of:

- (i) the business desired to be brought before such meeting, including the text of any resolution proposed for consideration by the stockholders (including the specific wording of any proposed amendment to the Bylaws),
 - (ii) the reasons for conducting such business at the meeting, and
 - (iii) any material interest of such stockholder or beneficial owner or Stockholder Associated Person in such business, including a description of all agreements, arrangements and understandings (A) between such stockholder or beneficial owner or Stockholder Associated Person and (B) between such stockholder or beneficial owner or Stockholder Associated Person and any other person(s) (including the name(s) of such other person(s)) in connection with or related to the proposal of such business by the stockholder,
- (B) as to the stockholder giving notice, the beneficial owner(s), if any, on whose behalf the proposal is made and any Stockholder Associated Person (and for purposes of clauses (i) through (v) below, including any interests described therein held by any affiliates or associates of such stockholder or beneficial owner(s) or by any member of such stockholder or beneficial owner's immediate family sharing the same household, in each case as of the date of such stockholder's notice):
- (i) the information called for by clauses (A)(i) through (A)(xx) of the immediately preceding paragraph (2),
 - (ii) a statement as to whether such stockholder or any such beneficial owner or Stockholder Associated Person intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to approve the proposal and/or otherwise to solicit proxies from stockholders in support of such proposal,
 - (iii) the names and addresses of other stockholders (including beneficial owners) known by such stockholder to support the proposal and, to the extent known, the class and number of all shares of the Corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s),
 - (iv) a representation from such stockholder as to whether such stockholder, beneficial owner or Stockholder Associated Person intends or is part of a group that intends to engage in a solicitation (within the meaning of Exchange Act Rule 14a-1(l)) with respect to such proposal and if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation, and

- (C) a representation that the stockholder is a holder of record of shares of the Corporation entitled to vote at such meeting and intends to appear or cause a qualified representative of such stockholder to appear in person, by proxy or by remote communication (if applicable) at the meeting to propose such proposal, and an acknowledgment that, if such stockholder (or a qualified representative of such stockholder) does not appear to present such proposal at such meeting, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation,
- (D) all other information relating to such proposal that that would be required to be disclosed in a proxy statement or other filings required to be made by such stockholder, the beneficial owner(s) on whose behalf the proposal is made and any Stockholder Associated Person in connection with solicitations of proxies in support of such business pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, and
- (E) such additional information that the Corporation may reasonably request regarding the business that such stockholder proposes to bring before the meeting.

The foregoing notice requirements of this Section 11(a)(3) of ARTICLE II shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(b) Special Meetings of Stockholders. Special meetings of the stockholders of the Corporation may be called only in the manner set forth in the Certificate of Incorporation. Only such business shall be conducted at a special meeting of stockholders as is a proper matter for stockholder action under Delaware law and as shall have been brought before the meeting pursuant to the Corporation's notice of the special meeting given by or at the direction of the Board or by the Secretary (solely to the extent and in the manner provided by the Certificate of Incorporation). The notice of such special meeting shall include the purpose for which the meeting is called. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or by the Secretary (solely to the extent and in the manner provided by the Certificate of Incorporation) or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (a) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination or nominations are made, only if such beneficial owner is the beneficial owner of shares of the Corporation) both at the time the notice provided for in paragraph (b) of this Section 11 of ARTICLE II is delivered to the Corporation's Secretary and on the record date for the determination of stockholders entitled to vote at the special meeting, (b) is entitled to vote at the meeting and upon such election and (c) complies with the notice procedures set forth in

subparagraph (2) of paragraph (a) of this Section 11 of ARTICLE II. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, 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 required by paragraph (a)(2) of this Section 11 of ARTICLE II shall be delivered to the Corporation's Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) 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 of Directors to be elected at such meeting. In no event shall any adjournment, deferral or postponement of a special meeting or the public announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

- (1) Only such persons who are nominated in accordance with the procedures set forth in this Section 11 of ARTICLE II or Section 12 of ARTICLE II shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation 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 11 of ARTICLE II. Notwithstanding the foregoing provisions of this Section 11 of ARTICLE II, 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 proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. The Board may require any person whom a stockholder proposes to nominate for election or reelection as a director to submit to interviews with the Board or any committee thereof, and such person shall make himself or herself available for any such interviews within ten (10) days following any reasonable request therefor from the Board or any committee thereof.
- (2) Notwithstanding the foregoing provisions of this Section 11 of ARTICLE II, 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 11 of ARTICLE II.
- (3) Nothing in this section shall be deemed to (a) affect any rights of (1) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (2) stockholders to request inclusion of nominees, (b) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation's proxy statement pursuant to the Exchange Act and the rules and regulations thereunder or (c) affect any rights of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

