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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND RISK FACTORS
(Cautionary Statements Under the Private Securities Litigation Reform Act of 1995)**

This Quarterly Report on Form 10-Q includes forward-looking statements. Certain matters discussed in "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations" and other sections of this Quarterly Report on Form 10-Q are forward-looking statements intended to qualify for safe harbors from liability established by the Private Securities Litigation Reform Act of 1995. Some of these statements can be identified by terms and phrases such as "anticipate," "believe," "intend," "estimate," "expect," "continue," "could," "may," "plan," "project," "predict" and similar expressions and include references to assumptions that the Company believes are reasonable and relate to its future prospects, developments and business strategies. Such statements are subject to various risks and uncertainties that could cause actual results to differ materially. These include, but are not limited to: (i) the Company's dependence on eCommerce and mall traffic for its sales, and the continued reduction in the volume of mall traffic; (ii) the Company's ability to anticipate and respond to fashion trends; (iii) the impact of general economic conditions and their effect on consumer confidence and spending patterns; (iv) changes in the cost of raw materials, distribution services or labor; (v) the potential for economic conditions to negatively impact the Company's merchandise vendors and their ability to deliver products; (vi) the Company's ability to open and operate stores successfully; (vii) seasonal fluctuations in the Company's business; (viii) competition in the Company's market, including promotional and pricing competition; (ix) the Company's ability to retain, recruit and train key personnel; (x) the Company's reliance on third parties to manage some aspects of its business; (xi) the Company's reliance on foreign sources of production; (xii) the Company's ability to protect its trademarks and other intellectual property rights; (xiii) the Company's ability to maintain, and its reliance on, its information technology infrastructure; (xiv) the effects of government regulation; (xv) the control of the Company by its largest stockholder and any potential change of ownership; and (xvi) other risks and uncertainties as described in the Company's documents filed with the SEC, including its most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q.

The Company undertakes no obligation to revise the forward-looking statements included in this Quarterly Report on Form 10-Q to reflect any future events or circumstances. The Company's actual results, performance or achievements could differ materially from the results expressed or implied by these forward-looking statements.

**PART I.
FINANCIAL INFORMATION**

ITEM 1. FINANCIAL STATEMENTS

**RTW Retailwinds, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations**

(Unaudited)

(Amounts in thousands, except per share amounts)	Three months ended November 3, 2018	Three months ended October 28, 2017	Nine months ended November 3, 2018	Nine months ended October 28, 2017
Net sales	\$ 210,758	\$ 214,182	\$ 645,957	\$ 648,155
Cost of goods sold, buying and occupancy costs	142,383	146,584	438,247	447,574
Gross profit	68,375	67,598	207,710	200,581
Selling, general and administrative expenses	66,802	66,980	199,605	198,659
Operating income	1,573	618	8,105	1,922
Interest expense, net of interest income of \$330, \$104, \$815, and \$238, respectively	(258)	161	(453)	678
Loss on extinguishment of debt	—	—	239	—
Income before income taxes	1,831	457	8,319	1,244
Provision for income taxes	106	105	441	316
Net income	\$ 1,725	\$ 352	\$ 7,878	\$ 928
Basic earnings per share	\$ 0.03	\$ 0.01	\$ 0.12	\$ 0.01
Diluted earnings per share	\$ 0.03	\$ 0.01	\$ 0.12	\$ 0.01
Weighted average shares outstanding:				
Basic shares of common stock	63,940	63,242	63,738	63,213
Diluted shares of common stock	66,289	64,099	65,979	63,842

RTW Retailwinds, Inc. and Subsidiaries

Condensed Consolidated Statements of Comprehensive Income

(Unaudited)

(Amounts in thousands)	Three months ended November 3, 2018	Three months ended October 28, 2017	Nine months ended November 3, 2018	Nine months ended October 28, 2017
Comprehensive income	\$ 1,760	\$ 362	\$ 7,983	\$ 1,123

See accompanying notes.

RTW Retailwinds, Inc. and Subsidiaries

Condensed Consolidated Balance Sheets

<u>(Amounts in thousands, except per share amounts)</u>	<u>November 3, 2018</u>	<u>February 3, 2018*</u>	<u>October 28, 2017</u>
	<u>(Unaudited)</u>		<u>(Unaudited)</u>
Assets			
Current assets:			
Cash and cash equivalents	\$ 83,662	\$ 90,908	\$ 69,235
Accounts receivable	14,134	12,528	16,242
Income taxes receivable	55	115	115
Inventories, net	121,586	84,498	125,604
Prepaid expenses	16,894	16,447	17,648
Other current assets	2,308	1,924	2,587
Total current assets	238,639	206,420	231,431
Property and equipment, net	65,292	77,906	78,796
Intangible assets	16,891	17,125	14,879
Other assets	1,411	1,505	1,635
Total assets	\$ 322,233	\$ 302,956	\$ 326,741
Liabilities and stockholders' equity			
Current liabilities:			
Current portion-long-term debt	\$ —	\$ 841	\$ 841
Accounts payable	107,231	70,089	105,419
Accrued expenses	66,487	70,677	61,714
Income taxes payable	16	28	—
Total current liabilities	173,734	141,635	167,974
Long-term debt, net of current portion	—	10,644	10,854
Deferred rent	25,623	27,217	28,192
Other liabilities	32,226	36,599	38,498
Total liabilities	231,583	216,095	245,518
Stockholders' equity:			
Common stock, voting, par value \$0.001; 300,000 shares authorized 66,663, 65,896 and 66,012 shares issued and 64,832, 64,065 and 64,180 shares outstanding at November 3, 2018, February 3, 2018 and October 28, 2017, respectively	67	66	66
Additional paid-in capital	184,916	183,228	182,947
Retained deficit	(88,802)	(90,797)	(95,544)
Accumulated other comprehensive loss	(446)	(551)	(1,161)
Treasury stock at cost; 1,831 shares at November 3, 2018, February 3, 2018 and October 28, 2017	(5,085)	(5,085)	(5,085)
Total stockholders' equity	90,650	86,861	81,223
Total liabilities and stockholders' equity	\$ 322,233	\$ 302,956	\$ 326,741

* Derived from the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 2018.

See accompanying notes.

RTW Retailwinds, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(Unaudited)

(Amounts in thousands)	Nine months ended November 3, 2018	Nine months ended October 28, 2017
Operating activities		
Net income	\$ 7,878	\$ 928
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	15,833	16,354
Loss from impairment charges	486	611
Amortization of intangible assets	234	—
Amortization of deferred financing costs	49	142
Write-off of unamortized deferred financing costs	239	—
Share-based compensation expense	1,997	1,756
Changes in operating assets and liabilities:		
Accounts receivable	(1,981)	(4,455)
Income taxes receivable	60	29
Inventories, net	(37,088)	(47,560)
Prepaid expenses	(447)	1,098
Accounts payable	37,142	37,351
Accrued expenses	(10,202)	(7,872)
Income taxes payable	(12)	(174)
Deferred rent	(1,594)	(1,847)
Other assets and liabilities	(3,131)	(4,978)
Net cash provided by (used in) operating activities	9,463	(8,617)
Investing activities		
Capital expenditures	(3,705)	(7,794)
Insurance recoveries	375	50
Net cash used in investing activities	(3,330)	(7,744)
Financing activities		
Repayment of long-term debt	(11,750)	(750)
Principal payment on capital lease obligations	(1,320)	(1,199)
Shares withheld for payment of employee payroll taxes	(309)	(202)
Purchase of treasury stock	—	(622)
Net cash used in financing activities	(13,379)	(2,773)
Net decrease in cash and cash equivalents	(7,246)	(19,134)
Cash and cash equivalents at beginning of period	90,908	88,369
Cash and cash equivalents at end of period	<u>\$ 83,662</u>	<u>\$ 69,235</u>
Supplementary non-cash investing activities		
Non-cash capital lease transactions	<u>\$ —</u>	<u>\$ 818</u>

See accompanying notes.

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements

November 3, 2018

(Unaudited)

1. Organization and Basis of Presentation

RTW Retailwinds, Inc., formerly known as New York & Company, Inc., (together with its subsidiaries, the "Company") is a specialty women's omnichannel and digitally enabled retailer with a powerful multi-brand lifestyle platform providing curated fashion solutions that are versatile, on-trend, and stylish at a great value. The specialty retailer, first incorporated in 1918, has grown to now operate roughly 428 retail and outlet locations in 36 states while also growing a substantial eCommerce business. The company's portfolio includes branded merchandise from New York & Company, Fashion to Figure, and collaborations with Eva Mendes, Gabrielle Union and Kate Hudson. The Company's branded merchandise is sold exclusively at its retail locations and online at www.nyandcompany.com, www.fashiontofigure.com, and www.nyandcompanycloset.com. The target customers for the Company's merchandise are women between the ages of 25 and 49.

The condensed consolidated financial statements as of November 3, 2018 and October 28, 2017 and for the 13 weeks ("three months") and 26 weeks ("nine months") ended November 3, 2018 and October 28, 2017 are unaudited and are presented pursuant to the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Accordingly, these unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the 53-week fiscal year ended February 3, 2018 ("fiscal year 2017"), which were filed with the Company's Annual Report on Form 10-K with the SEC on April 17, 2018. The 52-week fiscal year ending February 2, 2019 is referred to herein as "fiscal year 2018." The Company's fiscal year is a 52- or 53-week year that ends on the Saturday closest to January 31.

The Company identifies its operating segments according to how its business activities are managed and evaluated. Its operating segments have been aggregated and are reported as one reportable segment based on the similar nature of products sold, production process, distribution process, target customers and economic characteristics. All of the Company's revenues are generated in the United States. In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, which are of a normal recurring nature, necessary to present fairly the financial condition, results of operations and cash flows for the interim periods. All significant intercompany balances and transactions have been eliminated in consolidation.

Due to seasonal variations in the retail industry, the results of operations for any interim period are not necessarily indicative of the results expected for the full fiscal year.

Certain totals that appear in this Quarterly Report on Form 10-Q may not equal the sum of the components due to rounding.

2. New Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, "Revenue from Contracts with Customers (Topic 606)" ("Topic 606"), which supersedes the revenue recognition requirements in FASB Accounting Standards Codification™ ("ASC") Topic 605, "Revenue Recognition" and requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which an entity expects to be entitled to in exchange for those goods or services. The Company adopted Topic 606 as of February 4, 2018 using the modified retrospective method with a

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

2. New Accounting Pronouncements (Continued)

cumulative adjustment to the opening retained earnings balance. Please refer to Note 3, "Revenue Recognition" for further information regarding the adoption of Topic 606.

In February 2016, the FASB issued ASU 2016-02, "Leases" ("ASU 2016-02"), which is a comprehensive new lease standard that amends various aspects of existing accounting guidance for leases. The core principle of ASU 2016-02 will require lessees to present the assets and liabilities that arise from leases on their balance sheets. ASU 2016-02 is effective for annual periods beginning after December 15, 2018, and interim periods within those fiscal years and requires modified retrospective adoption. Early adoption is permitted. The Company will adopt ASU 2016-02 on February 3, 2019 using the transition option to recognize a cumulative adjustment to the opening retained earnings balance and without adjustment to prior periods. The Company has gathered all of its existing contracts that meet the definition of a lease under ASU 2016-02, and it has concluded that the Company's real estate leases will drive the significant impact to the Company's consolidated balance sheet. The Company is going through the process of determining its policy elections and its application of practical expedients as they pertain to the adoption of ASU 2016-02. While the Company continues to evaluate the impact of the adoption of this new standard on the Company's financial position and results of operations, the Company expects that the adoption of ASU 2016-02 will result in a significant increase to its long-term assets and liabilities on the consolidated balance sheet.

In March 2017, the FASB issued ASU 2017-07, "Compensation-Retirement Benefits: Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost" ("ASU 2017-07"), which requires: (i) the disaggregation of the service cost component from the other components of net benefit costs in the income statement; (ii) provides explicit guidance on the presentation of the service cost component and the other components of net benefit cost in the income statement; and (iii) allows only the service cost component of net benefit cost to be eligible for capitalization. ASU 2017-07 is effective for annual reporting periods beginning after December 15, 2017, and interim periods within those fiscal years, and requires retrospective adoption. The Company prospectively adopted ASU 2017-07 on February 4, 2018, as the Company deemed the impact of prior period reclassifications to be immaterial. The impact on the three months ended October 28, 2017 would have resulted in a net increase of "Selling, general, and administrative expenses" and a decrease in "Operating income" on the Company's condensed consolidated statements of operations by \$52,000. The impact on the nine months ended October 28, 2017 would have resulted in a net decrease of "Selling, general, and administrative expenses" and an increase in "Operating income" on the Company's condensed consolidated statements of operations by \$60,000.

