

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

FORM 10-Q

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

For the quarterly period ended September 28, 2023

OR

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

For the transition period from ___ to ___

Commission file number 001-38070

Floor & Decor Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

27-3730271

(I.R.S. Employer Identification No.)

2500 Windy Ridge Parkway SE

Atlanta, Georgia

(Address of principal executive offices)

30339

(Zip Code)

(404) 471-1634

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, \$0.001 par value per share	FND	New York Stock Exchange

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

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

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

Large Accelerated Filer	<input checked="" type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-Accelerated Filer	<input type="checkbox"/>	Smaller Reporting Company	<input type="checkbox"/>
		Emerging Growth Company	<input type="checkbox"/>

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at October 30, 2023
Class A common stock, \$0.001 par value per share	106,569,892

Table of Contents

	Page
Forward-Looking Statements	3
Part I – Financial Information	5
Item 1. Financial Statements	5
Condensed Consolidated Balance Sheets (Unaudited)	5
Condensed Consolidated Statements of Operations and Comprehensive Income (Unaudited)	6
Condensed Consolidated Statements of Stockholders' Equity (Unaudited)	7
Condensed Consolidated Statements of Cash Flows (Unaudited)	9
Notes to Condensed Consolidated Financial Statements (Unaudited)	10
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	22
Item 3. Quantitative and Qualitative Disclosures About Market Risk	29
Item 4. Controls and Procedures	30
Part II – Other Information	30
Item 1. Legal Proceedings	30
Item 1A. Risk Factors	30
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	30
Item 5. Other Information	30
Item 6. Exhibits	32
Signatures	33

Forward-Looking Statements

The discussion in this Quarterly Report, including under this Item 2, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of Part I and Item 1A, “Risk Factors” of Part II, contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact contained in this Quarterly Report, including statements regarding our future operating results and financial position, expectations related to our acquisition of Spartan Surfaces, Inc. (“Spartan”), business strategy and plans, objectives of management for future operations, are forward-looking statements. These statements are based on our current expectations, assumptions, estimates, and projections. These statements involve known and unknown risks, uncertainties, and other important factors that may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. Forward-looking statements are based on management’s current expectations and assumptions regarding the Company’s business, the economy, and other future conditions, including the impact of natural disasters on sales. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “seeks,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “budget,” “potential,” or “continue” or the negative of these terms or other similar expressions.

The forward-looking statements contained in this Quarterly Report are only predictions. Although we believe that the expectations reflected in the forward-looking statements in this Quarterly Report are reasonable, we cannot guarantee future events, results, performance, or achievements. A number of important factors could cause actual results to differ materially from those indicated by the forward-looking statements in this Quarterly Report, including, without limitation, those factors described in this Item 2, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” of Part I and Item 1A, “Risk Factors” of Part II. Some of the key factors that could cause actual results to differ from our expectations include the following:

- an overall decline in the health of the economy, the hard surface flooring industry, consumer confidence and spending, and the housing market, including as a result of rising inflation or interest rates;
- demand fluctuations in the housing industry, and demand for our products and services, may be adversely affected by unfavorable economic conditions, including rising interest rates, inflation, a decline in disposable income levels, and recession fears;
- an economic recession or depression;
- global inflationary pressures on raw materials, energy, commodity, transportation, and other costs could cause our vendors to seek further price increases on the products we sell;
- any disruption in our supply chain, including carrier capacity constraints, port congestion, higher shipping, rail, and trucking prices, and other supply chain costs or product shortages;
- our failure to successfully anticipate consumer preferences and demand;
- our inability to pass along cost increases at rates consumers are willing to pay, or reduced demand due to pricing increases;
- our inability to manage our growth;
- our inability to manage costs and risks relating to new store openings;
- our inability to find available locations for our stores on terms acceptable to us;
- demand for our products and services may be adversely affected by unfavorable economic conditions;
- any disruption in our distribution capabilities, including from difficulties operating our distribution centers;
- our failure to execute our business strategy effectively and deliver value to our customers;
- our inability to find, train, and retain key personnel;
- the resignation, incapacitation, or death of any key personnel;
- the inability to staff our stores and distribution centers sufficiently;
- the effects of weather conditions, natural disasters, or other unexpected events, including global health crises, such as the COVID-19 pandemic, may disrupt our operations;
- our dependence on foreign imports for the products we sell, which may include the impact of tariffs and other duties;

- geopolitical risks, such as the conflict in the Middle East, the ongoing war in Ukraine, or import restrictions under the Uyghur Forced Labor Prevention Act, that impact our ability to import from foreign suppliers or raise our costs;
- if the use of “cookie” tracking technologies is further restricted, the amount of internet user information we collect would decrease, which could require additional marketing efforts and harm our business and operating results;
- violations of laws and regulations applicable to us or our suppliers;
- our failure to adequately protect against security breaches involving our information technology systems and customer information;
- suppliers may sell similar or identical products to our competitors;
- competition from other stores and internet-based competition;
- impact of acquired companies, including Spartan;
- our inability to manage our inventory obsolescence, shrinkage, and damage;
- our inability to maintain sufficient levels of cash flow or liquidity to meet growth expectations;
- our inability to obtain merchandise on a timely basis at prices acceptable to us;
- restrictions imposed by our indebtedness on our current and future operations; and
- our variable rate debt subjects us to interest rate risk that could cause our debt service obligations to increase significantly.

Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The forward-looking statements contained in this Quarterly Report speak only as of the date hereof. New risks and uncertainties arise over time, and it is not possible for us to predict those events or how they may affect us. If a change to the events and circumstances reflected in our forward-looking statements occurs, our business, financial condition, and operating results may vary materially from those expressed in our forward-looking statements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, or otherwise.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

Floor & Decor Holdings, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(Unaudited)

<i>in thousands, except for share and per share data</i>	As of September 28, 2023	As of December 29, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 61,628	\$ 9,794
Income taxes receivable	16,157	7,325
Receivables, net	97,733	94,732
Inventories, net	1,105,450	1,292,336
Prepaid expenses and other current assets	55,134	53,298
Total current assets	1,336,102	1,457,485
Fixed assets, net	1,562,616	1,258,056
Right-of-use assets	1,306,475	1,205,636
Intangible assets, net	154,786	152,353
Goodwill	257,940	255,473
Deferred income tax assets, net	12,446	11,265
Other assets	7,717	10,974
Total long-term assets	3,301,980	2,893,757
Total assets	\$ 4,638,082	\$ 4,351,242
Liabilities and stockholders' equity		
Current liabilities:		
Current portion of term loan	\$ 2,103	\$ 2,103
Current portion of lease liabilities	125,348	105,693
Trade accounts payable	706,325	590,883
Accrued expenses and other current liabilities	327,224	298,019
Deferred revenue	13,383	10,060
Total current liabilities	1,174,383	1,006,758
Term loan	195,042	195,351
Revolving line of credit	—	210,200
Lease liabilities	1,325,226	1,227,507
Deferred income tax liabilities, net	46,917	41,520
Other liabilities	11,038	12,730
Total long-term liabilities	1,578,223	1,687,308
Total liabilities	2,752,606	2,694,066
Commitments and contingencies (Note 5)		
Stockholders' equity		
Capital stock:		
Preferred stock, \$0.001 par value; 10,000,000 shares authorized; 0 shares issued and outstanding at September 28, 2023 and December 29, 2022	—	—
Common stock Class A, \$0.001 par value; 450,000,000 shares authorized; 106,569,892 shares issued and outstanding at September 28, 2023 and 106,150,661 issued and outstanding at December 29, 2022	107	106
Common stock Class B, \$0.001 par value; 10,000,000 shares authorized; 0 shares issued and outstanding at September 28, 2023 and December 29, 2022	—	—
Common stock Class C, \$0.001 par value; 30,000,000 shares authorized; 0 shares issued and outstanding at September 28, 2023 and December 29, 2022	—	—
Additional paid-in capital	503,594	482,312
Accumulated other comprehensive income, net	2,455	4,337
Retained earnings	1,379,320	1,170,421
Total stockholders' equity	1,885,476	1,657,176
Total liabilities and stockholders' equity	\$ 4,638,082	\$ 4,351,242

See accompanying notes to condensed consolidated financial statements.

Floor & Decor Holdings, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations and Comprehensive Income
(Unaudited)

	Thirteen Weeks Ended		Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022	September 28, 2023	September 29, 2022
<i>in thousands, except for per share data</i>				
Net sales	\$ 1,107,812	\$ 1,097,824	\$ 3,365,763	\$ 3,216,404
Cost of sales	640,357	650,349	1,949,557	1,924,589
Gross profit	467,455	447,475	1,416,206	1,291,815
Operating expenses:				
Selling and store operating	308,581	280,735	923,658	798,437
General and administrative	59,870	54,697	185,060	162,449
Pre-opening	14,232	10,386	32,226	28,890
Total operating expenses	382,683	345,818	1,140,944	989,776
Operating income	84,772	101,657	275,262	302,039
Interest expense, net	1,246	3,032	9,006	5,866
Income before income taxes	83,526	98,625	266,256	296,173
Income tax expense	17,603	22,450	57,357	67,215
Net income	\$ 65,923	\$ 76,175	\$ 208,899	\$ 228,958
Change in fair value of hedge instruments, net of tax	(907)	1,513	(1,882)	3,889
Total comprehensive income	\$ 65,016	\$ 77,688	\$ 207,017	\$ 232,847
Basic earnings per share	\$ 0.62	\$ 0.72	\$ 1.97	\$ 2.17
Diluted earnings per share	\$ 0.61	\$ 0.71	\$ 1.94	\$ 2.13

See accompanying notes to condensed consolidated financial statements.