- (4) The chair of the meeting of stockholders shall, if the facts warrant, determine and declare to the meeting that a nomination was not properly made or any business was not properly brought before the meeting, as the case may be, in accordance with the provisions of this Section 11 of ARTICLE II; if he or she should so determine, he or she shall so declare to the meeting and any such nomination not properly made or any business not properly brought before the meeting, as the case may be, shall not be transacted.
- (5) A stockholder submitting notice pursuant to this Section 11 of ARTICLE II shall update such notice, if necessary, such that the information provided or required to be provided in such notice shall be true and correct as of (A) the record date for determining the stockholders entitled to receive notice of the meeting and (B) the date that is ten (10) business days prior to the meeting (or any postponement, rescheduling or adjournment thereof), and such update shall (i) be received by the Secretary of the Corporation at the principal executive offices of the Corporation (x) not later than the close of business five (5) business days after the record date for determining the stockholders entitled to receive notice of such meeting (in the case of an update required to be made under clause (A)) and (y) not later than the close of business seven (7) business days prior to the date for the meeting or, if practicable, any postponement, rescheduling or adjournment thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been postponed, rescheduled or adjourned) (in the case of an update required to be made pursuant to clause (B)), (ii) be made only to the extent that information has changed since such stockholder's prior submission and (iii) clearly identify the information that has changed since such stockholder's prior submission. For the avoidance of doubt, any information provided pursuant to this Section 11(c)(5) shall not be deemed to cure any deficiencies or inaccuracies in a notice previously delivered pursuant to this Section 11 of ARTICLE II and shall not extend the time period for the delivery of notice pursuant to this Section 11 of ARTICLE II. If such stockholder fails to provide such written update within such period, the information as to which such written update relates may be deemed not to have been provided in accordance with this Section 11.
- (6) If any information submitted pursuant to this Section 11 of ARTICLE II by any such stockholder nominating individuals for election or reelection as a director or proposing business for consideration at a stockholder meeting shall be inaccurate in any material respect (as determined by the Board of Directors or a committee thereof), such information shall be deemed not to have been provided in accordance with this Section 11 of ARTICLE II. Any such stockholder shall notify the Secretary of the Corporation in writing at the principal executive offices of the Corporation of any inaccuracy or change in any information submitted pursuant to this Section 11 (including if any such stockholder, beneficial owner or any Stockholder Associated Person no longer intends to solicit proxies in accordance with the representation made pursuant to this Section 11 of ARTICLE II) within two (2) business days after becoming aware of such inaccuracy or change, and any such notification shall clearly identify the inaccuracy or change, it being understood that no such notification may cure any deficiencies or inaccuracies with respect to any prior submission by such stockholder. Upon written request of the Secretary of the Corporation on behalf of the Board of Directors (or a duly authorized committee thereof), any such stockholder shall provide, within seven (7) business days

after delivery of such request (or such other period as may be specified in such request), (a) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by such stockholder pursuant to this Section 11 of ARTICLE II and (b) a written affirmation of any information submitted by such stockholder pursuant to this Section 11 of ARTICLE II as of an earlier date. If such stockholder fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 11 of ARTICLE II.

- (7) If (A) any such stockholder or beneficial owner or any Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) under the Exchange Act with respect to any such nominee and (B) such stockholder, beneficial owner or Stockholder Associated Person subsequently either (x) notifies the Corporation that such stockholder, beneficial owner or Stockholder Associated Person no longer intends to solicit proxies in support of the election or reelection of such nominee in accordance with Rule 14a-19(b) under the Exchange Act or (y) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act, then the Corporation shall disregard any proxies solicited for the election of such nominee. Upon request by the Corporation, if any such stockholder, beneficial owner or any Stockholder Associated Person provides notice pursuant to Rule 14a-19(b) under the Exchange Act, such stockholder shall deliver to the Secretary of the Corporation, no later than five (5) business days prior to the applicable meeting date, reasonable evidence that the requirements of Rule 14a-19(a)(3) under the Exchange Act have been satisfied.
- (8) The number of persons whom a stockholder proposes to nominate for election or reelection as a director may not exceed the number of directors to be elected at such meeting, and for the avoidance of doubt, no stockholder shall be entitled to make additional or substitute nominations following the expiration of the time periods set forth in this Section 11 of ARTICLE II.
- (9) For purposes of these Bylaws, (A) a “Stockholder Associated Person” of any stockholder or beneficial owner on whose behalf such stockholder is providing notice pursuant to this Section 11 of ARTICLE II shall mean (i) any “affiliate” or “associate” (as those terms are defined in Rule 12b-2 under the Exchange Act) of such stockholder or beneficial owner, (ii) any beneficial owner of any stock or other securities of the Corporation owned of record or beneficially by such stockholder or beneficial owner, (iii) any person directly or indirectly controlling, controlled by or under common control with any such Stockholder Associated Person referred to in clause (i) or (ii) above, (iv) any person acting in concert in respect of any matter involving the Corporation or its securities with either such stockholder or beneficial owner or any beneficial owner of any stock or other securities of the Corporation owned of record or beneficially by such stockholder or beneficial owner, (v) any affiliate or associate of such stockholder or such beneficial owner or any other Stockholder Associated Person, (vi) if such stockholder or such beneficial owner is not a natural person, any Responsible Person, (vii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder or such beneficial owner or any other Stockholder Associated

Person with respect to any proposed business or nominations, as applicable, (viii) any beneficial owner of shares of stock of the Corporation owned of record by such Noticing Party or any other Stockholder Associated Person (other than a stockholder that is a depository) and (ix) any person whom such stockholder proposes to nominate for election or reelection as a director; (B) a “qualified representative” of a person shall mean a person who is a duly authorized officer, manager or partner of such person or has been authorized by a writing executed by such person or an electronic transmission delivered by such person to act for such person as proxy at the meeting of stockholders, which such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, shall be produced by the qualified representative at the meeting of stockholders; and (C) “public announcement” shall mean disclosure in a press release reported by Dow Jones News Service, Associated Press or a comparable national news service in the United States or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

Section 12. Proxy Access for Director Nominations.

(a) Proxy Access Eligibility. Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of the stockholders, subject to the provisions of this Section 12 of ARTICLE II, the Corporation shall include in its proxy statement, in addition to any persons nominated for election by the Board or any committee thereof, the name, together with the Required Information (as defined below), of any person nominated for election (the “Stockholder Nominee”) to the Board by a stockholder or group of no more than twenty (20) stockholders that satisfies the requirements of this Section 12 of ARTICLE II (such stockholder or group, including each member thereof to the extent the context requires, the “Eligible Stockholder”) and that expressly elects at the time of providing the notice required by this Section 12 of ARTICLE II (the “Notice of Proxy Access Nomination”) to have such nominee included in the Corporation’s proxy materials pursuant to this Section 12 of ARTICLE II. For purposes of this Section 12 of ARTICLE II, the “Required Information” that the Corporation will include in its proxy statement is (i) the information provided to the Secretary concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation’s proxy statement pursuant to the Exchange Act and the rules and regulations thereunder and (ii) if the Eligible Stockholder so elects, a Supporting Statement (as defined below). The Required Information must be provided with the Notice of Proxy Access Nomination. Nothing in this Section 12 of ARTICLE II shall limit the Corporation’s ability to solicit against any Stockholder Nominee or include in its proxy materials the Corporation’s own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation pursuant to this Section 12 of ARTICLE II.