3. Revenue Recognition

On February 4, 2018, the Company adopted Topic 606 using the modified retrospective method applied to all contracts not completed as of the date of adoption. Results for reporting periods beginning February 4, 2018 are presented under Topic 606, while prior period amounts are not adjusted and continue to be reported in accordance with the Company's historic accounting under Topic 605.

On February 4, 2018, the Company recorded a net increase to the opening "Retained deficit" balance of \$5.9 million with an offsetting adjustment to "Accrued expenses" due to the cumulative

RTW Retailwinds, Inc.**Notes to Condensed Consolidated Financial Statements (Continued)****November 3, 2018****(Unaudited)****3. Revenue Recognition (Continued)**

impact of adopting Topic 606. The cumulative effect adjustment related primarily to the Company's private label credit card loyalty program (the "Runway Rewards" program).

Runway Rewards is the Company's points-based customer loyalty program, in which customers earn points based on purchases. When customers reach predetermined point thresholds, earned points are converted to rewards that can be redeemed for discounts on future purchases of Company merchandise. Previously under Topic 605, the Company recognized revenue for the full sale amount at the time of sale; however, the Company would accrue the estimated cost of points and rewards earned and outstanding until they were redeemed or expired, which is referred to as the incremental cost method. Under Topic 606, the Company no longer accrues the estimated cost of points and rewards earned and outstanding. Instead, it defers a portion of the revenue at the time of sale using the standalone selling price method, as described in Topic 606, until the points and rewards are redeemed or expire. On the date of adoption of Topic 606, the Company established a current liability for deferred revenue equal to the estimated sales value of points and rewards earned and outstanding that are expected to be redeemed, with an offsetting adjustment to the opening balance of "Retained deficit."

In accordance with the new revenue standard requirements, the disclosure of the impact of adoption on the Company's consolidated balance sheet on February 4, 2018 was as follows:

	<u>February 3, 2018</u>	<u>Effect of</u>	<u>February 4, 2018</u>
	<u>(As reported)</u>	<u>Topic 606</u>	<u>(As amended)</u>
		<u>Adoption</u>	
	<u>(Amounts in thousands)</u>		
Accrued expenses	\$ 70,677	\$ 5,883	\$ 76,560
Retained deficit	\$ (90,797)	\$ (5,883)	\$ (96,680)

There was no impact to the Company's condensed consolidated statement of operations on the date of adoption of Topic 606.

In accordance with the new revenue standard requirements, the disclosure of the impact of adoption on the Company's consolidated balance sheet as of November 3, 2018 was as follows:

	<u>As of November 3, 2018</u>		
	<u>Balances</u>	<u>Effect of</u>	
	<u>Without</u>	<u>Topic 606</u>	
	<u>Adoption of</u>	<u>Adoption</u>	<u>As Reported</u>
	<u>ASC 606</u>	<u>Adoption</u>	
	<u>(Amounts in thousands)</u>		
Accrued expenses	\$ 65,964	\$ 523	\$ 66,487
Retained deficit	\$ (88,279)	\$ (523)	\$ (88,802)

RTW Retailwinds, Inc.**Notes to Condensed Consolidated Financial Statements (Continued)****November 3, 2018****(Unaudited)****3. Revenue Recognition (Continued)**

In accordance with the new revenue standard requirements, the disclosure of the impact of adoption on the Company's condensed consolidated statements of operations during the three and nine months ended November 3, 2018 was as follows:

	<u>Three months ended November 3, 2018</u>			<u>Nine months ended November 3, 2018</u>		
	<u>Balances Without Adoption of ASC 606</u>	<u>Effect of Topic 606 Adoption</u>	<u>As Reported</u>	<u>Balances Without Adoption of ASC 606</u>	<u>Effect of Topic 606 Adoption</u>	<u>As Reported</u>
	(Amounts in thousands)					
Net sales	\$ 211,144	\$ (386)	\$ 210,758	\$ 646,383	\$ (426)	\$ 645,957
Cost of goods sold, buying and occupancy costs	\$ 142,355	\$ 28	\$ 142,383	\$ 438,150	\$ 97	\$ 438,247
Gross profit	\$ 68,789	\$ (414)	\$ 68,375	\$ 208,233	\$ (523)	\$ 207,710
Operating income	\$ 1,987	\$ (414)	\$ 1,573	\$ 8,628	\$ (523)	\$ 8,105

As a result of the adoption of Topic 606, the Company could experience a shift in revenues and gross profit between fiscal quarters in the future, depending on the timing and level of rewards earned and redeemed by customers.

Revenue Recognition Accounting Policies

Revenue from the sale of merchandise at the Company's stores is recognized at the time the customer takes possession of the related merchandise and the purchases are paid for. Revenue, including shipping fees billed to customers, from the sale of merchandise at the Company's eCommerce store is recognized when the merchandise is shipped to the customer and the purchases are paid for. Revenue for gift cards and merchandise credits is recognized at redemption. Prior to their redemption, gift cards and merchandise credits are recorded as a liability. Discounts and promotional coupons offered to customers are accounted for as a reduction of sales revenue at the time the coupons are tendered by the customer. For sales incentives that provide customers with a coupon for a discount on future purchases, the Company defers a portion of the revenue at the time the coupon is earned using the standalone selling price method, until the coupon is redeemed or expired. Sales taxes collected from customers are excluded from revenues.

The Company reserves for sales returns on a gross basis through a separate right of return asset and liability with reductions in sales and cost of goods sold based upon historical merchandise returns experience and current sales levels.

The Company issues gift cards and merchandise credits which do not contain provisions for expiration or inactivity fees. The portion of the dollar value of gift cards and merchandise credits that ultimately is not used by customers to make purchases is known as breakage and will be recognized as revenue if the Company determines it is not required to escheat such amounts to government agencies under state escheatment laws. The Company recognizes gift card and merchandise credit breakage as revenue as each is redeemed over a two-year redemption period based on their respective historical breakage rate. The Company considers the likelihood of redemption remote beyond a two-year redemption period, at which point any unrecognized breakage is recognized as revenue. The Company

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

3. Revenue Recognition (Continued)

determined the redemption period and the breakage rates for gift cards and merchandise credits based on their respective historical redemption patterns.

Under the Company's Runway Rewards program, points earned expire within 12 months if the point threshold for a reward is not attained. Issued rewards expire within approximately 60 days if they are not redeemed. As rewards are being earned the Company defers a portion of the revenue equal to the estimated sales value of the reward that is expected to be redeemed using the standalone selling price method. Revenue is recognized as rewards are redeemed or expire. The Company determines the estimated redemption rate based on the historical experience of rewards being earned and redeemed.

The Company also recognizes revenue in connection with its private label credit card agreement with Comenity Bank, a bank subsidiary of Alliance Data Systems Corporation ("ADS") (the "ADS Agreement"). Pursuant to the terms of the ADS Agreement, ADS has the exclusive right to provide private label credit cards to its customers. The Company's private label credit card is issued to the Company's customers for use exclusively at the Company's stores and eCommerce websites, and credit is extended to such customers by Comenity Bank on a non-recourse basis to the Company. Upon execution of the ADS Agreement on July 14, 2016, the Company was entitled to a \$40 million signing bonus, which was recorded as deferred revenue, and is being amortized on a straight-line basis over the 10-year term of the ADS agreement. In addition, over the term of the ADS Agreement, the Company receives royalty payments based on a percentage of private label credit card sales, which the Company recognizes as revenue as it is earned.

Contract Liabilities

Deferred revenue related to the Company's gift cards and merchandise credits outstanding was \$12.1 million and \$13.6 million as of November 3, 2018 and February 3, 2018, respectively, which is included in "Accrued expenses" on the Company's condensed consolidated balance sheets. During the nine months ended November 3, 2018, the Company recognized approximately \$5.1 million of revenue that was included in the deferred revenue liability for gift cards and merchandise credits at February 3, 2018.

Deferred revenue related to the Company's Runway Rewards program and other sales incentive programs, including the impact of Topic 606 adoption, was \$7.8 million and \$7.3 million as of November 3, 2018 and February 3, 2018, respectively. At November 3, 2018, the \$7.8 million deferred revenue liability for loyalty programs is included in "Accrued expenses" on the Company's condensed consolidated balance sheet. During the three and nine months ended November 3, 2018, the net impact of rewards earned, redeemed and expired under these programs was a \$0.3 million and \$0.4 million deferral of revenue, respectively.

Deferred revenue related to the ADS Agreement was \$30.0 million at November 3, 2018, of which \$26.0 million is included in "Other liabilities" and \$4.0 million is included in "Accrued expenses" on the condensed consolidated balance sheet. As of February 3, 2018, deferred revenue related to the ADS Agreement was \$33.0 million, of which \$29.0 million is included in "Other liabilities" and \$4.0 million is included in "Accrued expenses" on the condensed consolidated balance sheet. During the three months ended November 3, 2018 and October 28, 2017, the Company recognized revenue of

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

3. Revenue Recognition (Continued)

\$6.0 million and \$6.1 million, respectively, from royalties and the amortization of signing bonuses in connection with the ADS Agreement. During the nine months ended November 3, 2018 and October 28, 2017, the Company recognized revenue of \$17.6 million and \$17.7 million, respectively, from royalties and the amortization of signing bonuses in connection with the ADS Agreement.

4. Earnings Per Share

Basic earnings per share are computed by dividing net income by the weighted average number of shares of common stock outstanding for the period. Except when the effect would be anti-dilutive, diluted earnings per share are calculated based on the weighted average number of outstanding shares of common stock plus the dilutive effect of share-based awards calculated under the treasury stock method. A reconciliation between basic and diluted earnings per share is as follows:

	Three months ended November 3, 2018	Three months ended October 28, 2017	Nine months ended November 3, 2018	Nine months ended October 28, 2017
	(Amounts in thousands, except per share amounts)			
Net income	\$ 1,725	\$ 352	\$ 7,878	\$ 928
<i>Basic earnings per share:</i>				
<i>Weighted average shares outstanding:</i>				
Basic shares of common stock	63,940	63,242	63,738	63,213
Basic earnings per share	<u>\$ 0.03</u>	<u>\$ 0.01</u>	<u>\$ 0.12</u>	<u>\$ 0.01</u>
<i>Diluted earnings per share:</i>				
<i>Weighted average shares outstanding:</i>				
Basic shares of common stock	63,940	63,242	63,738	63,213
Plus impact of share-based awards	2,349	857	2,241	629
Diluted shares of common stock	66,289	64,099	65,979	63,842
Diluted earnings per share	<u>\$ 0.03</u>	<u>\$ 0.01</u>	<u>\$ 0.12</u>	<u>\$ 0.01</u>

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

4. Earnings Per Share (Continued)

The calculation of diluted earnings per share for the three and nine months ended November 3, 2018 and October 28, 2017 excludes the share-based awards listed in the following table due to their anti-dilutive effect as determined under the treasury stock method:

	Three months ended November 3, 2018	Three months ended October 28, 2017	Nine months ended November 3, 2018	Nine months ended October 28, 2017
	(Amounts in thousands)			
Stock options	—	13	4	190
Stock appreciation rights(1)	846	2,880	339	6,208
Restricted stock and units	313	92	113	208
Total anti-dilutive shares	<u>1,159</u>	<u>2,985</u>	<u>456</u>	<u>6,606</u>

- (1) Each stock appreciation right ("SAR") referred to above represents the right to receive a payment measured by the increase in the fair market value of one share of common stock from the date of grant of the SAR to the date of exercise of the SAR. Upon exercise, the SARs will be settled in stock.

5. Pension Plan

The Company sponsors a single employer defined benefit pension plan ("plan") covering substantially all union employees. Employees covered by collective bargaining agreements are primarily non-management store associates, representing approximately 7% of the Company's workforce at November 3, 2018. The collective bargaining agreement with the Local 1102 unit of the Retail, Wholesale and Department Store Union AFL-CIO is in effect through January 31, 2019.