Floor & Decor Holdings, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)

<i>in thousands</i>	Common Stock Class A		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Retained Earnings	Total Stockholders' Equity
	Shares	Amount				
Balance, December 30, 2022	106,151	\$ 106	\$ 482,312	\$ 4,337	\$ 1,170,421	\$ 1,657,176
Stock-based compensation expense	—	—	6,741	—	—	6,741
Exercise of stock options	79	—	2,130	—	—	2,130
Issuance of common stock upon vesting of restricted stock units	117	—	—	—	—	—
Shares issued under employee stock purchase plan	43	—	2,558	—	—	2,558
Common stock redeemed for tax liability	(119)	—	(10,863)	—	—	(10,863)
Other comprehensive loss, net of tax	—	—	—	(849)	—	(849)
Net income	—	—	—	—	71,524	71,524
Balance, March 30, 2023	106,271	\$ 106	\$ 482,878	\$ 3,488	\$ 1,241,945	\$ 1,728,417
Stock-based compensation expense	—	—	8,306	—	—	8,306
Exercise of stock options	123	—	2,728	—	—	2,728
Issuance of common stock upon vesting of restricted stock units	8	—	—	—	—	—
Common stock redeemed for tax liability	(11)	—	(998)	—	—	(998)
Other comprehensive loss, net of tax	—	—	—	(126)	—	(126)
Net income	—	—	—	—	71,452	71,452
Balance, June 29, 2023	106,391	\$ 106	\$ 492,914	\$ 3,362	\$ 1,313,397	\$ 1,809,779
Stock-based compensation expense	—	—	5,289	—	—	5,289
Exercise of stock options	134	1	3,050	—	—	3,051
Issuance of common stock upon vesting of restricted stock units	7	—	—	—	—	—
Shares issued under employee stock purchase plan	41	—	2,601	—	—	2,601
Common stock redeemed for tax liability	(3)	—	(260)	—	—	(260)
Other comprehensive loss, net of tax	—	—	—	(907)	—	(907)
Net income	—	—	—	—	65,923	65,923
Balance, September 28, 2023	106,570	\$ 107	\$ 503,594	\$ 2,455	\$ 1,379,320	\$ 1,885,476

See accompanying notes to condensed consolidated financial statements.

Floor & Decor Holdings, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)

<i>in thousands</i>	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Retained Earnings	Total Stockholders' Equity
	Class A					
	Shares	Amount				
Balance, December 31, 2021	105,761	\$ 106	\$ 450,332	\$ 535	\$ 872,226	\$ 1,323,199
Stock-based compensation expense	—	—	5,980	—	—	5,980
Exercise of stock options	32	—	577	—	—	577
Issuance of common stock upon vesting of restricted stock units	47	—	—	—	—	—
Shares issued under employee stock purchase plan	21	—	1,963	—	—	1,963
Common stock redeemed for tax liability	(19)	—	(1,807)	—	—	(1,807)
Other comprehensive gain, net of tax	—	—	—	1,554	—	1,554
Net income	—	—	—	—	70,951	70,951
Balance, March 31, 2022	105,842	\$ 106	\$ 457,045	\$ 2,089	\$ 943,177	\$ 1,402,417
Stock-based compensation expense	—	—	4,889	—	—	4,889
Exercise of stock options	209	—	4,599	—	—	4,599
Forfeiture of restricted stock awards	(59)	—	—	—	—	—
Issuance of common stock upon vesting of restricted stock units	5	—	—	—	—	—
Common stock redeemed for tax liability	(4)	—	(273)	—	—	(273)
Other comprehensive gain, net of tax	—	—	—	822	—	822
Net income	—	—	—	—	81,832	81,832
Balance, June 30, 2022	105,993	\$ 106	\$ 466,260	\$ 2,911	\$ 1,025,009	\$ 1,494,286
Stock-based compensation expense	—	—	6,360	—	—	6,360
Exercise of stock options	81	—	1,924	—	—	1,924
Issuance of common stock upon vesting of restricted stock units	2	—	—	—	—	—
Shares issued under employee stock purchase plan	41	—	2,416	—	—	2,416
Common stock redeemed for tax liability	—	—	(55)	—	—	(55)
Other comprehensive gain, net of tax	—	—	—	1,513	—	1,513
Net income	—	—	—	—	76,175	76,175
Balance, September 29, 2022	106,117	\$ 106	\$ 476,905	\$ 4,424	\$ 1,101,184	\$ 1,582,619

See accompanying notes to condensed consolidated financial statements.