(b) Maximum Number of Stockholder Nominees. The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation’s proxy materials with respect to an annual meeting of the stockholders shall not exceed the greater of two (2) directors or twenty percent (20%) of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 12 of ARTICLE II (the “Final Proxy Access

Nomination Date”) or, if such amount is not a whole number, the closest whole number below twenty percent (20%) of such number of directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees included in the Corporation’s proxy materials shall be calculated based on the number of directors in office as so reduced. The maximum number of Stockholder Nominees provided for in this Section 12 of ARTICLE II for any annual meeting of the stockholders shall be reduced by (i) the number of directors (if any) in office as of the Final Proxy Access Nomination Date who were included in the Corporation’s proxy materials as a Stockholder Nominee for any of the two (2) preceding annual meetings of the stockholders (including any individual counted as a Stockholder Nominee pursuant to the immediately succeeding sentence) and whom the Board decides to nominate for re-election to the Board of Directors at such annual meeting and (ii) the number of individuals (if any) who will be included in the Corporation’s proxy statement as nominees recommended by the Board of Directors pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in a connection with an acquisition of capital stock from the Corporation by such stockholder or group of stockholders). For purposes of determining when the maximum number of Stockholder Nominees provided for in this Section 12 of ARTICLE II has been reached, each of the following persons shall be counted as one of the Stockholder Nominees: (A) any individual nominated by an Eligible Stockholder for inclusion in the Corporation’s proxy materials pursuant to this Section 12 of ARTICLE II whose nomination is subsequently withdrawn and (B) any individual nominated by an Eligible Stockholder for inclusion in the Corporation’s proxy materials pursuant to this Section 12 of ARTICLE II whom the Board decides to nominate for election to the Board of Directors. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation’s proxy materials pursuant to this Section 12 of ARTICLE II shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation’s proxy materials. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 12 of ARTICLE II exceeds the maximum number of Stockholder Nominees provided for in this Section 12 of ARTICLE II, the highest ranking Stockholder Nominee who meets the requirements of this Section 12 of ARTICLE II from each Eligible Stockholder will be selected for inclusion in the Corporation’s proxy materials until the maximum number is reached, going in order of the amount (largest to smallest) of shares of stock of the Corporation each Eligible Stockholder disclosed as owned in its Notice of Proxy Access Nomination. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 12 of ARTICLE II from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee who meets the requirements of this Section 12 of ARTICLE II from each Eligible Stockholder will be selected for inclusion in the Corporation’s proxy materials, and this process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

(c) Required Shares and Minimum Holding Period. In order to make a nomination pursuant to this Section 12 of ARTICLE II, an Eligible Stockholder must have continuously owned (as hereinafter defined) for at least three (3) years as of the date the Notice of Proxy Access Nomination is delivered to the Secretary in accordance with this Section 12 of

ARTICLE II (the "Minimum Holding Period") a number of shares of stock of the Corporation that represents at least three percent (3%) of the voting power of the shares of stock of the Corporation entitled to vote in the election of directors (the "Required Shares") and must continue to own the Required Shares through the date of the annual meeting. For purposes of this Section 12 of ARTICLE II, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of stock of the Corporation as to which the stockholder possesses both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares, provided that the number of shares calculated in accordance with the immediately preceding clauses (1) and (2) shall not include any shares: (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding stock of the Corporation, if, in any such case, such instrument or agreement has, or is intended to have, the purpose or effect of: (i) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares and/or (ii) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A person's ownership of shares shall be deemed to continue during any period in which (A) the stockholder has loaned such shares, provided that the person has the power to recall such loaned shares on five (5) business days' notice or (B) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the stock of the Corporation are "owned" for these purposes shall be determined by the Board or any committee thereof. For purposes of this Section 12 of ARTICLE II, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto in Rule 12b-2 under the Exchange Act.

(d) Requirements for a Group.

- (1) Whenever the Eligible Stockholder consists of a group of stockholders: (A) a group of funds under common management and control shall be treated as one stockholder, (B) each provision in this Section 12 of ARTICLE II that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund that is a member of a group of funds treated as one stockholder) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their shareholdings in order to meet the three percent (3%) ownership requirement of the "Required Shares" definition), (C) a breach of any obligation, agreement or representation under this Section 12 of ARTICLE

II by any member of such group shall be deemed a breach by the Eligible Stockholder and (D) the Notice of Proxy Access Nomination must designate one member of the group for purposes of receiving communications, notices and inquiries from the Corporation and otherwise authorize such member to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 12 of ARTICLE II (including withdrawal of the nomination).

- (2) Whenever the Eligible Stockholder consists of a group of stockholders aggregating their shareholdings in order to meet the three percent (3%) ownership requirement of the “Required Shares” definition: (A) such ownership shall be determined by aggregating the lowest number of shares continuously owned by each such stockholder during the Minimum Holding Period and (B) the Notice of Proxy Access Nomination must indicate, for each such stockholder, such lowest number of shares continuously owned by such stockholder during the Minimum Holding Period.
- (3) Any group of funds whose shares are aggregated for purposes of constituting an Eligible Stockholder must, within five (5) business days after the date of the Notice of Proxy Access Nomination, provide documentation reasonably satisfactory to the Corporation that demonstrates that the funds are under common management and investment control. No person may be a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting. For the avoidance of doubt, a stockholder may withdraw from a group of stockholders constituting an Eligible Stockholder at any time prior to the annual meeting and if, as a result of such withdrawal, the Eligible Stockholder no longer owns the Required Shares, the nomination shall be disregarded.