The plan provides retirement benefits for union employees who have attained the age of 21 and complete 1,000 or more hours of service in any calendar year following the date of employment. The plan provides benefits based on length of service. The Company's funding policy for the pension plan is to contribute annually the amount necessary to provide for benefits based on accrued service and to contribute at least the minimum required by ERISA rules. Net periodic benefit cost includes the following components:

	Three months ended November 3, 2018	Three months ended October 28, 2017	Nine months ended November 3, 2018	Nine months ended October 28, 2017
	(Amounts in thousands)			
Service cost	\$ 97	\$ 84	\$ 290	\$ 252
Interest cost	76	72	229	244
Expected return on plan assets	(140)	(134)	(421)	(379)
Amortization of unrecognized losses	39	13	117	206
Amortization of prior service credit	(4)	(3)	(12)	(11)
Net periodic benefit cost	<u>\$ 68</u>	<u>\$ 32</u>	<u>\$ 203</u>	<u>\$ 312</u>

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

5. Pension Plan (Continued)

In accordance with FASB ASC Topic 220, "Comprehensive Income," comprehensive income reported on the Company's condensed consolidated statements of comprehensive income includes net income and other comprehensive income. For the Company, other comprehensive income consists of the reclassification of unrecognized losses and prior service credits related to the Company's minimum pension liability. The total amount of unrecognized losses and prior service credits reclassified out of "Accumulated other comprehensive loss" on the condensed consolidated balance sheets and into "Selling, general, and administrative expenses" on the Company's condensed consolidated statements of operations for the three months ended November 3, 2018 and October 28, 2017 was approximately \$35,000 and \$10,000, respectively, and for the nine months ended November 3, 2018 and October 28, 2017 was approximately \$105,000 and \$195,000, respectively. As of February 3, 2018, the Company reported a minimum pension liability of \$1.2 million due to the underfunded status of the plan. The minimum pension liability is reported in "Other liabilities" on the condensed consolidated balance sheets.

6. Income Taxes

The Company files U.S. federal income tax returns and income tax returns in various state and local jurisdictions. The Company is no longer subject to U.S. federal income tax examinations for tax years through 2014. With limited exception, the Company is no longer subject to state and local income tax examinations for tax years through 2013.

At February 3, 2018, the Company reported a total liability for unrecognized tax benefits of \$2.0 million, including interest and penalties. There have been no material changes during the nine months ended November 3, 2018. Of the total \$2.0 million of unrecognized tax benefits at February 3, 2018, approximately \$1.6 million, if recognized, would impact the Company's effective tax rate. The Company does not anticipate any significant increases or decreases to the balance of unrecognized tax benefits during the next 12 months.

The Company continues to maintain a valuation allowance against its deferred tax assets until the Company believes it is more likely than not that these assets will be realized in the future. If sufficient positive evidence arises in the future indicating that all or a portion of the deferred tax assets meet the more likely than not standard under ASC Topic 740, "Income Taxes," the valuation allowance would be reversed accordingly in the period that such determination is made. As of November 3, 2018, the Company's valuation allowance against its deferred tax assets was \$55.1 million.

7. Long-Term Debt and Credit Facilities

On October 24, 2014, Lerner New York, Inc., Lernco, Inc. and Lerner New York Outlet, LLC, wholly-owned indirect subsidiaries of RTW Retailwinds, Inc., entered into a Fourth Amended and Restated Loan and Security Agreement (the "Loan Agreement") with Wells Fargo Bank, National Association, as Agent and Term Loan Agent and the lender party thereto. The obligations under the Loan Agreement are guaranteed by RTW Retailwinds, Inc. and its other subsidiaries. The Loan Agreement expires on October 24, 2019.

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

7. Long-Term Debt and Credit Facilities (Continued)

The Loan Agreement consists of a revolving credit facility that provides the Company with up to \$100 million of credit, consisting of a \$75 million revolving credit facility (which includes a sub-facility for issuance of letters of credit up to \$45 million) with a fully committed accordion option that allows the Company to increase the revolving credit facility up to \$100 million or decrease it to a minimum of \$60 million, subject to certain restrictions. On April 5, 2018, the Company used cash on-hand to prepay in full an \$11.5 million outstanding balance of a \$15 million, 5-year term loan under the Loan Agreement.

Under the terms of the Loan Agreement, the interest rates applicable to Revolving Loans are, at the Company's option, either at a floating rate equal to the Adjusted Eurodollar Rate plus a margin of between 1.50% and 1.75% per year for Eurodollar Rate Loans or a floating rate equal to the Prime Rate plus a margin of between 0.50% and 0.75% per year for Prime Rate Loans, depending upon the Company's Average Compliance Excess Availability. The Company pays to the lender under the revolving credit facility a monthly fee on outstanding commercial letters of credit at a rate of between 0.75% and 0.875% per year and on standby letters of credit at a rate of between 1.50% and 1.75% per year, depending upon the Company's Average Compliance Excess Availability, plus a monthly fee on a proportion of the unused commitments under the revolving credit facility at a rate of 0.25% per year.

The maximum borrowing availability under the Company's revolving credit facility is determined by a monthly borrowing base calculation based on applying specified advance rates against inventory and certain other eligible assets. As of November 3, 2018, the Company had availability under its revolving credit facility of \$59.9 million, net of letters of credit outstanding of \$13.0 million, as compared to availability of \$38.1 million, net of letters of credit outstanding of \$12.5 million, as of February 3, 2018, and availability of \$59.4 million, net of letters of credit outstanding of \$14.7 million, as of October 28, 2017. The \$13.0 million of letters of credit outstanding at November 3, 2018 includes \$11.9 million of standby letters of credit primarily related to the Company's new corporate headquarters and certain insurance contracts. Standby letters of credit related to the Company's corporate headquarters are scheduled to be reduced by \$2.0 million annually, which began in October 2017, for a total reduction of \$6.0 million by October 2019.

Under the terms of the Loan Agreement, the Company is subject to a Minimum Excess Availability covenant of \$7.5 million. The Loan Agreement contains other covenants and conditions, including restrictions on the Company's ability to pay dividends on its common stock, incur additional indebtedness and to prepay, redeem, defease or purchase other indebtedness. Subject to such restrictions, the Company may incur more indebtedness for working capital, capital expenditures, stock repurchases, acquisitions and for other purposes.

The lender has been granted a pledge of the common stock of Lerner New York Holding, Inc. and certain of its subsidiaries, and a first priority security interest in substantially all other tangible and intangible assets of RTW Retailwinds, Inc. and its subsidiaries, as collateral for the Company's obligations under the Loan Agreement. In addition, RTW Retailwinds, Inc. and certain of its subsidiaries have fully and unconditionally guaranteed the obligations under the Loan Agreement, and such guarantees are joint and several.

RTW Retailwinds, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

November 3, 2018

(Unaudited)

7. Long-Term Debt and Credit Facilities (Continued)

As of November 3, 2018, February 3, 2018, and October 28, 2017, the Company had \$4.4 million, \$5.8 million, and \$6.2 million of capital lease obligations outstanding, respectively. The Company's capital lease obligations are generally required to be repaid ratably over a five-year term beginning on the respective lease commencement date.

8. Fair Value Measurements

The Company measures fair value in accordance with FASB ASC Topic 820, "Fair Value Measurements" ("ASC 820"). ASC 820 establishes a three-level fair value hierarchy that requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of inputs used to measure fair value are as follows:

- Level 1: Observable inputs such as quoted prices in active markets;
- Level 2: Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and
- Level 3: Unobservable inputs in which there is little or no market data and require the reporting entity to develop its own assumptions.

The Company's financial instruments consist of cash and cash equivalents, short-term trade receivables, accounts payable, and long-term debt in prior periods. The carrying values on the balance sheets for cash and cash equivalents, short-term trade receivables and accounts payable approximate their fair values due to the short-term maturities of such items. The carrying amount of long-term debt on the balance sheets approximates its fair value due to the variable interest rate it carries.

The Company classifies long-lived store assets within Level 3 of the fair value hierarchy. The Company evaluates the impairment of long-lived assets in accordance with ASC Topic 360, "Property, Plant and Equipment." Long-lived assets are evaluated for recoverability whenever events or changes in circumstances indicate that an asset may have been impaired. The evaluation is performed at the individual store level, which is the lowest level for which identifiable cash flows are largely independent of the cash flows of other groups of assets and liabilities. In evaluating long-lived assets for recoverability, the Company estimates the future cash flows at the individual store level that are expected to result from the use of each store's assets based on historical experience, omni-channel strategy, knowledge and market data assumptions. If the sum of the expected future undiscounted cash flows is less than the carrying amount of the long-lived assets, an impairment loss, equal to the excess of the carrying amount over the fair value of the assets, is recognized. During the nine months ended November 3, 2018, the Company recorded \$0.5 million of non-cash impairment charges related to underperforming store assets in "Selling, general and administrative expenses" on the Company's condensed consolidated statement of operations. There were no asset impairment charges recorded during the three months ended November 3, 2018. During the three and nine months ended October 28, 2017, the Company recorded \$0.1 million and \$0.6 million, respectively, of non-cash impairment charges related to underperforming store assets in "Selling, general and administrative expenses" on the Company's condensed consolidated statement of operations.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

RTW Retailwinds, Inc., formerly known as New York & Company, Inc., (together with its subsidiaries, the "Company") is a specialty women's omni-channel and digitally enabled retailer with a powerful multi-brand lifestyle platform providing curated fashion solutions that are versatile, on-trend, and stylish at a great value. The specialty retailer, first incorporated in 1918, has grown to now operate roughly 428 retail and outlet locations in 36 states while also growing a substantial eCommerce business. The company's portfolio includes branded merchandise from New York & Company, Fashion to Figure, and collaborations with Eva Mendes, Gabrielle Union and Kate Hudson. The Company's branded merchandise is sold exclusively at its retail locations and online at www.nyandcompany.com, www.fashiontofigure.com, and www.nyandcompanycloset.com. The target customers for the Company's merchandise are women between the ages of 25 and 49.

Throughout fiscal year 2018, the Company's key strategic initiatives are as follows: (i) leverage its celebrity collaborations and evolve as a broader lifestyle brand through the growth of the Company's sub-brand strategy, including 7th Avenue Design Studio, Kate Hudson for Soho Jeans, Soho Street, Eva Mendes Collection, and Gabrielle Union Collection; (ii) enhance brand awareness and increase customer engagement, including growth in both the number of new private label credit card holders and the Company's existing customer database, to drive traffic online and into stores; (iii) drive growth in eCommerce sales and continue to elevate its omni-channel capabilities by providing an easy and seamless customer experience; (iv) optimize the Company's existing store base; (v) continue ongoing Project Excellence initiatives; and (vi) explore opportunities to invest in growth initiatives.

Project Excellence is the Company's ongoing business re-engineering program which consists of a continuous analysis of business processes and organizational structure in an effort to improve sales productivity and operating efficiencies, as well as to reduce the Company's overall cost structure. For further information related to Project Excellence, please refer to Note 14, "Quarterly Results" in the Notes to Consolidated Financial Statements appearing in the Company's Annual Report on Form 10-K for the fiscal year ended February 3, 2018.

In regards to new growth initiatives, in fiscal year 2017 the Company launched an online subscription apparel rental service, *NY&C Closet*, which is available at www.nyandcompanycloset.com. With each apparel rental, subscribers have the option to return or exchange, or purchase at a discount, any or all of their rented items. During the first nine months of fiscal year 2018, the Company successfully grew its subscriber base for *NY&C Closet*, and going forward, the Company plans to expand customer engagement with the New York & Company brand through this platform.

In addition, on February 2, 2018, the Company acquired certain assets of Fashion to Figure, a U.S. based retailer of trendy plus-size fashions, including intellectual property rights related to the Fashion to Figure® brand, which enabled the Company to enter the plus-size market and drive accretive growth to the RTW Retailwinds portfolio of brands. During the first quarter of fiscal year 2018, the Company relaunched the Fashion to Figure business with 8 new stores and through the Company's eCommerce platform. During the third quarter of fiscal year 2018, the Company opened 2 additional Fashion to Figure store locations and launched the Fashion to Figure eCommerce store at www.fashiontofigure.com.

On August 22, 2018, the Company announced a multi-year partnership with Kate Hudson to be the brand ambassador for the Company's Soho Jeans collection and to launch her own ready-to-wear fashion line in Spring 2019.

Net sales for the three months ended November 3, 2018 were \$210.8 million, as compared to \$214.2 million for the three months ended October 28, 2017. Comparable store sales increased 0.2% for the three months ended November 3, 2018, as compared to an increase of 2.2% for the three

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months ended October 28, 2017. A store is included in the comparable store sales calculation after it has completed 13 full fiscal months of operations from the store's opening date or once it has been reopened after remodeling if the gross square footage did not change by more than 20%. Sales from the Company's eCommerce store, including Fashion to Figure eCommerce sales and private label credit card royalties and related revenue, are included in comparable store sales. Fashion to Figure retail locations are not included in comparable store sales calculations until they complete 13 full fiscal months of operations.