Floor & Decor Holdings, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(Unaudited)

<i>in thousands</i>	Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022
Operating activities		
Net income	\$ 208,899	\$ 228,958
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	146,947	112,691
Stock-based compensation expense	20,336	17,229
Deferred income taxes	4,953	1,747
Change in fair value of contingent earn-out liabilities	2,329	1,530
Loss on asset impairments and disposals, net	858	—
Interest cap derivative contracts	85	85
Changes in operating assets and liabilities, net of effects of acquisitions:		
Receivables, net	2,931	(21,014)
Inventories, net	195,590	(312,288)
Trade accounts payable	109,338	(25,761)
Accrued expenses and other current liabilities	2,950	27,796
Income taxes	(8,912)	(6,360)
Deferred revenue	3,323	1,415
Other, net	9,348	(18,703)
Net cash provided by operating activities	698,975	7,325
Investing activities		
Purchases of fixed assets	(413,717)	(322,825)
Acquisitions, net of cash acquired	(17,353)	(1,121)
Proceeds from sales of property	—	4,773
Net cash used in investing activities	(431,070)	(319,173)
Financing activities		
Payments on term loan	(1,577)	(1,577)
Borrowings on revolving line of credit	518,900	663,200
Payments on revolving line of credit	(729,100)	(486,800)
Payments of contingent earn-out liabilities	(5,241)	(2,571)
Proceeds from exercise of stock options	7,909	7,100
Proceeds from employee stock purchase plan	5,159	4,379
Debt issuance costs	—	(1,505)
Tax payments for stock-based compensation awards	(12,121)	(2,135)
Net cash (used in) provided by financing activities	(216,071)	180,091
Net increase (decrease) in cash and cash equivalents	51,834	(131,757)
Cash and cash equivalents, beginning of the period	9,794	139,444
Cash and cash equivalents, end of the period	\$ 61,628	\$ 7,687
Supplemental disclosures of cash flow information		
Buildings and equipment acquired under operating leases	\$ 192,906	\$ 148,665
Cash paid for interest, net of capitalized interest	\$ 8,871	\$ 3,437
Cash paid for income taxes, net of refunds	\$ 62,105	\$ 71,800
Fixed assets accrued at the end of the period	\$ 150,111	\$ 118,453

See accompanying notes to condensed consolidated financial statements.

Floor & Decor Holdings, Inc. and Subsidiaries
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Basis of Presentation and Summary of Significant Accounting Policies

Nature of Business

Floor & Decor Holdings, Inc., together with its subsidiaries (the “Company,” “we,” “our,” or “us”) is a multi-channel specialty retailer and commercial flooring distributor. The Company offers a broad assortment of in-stock hard-surface flooring, including tile, wood, laminate, vinyl, and natural stone along with decorative accessories and wall tile, installation materials, and adjacent categories at everyday low prices. Our stores appeal to a variety of customers, including professional installers and commercial businesses (“Pro”), do it yourself customers (“DIY”), and buy it yourself customers who buy our products for professional installation (“BIY”). We operate within one reportable segment.

As of September 28, 2023, the Company, through its wholly owned subsidiary, Floor and Decor Outlets of America, Inc. (“Outlets”), operates 207 warehouse-format stores, which average 78,000 square feet, and five small-format standalone design studios in 36 states, as well as four distribution centers and an e-commerce site, *FloorandDecor.com*. Substantially all of the Company’s operating assets and liabilities are held by Outlets.

Fiscal Year

The Company’s fiscal year is the 52- or 53-week period ending on the Thursday on or preceding December 31st. The fiscal year ending December 28, 2023 (“fiscal 2023”) and the fiscal year ended December 29, 2022 (“fiscal 2022”) include 52 weeks. 52-week fiscal years consist of thirteen-week periods in each quarter of the fiscal year. When a 53-week fiscal year occurs, we report the additional week at the end of the fiscal fourth quarter.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. These financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information. The Condensed Consolidated Balance Sheet as of December 29, 2022 has been derived from the audited Consolidated Balance Sheet for the fiscal year then ended. The interim condensed consolidated financial statements should be read together with the audited consolidated financial statements and related footnote disclosures included in the Company’s Annual Report on Form 10-K for fiscal 2022, filed with the Securities and Exchange Commission (the “SEC”) on February 23, 2023 (the “Annual Report”). Management believes the accompanying unaudited condensed consolidated financial statements reflect all normal recurring adjustments considered necessary for a fair statement of results for the interim periods presented. Results of operations for the thirteen and thirty-nine weeks ended September 28, 2023 are not necessarily indicative of the results to be expected for the full year.

Summary of Significant Accounting Policies

There were no significant changes to our Significant Accounting Policies as disclosed in the Annual Report. For more information regarding our Significant Accounting Policies and Estimates, see the “Summary of Significant Accounting Policies” section of “Item 8. Financial Statements and Supplementary Data” of our Annual Report.

Recently Adopted Accounting Pronouncements

Supplier Finance Programs. In September 2022, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2022-04, “Liabilities - Supplier Finance Programs (Subtopic 405-50).” The ASU requires disclosure of the key terms of outstanding supply chain finance programs and a rollforward of the related amounts due to vendors participating in these programs. The adoption of ASU 2022-04 did not affect the Company’s financial position, results of operations, or cash flows as the standard only impacts financial statement footnote disclosures. The guidance is effective in the first quarter of fiscal 2023, except for a rollforward of activity within supply chain finance programs, which is effective beginning in fiscal 2024. For additional information, refer to Note 9, “Supply Chain Finance.”