(e) Deadline for Notice of Proxy Access Nomination. Nominations by stockholders pursuant to this Section 12 of ARTICLE II must be made pursuant to timely notice to the Secretary of the Corporation in accordance with this Section 12 of ARTICLE II. To be timely, a Notice of Proxy Access Nomination must be delivered to or mailed and received at the principal executive offices of the Corporation not later than the close of business on the one hundred twentieth (120th) day nor earlier than the close of business on the one hundred fiftieth (150th) day prior to the first anniversary of the date (as stated in the Corporation’s proxy materials) the Corporation’s definitive proxy statement was first made available to stockholders in connection with the preceding year’s annual meeting (provided, however, that in the event that there was no annual meeting in the prior year or the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, a Notice of Proxy Access Nomination must be so delivered not earlier than the close of business on the one hundred fiftieth (150th) day prior to such annual meeting and not later than the close of business on the later of the one hundred twentieth (120th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall any adjournment, deferral or postponement of an annual meeting or the public announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above.

(f) Requirements for Notice of Proxy Access Nomination. To be in proper form for purposes of this Section 12 of ARTICLE II, the Notice of Proxy Access Nomination must include or be accompanied by the following:

- (1) the information and representations that would be required to be set forth in a stockholder's notice providing for the nomination of a person or persons for election as a director or directors of the Corporation pursuant to Section 11 of ARTICLE II,
- (2) such person's written consent to being named in the Corporation's proxy statement and form of proxy as a nominee and to serving as a director if elected, including a written statement of such person's intention to serve as a director for the full term for which such person is to stand for election,
- (3) in form and substance reasonably satisfactory to the Corporation, one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date for determining the stockholders entitled to receive notice of the annual meeting, which statements must be provided within five (5) business days after the record date,
- (4) a copy of the Schedule 14N that has been filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act,
- (5) a representation in form and substance reasonably satisfactory to the Corporation that the Eligible Stockholder: (A) will continue to hold the Required Shares through the date of the annual meeting, (B) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent, (C) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Stockholder Nominee(s) it is nominating pursuant to this Section 12 of ARTICLE II, (D) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board, (E) has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation, (F) has complied and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, (G) will file with the Securities and Exchange Commission any solicitation or other communication with the Corporation's stockholders relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act and (H) has provided

and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make such information, in light of the circumstances under which it was or will be made or provided, not misleading, and

- (6) an undertaking in form and substance reasonably satisfactory to the Corporation that the Eligible Stockholder agrees to: (A) assume all liability stemming from any legal or regulatory violation arising out of communications with the stockholders of the Corporation by the Eligible Stockholder, its affiliates and associates or their respective agents and representatives, either before or after providing a Notice of Proxy Access Nomination pursuant to this Section 12 of ARTICLE II, or out of the facts, statements or other information that the Eligible Stockholder or its Stockholder Nominee(s) provided to the Corporation in connection with the inclusion of such Stockholder Nominee(s) in the Corporation's proxy materials, and (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 12 of ARTICLE II.

(g) Supporting Statement. The Eligible Stockholder may, at its option, provide to the Secretary of the Corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s)' candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 12 of ARTICLE II, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes is untrue in any material respect (or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading) or would violate any applicable law or regulation.

(h) Eligible Stockholder and Stockholder Nominee Duty to Update.

- (1) If any information submitted pursuant to this Section 12 of ARTICLE II shall be inaccurate in any material respect (as determined by the Board of Directors or a committee thereof), such information shall be deemed not to have been provided in accordance with this Section 12 of ARTICLE II. The Eligible Stockholder shall notify the Secretary of the Corporation in writing at the principal executive offices of the Corporation of any inaccuracy or change in any information submitted pursuant to this Section 12 within two (2) business days after becoming aware of such inaccuracy or change, and any such notification shall clearly identify the inaccuracy or change, it being understood that no such notification may cure any deficiencies or inaccuracies with respect to any prior submission by such stockholder. Upon written request of the Secretary of the Corporation on behalf of the Board of Directors (or a duly authorized committee thereof), such Eligible Stockholder shall provide, within seven (7) business

days after delivery of such request (or such other period as may be specified in such request), (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by such stockholder pursuant to this Section 12 of ARTICLE II and (B) a written affirmation of any information submitted by such Eligible Stockholder pursuant to this Section 12 of ARTICLE II as of an earlier date. If such Eligible Stockholder fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 12 of ARTICLE II.

- (2) The Eligible Stockholder shall update the Notice of Proxy Access Nomination, if necessary, such that the information provided or required to be provided in such Notice of Proxy Access Nomination shall be true and correct as of (A) the record date for determining the stockholders entitled to receive notice of the meeting and (B) the date that is ten (10) business days prior to the meeting (or any postponement, rescheduling or adjournment thereof), and such update shall (i) be received by the Secretary of the Corporation at the principal executive offices of the Corporation (x) not later than the close of business five (5) business days after the record date for determining the stockholders entitled to receive notice of such meeting (in the case of an update required to be made under clause (A)) and (y) not later than the close of business seven (7) business days prior to the date for the meeting or, if practicable, any postponement, rescheduling or adjournment thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been postponed, rescheduled or adjourned) (in the case of an update required to be made pursuant to clause (B)), (ii) be made only to the extent that information has changed since such Eligible Stockholder's prior submission and (iii) clearly identify the information that has changed since the Eligible Stockholder's prior submission. For the avoidance of doubt, any information provided pursuant to this Section 12(H)(2) shall not be deemed to cure any deficiencies or inaccuracies in a notice previously delivered pursuant to this Section 12 of ARTICLE II and shall not extend the time period for the delivery of notice pursuant to this Section 12 of ARTICLE II. If such Eligible Stockholder fails to provide such written update within such period, the information as to which such written update relates may be deemed not to have been provided in accordance with this Section 12.

(i) Other Reasons to Exclude Stockholder Nominee.