Net income for the three months ended November 3, 2018 was \$1.7 million, or earnings of \$0.03 per diluted share, as compared to net income of \$0.4 million, or earnings of \$0.01 per diluted share, for the three months ended October 28, 2017. On a non-GAAP basis, adjusted net income for the three months ended November 3, 2018 was \$2.5 million, or earnings of \$0.04 per diluted share, which excludes \$0.8 million of non-operating adjustments. This compares to non-GAAP adjusted net income for the three months ended October 28, 2017 of \$1.0 million, or earnings of \$0.02 per diluted share, which excludes \$0.6 million of non-operating adjustments. Please refer to the "Results of Operations" and "Reconciliation of GAAP to non-GAAP Financial Measures" sections below for a further discussion of the Company's operating results.

Capital spending for the nine months ended November 3, 2018 was \$3.7 million, as compared to \$7.8 million for the nine months ended October 28, 2017. During the nine months ended November 3, 2018, the Company opened 3 New York & Company stores, 1 Outlet store, and 10 Fashion to Figure stores, converted 3 existing New York & Company stores to Outlet stores, closed 18 stores, and remodeled/refreshed 7 existing stores, ending the third quarter of fiscal year 2018 with 428 stores, including 119 Outlet stores, and 2.1 million selling square feet in operation. Included in the New York & Company store count at November 3, 2018 are 18 Eva Mendes side-by-side stores, 50 Eva Mendes shop-in-shop stores, and 1 free-standing Eva Mendes boutique.

The Company views the retail apparel market as having two principal selling seasons: spring (first and second fiscal quarters) and fall (third and fourth fiscal quarters). The Company's business experiences seasonal fluctuations in net sales and operating income, with a significant portion of its sales typically realized during its fourth quarter. Any decrease in sales or margins during either of the principal selling seasons in any given year could have a disproportionate effect on the Company's financial condition and results of operations. Seasonal fluctuations also affect inventory levels. The Company must carry a significant amount of inventory, especially before the holiday season selling period in the fourth fiscal quarter and prior to the Easter and Mother's Day holidays toward the latter part of the first fiscal quarter and beginning of the second fiscal quarter.

Results of Operations

The following tables summarize the Company's results of operations as a percentage of net sales and selected store operating data for the three and nine months ended November 3, 2018 and October 28, 2017:

<u>As a % of net sales</u>	<u>Three months ended November 3, 2018</u>	<u>Three months ended October 28, 2017</u>	<u>Nine months ended November 3, 2018</u>	<u>Nine months ended October 28, 2017</u>
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of goods sold, buying and occupancy costs	67.6%	68.4%	67.8%	69.1%
Gross profit	32.4%	31.6%	32.2%	30.9%
Selling, general and administrative expenses	31.7%	31.3%	30.9%	30.6%
Operating income	0.7%	0.3%	1.3%	0.3%
Interest (income) expense, net	(0.1)%	0.1%	(0.1)%	0.1%
Loss on extinguishment of debt	—%	—%	—%	—%
Income before income taxes	0.8%	0.2%	1.4%	0.2%
Provision for income taxes	—%	—%	0.2%	0.1%
Net income	0.8%	0.2%	1.2%	0.1%

<u>Selected operating data:</u>	<u>Three months ended November 3, 2018</u>	<u>Three months ended October 28, 2017</u>	<u>Nine months ended November 3, 2018</u>	<u>Nine months ended October 28, 2017</u>
	(Dollars in thousands, except square foot data)			
Comparable store sales increase	0.2%	2.2%	1.2%	0.1%
Net sales per average selling square foot(1)	\$ 99	\$ 93	\$ 301	\$ 279
Net sales per average store(2)	\$ 495	\$ 467	\$ 1,502	\$ 1,406
Average selling square footage per store(3)	4,987	5,026	4,987	5,026

- (1) Net sales per average selling square foot is defined as net sales divided by the average of beginning and monthly end of period selling square feet.
- (2) Net sales per average store is defined as net sales divided by the average of beginning and monthly end of period number of stores.
- (3) Average selling square footage per store is defined as end of period selling square feet divided by end of period number of stores.

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	Three months ended November 3, 2018		Three months ended October 28, 2017		Nine months ended November 3, 2018		Nine months ended October 28, 2017	
	Store Count	Selling Square Feet	Store Count	Selling Square Feet	Store Count	Selling Square Feet	Store Count	Selling Square Feet
Store count and selling square feet:								
Stores open, beginning of period	426	2,118,906	460	2,313,026	432	2,171,329	466	2,367,194
New stores	4	24,941	2	11,238	14	51,082	11	48,826
Closed stores	(2)	(9,559)	(3)	(15,931)	(18)	(93,040)	(18)	(100,282)
Net impact of remodeled stores on selling square feet	—	(9)	—	(1,431)	—	4,908	—	(8,836)
Stores open, end of period	<u>428</u>	<u>2,134,279</u>	<u>459</u>	<u>2,306,902</u>	<u>428</u>	<u>2,134,279</u>	<u>459</u>	<u>2,306,902</u>

Three Months Ended November 3, 2018 Compared to Three Months Ended October 28, 2017

Net Sales. Net sales for the three months ended November 3, 2018 were \$210.8 million, as compared to \$214.2 million for the three months ended October 28, 2017. The decrease in net sales reflects a reduced store count, partially offset by growth in eCommerce sales and increased sales from Fashion to Figure. Included in net sales for the three months ended November 3, 2018 and October 28, 2017 are royalties and other revenue totaling \$6.0 million and \$6.1 million recognized as a result of the ADS Agreement, respectively. Comparable store sales increased 0.2% for the three months ended November 3, 2018, driven by an increase in sales from the Company's eCommerce business and strength in Outlet stores, and in particular, Outlet clearance stores, as compared to an increase of 2.2% for the same period last year. In the comparable store base, average dollar sales per transaction increased by 3.7%, while the number of transactions per average store decreased 3.4%, as compared to the same period last year.

Gross Profit. Gross profit for the three months ended November 3, 2018 was \$68.4 million, or 32.4% of net sales, as compared to \$67.6 million, or 31.6% of net sales, for the three months ended October 28, 2017. The increase in gross profit as a percentage of net sales for the three months ended November 3, 2018, as compared to the three months ended October 28, 2017, reflects a 140 basis point increase in the leverage of buying and occupancy costs, partially offset by a 60 basis point decrease in merchandise margin driven by a slight increase in promotional activity and increased shipping costs.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were \$66.8 million, or 31.7% of net sales, for the three months ended November 3, 2018, as compared to \$67.0 million, or 31.3% of net sales, for the three months ended October 28, 2017. Included in selling, general and administrative expenses for the three months ended November 3, 2018 is \$0.8 million of non-operating adjustments, primarily related to consulting expense, the Company's registration statement filed with the SEC on August 10, 2018, and certain legal expenses, which were offset by a decrease in variable compensation expense. Selling, general and administrative expenses for the three months ended October 28, 2017 included \$0.8 million of non-operating adjustments, comprised of severance expense associated with the integration of brick-and-mortar channels into one merchant, planning, allocation and stores team, along with certain legal expense accruals, and consulting expenses related to new initiatives under Project Excellence.

Operating Income. For the reasons discussed above, operating income for the three months ended November 3, 2018 was \$1.6 million, as compared to operating income of \$0.6 million for the three months ended October 28, 2017. On a non-GAAP basis, adjusted operating income for the three months ended November 3, 2018 was \$2.4 million, which excludes \$0.8 million of non-operating adjustments. This compares to non-GAAP adjusted operating income for the three months ended October 28, 2017 of \$1.3 million, which excludes \$0.6 million of non-operating adjustments.

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Interest (Income) Expense, Net. Net interest income was \$0.3 million for the three months ended November 3, 2018, as compared to net interest expense of \$0.2 million for the three months ended October 28, 2017. The reduction in interest expense during the three months ended November 3, 2018, as compared to the three months ended October 28, 2017, is largely due to the Company's prepayment of an \$11.5 million term loan (the "Term Loan") on April 5, 2018 using cash on-hand.

Provision for Income Taxes. As previously disclosed, the Company continues to provide for adjustments to the deferred tax valuation allowance initially recorded during the three months ended July 31, 2010. The provision for income taxes for both the three months ended November 3, 2018 and the three months ended October 28, 2017 was \$0.1 million.

Net Income. For the reasons discussed above, net income for the three months ended November 3, 2018 was \$1.7 million, or earnings of \$0.03 per diluted share, as compared to net income of \$0.4 million, or earnings of \$0.01 per diluted share, for the three months ended October 28, 2017. On a non-GAAP basis, adjusted net income for the three months ended November 3, 2018 was \$2.5 million, or earnings of \$0.04 per diluted share, which excludes \$0.8 million of non-operating adjustments. This compares to non-GAAP adjusted net income for the three months ended October 28, 2017 of \$1.0 million, or earnings of \$0.02 per diluted share, which excludes \$0.6 million of non-operating adjustments.

Nine months Ended November 3, 2018 Compared to Nine months Ended October 28, 2017

Net Sales. Net sales for the nine months ended November 3, 2018 was \$646.0 million, as compared to \$648.2 million for the nine months ended October 28, 2017. Included in net sales for the nine months ended November 3, 2018 and October 28, 2017 are royalties and other revenue totaling \$17.6 million and \$17.7 million recognized as a result of the ADS Agreement, respectively. Comparable store sales increased 1.2% for the nine months ended November 3, 2018, driven by an increase in sales from the Company's eCommerce business and strength in Outlet stores, as compared to an increase of 0.1% for the same period last year. In the comparable store base, average dollar sales per transaction increased by 5.8%, while the number of transactions per average store decreased by 4.4%, as compared to the same period last year.

Gross Profit. Gross profit for the nine months ended November 3, 2018 was \$207.7 million, or 32.2% of net sales, as compared to \$200.6 million, or 30.9% of net sales, for the nine months ended October 28, 2017. The increase in gross profit as a percentage of net sales during the nine months ended November 3, 2018, as compared to the nine months ended October 28, 2017, was due to a 140 basis point improvement in buying and occupancy costs, partially offset by a 10 basis point decrease in merchandise margin due to increased shipping costs offsetting a reduction in product costs.

Selling, General and Administrative Expenses. Selling, general and administrative expenses increased to \$199.6 million, or 30.9% of net sales, for the nine months ended November 3, 2018, as compared to \$198.7 million, or 30.6% of net sales, for the nine months ended October 28, 2017. Included in selling, general and administrative expenses for the nine months ended November 3, 2018 is \$1.8 million of non-operating adjustments, primarily comprised of legal accruals related to a previously disclosed ongoing trademark infringement case and a class action lawsuit, consulting expenses related to new initiatives under Project Excellence, severance expense related to the Company's organizational changes, and expenses associated with the Company's registration statement filed with the SEC on August 10, 2018. Included in selling, general and administrative expenses for the nine months ended October 28, 2017 is \$0.2 million of non-operating adjustments, comprised of severance expense associated with the integration of brick-and-mortar channels into one merchant, planning, allocation and stores team, consulting expenses related to new initiatives under Project Excellence, and certain executive relocation expense, partially offset by the reversal of a portion of the legal expense accrual related to an ongoing trademark infringement case.

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Selling, general, and administrative expenses during the nine months ended November 3, 2018, as compared to the nine months ended October 28, 2017, reflects an increase in variable compensation expense due to the Company's improved operating results, partially offset by decreases in store and home office payroll resulting from Project Excellence initiatives executed during the first quarter of fiscal year 2018, and a reduction in marketing expenses.

Operating Income. For the reasons discussed above, operating income for the nine months ended November 3, 2018 was \$8.1 million, as compared to operating income of \$1.9 million for the nine months ended October 28, 2017. On a non-GAAP basis, adjusted operating income for the nine months ended November 3, 2018 was \$10.1 million, which excludes \$2.0 million of non-operating adjustments. This compares to non-GAAP adjusted operating income for the nine months ended October 28, 2017 of \$2.4 million, which excludes \$0.5 million of non-operating adjustments.

Interest (Income) Expense, Net. Net interest income was \$0.5 million for the nine months ended November 3, 2018, as compared to net interest expense of \$0.7 million for the nine months ended October 28, 2017. The reduction in interest expense during the nine months ended November 3, 2018, as compared to the nine months ended October 28, 2017, is largely due to the Company's prepayment of an \$11.5 million term loan on April 5, 2018 using cash on-hand.