Business Combinations. In October 2021, the FASB issued ASU No. 2021-08, “*Business Combinations (Topic 805), Accounting for Contract Assets and Contract Liabilities from Contracts with Customers.*” The ASU addresses diversity and inconsistency related to the recognition and measurement of contract assets and contract liabilities acquired in a business combination and requires that an acquirer recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606, Revenue from Contracts with Customers. The Company adopted ASU No. 2021-08 in the first quarter of 2023 on a prospective basis. The adoption of ASU No. 2021-08 did not have a material impact on the Company’s consolidated financial statements or related disclosures and is only applicable to the extent that the Company has future business combinations.

Recently Issued Accounting Pronouncements

Presentation and Disclosure Requirements. In October 2023, the FASB issued ASU No. 2023-06, “*Disclosure Improvements - Codification Amendments in Response to the SEC’s Disclosure Update and Simplification Initiative.*” The ASU amends the disclosure or presentation requirements related to various subtopics in the FASB Accounting Standards Codification (“ASC”). The ASU was issued in response to the SEC’s August 2018 final amendments in Release No. 33-10532, *Disclosure Update and Simplification* that updated and simplified disclosure requirements that the SEC believed were duplicative, overlapping, or outdated. The guidance in ASU 2023-06 is intended to align GAAP requirements with those of the SEC and to facilitate the application of GAAP for all entities. The amendments introduced by ASU 2023-06 are effective if the SEC removes the related disclosure or presentation requirement from its existing regulations by June 30, 2027. If, by June 30, 2027, the SEC has not removed the applicable requirements from its existing regulations, the pending content of the associated amendment will be removed from the ASC and will not become effective for any entities. Early adoption is permitted. The adoption of ASU 2023-06 is not expected to have a material impact on the Company’s consolidated financial statements or related disclosures.

Leases. In March 2023, the FASB issued ASU No. 2023-01, “*Leases (Topic 842), Common Control Arrangements.*” The amendments in the ASU applying to public business entities clarifies the accounting for leasehold improvements associated with common control leases, reducing diversity in practice and providing investors with financial information that will better reflect the economics of those transactions. This guidance in ASU No. 2023-01 is effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years, and can be applied prospectively to all new leasehold improvements, prospectively to all new and existing leasehold improvements, or retrospectively to the beginning of the period in which the entity first applied Topic 842. Early adoption of the standard is permitted, including adoption in an interim period. The adoption of ASU 2023-01 is not expected to have an impact on the Company’s consolidated financial statements or related disclosures and would only be applicable to the extent that the Company has future common control leases.

2. Revenue

Net sales consist of revenue associated with contracts with customers for the sale of goods and services in amounts that reflect the consideration the Company is entitled to receive in exchange for those goods and services.

Deferred Revenue & Contract Liabilities

In accordance with ASC 606, *Revenue from Contracts with Customers*, the Company recognizes revenue when the customer obtains control of the inventory. Amounts in deferred revenue at period-end reflect orders for which the inventory was not yet ready for physical transfer to customers.

Contract liabilities within the Condensed Consolidated Balance Sheets as of September 28, 2023 and December 29, 2022 primarily consisted of deferred revenue as well as amounts in accrued expenses and other current liabilities related to the Pro Premier Rewards loyalty program and unredeemed gift cards. As of September 28, 2023, contract liabilities totaled \$70.2 million and included \$43.1 million of loyalty program liabilities, \$13.7 million of unredeemed gift cards, and \$13.4 million of deferred revenue. As of December 29, 2022, contract liabilities totaled \$57.0 million and included \$33.8 million of loyalty program liabilities, \$13.1 million of unredeemed gift cards, and \$10.1 million of deferred revenue. Of the contract liabilities outstanding as of December 29, 2022, approximately \$16.7 million was recognized in revenue during the thirty-nine weeks ended September 28, 2023.

Disaggregated Revenue

The Company has one reportable segment. The following table presents the net sales of each major product category (in thousands):

Product Category	Thirteen Weeks Ended			
	September 28, 2023		September 29, 2022	
	Net Sales	% of Net Sales	Net Sales	% of Net Sales
Laminate and vinyl	\$ 287,631	26 %	\$ 314,502	29 %
Tile	258,148	23	246,336	22
Installation materials and tools	211,732	19	183,495	17
Decorative accessories and wall tile	183,657	17	187,369	17
Wood	66,646	6	69,691	6
Natural stone	51,655	5	52,670	5
Adjacent categories	21,789	2	17,338	2
Other (1)	26,554	2	26,423	2
Total	\$ 1,107,812	100 %	\$ 1,097,824	100 %

Product Category	Thirty-nine Weeks Ended			
	September 28, 2023		September 29, 2022	
	Net Sales	% of Net Sales	Net Sales	% of Net Sales
Laminate and vinyl	\$ 886,358	26 %	\$ 896,347	28 %
Tile	793,995	24	725,242	22
Installation materials and tools	622,249	18	529,659	16
Decorative accessories and wall tile	573,014	17	569,370	18
Wood	193,207	6	213,126	7
Natural stone	160,565	5	161,374	5
Adjacent categories	61,814	2	51,363	2
Other (1)	74,561	2	69,923	2
Total	\$ 3,365,763	100 %	\$ 3,216,404	100 %

(1) Other includes delivery, sample, and other product revenue and adjustments for deferred revenue, sales returns reserves, and other revenue related adjustments that are not allocated on a product-category basis.