- (1) Notwithstanding anything to the contrary contained in this Section 12 of ARTICLE II the Corporation shall not be required to include, pursuant to this Section 12 of ARTICLE II, a Stockholder Nominee in its proxy materials: (A) for any meeting of stockholders for which the Secretary of the Corporation receives notice that the Eligible Stockholder or any other stockholder intends to nominate one or more persons for election to the Board pursuant to the advance notice requirements for stockholder nominees set forth in Section 11 of ARTICLE II of these Bylaws, (B) if such Stockholder Nominee would not be an independent director under the listing standards of each principal U.S. exchange on which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the Corporation's directors, in

each case as determined by the Board or any committee thereof, (C) if such Stockholder Nominee's election as a member of the Board would cause the Corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal United States securities exchange(s) upon which the common stock of the Corporation is listed or traded or any applicable state or federal law, rule or regulation, (D) if such Stockholder Nominee is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (E) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (F) if such Stockholder Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, (G) if such Stockholder Nominee or the Eligible Stockholder who nominated such Stockholder Nominee provides any facts, statements or other information to the Corporation or its stockholders required or requested pursuant to this Section 12 of ARTICLE II that is not true and correct in all material respects or that omits a material fact necessary to make such information, in light of the circumstances in which it is made or provided, not misleading, or (H) if such Stockholder Nominee or the Eligible Stockholder who nominated such Stockholder Nominee otherwise contravenes any of the agreements or representations made by such Stockholder Nominee or Eligible Stockholder or fails to comply with its obligations pursuant to this Section 12 of ARTICLE II.

- (2) Notwithstanding anything to the contrary contained in this Section 12 of ARTICLE II, if either: (A) a Stockholder Nominee and/or the applicable Eligible Stockholder breaches any of its or their obligations, agreements or representations under this Section 12 of ARTICLE II, or (B) the Stockholder Nominee otherwise becomes ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 12 of ARTICLE II or dies, becomes disabled in a manner rendering such Stockholder Nominee unable to perform the duties that would be required of a director of the Corporation or is otherwise disqualified from being nominated for election or serving as a director of the Corporation, in each case under this clause (2) as determined by the Board of Directors, any committee thereof or the chair of the annual meeting, then: (i) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (ii) the Corporation shall not be required to include in its proxy materials for that annual meeting any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder, and (iii) the Board of Directors or the chair of the annual meeting shall declare such nomination to be invalid, such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation and the named proxies will not vote any proxies received from stockholders with respect to such Stockholder Nominee. In addition, if the Eligible Stockholder (or a representative thereof) does not appear at the annual meeting to present any nomination pursuant to this Section 12 of ARTICLE II, except to the extent required by Rule 14a-19 promulgated under the Exchange Act, such nomination shall be disregarded as provided in the immediately preceding clause (iii).

(j) Resubmission of Stockholder Nominee. Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (A) withdraws from or becomes ineligible or unavailable for election at the annual meeting or (B) does not receive at least twenty five percent (25%) of the votes cast in favor of such Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 12 of ARTICLE II for the next two (2) annual meetings of the Corporation's stockholders.

(k) Exclusivity. This Section 12 of ARTICLE II provides the exclusive method for a stockholder to include nominees for election to the Board in the Corporation's proxy materials, except to the extent required by Rule 14a-19 promulgated under the Exchange Act.

Section 13. Fixing a Record Date for Stockholder Meetings. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors 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 of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors 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 of Directors 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 of Directors, the record date for determining stockholders entitled to notice of and 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 of Directors 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 with the foregoing provisions of this Section 13 of ARTICLE II at the adjourned meeting.

Section 14. Fixing a Record Date for Other Purposes. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors 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 be not more than sixty (60) days prior to such action. If no 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 of Directors adopts the resolution relating thereto.

Section 15. Conduct of Meetings.

(a) Generally. Meetings of stockholders shall be presided over by a chair designated by the Board of Directors, or in his or her absence, by the Chair of the Board, if any, or in the absence of the Chair of the Board, by the Chief Executive Officer, or in the absence of

the Chief Executive Officer, by the President, or in the absence of the President, by the Chief Financial Officer, or in the absence of all of the foregoing, by the most senior officer of the Corporation present at the meeting. The Secretary shall act as secretary of the meeting, but in the absence of the Secretary, the chair of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate, including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chair of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants; (vi) removal of any stockholder or any other individual who refuses to comply with meeting rules, regulations or procedures; (vii) the conclusion, recess or adjournment of the meeting, regardless of whether a quorum is present, to a later date and time and at a place, if any, announced at the meeting; (viii) restrictions on the use of audio and video recording devices, cell phones and other electronic devices; (ix) rules, regulations or procedures for compliance with any state or local laws or regulations including those concerning safety, health and security; (x) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting; and (xi) any rules, regulations or procedures as the chair may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting, whether such meeting is to be held at a designated place or solely by means of remote communication. The chair of a stockholder meeting, in addition to making any other determinations that may be appropriate regarding the conduct of the meeting, shall determine and declare to the meeting that a matter of business was not properly brought before the meeting, and, if the chair should so determine, the chair shall so declare to the meeting and any such matter of business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The chair of the meeting, or his or her designee, shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted. The chair of the meeting shall have the power to adjourn the meeting to another place, if any, date and time or to recess the meeting.

(c) Inspectors of Elections. The Corporation may, and to the extent required by law shall, in advance of any meeting of stockholders, appoint one or more inspectors of election

to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chair of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

ARTICLE III. DIRECTORS

Section 1. General Powers. Except as otherwise provided by the Certificate of Incorporation or the General Corporation Law of the State of Delaware, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Annual Meetings. Except as otherwise from time to time determined by resolution of the Board of Directors, an annual meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place (if any) as, the annual meeting of stockholders.

Section 3. Regular Meetings and Special Meetings. Regular meetings, other than the annual meeting, of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called by the chair of the board, the Chief Executive Officer or the President (in either case, if such person is a director) or upon the written request of at least a majority of the directors then in office.