Loss on Extinguishment of Debt. On April 5, 2018, the Company used cash on-hand to prepay in full the \$11.5 million outstanding balance of the Term Loan, which resulted in a \$0.2 million charge during the nine months ended November 3, 2018 associated with the write-off of unamortized deferred financing costs. The Company incurred no such charge during the nine months ended October 28, 2017.

Provision for Income Taxes. As previously disclosed, the Company continues to provide for adjustments to the deferred tax valuation allowance initially recorded during the three months ended July 31, 2010. The provision for income taxes for the nine months ended November 3, 2018 was \$0.4 million, as compared to \$0.3 million for the nine months ended October 28, 2017.

Net Income. For the reasons discussed above, net income for the nine months ended November 3, 2018 was \$7.9 million, or earnings of \$0.12 per diluted share, as compared to net income of \$0.9 million, or earnings of \$0.01 per diluted share for the nine months ended October 28, 2017. On a non-GAAP basis, adjusted net income for the nine months ended November 3, 2018 was \$9.9 million, or earnings of \$0.15 per diluted share, which excludes \$2.0 million of non-operating adjustments. This compares to non-GAAP adjusted net income for the nine months ended October 28, 2017 of \$1.4 million, or earnings of \$0.02 per diluted share, which excludes \$0.5 million of non-operating adjustments.

Reconciliation of GAAP to Non-GAAP Financial Measures

A reconciliation of the Company's GAAP to non-GAAP financial statement information for the three and nine months ended November 3, 2018 and October 28, 2017 is indicated below. This information reflects, on a non-GAAP basis, the Company's adjusted operating results after excluding certain non-operating adjustments, as described below. This non-GAAP financial information is provided to enhance the reader's overall understanding of the Company's current financial performance. Specifically, the Company believes the non-GAAP adjusted results provide useful information to both management and investors by excluding expenses that the Company believes are not indicative of the Company's continuing operating results. The non-GAAP financial information should be considered in addition to, not as a substitute for or as being superior to, measures of financial performance prepared in accordance with GAAP.

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(Amounts in thousands, except per share amounts)	Three months ended November 3, 2018					
	Cost of goods sold, buying and occupancy costs	Gross profit	Selling, general and administrative expenses	Operating income	Net income	Earnings per diluted share
GAAP as reported	\$ 142,383	\$ 68,375	\$ 66,802	\$ 1,573	\$ 1,725	\$ 0.03
<i>Adjustments affecting comparability</i>						
Company name change and registration statement	—	—	341	341	341	
Reversal of certain severance accruals	—	—	(67)	(67)	(67)	
Consulting expense	—	—	418	418	418	
Legal expenses	—	—	103	103	103	
Total adjustments(1)	—	—	795	795	795	0.01
Non-GAAP as adjusted	\$ 142,383	\$ 68,375	\$ 66,007	\$ 2,368	\$ 2,520	\$ 0.04

(Amounts in thousands, except per share amounts)	Three months ended October 28, 2017					
	Cost of goods sold, buying and occupancy costs	Gross profit	Selling, general and administrative expenses	Operating income	Net income	Earnings per diluted share
GAAP as reported	\$ 146,584	\$ 67,598	\$ 66,980	\$ 618	\$ 352	\$ 0.01
<i>Adjustments affecting comparability</i>						
Certain severance expense	(206)	(206)	633	427	427	
Consulting expense	—	—	114	114	114	
Legal settlement fees	—	—	102	102	102	
Total adjustments(1)	(206)	(206)	849	643	643	0.01
Non-GAAP as adjusted	\$ 146,790	\$ 67,392	\$ 66,131	\$ 1,261	\$ 995	\$ 0.02

(Amounts in thousands, except per share amounts)	Nine months ended November 3, 2018					
	Cost of goods sold, buying and occupancy costs	Gross profit	Selling, general and administrative expenses	Operating income	Net income	Earnings per diluted share
GAAP as reported	\$ 438,247	\$ 207,710	\$ 199,605	\$ 8,105	\$ 7,878	\$ 0.12
<i>Adjustments affecting comparability</i>						
Company name change and registration statement	—	—	341	341	341	
Certain severance expense	286	286	285	571	571	
Reversal of certain employee relocation accruals	—	—	(135)	(135)	(135)	
Consulting expense	—	—	610	610	610	
Legal expenses	—	—	655	655	655	
Total adjustments(1)	286	286	1,756	2,042	2,042	0.03
Non-GAAP as adjusted	\$ 437,961	\$ 207,996	\$ 197,849	\$ 10,147	\$ 9,920	\$ 0.15

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(Amounts in thousands, except per share amounts)	Nine months ended October 28, 2017					
	Cost of goods sold, buying and occupancy costs	Gross profit	Selling, general and administrative expenses	Operating income	Net income	Earnings per diluted share
GAAP as reported	\$ 447,574	\$ 200,581	\$ 198,659	\$ 1,922	\$ 928	\$ 0.01
<i>Adjustments affecting comparability</i>						
Certain severance expenses	342	342	633	975	975	
Consulting expense	—	—	1,195	1,195	1,195	
Certain executive relocation expense	—	—	401	401	401	
Legal settlement fees net accrual reversal (trademark infringement case)	—	—	(2,051)	(2,051)	(2,051)	
Total adjustments(1)	342	342	178	520	520	0.01
Non-GAAP as adjusted	\$ 447,232	\$ 200,923	\$ 198,481	\$ 2,442	\$ 1,448	\$ 0.02

- (1) The tax effect of the \$0.8 million and \$0.6 million of non-operating adjustments during the three months ended November 3, 2018 and October 28, 2017, and the \$2.0 million and \$0.5 million of non-operating adjustments during the nine months ended November 3, 2018 and October 28, 2017, respectively, is offset by a full valuation allowance against deferred tax assets.

Liquidity and Capital Resources

The Company's primary uses of cash are to fund working capital, operating expenses, debt service and capital expenditures related primarily to the construction of new stores, remodeling/refreshing of existing stores and the development of the Company's information technology infrastructure and omni-channel strategy. Historically, the Company has financed these requirements from internally generated cash flow. The Company intends to fund its ongoing capital and working capital requirements, as well as debt service obligations, primarily through cash flows from operations, supplemented by borrowings under its credit facility and the sale of its common stock, if needed. As of the date of this Quarterly Report on Form 10-Q, the Company is in compliance with all debt covenants.

The Company plans to make strategic investments to drive top line sales growth, improve profitability and increase long-term shareholder value. These strategic investments include the expansion of its successful celebrity collaborations, the continued expansion of the Company's digital footprint as it continues the transformation to a digitally dominant retailer with eCommerce currently representing approximately 30% of its business, the potential expansion of Fashion to Figure, and new opportunities to broaden the Company's brand presence into new product categories. On August 22, 2018, the Company announced a multi-year partnership with Kate Hudson to be the brand ambassador for the Company's Soho Jeans collection and to launch her own ready-to-wear fashion line in Spring 2019.

The following tables contain information regarding the Company's liquidity and capital resources:

	November 3, 2018	February 3, 2018	October 28, 2017
	(Amounts in thousands)		
Cash and cash equivalents	\$ 83,662	\$ 90,908	\$ 69,235
Working capital	\$ 64,905	\$ 64,785	\$ 63,457

	Nine months ended November 3, 2018	Nine months ended October 28, 2017
	(Amounts in thousands)	
Net cash provided by (used in) operating activities	\$ 9,463	\$ (8,617)
Net cash used in investing activities	\$ (3,330)	\$ (7,744)
Net cash used in financing activities	\$ (13,379)	\$ (2,773)
Net decrease in cash and cash equivalents	<u>\$ (7,246)</u>	<u>\$ (19,134)</u>

Operating Activities

The increase in net cash provided by operating activities during the nine months ended November 3, 2018, as compared to the nine months ended October 28, 2017, is primarily the result of an increase in net income combined with fluctuations in inventory due to the shift in the retail calendar.

Investing Activities

Net cash used in investing activities was \$3.3 million for the nine months ended November 3, 2018, as compared to \$7.7 million for the nine months ended October 28, 2017. During the nine months ended November 3, 2018, the Company opened 3 New York & Company stores, 1 Outlet store, and 10 Fashion to Figure stores, converted 3 existing New York & Company stores to Outlet stores, closed 18 stores, and remodeled/refreshed 7 existing stores, ending the third quarter of fiscal year 2018 with 428 stores, including 119 Outlet stores, and 2.1 million selling square feet in operation. Included in the New York & Company store count at November 3, 2018 are 18 Eva Mendes side-by-side stores, 50 Eva Mendes shop-in-shop stores, and 1 free-standing Eva Mendes boutique.

Net cash used in investing activities during the nine months ended October 28, 2017 represents capital expenditures of \$3.5 million for store related projects and \$4.3 million related primarily to the Company's information technology infrastructure. During the nine months ended October 28, 2017, the Company opened 8 New York & Company stores and 3 Outlet stores, remodeled/refreshed 13 existing stores, and closed 18 stores, ending the third quarter of fiscal year 2017 with 459 stores, including 125 Outlet stores, and 2.3 million selling square feet in operation. Included in the New York & Company store count at October 28, 2017 are 18 Eva Mendes side by side stores, 52 Eva Mendes shop in shop stores, and 1 free-standing Eva Mendes boutique.

For fiscal year 2018, capital expenditures are expected to be between \$8 million and \$9 million, including capital required for the Company's new Fashion to Figure business. In total, fiscal year 2018 capital expenditures reflect continued investments in the Company's information technology, including its omni-channel infrastructure, eCommerce store and mobile applications, and real estate spending to support opening a select number of new stores and remodeling/refreshing existing locations. In fiscal year 2018, the Company expects to end fiscal year 2018 having opened 3 New York & Company stores and 1 new Outlet store, opened 11 Fashion to Figure stores, converted 3 existing New York & Company stores to Outlet stores, remodeled/refreshed 7 existing stores, and closed 32 stores ending the fiscal year with approximately 415 stores, including 119 Outlet stores, and approximately 2.1 million selling square feet.

As of November 3, 2018, approximately 70% of the Company's store leases could be terminated by the Company in two years or less.

Financing Activities

Net cash used in financing activities for the nine months ended November 3, 2018 was \$13.4 million, which consists primarily of the \$11.5 million early repayment of the Term Loan, a

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\$0.3 million quarterly amortization payment of the Term Loan, \$1.3 million of principal payments on capital lease obligations, and \$0.3 million of employee payroll taxes for which shares were withheld. Net cash used in financing activities for the nine months ended October 28, 2017 was \$2.8 million, which consists primarily of \$1.2 million of principal payments on capital lease obligations, \$0.8 million in quarterly amortization payments of the Term Loan, \$0.6 million for the purchase of treasury stock, and \$0.2 million of employee payroll taxes for which shares were withheld.

Long-Term Debt and Credit Facilities

On October 24, 2014, Lerner New York, Inc., Lernco, Inc. and Lerner New York Outlet, LLC, wholly-owned indirect subsidiaries of RTW Retailwinds, Inc. entered into a Fourth Amended and Restated Loan and Security Agreement (the "Loan Agreement") with Wells Fargo Bank, National Association, as Agent and Term Loan Agent and the lender party thereto. The obligations under the Loan Agreement are guaranteed by RTW Retailwinds, Inc. and its other subsidiaries. The Loan Agreement expires on October 24, 2019.

The Loan Agreement consists of a revolving credit facility that provides the Company with up to \$100 million of credit, consisting of a \$75 million revolving credit facility (which includes a sub-facility for issuance of letters of credit up to \$45 million) with a fully committed accordion option that allows the Company to increase the revolving credit facility up to \$100 million or decrease it to a minimum of \$60 million, subject to certain restrictions. On April 5, 2018, the Company used cash on-hand to prepay in full the \$11.5 million outstanding balance of a \$15 million, 5-year term loan under the Loan Agreement.

Under the terms of the Loan Agreement, the interest rates applicable to Revolving Loans are, at the Company's option, either at a floating rate equal to the Adjusted Eurodollar Rate plus a margin of between 1.50% and 1.75% per year for Eurodollar Rate Loans or a floating rate equal to the Prime Rate plus a margin of between 0.50% and 0.75% per year for Prime Rate Loans, depending upon the Company's Average Compliance Excess Availability. The Company pays to the lender under the revolving credit facility a monthly fee on outstanding commercial letters of credit at a rate of between 0.75% and 0.875% per year and on standby letters of credit at a rate of between 1.50% and 1.75% per year, depending upon the Company's Average Compliance Excess Availability, plus a monthly fee on a proportion of the unused commitments under the revolving credit facility at a rate of 0.25% per year.