3. Debt

The following table summarizes the Company's long-term debt as of September 28, 2023 and December 29, 2022:

<i>in thousands</i>	Maturity Date	Interest Rate Per Annum at September 28, 2023 (1)		September 28, 2023	December 29, 2022
Credit Facilities:					
Term Loan Facility	February 14, 2027	7.33%	Variable	\$ 202,922	\$ 204,499
Asset-based Loan Facility ("ABL Facility")	August 4, 2027	6.57%	Variable	—	210,200
Total secured debt at par value				202,922	414,699
Less: current maturities				2,103	2,103
Long-term debt maturities				200,819	412,596
Less: unamortized discount and debt issuance costs				5,777	7,045
Total long-term debt				\$ 195,042	\$ 405,551

(1) The applicable interest rate for the Term Loan Facility as presented herein does not include the effect of interest rate cap agreements.

Market risk associated with the Company’s long-term debt relates to the potential change in fair value and negative impact to future earnings, respectively, from a change in interest rates. The aggregate fair value of debt is based primarily on the Company’s estimates of interest rates, maturities, credit risk, and underlying collateral.

The following table summarizes scheduled maturities of the Company’s debt as of September 28, 2023:

<i>in thousands</i>	Amount
Thirteen weeks ending December 28, 2023	\$ 526
2024	2,103
2025	2,103
2026	2,629
2027	195,561
Total minimum debt payments	<u>\$ 202,922</u>

Components of interest expense are as follows for the periods presented:

<i>in thousands</i>	Thirteen Weeks Ended		Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022	September 28, 2023	September 29, 2022
Total interest costs, net of interest income	\$ 3,255	\$ 4,092	\$ 14,022	\$ 8,617
Less: interest capitalized	2,009	1,060	5,016	2,751
Interest expense, net	<u>\$ 1,246</u>	<u>\$ 3,032</u>	<u>\$ 9,006</u>	<u>\$ 5,866</u>

Term Loan Facility

The Term Loan Facility bears interest at a rate equal to either (a) a base rate determined by reference to the highest of (1) the “Prime Rate,” (2) the U.S. federal funds rate plus 0.5% and (3) the one-month Term Secured Overnight Financing Rate (“SOFR”) plus 1.0%, or (b) Adjusted Term SOFR, plus, in each case, the Applicable Margin (each term as defined in the Term Loan Facility credit agreement). The Applicable Margin for base rate loans will be between 1.00% and 1.25%, and the Applicable Margin for SOFR loans will be between 2.00% and 2.25% (subject to a floor of 0.00%), in each case, if the Company exceeds certain leverage ratio tests.

All obligations under the Term Loan Facility are secured by (1) a first-priority security interest in substantially all of the property and assets of Outlets and the other guarantors under the Term Loan Facility, with certain exceptions, and (2) a second-priority security interest in the collateral securing the ABL Facility.

ABL Facility

As of September 28, 2023, the Company’s ABL Facility had a maximum availability of \$800.0 million with actual available borrowings limited to the sum, at the time of calculation, of (a) eligible credit card receivables multiplied by the credit card advance rate, plus (b) the cost of eligible inventory, net of inventory reserves, multiplied by the applicable appraisal percentage, plus (c) 85% of eligible net trade receivables, plus (d) all eligible cash on hand, plus (e) 100% of the amount for which the eligible letter of credit must be honored after giving effect to any draws, minus certain Availability Reserves (each component as defined in the ABL Facility). The ABL Facility is available for issuance of letters of credit and contains a sublimit of \$50.0 million for standby letters of credit and commercial letters of credit combined. Available borrowings under the facility are reduced by the face amount of outstanding letters of credit. The Company’s ABL Facility allows for the Company, under certain circumstances, to increase the size of the facility by an additional amount up to \$200.0 million.

All obligations under the ABL Facility are secured by (1) a first-priority security interest in the cash and cash equivalents, accounts receivable, inventory, and related assets of Outlets and the other guarantors under the ABL Facility, with certain exceptions, and (2) a second-priority security interest in substantially all of the other property and assets of Outlets and the other guarantors under the Term Loan Facility.

Based on financial data as of September 28, 2023, net availability under the ABL Facility was \$697.3 million as reduced by letters of credit of \$32.6 million.