Section 4. Notice of Meetings. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by law or these Bylaws. Notice of each special meeting of the Board of Directors, and of each regular and annual meeting of the Board of Directors for which notice shall be required, shall be given by the Secretary as hereinafter provided in this Section 4. Any such notice shall state the time and place of the meeting. Notice of any special meeting, and of any regular or annual meeting for which notice is required, shall be given to each director at least (a) 24 hours before the meeting, if the notice is given by telephone, by delivery in person, or sent by telex, telecopy, electronic mail or similar means, or in the case of a special meeting, on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances, or (b) 5 days before the meeting if delivered by mail to the director's residence or usual place of business. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid, or when transmitted if sent by telex, telecopy, email or similar means. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 5. Chair of the Board, Quorum, Required Vote and Adjournment. The Board of Directors may elect from among its ranks, by the affirmative vote of a majority of the total number of directors then in office, a Chair of the Board, who shall preside at all meetings of the Board of Directors at which he or she is present and shall have such powers and perform such duties as the Board of Directors may from time to time prescribe. If the Chair of the Board is not present at a meeting of the Board of Directors, the Lead Independent Director (if any) shall preside at such meeting, and, if the Lead Independent Director is not present at such meeting, the Chief Executive Officer shall preside at such meeting (if the Chief Executive Officer is a director and is not also Chair of the Board), and, if the Chief Executive Officer is not present at such meeting or is not a director, the President shall preside at such meeting (if the President is a director and is not also the Chair of the Board or the Chief Executive Officer), and, if the President is not present at such meeting or is not a director, a majority of the directors present at such meeting then in office shall elect one of their members to so preside. A majority of the total number of directors shall constitute a quorum for the transaction of business. Unless by express provision of an applicable law, the Certificate of Incorporation or these Bylaws a different vote is required, the vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Committees. The Board of Directors (i) may designate one or more committees consisting of one or more of the directors of the Corporation and (ii) shall, during such period of time as any securities of the Corporation are listed on a national securities exchange, designate all committees required by the rules and regulations of such exchange. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Except to the extent restricted by applicable law or the Certificate of Incorporation, each such committee, to the extent provided in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors. Each such committee shall serve at the pleasure of the Board of Directors as may be determined from time to time by resolution adopted by the Board of Directors or as required by the rules and regulations of such exchange, if applicable. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

Section 7. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. All matters shall be determined by a majority vote of the members present at a meeting at which a quorum is present. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 8. Telephonic and Other Meetings. Unless restricted by the Certificate of Incorporation, any one or more members of the Board of Directors or any committee thereof may participate in and act at any meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

Section 9. Waiver of Notice. Any director may waive notice of any meeting of the Board of Directors, or any committee thereof, by a written waiver signed by the director entitled to the notice, or a waiver by electronic transmission by the director entitled to notice, whether before or after the time stated therein. Attendance of a director at a meeting of the Board of Directors, or of any committee thereof, shall constitute a waiver of notice of such meeting, except when the director attends 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.

Section 10. Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 11. Compensation. The Board of Directors shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Section 12. Reliance on Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such director's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 13. Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event or events.

ARTICLE IV.
OFFICERS

Section 1.Number, Titles. The officers of the Corporation shall be elected by the Board of Directors and may consist of a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice Presidents, a Secretary and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. Any number of offices may be held by the same person, except that neither the Chief Executive Officer nor the President shall also hold the office of Secretary. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except that the offices of Chief Executive Officer and Secretary shall be filled as expeditiously as possible.

Section 2.Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation, removal, disqualification, or retirement as hereinafter provided.

Section 3.Removal. Any officer or agent elected by the Board of Directors may be removed by the Board of Directors at its sole discretion, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4.Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification, retirement or otherwise may be filled by the Board of Directors.

Section 5.Compensation. Compensation of all executive officers shall be approved by the Board of Directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Corporation; provided, however, that compensation of some or all executive officers may be determined by a committee established for that purpose if so authorized by the Board of Directors or as required by applicable law or any applicable rule or regulation, including any rule or regulation of any stock exchange upon which the Corporation's securities are then listed for trading.

Section 6.Chief Executive Officer. The Chief Executive Officer shall have, subject to the supervision, direction and control of the Board of Directors, the general powers and duties of supervision, direction, and management of the business and affairs of the Corporation, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the Corporation. The Chief Executive Officer shall see that all orders and resolutions of the Board of Directors are carried into effect. In addition, the Chief Executive Officer shall have such other powers and perform such other duties as may be delegated to him or her by the Board of Directors or as are set forth in the Certificate of Incorporation or these Bylaws. If the Board of Directors has not elected or appointed a President or the office of the President is otherwise vacant, and no officer otherwise functions with the powers and duties of the President, then, unless otherwise determined by the Board of Directors, the Chief Executive Officer shall also have all the powers and duties of the President.

Section 7.The President. The President, if there is such an officer and the Board of Directors so directs, shall serve as chief operating officer and have the powers and duties customarily and usually associated with the office of chief operating officer unless the Board of Directors provides for another officer to serve as chief operating officer (or to have the powers and duties of chief operating officer). The President shall have such other powers and perform such other duties as may be delegated to him or her from time to time by the Board of Directors or the Chief Executive Officer. If the Board of Directors has not elected or appointed a Chief Executive Officer or the office of Chief Executive Officer is otherwise vacant, then, unless otherwise determined by the Board of Directors, the President shall also have all the powers and duties of the Chief Executive Officer.

Section 8.Vice Presidents. Each Vice President shall have the powers and duties delegated to him or her by the Board of Directors or the President. One Vice President may be designated by the Board of Directors to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

Section 9.The Secretary and Assistant Secretaries. The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and shall perform other duties as the Board of Directors may from time to time prescribe.

Any Assistant Secretary, if there is such an officer, shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer, President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors), shall perform the duties and exercise the powers of the Secretary.

Section 10.The Chief Financial Officer, Treasurer and Assistant Treasurers. The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors, the Chief Executive Officer or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the President shall designate from time to time. The Chief Executive Officer or President may direct the Treasurer or any Assistant Treasurer, if there is such an officer, to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the President shall designate from time to time.

Section 11.Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these Bylaws, shall have

such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

Section 12.Delegation of Authority. The Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

Section 13.Officers' Bonds or Other Security. If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his duties, in such amount and with such surety as the Board of Directors may require.

Section 14.Absence or Disability of Officers. In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person selected by it.