The maximum borrowing availability under the Company's revolving credit facility is determined by a monthly borrowing base calculation based on applying specified advance rates against inventory and certain other eligible assets. As of November 3, 2018, the Company had availability under its revolving credit facility of \$59.9 million, net of letters of credit outstanding of \$13.0 million, as compared to availability of \$38.1 million, net of letters of credit outstanding of \$12.5 million, as of February 3, 2018, and availability of \$59.4 million, net of letters of credit outstanding of \$14.7 million, as of October 28, 2017. The \$13.0 million of letters of credit outstanding at November 3, 2018 includes \$11.9 million of standby letters of credit primarily related to the Company's new corporate headquarters and certain insurance contracts. Standby letters of credit related to the Company's corporate headquarters are scheduled to be reduced by \$2.0 million annually, which began in October 2017, for a total reduction of \$6.0 million by October 2019.

Under the terms of the Loan Agreement, the Company is subject to a Minimum Excess Availability covenant of \$7.5 million. The Loan Agreement contains other covenants and conditions, including restrictions on the Company's ability to pay dividends on its common stock, incur additional indebtedness and to prepay, redeem, defease or purchase other indebtedness. Subject to such restrictions, the Company may incur more indebtedness for working capital, capital expenditures, stock repurchases, acquisitions and for other purposes.

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The lender has been granted a pledge of the common stock of Lerner New York Holding, Inc. and certain of its subsidiaries, and a first priority security interest in substantially all other tangible and intangible assets of RTW Retailwinds, Inc. and its subsidiaries, as collateral for the Company's obligations under the Loan Agreement. In addition, RTW Retailwinds, Inc. and certain of its subsidiaries have fully and unconditionally guaranteed the obligations under the Loan Agreement, and such guarantees are joint and several.

Critical Accounting Policies

Management has determined the Company's most critical accounting policies are those related to inventories, long-lived assets, intangible assets and income taxes. Management continues to monitor these accounting policies to ensure proper application of current rules and regulations. There have been no significant changes to these policies as discussed in the Company's Annual Report on Form 10-K filed with the SEC on April 17, 2018.

Adoption of New Accounting Standards

Please refer to Note 2, "New Accounting Pronouncements" in the Notes to Condensed Consolidated Financial Statements appearing elsewhere in this Quarterly Report on Form 10-Q.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes in the Company's quantitative and qualitative disclosures about market risk from what was reported in its Annual Report on Form 10-K filed with the SEC on April 17, 2018.

ITEM 4. CONTROLS AND PROCEDURES

(a) *Evaluation of disclosure controls and procedures.* The Company carried out an evaluation, as of November 3, 2018, under the supervision and with the participation of the Company's management, including the Company's Principal Executive Officer and Principal Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended. Based upon that evaluation, the Principal Executive Officer and Principal Financial Officer concluded that the Company's disclosure controls and procedures are effective in ensuring that all information required to be filed in this Quarterly Report on Form 10-Q was (i) recorded, processed, summarized and reported within the time period specified in the Securities and Exchange Commission's rules and forms (ii) and that the disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its Principal Executive and Principal Financial Officers, as appropriate to allow timely decisions regarding required disclosure.

(b) *Changes in internal control over financial reporting.* There has been no change in the Company's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rule 13a-15 or 15d-15 that occurred during the Company's last fiscal quarter (the Company's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

**PART II.
OTHER INFORMATION**

ITEM 1. LEGAL PROCEEDINGS

There have been no material changes in the Company's legal proceedings from what was reported in its Annual Report on Form 10-K filed with the SEC on April 17, 2018.

ITEM 1A. RISK FACTORS

There have been no material changes in the Company's risk factors from what was reported in its Annual Report on Form 10-K filed with the SEC on April 17, 2018.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

On December 11, 2018, the Company's Board of Directors approved an amendment and restatement of the Company's by-laws (the "Second Amended and Restated By-laws"). The Second Amended and Restated By-laws, among other things: (i) amend the provisions regarding how stockholders may properly bring business before a meeting of stockholders, including director nominations; (ii) amend the procedures for calling special meetings of stockholders; (iii) amend the procedural requirements regarding stockholder written consent; and (iv) add provisions clarifying the organization and conduct of stockholder meetings. The foregoing description of the Second Amended and Restated By-laws is not complete and is qualified in its entirety by reference to the complete text of the Second Amended and Restated By-laws, a copy of which is filed as Exhibit 3.2 to this Quarterly Report.

ITEM 6. EXHIBITS

The following exhibits are filed with this report and made a part hereof.

- 3.1 [Certificate of Amendment of Restated Certificate of Incorporation, incorporated by reference from the Company's Current Report on Form 8-K filed with the SEC on November 20, 2018.](#)
- 3.2 [Second Amended and Restated By-laws.](#)
- 31.1 [Certification by the Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated December 13, 2018.](#)
- 31.2 [Certification by the Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated December 13, 2018.](#)
- 32.1 [Written Statement of the Chief Executive Officer and the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated December 13, 2018.](#)

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101.INS XBRL Instance Document.

101.SCH XBRL Taxonomy Extension Schema Document.

101.CAL XBRL Taxonomy Extension Calculation Linkbase Document.

101.DEF XBRL Taxonomy Definition Linkbase Document.

101.LAB XBRL Taxonomy Extension Label Linkbase Document.

101.PRE XBRL Taxonomy Extension Presentation Linkbase Document.

SIGNATURES

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

RTW RETAILWINDS, INC.

/s/ SHEAMUS TOAL

By: Sheamus Toal
Its: *Executive Vice President, Chief Operating Officer
and Chief Financial Officer (Principal Financial
Officer)*

Date: December 13, 2018

SECOND AMENDED AND RESTATED

BY-LAWS

OF

RTW RETAILWINDS, INC.

A Delaware Corporation

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of RTW Retailwinds, Inc. (the “Corporation”) in the State of Delaware shall be located at 251 Little Falls Drive, Wilmington, DE 19808. The name of the Corporation’s registered agent at such address shall be Corporation Service Company. The registered office and registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Annual Meeting. An annual meeting of the stockholders shall be held at such date and at such time specified by the Board of Directors for the purpose of electing directors and conducting such other proper business as may come before the annual meeting. At the annual meeting, stockholders shall elect directors and transact such other business as properly may be brought before the annual meeting pursuant to Section 11 of *Article II* hereof.

Section 2. Special Meetings. Special meetings of stockholders may be held at such time and place as may be fixed by the Board of Directors in accordance with these By-laws and applicable law, within or without the State of Delaware. Such meetings may be called at any time by the Board of Directors or, subject to compliance with the provisions of this Section 2, by the secretary of the Corporation upon the written request for a special meeting (a “*Special Meeting Request*”) of one or more stockholders of the Corporation (each of whom shall be a stockholder of record of the Corporation) (i) having Net Long Beneficial Ownership (as defined below) of at least 20% of the outstanding shares of the Corporation’s common stock (the “*Requisite Percentage*”) and (ii) who have continuously had Net Long Beneficial Ownership of the Requisite Percentage for at least 90 consecutive days prior to the Delivery Date (as defined below); *provided* that, the date of any Stockholder Requested Special Meeting (as defined below) shall not be more than 90 days after the date that a valid Special Meeting Request is received by the secretary of the Corporation at the principal

executive offices of the Corporation (the “*Delivery Date*”); *provided, further*, that, if the Board of Directors fails to designate, within 10 business days after the Delivery Date, a date and time for a Stockholder Requested Special Meeting, then such meeting shall be held at 9:00 a.m. local time on the 90th day after the Delivery Date or, if such 90th day is not a business day, on the first preceding business day. Except in accordance with this Section 2, stockholders of the Corporation shall not be permitted to propose business to be brought before a special meeting of stockholders. Only such business shall be conducted at a special meeting as is expressly set forth in the Corporation’s notice of meeting; *provided* that, nothing in these By-laws shall prohibit the Board of Directors from submitting matters to the stockholders at any special meeting requested by the stockholders.

In order for any special meeting of stockholders to be validly called by stockholders (any such validly called special meeting, a “*Stockholder Requested Special Meeting*”), one or more Special Meeting Requests in a proper form must be signed by one or more Proposing Persons (as defined below) having Net Long Beneficial Ownership of the Requisite Percentage and delivered to the secretary of the Corporation at the principal executive offices of the Corporation by registered mail, return receipt requested, in accordance with this Section 2. In determining whether a Stockholder Requested Special Meeting has been validly called, multiple Special Meeting Requests delivered to the secretary of the Corporation will be considered together only if each Special Meeting Request identifies the same purpose or purposes of the Stockholder Requested Special Meeting and the same matters proposed to be acted on at such meeting (in each case as determined by the Board of Directors or the secretary of the Corporation), and such Special Meeting Requests have been dated and delivered to the secretary of the Corporation at the principal executive offices of the Corporation within 60 days of the earliest dated Special Meeting Request.

To be in proper form for purposes of this Section 2 each Special Meeting Request shall (i) set forth the name and address, as they appear on the stock books of the Corporation, of each Proposing Person, (ii) bear the date of signature of each Proposing Person signing the Special Meeting Request, and (iii) include a statement of the specific purpose or purposes of the meeting, the matter or matters proposed to be acted on and the text of any proposal or business to be considered, in each case, at the Stockholder Requested Special Meeting (including the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend these By-laws, the language of the proposed amendment).

Any Proposing Person who delivered a valid Special Meeting Request shall update and supplement such request, if necessary or appropriate, so that the information provided or required to be provided in such request shall be true and correct (i) as of the record date for notice of the Stockholder Requested Special Meeting; and (ii) as of the date that is 10 business days prior to the Stockholder Requested Special Meeting or any adjournment, recess, rescheduling or postponement thereof, and such update and supplement shall be delivered to the secretary of the Corporation at the principal executive offices of the Corporation not later than 5 business days after the record date for the Stockholder Requested Special Meeting (in the case of the update and supplement required under clause (i)), and not later than 7 business days prior to the Stockholder Requested Special Meeting

or, if practicable, any adjournment, recess, rescheduling or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the Stockholder Requested Special Meeting has been adjourned, recessed, rescheduled or postponed) (in the case of the update and supplement required under clause (ii)).

Notwithstanding anything in these By-laws to the contrary, the secretary of the Corporation shall not be required to call a Stockholder Requested Special Meeting pursuant to a Special Meeting Request if the Special Meeting Request is received by the secretary of the Corporation at the principal executive offices of the Corporation during the period commencing 90 days prior to the first anniversary date of the immediately preceding annual meeting and ending immediately following the final adjournment of the next annual meeting.

For purposes of these By-laws, "*Net Long Beneficial Ownership*" shall mean those shares of common stock of the Corporation as to which a stockholder possesses both (i) the sole voting and investment rights pertaining to the shares and (ii) the sole economic interest in (including the opportunity for profit from and risk of loss on) such shares; *provided* that, Net Long Beneficial Ownership shall not include any shares (A) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale, (B) borrowed by such stockholder or any of its affiliates for any purpose or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (C) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar 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 common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) 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 (2) 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. The terms "affiliate" or "affiliates" as used in this definition shall have the meaning ascribed thereto under the Exchange Act and the rules and regulations promulgated thereunder (as defined below).

For purposes of these By-laws, "*Proposing Person*" shall mean the holder of record of shares of common stock of the Corporation submitting a Special Meeting Request and the beneficial owner of such shares, if any, on whose behalf such Special Meeting Request is made; *provided* that, with respect to the informational requirements of clause (iii) of the third paragraph of this Section 2, if the record holder of such shares is acting solely as a nominee of the beneficial owner thereof and is making the Special Meeting Request solely on behalf of and at the direction of such beneficial owner, Proposing Person shall mean only such beneficial owner.