Covenants

The credit agreements governing the Term Loan Facility and ABL Facility contain customary restrictive covenants, which, among other things and with certain exceptions, limit the Company's ability to (i) incur additional indebtedness and liens in connection with such indebtedness, (ii) pay dividends and make certain other restricted payments, (iii) effect mergers or consolidations, (iv) enter into transactions with affiliates, (v) sell or dispose of property or assets, and (vi) engage in unrelated lines of business. In addition, these credit agreements subject the Company to certain reporting obligations and require that the Company satisfy certain financial covenants, including, among other things, a requirement that if borrowings under the ABL Facility exceed 90% of availability, the Company will maintain a certain fixed charge coverage ratio (defined as Consolidated EBITDA less non-financed capital expenditures and income taxes paid to consolidated fixed charges, in each case as more fully defined in the ABL Facility).

The Term Loan Facility has no financial maintenance covenants. The Company is currently in compliance with all covenants under the credit agreements.

Fair Value of Debt

The estimated fair values and classifications within the fair value hierarchy of the Term Loan Facility and the ABL Facility were as follows as of September 28, 2023 and December 29, 2022:

<i>in thousands</i>	Fair Value Hierarchy Classification	September 28, 2023	December 29, 2022
Term Loan Facility	Level 3	\$ 201,524	\$ 196,575
ABL Facility	Level 2	—	210,200
Total		<u>\$ 201,524</u>	<u>\$ 406,775</u>

The Term Loan Facility fair value is classified as Level 3 within the fair value hierarchy due to the use of unobservable inputs significant to the valuation, including indicative pricing from counterparties and discounted cash flow methods. The carrying amount of borrowings under the ABL Facility approximates fair value as the ABL Facility variable interest rates are based on prevailing market rates, which are a Level 2 input.

4. Income Taxes

Effective tax rates for the thirteen and thirty-nine weeks ended September 28, 2023 and September 29, 2022 were based on the Company's forecasted annualized effective tax rates and were adjusted for discrete items that occurred within each period. The Company's effective income tax rate was 21.1% and 22.8% for the thirteen weeks ended September 28, 2023 and September 29, 2022, respectively, and 21.5% and 22.7% for the thirty-nine weeks ended September 28, 2023 and September 29, 2022, respectively. For the thirteen and thirty-nine weeks ended September 28, 2023 and September 29, 2022, the effective income tax rates were higher than the statutory federal income tax rate of 21.0% primarily due to state income taxes that were partially offset by tax deductions in excess of book expense related to stock-based compensation awards.

5. Commitments and Contingencies

Lease Commitments

The Company accounts for leases in accordance with ASC 842, *Leases*. The majority of the Company's long-term operating lease agreements are for its retail locations, distribution centers, and corporate office, which expire in various years through 2049. Most of these agreements are retail leases wherein both the land and building are leased. In addition, the Company has ground leases in which only the land is leased. The initial lease terms for the Company's retail locations, distribution centers, and corporate office typically range from 10-20 years. The majority of the Company's leases also include options to extend, which are factored into the recognition of their respective assets and liabilities when appropriate based on management's assessment of the probability that the options will be exercised.

When readily determinable, the rate implicit in the lease is used to discount lease payments to present value; however, substantially all of the Company's leases do not provide a readily determinable implicit rate. If the rate implicit in the lease is not readily determinable, the Company uses a third party to assist in the determination of a secured incremental borrowing rate, determined on a collateralized basis, to discount lease payments based on information available at lease commencement. The secured incremental borrowing rate is estimated based on yields obtained from Bloomberg for U.S. consumers with a BB credit rating and is adjusted for collateralization as well as inflation. As of September 28, 2023 and September 29, 2022, the Company's weighted average discount rate was 5.7% and 5.3%, respectively. As of September 28, 2023 and September 29, 2022, the weighted average remaining lease term of the Company's leases was approximately 12 years and 11 years, respectively.

Lease Costs

The table below presents components of lease expense for operating leases.

<i>in thousands</i>	<i>Classification</i>	Thirteen Weeks Ended		Thirty-nine Weeks Ended	
		September 28, 2023	September 29, 2022	September 28, 2023	September 29, 2022
Fixed operating lease cost:	Selling and store operating	\$ 39,575	\$ 33,991	\$ 116,248	\$ 103,035
	Cost of sales	6,385	6,354	17,856	19,178
	Pre-opening	4,244	2,558	11,216	7,542
	General and administrative	1,029	1,136	3,131	3,407
Total fixed operating lease cost		<u>\$ 51,233</u>	<u>\$ 44,039</u>	<u>\$ 148,451</u>	<u>\$ 133,162</u>
Variable lease cost (1):	Selling and store operating	\$ 14,601	\$ 13,524	\$ 44,369	\$ 38,450
	Cost of sales	1,149	1,231	3,307	3,886
	Pre-opening	185	114	328	354
	General and administrative	408	194	1,027	598
Total variable lease cost		<u>\$ 16,343</u>	<u>\$ 15,063</u>	<u>\$ 49,031</u>	<u>\$ 43,288</u>
Sublease income	Cost of sales	(681)	(681)	(2,041)	(2,041)
Total operating lease cost (2)		<u>\$ 66,895</u>	<u>\$ 58,421</u>	<u>\$ 195,441</u>	<u>\$ 174,409</u>

(1) Includes variable costs for common area maintenance, property taxes, and insurance on leased real estate.