ARTICLE V. STOCK

Section 1.Uncertificated Shares; Certificated Shares. The shares of stock of the Corporation shall be uncertificated, provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be represented by certificates. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by, (i) the Chair of the Board, or the President or Vice President and (ii) the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. Any or all signatures on any such certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, whose facsimile signature has been used on or who has duly affixed a facsimile signature or signatures to any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the Corporation whether because of death, resignation or otherwise before such certificate or certificates have been issued by the Corporation, such certificate or certificates may nevertheless be issued as though the person or persons who signed such certificate or certificates, whose facsimile signature or signatures have been used thereon or who duly affixed a facsimile signature or signatures thereon had not ceased to be such officer, transfer agent or registrar of the Corporation.

Section 2.Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the stock record of the Corporation by the holder of record thereof or by his, her or its attorney thereunto authorized by the power of attorney duly executed and filed with the Secretary of the Corporation or the transfer agent thereof. Certificated shares, if any, shall be transferred only upon surrender of the certificate or certificates representing such shares, properly endorsed or accompanied by a duly executed stock transfer power. Uncertificated shares shall be transferred by delivery of a duly executed stock transfer power. Registration of transfer of any shares shall be subject to applicable provisions of the Certificate of Incorporation and applicable law with respect to the transfer of such shares. The Board of Directors may make

such additional rules and regulations as it may deem expedient concerning the issue and transfer of shares of stock of the Corporation.

Section 3. Transfer Agent. The Board of Directors may appoint a bank or trust company organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both in connection with the transfer of any class or series of securities of the Corporation.

Section 4. Lost, Stolen or Destroyed Certificates. The Corporation may issue or direct a new certificate or certificates or uncertificated shares to be issued in place of any certificate or certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, or of uncertificated shares, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock of the Corporation to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner of such shares. The Corporation shall not be bound to recognize any equitable or other claim to or interest in any such shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

ARTICLE VI. GENERAL PROVISIONS

Section 1. Dividends. Subject to the provisions of the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors in accordance with applicable law. Dividends may be paid in cash, in property, in shares of the capital stock or in any combination thereof, subject to the provisions of applicable law and the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors may think conducive to the interests of the Corporation. The Board of Directors may modify or abolish any such reserves in the manner in which it was created.

Section 2. Contracts. In addition to the powers otherwise granted to officers pursuant to ARTICLE IV hereof, the Board of Directors may authorize any officer or officers, or any agent or agents, in the name and on behalf of the Corporation to enter into or execute and deliver any

and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

Section 3.Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4.Corporate Seal. The Board of Directors may provide a corporate seal which shall be in the form as the Board of Directors shall from time to time determine. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. Notwithstanding the foregoing, no seal shall be required by virtue of this section.

Section 5.Voting Securities Owned By Corporation. Voting securities in any other corporation held by the Corporation shall be voted (or consents in writing may be provided in respect thereof) by the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, the Secretary or any Vice President, unless the Board of Directors specifically confers authority to vote (or express consent in writing) with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote or express consent with respect to such securities shall have the power to appoint proxies, with general power of substitution.

Section 6.Inspection of Books and Records. The Board of Directors shall have power from time to time to determine to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware.

Section 7.Time Periods. Unless otherwise provided by applicable law, in applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded and the day of the event shall be included.

Section 8.Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 9.Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VII. INDEMNIFICATION

Section 1.Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement, without

limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (a “proceeding”), by reason of the fact that such person is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as an employee or agent of the Corporation or as a director, officer, partner, member, trustee, administrator, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other enterprise, including service with respect to an employee benefit plan (an “indemnatee”), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys’ fees and related disbursements, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended from time to time (“ERISA”), and any other penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such indemnatee in connection therewith and such indemnification shall continue as to an indemnatee who has ceased to be a director or officer of the Corporation (or has ceased to serve, at the request of the Corporation, as an employee or agent of the Corporation or as a director, officer, partner, member, trustee, administrator, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other enterprise, including service with respect to an employee benefit plan) and shall inure to the benefit of the indemnatee’s heirs, executors and administrators; provided, however, that, except as provided in Section 2 of this ARTICLE VII with respect to proceedings to enforce rights to indemnification or advancement of expenses, the Corporation shall indemnify any such indemnatee in connection with a proceeding (or part thereof) initiated by such indemnatee only if such proceeding (or part thereof) was authorized in the first instance by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 1 of this ARTICLE VII shall be a contract right and shall include the obligation of the Corporation to pay the expenses incurred in defending any such proceeding in advance of its final disposition (an “advancement of expenses”); provided, however, that an advancement of expenses incurred by an indemnatee shall be made only upon delivery to the Corporation of an undertaking (an “undertaking”), by or on behalf of such indemnatee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a “final adjudication”) that such indemnatee is not entitled to be indemnified for such expenses under this Section 1 or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification and advancement of expenses to employees and agents of the Corporation with the same or lesser scope and effect as the foregoing indemnification and advancement of expenses of directors and officers.

Section 2.Procedure for Indemnification. If a claim for indemnification under this Article VII (which may only be made following the final disposition of such proceeding) is not paid in full within sixty days after the Corporation has received a claim therefor by the indemnatee, or if a claim for any advancement of expenses under this Article VII is not paid in full within thirty days after the Corporation has received a statement or statements requesting such amounts to be advanced (provided that the indemnatee has delivered the undertaking contemplated by Section 1 of this Article VII), the indemnatee shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. Such person’s costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole

or in part, in any such action shall also be indemnified by the Corporation to the fullest extent permitted by law. It shall be a defense to any action by a director or officer for indemnification or the advancement of expenses (other than an action brought to enforce a claim for the advancement of expenses where the undertaking required pursuant to Section 2 of this ARTICLE VII, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its directors, a committee thereof, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such person has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Corporation (including its directors, a committee thereof, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. The procedure for indemnification of other employees and agents of the Corporation for whom indemnification and advancement of expenses is provided pursuant to Section 1 of this ARTICLE VII shall be the same procedure set forth in this Section 2 for directors or officers of the Corporation, unless otherwise set forth in the action of the Board of Directors providing indemnification and advancement of expenses for such employees or agents of the Corporation.