Section 3. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Corporation. If for

any reason any annual meeting shall not be held during any year, the business thereof may be transacted at any special meeting of the stockholders.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 days nor more than 60 days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the Board of Directors, the chairman of the board, the chief executive officer, the president, the chief operating officer or the secretary, and 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. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person 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. Any previously scheduled meeting of stockholders (whether annual or special) may be cancelled, rescheduled or postponed by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 5. Stockholders List. The officer having charge of the stock ledger of the Corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum. The holders of a majority of the outstanding shares of capital stock entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by the General Corporation Law of the State of Delaware or in the Corporation's certificate of incorporation (the "*Certificate of Incorporation*"). Without prejudice to the rights and authority of the chairman of any meeting of stockholders, if a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time or place. When a specified item of business requires a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class or series, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are

announced at the meeting at which the adjournment is taken. 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, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless by express provisions of an applicable law or of the Certificate of Incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 9. Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware, the Certificate of Incorporation of the Corporation or any amendments thereto or these By-laws, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of capital stock held by such stockholder.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, 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. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the 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 an Annual Meeting. Only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations of directors and proposals of other business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors or (iii) otherwise properly brought before the meeting by a stockholder of the Corporation who (A) is a stockholder of record of the Corporation at the time such stockholder delivers the notice to the secretary of the Corporation as provided below, on the record date for the determination of stockholders entitled to vote at the meeting and at the time of the meeting, (B) shall be entitled to vote at such meeting and (C) complies with the notice procedures set forth in this Section 11 as to such nomination and/or business. For business, including the nomination of a director, to be properly brought before

an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing 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 less than 60 days nor more than 90 days prior to the anniversary date of the immediately preceding annual meeting, regardless of any postponements, deferrals or adjournments of that meeting; *provided* that, in the event that the annual meeting is called for a date that is not within 30 days before or after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the date on which the Corporation makes a Public Announcement (as defined below) of the date of the annual meeting. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the substance of, and the reasons for conducting, such business at the annual meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business and the beneficial owner, if any, on whose behalf such business is being proposed; (iii) the class and number of shares of the Corporation which are beneficially owned by the stockholder, any person controlling, directly or indirectly, or acting in concert with, such stockholder and any person controlling, controlled by or under common control with such stockholder; (iv) any material interest of the stockholder in such business; and (v) a representation that the stockholder intends to appear in person or by proxy at the meeting to propose such business. In addition, a stockholder's notice with respect to a director nomination must set forth or provide: (i) the name, address and class and number of shares of the Corporation which are, directly or indirectly, owned beneficially and/or of record by the nominating stockholder; (ii) (A) the name, age, business address, residence address and class and number of shares of the Corporation which are owned beneficially and/or of record by the nominee, (B) all information relating to the nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or that is otherwise required, in each case pursuant to and in accordance with Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (C) a description of all direct and indirect compensation and other monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between the nominating stockholder, 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 Rule 404 promulgated under Regulation S-K if the nominating stockholder were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant and (D) all information relating to the nominee that would be required by this Section 11 to be set forth in a stockholder's notice with respect to a director nomination if such nominee were a stockholder providing notice of a director nomination to be made at the meeting; (iii) a detailed biography outlining the nominee's relevant background; (iv) the nominee's professional and business experience and other significant accomplishments, including, without limitation, the principal occupation or employment of such person (present and for the past five years); (v) a notarized letter stating the nominee's written consent to being named in any proxy statement as a nominee and an acknowledgement from the nominee that he or she would be willing to serve a full term on the Board of Directors, if elected; (vi) a statement by the stockholder outlining the reasons why the nominee's skills, experience and background would make a

valuable contribution to the Board of Directors; (vii) a minimum of two references who have either worked with the nominee, served on a board of directors or board of trustees with the nominee, or can otherwise provide relevant perspective on the nominee's capabilities as a potential board member; (viii) a completed and signed (A) Questionnaire (as defined below) and (B) Representation and Agreement (as defined below); (ix) a representation by the nominating stockholder that such stockholder (A) is a stockholder of record of the Corporation at the time of giving of the notice provided for in this Section 11 and will be a stockholder of record of the Corporation at the time of the annual meeting, (B) is a holder of record of capital stock of the Corporation entitled to vote at the annual meeting and (C) intends to appear in person or by proxy at the annual meeting to propose such nomination; (x) (A) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of capital stock of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "*Derivative Instrument*"), directly or indirectly owned beneficially by the nominating stockholder, and any other contract, arrangement, understanding or relationship (including, without limitation, any swap profit interest, hedging transaction, repurchase agreement or securities lending or borrowing arrangement) to which the nominating stockholder is, directly or indirectly, a party (1) with respect to shares of capital stock of the Corporation or (2) the effect or intent of which is to mitigate loss to, manage the potential risk or benefit of share price changes (increases or decreases) for, or increase or decrease the voting power of such stockholder or any of its affiliates with respect to, securities of the Corporation, or which may have payments based in whole or in part, directly or indirectly, on the price, value or volatility (or change in price, value or volatility) of any class or series of securities of the Corporation, (B) any proxy, contract, arrangement, understanding, or relationship pursuant to which the nominating stockholder has a right to vote any shares of any security of the Corporation, (C) any short interest in any security of the Corporation (for purposes of this Section 11, a person shall be deemed to have a short interest in a security if such person, directly or indirectly, through a contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (D) any right to dividends on the shares of capital stock of the Corporation owned beneficially by the nominating stockholder, which right is separated or separable from the underlying shares, (E) any proportionate interest in shares of capital stock of the Corporation or Derivative Instrument held, directly or indirectly, by a general or limited partnership in which the nominating stockholder is a general partner or with respect to which such stockholder, directly or indirectly, beneficially owns an interest in a general partner and (F) any performance-related fees (other than an asset-based fee) to which the nominating stockholder is entitled to based on any increase or decrease in the value of shares of capital stock the Corporation or Derivative Instruments, if any, in each case with respect to the information required to be included in the notice pursuant to clauses (A) through (F) of this clause (x), as of the date of such notice and including, without limitation, any such interests held by members of the nominating stockholder's immediate family sharing the same household or by such stockholder's respective affiliates (naming such affiliates); (xi) any other information relating to the nominating stockholder that would be required to be disclosed in a proxy statement and/or other filings required to be made in

connection with the solicitation of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (xii) a representation as to whether the nominating stockholder intends or is part of a group that intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee or (B) to otherwise solicit proxies from stockholders in support of such proposal or nomination; (xiii) a complete and accurate description of all agreements, arrangements and understandings between the nominating stockholder and the beneficial owner, if any, on whose behalf the nomination is made, any person controlling, directly or indirectly, or acting in concert with, such nominating stockholder or such beneficial owner and any person controlling, controlled by or under common control with such nominating stockholder or such beneficial owner in connection with the nomination of any nominee to serve as a member of the Board of Directors or the proposal of any other business at any meeting of the stockholders of the Corporation and (xiv) a representation as to the accuracy of the information set forth in the notice. For purposes of the immediately preceding sentence, any reference to "nominating stockholder" shall include the nominating stockholder and the beneficial owner, if any, on whose behalf the nomination is made, any person controlling, directly or indirectly, or acting in concert with, such nominating stockholder or such beneficial owner and any person controlling, controlled by or under common control with such nominating stockholder or such beneficial owner, as applicable.

To be eligible to be a nominee for election or reelection as a director of the Corporation, a nominee must deliver (in the case of nominee nominated by a stockholder pursuant to this Section 11, in accordance with the time periods prescribed for delivery of notice under these By-laws and applicable law) to the secretary of the Corporation at the principal executive offices of the Corporation (i) a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (in the form provided by the secretary of the Corporation upon written request) (a "*Questionnaire*") and (ii) a written representation and agreement (in the form provided by the secretary of the Corporation upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding (whether written or oral) with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote in such capacity on any issue or question (a "*Voting Commitment*") that has not been disclosed to the Corporation or (2) 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 (whether written or oral) 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 of the Corporation that has not been disclosed to the Corporation and (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable law and all applicable rules of the U.S. stock exchanges upon which shares of capital stock of the Corporation are listed and all applicable publicly disclosed corporate governance, conflict of interest,

confidentiality and stock ownership and trading policies and other guidelines of the Corporation duly adopted by the Board of Directors (a “*Representation and Agreement*”).

In addition to the foregoing, the nominating stockholder also shall provide the Corporation with any other information reasonably requested by the Corporation, including, without limitation, such other information as may be reasonably required to determine (x) the eligibility of a nominee to serve as a director of the Corporation, and (y) whether such nominee qualifies as an “independent director” or “audit committee financial expert” under applicable law, securities exchange rule or regulation or any publicly disclosed corporate governance guideline or committee charter of the Corporation.

A stockholder providing notice of any nomination or other business proposed to be brought before a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 11 shall be true and correct (i) as of the record date for the meeting and (ii) as of the date that is 10 business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than 5 business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date) and not later than 7 business days prior to the meeting or, if practicable, any adjournment, recess, rescheduling or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned, recessed, rescheduled or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof).

Notwithstanding anything in these By-laws to the contrary, unless otherwise required by law, if a stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation and present his or her proposed business or nomination, such proposed business will not be transacted and the nomination will be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 11, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) stating that such person is authorized to act for such stockholder as a proxy at the meeting of stockholders, and such person must produce proof that he or she is a duly authorized officer, manager or partner of such stockholder or such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, as well as valid government-issued photo identification, at the meeting of stockholders.

Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 11. The presiding officer of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Section 11; if the presiding officer should so determine, the presiding officer shall so declare to the meeting and any such business not

properly brought before the meeting shall not be transacted. For purposes of this Section 11, “*Public Announcement*” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the U.S. Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder, publicly filed by the Corporation with any national securities exchange on which the Corporation’s stock is listed or traded or furnished by the Corporation to its stockholders. Nothing in this Section 11 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”). This Section 11 shall be effective for nominations or other business to be brought before an annual meeting occurring on or after December 7, 2018.

Section 12. Stockholder Action by Written Consent. Except as otherwise provided by the General Corporation Law of the State of Delaware, the Certificate of Incorporation of the Corporation or any amendments thereto or these By-laws, any action which could be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, are (i) signed by the holders of outstanding stock having not fewer than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and (ii) delivered to the secretary of the Corporation at the principal executive offices of the Corporation. Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of stockholders to take such action are delivered to the Corporation, in the manner required by this Section 12, within 60 days of the date of the earliest dated consent delivered to the Corporation in the manner required by this Section 12. The validity of any consent executed by a proxy for a stockholder pursuant to an electronic transmission transmitted to such proxy holder by or upon the authorization of the stockholder shall be determined by or at the direction of the secretary of the Corporation. A written record of the information upon which the person making such determination relied shall be made and kept in the records of the proceedings of the stockholders. Any such consent shall be inserted in the minute book as if it were the minutes of a meeting of stockholders. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

For the purpose of determining the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date on which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall by written notice delivered to the secretary of the Corporation at the principal executive offices of the Corporation by registered mail, return receipt requested, request that the Board of Directors fix a record date, which notice shall contain (i) a description of the action that the stockholder proposes to take by consent, (ii)

the text of the proposal and of any proposed resolution to be effected by the consent, (iii) the information required by the first paragraph of this Section 12, to the extent applicable, as though the stockholder making the request were submitting a stockholder notice with respect to a director nomination, (iv) an acknowledgment by the stockholder making the request and the beneficial owner, if any, on whose behalf the request is being made that a disposition of shares of the capital stock of the Corporation, owned of record or beneficially as of the date on which the request in respect of such shares is delivered to the secretary of the Corporation, that is made at any time prior to the delivery of the first written consent with respect to the action that the stockholder proposes to take by consent shall constitute a revocation of such request with respect to such disposed shares and (v) documentary evidence that the stockholder making the request owns the shares of capital stock of the Corporation as of the date that the request in respect of such shares is delivered to the secretary of the Corporation (a "Written Request"); provided that, if the stockholder making the Written Request is not the beneficial owner of such shares, then to be valid, the Written Request must also include documentary evidence (or, if not simultaneously provided with the Written Request, such documentary evidence must be delivered to the secretary of the Corporation at the principal executive offices of the Corporation within 10 days after the date on which the Written Request is delivered to the secretary of the Corporation) that the beneficial owner on whose behalf the Written Request is made beneficially owns the shares as of the date on which such Written Request is delivered to the secretary of the Corporation. In addition, the requesting stockholder and the beneficial owner, if any, on whose behalf the Written Request is being made shall promptly provide any other information reasonably requested by the Corporation. Any stockholder may revoke a Written Request with respect to such stockholder's shares at any time by written revocation delivered to the secretary of the Corporation.