Section 3. Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the General Corporation Law of the State of Delaware.

Section 4. Service for Subsidiaries. Any person serving as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture or other enterprise, at least 50% of whose equity interests are owned directly or indirectly by the Corporation (a "subsidiary" for this ARTICLE VII) shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

Section 5. Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnification, advancement of expenses and other rights contained in this ARTICLE VII in entering into or continuing such service. The rights to indemnification and to the advancement of expenses conferred in this ARTICLE VII shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

Section 6. Other Rights; Continuation of Rights to Indemnification. The rights to indemnification and to the advancement of expenses conferred in this ARTICLE VII shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation, these Bylaws or under any statute, agreement, vote of stockholders or disinterested directors or otherwise. All rights to indemnification and to the advancement of expenses under this ARTICLE VII shall be deemed to be a contract between the Corporation and each indemnitee who serves or served in such capacity at any time while this ARTICLE VII is in effect. Any repeal or modification of this ARTICLE VII or any repeal or modification of relevant provisions of the General Corporation Law of the State of Delaware or any other applicable laws shall not in any way diminish any rights to indemnification and advancement of expenses of such indemnitee or the obligations of the Corporation arising hereunder with respect to any proceeding arising out of, or relating to, any actions, transactions or facts occurring prior to the final adoption of such repeal or modification.

Section 7. Merger or Consolidation. For purposes of this ARTICLE VII, references to the “Corporation” shall include, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this ARTICLE VII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 8. Savings Clause. If this ARTICLE VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and advance expenses to each person entitled to indemnification or advancement of expenses under Section 1 of this ARTICLE VII as to all expense, liability and loss (including attorneys’ fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, and any other penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification or advancement of expenses is available to such person pursuant to this ARTICLE VII to the fullest extent permitted by any applicable portion of this ARTICLE VII that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VIII. EMERGENCY BYLAWS

Section 1. Emergency Bylaws. This Article VIII shall be operative during any emergency, disaster or catastrophe, as referred to in Section 110 of the General Corporation Law of the State of Delaware or other similar emergency condition (including a pandemic), as a result of which a quorum of the Board of Directors or a committee thereof cannot readily be convened for action (each, an “Emergency”), notwithstanding any different or conflicting provision in the preceding Sections of these Bylaws or in the Certificate of Incorporation. To the extent not inconsistent with the provisions of this Article VIII, the preceding sections of these Bylaws and the provisions of the Certificate of Incorporation shall remain in effect during such Emergency,

and upon termination of such Emergency, the provisions of this Article VIII shall cease to be operative unless and until another Emergency shall occur.

Section 2. Meetings; Notice. During any Emergency, a meeting of the Board of Directors or any committee thereof may be called by any member of the Board of Directors or such committee or the Chair of the Board, the Chief Executive Officer, the President or the Secretary of the Corporation. Notice of the place, date and time of the meeting shall be given by any available means of communication by the person calling the meeting to such of the directors or committee members and Designated Officers (as defined below) as, in the judgment of the person calling the meeting, it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the person calling the meeting, circumstances permit.

Section 3. Quorum. At any meeting of the Board of Directors called in accordance with Section 2 of this Article VIII, the presence or participation of three (3) directors shall constitute a quorum for the transaction of business, and at any meeting of any committee of the Board of Directors called in accordance with Section 2 of this Article VIII, the presence or participation of one (1) committee member shall constitute a quorum for the transaction of business. In the event that no directors are able to attend a meeting of the Board of Directors or any committee thereof, then the Designated Officers in attendance shall serve as directors, or committee members, as the case may be, for the meeting, without any additional quorum requirement and will have full powers to act as directors, or committee members, as the case may be, of the Corporation.

Section 4. Liability. No officer, director or employee of the Corporation acting in accordance with the provisions of this Article VIII shall be liable except for willful misconduct.

Section 5. Amendments. At any meeting called in accordance with Section 2 of this Article VIII, the Board of Directors, or any committee thereof, as the case may be, may modify, amend or add to the provisions of this Article VIII as it deems it to be in the best interests of the Corporation and as is practical or necessary for the circumstances of the Emergency.

Section 6. Repeal or Change. The provisions of this Article VIII shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of Section 4 of this Article VIII with regard to action taken prior to the time of such repeal or change.

Section 7. Definitions. For purposes of this Article VIII, the term "Designated Officer" means an officer identified on a numbered list of officers of the Corporation who shall be deemed to be, in the order in which they appear on the list up until a quorum is obtained, directors of the Corporation, or members of a committee of the Board of Directors, as the case may be, for purposes of obtaining a quorum during an Emergency, if a quorum of directors or committee members, as the case may be, cannot otherwise be obtained during such Emergency, which officers have been designated by the Board of Directors from time to time but in any event prior to such time or times as an Emergency may have occurred.

ARTICLE IX.
AMENDMENTS

These Bylaws may be amended, altered, changed or repealed or new Bylaws adopted only in accordance with Article Nine, Section 2 of the Certificate of Incorporation.

I, Michael O'Sullivan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Burlington Stores, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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: November 22, 2022

/s/ Michael O'Sullivan

Michael O'Sullivan

Chief Executive Officer

(Principal Executive Officer)

I, Kristin Wolfe, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Burlington Stores, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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: November 22, 2022

/s/ Kristin Wolfe

Kristin Wolfe

Chief Financial Officer

(Principal 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 Burlington Stores, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended October 29, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael O'Sullivan, 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 position and results of operations of the Company.

Date: November 22, 2022

/s/ Michael O'Sullivan

Michael O'Sullivan
Chief Executive Officer
(Principal Executive Officer)

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

In connection with the Quarterly Report of Burlington Stores, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended October 29, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kristin Wolfe, 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 position and results of operations of the Company.

Date: November 22, 2022

/s/ Kristin Wolfe

Kristin Wolfe

Chief Financial Officer

(Principal Financial Officer)