If no record date has been fixed by the Board of Directors pursuant to this Section 12 or otherwise within 10 days of the secretary of the Corporation's receipt of a valid Written Request by a stockholder, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required pursuant to applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation pursuant to this Section 12; provided that, if prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall in such an event be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

In the event of the delivery, in the manner provided by this Section 12 and applicable law, to the Corporation of written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage independent inspectors of election for the purpose of performing promptly a review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent and without a meeting shall be effective until such inspectors have completed their review, determined that the requisite number of valid and unrevoked consents delivered to the Corporation in accordance with this Section 12 and

applicable law have been obtained to authorize or take the action specified in the consents and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders. Nothing contained in this Section 12 shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto).

Section 13. Organization. Meetings of stockholders shall be presided over by the chairman of the board, if any, or in his or her absence by a person designated by the Board of Directors, and the stockholders shall not have the right to elect a different person as chairman of the meeting. The secretary of the Corporation or, in his or her absence, an assistant secretary or, in the absence of the secretary and all assistant secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to convene and adjourn or recess (for any or no reason) the meeting (whether or not a quorum is present), prescribe such rules, regulations and procedures and to do all such acts as, in the sole judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on the use of audio and/or visual recording devices, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot.

ARTICLE III

DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to such powers as are herein and in the Certificate of Incorporation expressly conferred upon it, the Board of Directors shall have and may exercise all the powers of the Corporation, subject to the provisions of the laws of Delaware, the Certificate of Incorporation and these By-laws.

Section 2. Number, Election and Term of Office. Subject to any rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors which shall constitute the Board of Directors shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the total number of directors then in office. The directors shall be elected by a plurality of the votes of the

shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors; *provided* that, whenever the holders of any class or series of capital stock of the Corporation are entitled to elect one or more directors pursuant to the provisions of the Certificate of Incorporation of the Corporation (including, but not limited to, for purposes of these By-laws, pursuant to any duly authorized certificate of designation), such directors shall be elected by a plurality of the votes of such class or series present in person or represented by proxy at the meeting and entitled to vote in the election of such directors. The directors shall be elected and shall hold office only in the manner provided in the Certificate of Incorporation.

Section 3. Removal and Resignation. No director may be removed from office without the affirmative vote of the holders of a majority of the voting power of the then outstanding shares of capital stock entitled to vote generally in the election of directors voting together as a single class; *provided* that, if the holders of any class or series of capital stock are entitled by the provisions of the Certificate of Incorporation (it being understood that any references to the Certificate of Incorporation shall include any duly authorized certificate of designation) to elect one or more directors, such director or directors so elected may be removed without cause only by the vote of the holders of a majority of the outstanding shares of that class or series entitled to vote. Any director may resign at any time upon written notice to the Corporation.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the total number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

Section 5. Annual Meetings. The annual meeting of the Board of Directors shall be held without other notice than this By-law immediately after, and at the same place as, the annual meeting of stockholders.

Section 6. Other Meetings and Notice. 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 chairman of the board, the chief executive officer, the president (if the president is a director) or, upon the written request of at least a majority of the directors then in office, the secretary of the Corporation on at least 24 hours' notice to each director, either personally, by telephone, by mail or by telecopy.

Section 7. Chairman of the Board, Quorum, Required Vote and Adjournment. The Board of Directors shall elect, by the affirmative vote of a majority of the total number of directors then in office, a chairman of the board, who shall preside at all meetings of the stockholders and 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 chairman of the board is not present at a meeting of the stockholders or the Board of Directors, the chief executive officer (if the chief executive officer is a director and is not also the chairman of the board) shall preside at such meeting, and, if the chief executive officer is not present at such meeting, a majority of the directors present at such meeting shall elect one of their members to so preside. A majority of the total number of directors

then in office shall constitute a quorum for the transaction of business. Unless by express provision of an applicable law, the Certificate of Incorporation or these By-laws 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 8. Committees. The Board of Directors may, by resolution passed by a majority of the total number of directors then in office, designate one or more committees, each committee to consist of one or more of the directors of the Corporation, which to the extent provided in such resolution or these By-laws shall have, and may exercise, the powers of the Board of Directors in the management and affairs of the Corporation, except as otherwise limited by law. 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 the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

Section 9. 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. 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 10. Communications Equipment. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and speak with each other, and participation in the meeting pursuant to this Section 10 shall constitute presence in person at the meeting.

Section 11. Waiver of Notice and Presumption of Assent. Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member 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. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment

thereof or shall be forwarded by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 12. 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 such board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

ARTICLE IV

OFFICERS

Section 1. Number. The officers of the Corporation shall be elected by the Board of Directors and shall consist of a chairman of the board, a chief executive officer, a president, a chief operating officer, 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 president 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 or removal 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 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 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* that, compensation of all executive officers may be determined by a committee established for that purpose if so authorized by the unanimous vote of the Board of Directors.

Section 6. Chairman of the Board. The chairman of the board shall preside at all meetings of the stockholders and of the Board of Directors and shall have such other powers and perform such other duties as may be prescribed to him or her by the Board of Directors or provided in these By-laws.

Section 7. Chief Executive Officer. The chief executive officer shall have the powers and perform the duties incident to that position. Subject to the powers of the Board of Directors and the chairman of the board, the chief executive officer shall be in the general and active charge of the entire business and affairs of the Corporation, and shall be its chief policy making officer. The chief executive officer shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or provided in these By-laws. The chief executive officer is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. Whenever the president is unable to serve, by reason of sickness, absence or otherwise, the chief executive officer shall perform all the duties and responsibilities and exercise all the powers of the president.

Section 8. The President. The president of the Corporation shall, subject to the powers of the Board of Directors, the chairman of the board and the chief executive officer, have general charge of the business, affairs and property of the Corporation, and control over its officers, agents and employees. The president shall see that all orders and resolutions of the Board of Directors are carried into effect. The president is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The president shall have such other powers and perform such other duties as may be prescribed by the chairman of the board, the chief executive officer, the Board of Directors or as may be provided in these By-laws.

Section 9. Chief Operating Officer. The chief operating officer of the Corporation shall, subject to the powers of the Board of Directors, the chairman of the board, the chief executive officer and the president, have general charge of the business, affairs and property of the Corporation, and control over its officers, agents and employees. The chief operating officer shall see that all orders and resolutions of the Board of Directors are carried into effect. The chief operating officer is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except when required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other Officer or agent of the Corporation. The chief operating officer shall have such other powers and perform such other duties as may be prescribed by the chairman of the board, the chief executive officer, the president, the Board of Directors or as may be provided in these By-laws.

Section 10. Vice-Presidents. The vice-president, or if there shall be more than one, the vice-presidents in the order determined by the Board of Directors or the chairman of the board, shall, in the absence or disability of the chief executive officer, president and the chief operating officer, act with all of the powers and be subject to all the restrictions of the president. The vice-presidents shall also perform such other duties and have such other powers as the Board of Directors, the chairman of the board, the chief executive officer, the

president, the chief operating officer or these By-laws may, from time to time, prescribe. The vice-presidents may also be designated as executive vice-presidents or senior vice-presidents, as the Board of Directors may from time to time prescribe.

Section 11. The Secretary and Assistant Secretaries. The secretary shall attend all meetings of the Board of Directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose or shall ensure that his or her designee attends each such meeting to act in such capacity. Under the chairman of the board's supervision, the secretary shall give, or cause to be given, all notices required to be given by these By-laws or by law; shall have such powers and perform such duties as the Board of Directors, the chairman of the board, the chief executive officer, the president, the chief operating officer or these By-laws may, from time to time, prescribe; and shall have custody of the corporate seal of the Corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, any of the assistant secretaries, shall in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors, the chairman of the board, the chief executive officer, the president, or secretary may, from time to time, prescribe.

Section 12. The Chief Financial Officer. The chief financial officer shall have the custody of the corporate funds and securities; shall keep full and accurate all books and accounts of the Corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the chairman of the board, the chief executive officer or the Board of Directors; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the Corporation; shall have such powers and perform such duties as the Board of Directors, the chairman of the board, the chief executive officer, the president or these By-laws may, from time to time, prescribe. If required by the Board of Directors, the chief financial officer shall give the Corporation a bond (which shall be rendered every six years) in such sums and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of chief financial officer and for the restoration to the Corporation, in case of death, resignation, retirement or removal from office of all books, papers, vouchers, money and other property of whatever kind in the possession or under the control of the chief financial officer belonging to the Corporation.

Section 13. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these By-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

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

CERTIFICATES OF STOCK

Section 1. Certificated and Uncertificated Shares; Form. Shares of the stock of the Corporation may be represented by certificates or uncertificated. If certificated, such certificate shall be signed by or in the name of the Corporation by the chairman of the board, the chief executive officer, the president, or the chief operating officer and the secretary or an assistant secretary of the Corporation, certifying the number of shares owned by such holder in the Corporation. If such a certificate is countersigned (i) by a transfer agent or an assistant transfer agent other than the Corporation or its employee or (ii) by a registrar, other than the Corporation or its employee, the signature of any such chairman of the board, chief executive officer, president, chief operating officer, secretary or assistant secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the Corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the Corporation. Uncertificated shares of stock of the Corporation shall be transferred in the share register of the Corporation only upon a written instruction originated by the appropriate person to transfer the shares. Certificated shares of stock of the Corporation shall only be transferred on the books of the Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. 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 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates 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, 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.

Section 3. Fixing a Record Date for Stockholder Meetings. In order that the Corporation may determine the stockholders entitled to notice of or to vote at 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 60 days nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first given. 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* that, the Board of Directors may fix a new record date for the adjourned meeting.

Section 4. 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 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 5. Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the Corporation may treat the registered owner as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner. The Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

Section 6. Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the Board of Directors. Any call made by the Board of Directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the Corporation may proceed to collect the amount due in the same manner as any debt due the Corporation.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, in accordance with applicable law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of 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 directors from time to time, in their 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 any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts or other orders for the payment of money by or to the Corporation and all notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. In addition to the powers otherwise granted to officers pursuant to *Article VI* hereof, the Board of Directors may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. Except to the extent that such loans or guarantees would be prohibited by applicable law or by the listing requirements of any stock exchange upon which shares of the Corporation's capital stock may be listed, the Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer or employee who is a director of the Corporation or its subsidiaries, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 4 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other Corporation held by the Corporation shall be voted by the chief executive officer, the president, the chief operating officer or a vice-president, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8. 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, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the Corporation.

Section 9. Section Headings. Section headings in these By-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Inconsistent Provisions. In the event that any provision of these By-laws 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 By-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VII

AMENDMENTS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend, change, add to or repeal these By-laws by the affirmative vote of a majority of the total number of directors then in office. Any alteration or repeal of these By-laws by the stockholders of the Corporation shall require the affirmative vote of a majority of the outstanding shares of the Corporation entitled to vote on such alteration or repeal.

ARTICLE VIII

FORUM FOR ADJUDICATION OF DISPUTES AND CONSENT TO JURISDICTION

Section 1. Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be a state or federal court

located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity owning, purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this *Article IX*.

Section 2. Personal Jurisdiction. If any action the subject matter of which is within the scope of Section 1 immediately above is filed in a court other than a court located within the State of Delaware (a "*Foreign Action*") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 1 immediately above (an "*FSC Enforcement Action*") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

Effective as of December 11, 2018

CERTIFICATION

I, Gregory J. Scott, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of RTW Retailwinds, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers 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: December 13, 2018

/s/ GREGORY J. SCOTT

Gregory J. Scott
Chief Executive Officer

QuickLinks

[Exhibit 31.1](#)

[CERTIFICATION](#)

CERTIFICATION

I, Sheamus Toal, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of RTW Retailwinds, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers 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: December 13, 2018

/s/ SHEAMUS TOAL

Sheamus Toal
*Executive Vice President, Chief Operating Officer and Chief
Financial Officer*

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[Exhibit 31.2](#)

[CERTIFICATION](#)

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Exhibit 32.1

**Certification Pursuant to 18 U.S.C. Section 1350
As adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Solely for the purposes of complying with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, we, the undersigned Chief Executive Officer, and Executive Vice President, Chief Operating Officer and Chief Financial Officer of RTW Retailwinds, Inc. (the "Company"), hereby certify, based on our knowledge, that the Quarterly Report on Form 10-Q of the Company for the quarter ended November 3, 2018 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 13, 2018

/s/ GREGORY J. SCOTT

Gregory J. Scott
Chief Executive Officer

/s/ SHEAMUS TOAL

Sheamus Toal
*Executive Vice President, Chief Operating Officer
and Chief Financial Officer*

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[Exhibit 32.1](#)

[Certification Pursuant to 18 U.S.C. Section 1350 As adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)