(2) Excludes short-term lease costs, which were immaterial for the thirteen and thirty-nine weeks ended September 28, 2023 and September 29, 2022.

Undiscounted Cash Flows

Future minimum lease payments under non-cancelable operating leases as of September 28, 2023 were as follows:

<i>in thousands</i>	Amount
Thirteen weeks ending December 28, 2023	\$ 42,334
2024	210,612
2025	200,864
2026	188,072
2027	178,914
Thereafter	1,277,883
Total minimum lease payments (1) (2)	2,098,679
Less: amount of lease payments representing interest	648,105
Present value of future minimum lease payments	1,450,574
Less: current obligations under leases	125,348
Long-term lease obligations	<u>\$ 1,325,226</u>

(1) Future lease payments exclude approximately \$477.0 million of legally binding minimum lease payments for operating leases signed but not yet commenced.

(2) Operating lease payments include \$242.3 million related to options to extend lease terms that are reasonably certain of being exercised.

For the thirty-nine weeks ended September 28, 2023 and September 29, 2022, cash paid for amounts included in the measurement of operating lease liabilities was \$141.7 million and \$131.3 million, respectively.

Litigation

On November 15, 2021, the Company was added as a defendant in a wrongful death lawsuit, Nguyen v. Inspections Now, Inc., No. 21-DCV-287142, pending in the 434th Judicial District Court of Fort Bend County, Texas. Inspections Now, Inc.; Bestview International Company; and Bestview (Fuzhou) Import & Export Co. LTD are also named as defendants in the case. Plaintiff's petition alleges that "wood paneling" allegedly purchased from the Company was installed in the vicinity of plaintiff's fireplace and caught fire while the fireplace was lit. The fire consumed plaintiff's home and resulted in injuries to plaintiff and another occupant and the death of plaintiff's three children and mother. Plaintiff alleges product defect and failure to warn claims against the Company; product defect, failure to warn, and strict liability claims against the Bestview entities; and negligent inspection claims against Inspections Now. Plaintiff's petition seeks damages in excess of \$1.0 million for property damage, personal injury, and wrongful death. The petition also seeks exemplary damages. Plaintiff's ex-husband, brother, and the additional occupant have since intervened in the lawsuit. Intervenors allege the same claims against the Company, Inspections Now, and the Bestview entities and collectively seek damages in excess of \$11.0 million for property damage, personal injury (as to the other occupant), wrongful death, and exemplary damages. The Company has answered all petitions, denying the allegations, and is seeking dismissal of the lawsuit in favor of a first-filed lawsuit against other defendants (but arising from the same fire) pending in Harris County, Texas. The trial court denied the Company's motion seeking dismissal on February 23, 2023, and on August 29, 2023, the Court of Appeals for the First Judicial District of Texas (in No. 01-23-00225-CV) denied the Company's petition for a writ of mandamus challenging the trial court's ruling. On October 10, 2023, the Company filed a petition seeking mandamus relief from the trial court's ruling in the Supreme Court of Texas, No. 23-0845. That petition remains pending.

On June 18, 2020, an alleged stockholder filed a putative derivative complaint, Lincolnshire Police Pension Fund v. Taylor, et al., No. 2020-0487-JTL, in the Delaware Court of Chancery, purportedly on behalf of the Company against certain of the Company's officers, directors, and stockholders. An amended complaint was filed on September 14, 2022. The Company along with the other defendants filed a motion to dismiss on October 31, 2022. The plaintiffs then filed a second amended complaint on December 22, 2022. On February 6, 2023, the Company, along with the other defendants, filed a motion to dismiss the operative complaint. The complaint alleges breaches of fiduciary duties and unjust enrichment. The factual allegations underlying these claims are similar to the factual allegations made in the previously dismissed In re Floor & Decor Holdings, Inc. Securities Litigation, as described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. The complaint seeks unspecified damages and restitution for the Company from the individual defendants and the payment of costs and attorneys' fees.

The Company maintains insurance that may cover any liability arising out of the above-referenced litigation up to the policy limits and subject to meeting certain deductibles and to other terms and conditions thereof. Estimating an amount or range of possible losses resulting from litigation proceedings is inherently difficult, particularly where the matters involve indeterminate claims for monetary damages and are in the stages of the proceedings where key factual and legal issues have not been resolved. For these reasons, the Company is currently unable to predict the ultimate timing or outcome of or reasonably estimate the possible losses or a range of possible losses resulting from the above-referenced litigation.

The Company is also subject to various other legal actions, claims, and proceedings arising in the ordinary course of business, which may include claims related to general liability, workers' compensation, product liability, intellectual property, and employment-related matters resulting from its business activities. As with most actions such as these, an estimation of any possible and/or ultimate liability cannot always be determined. The Company establishes reserves for specific legal proceedings when it determines that the likelihood of an unfavorable outcome is probable and the amount of loss can be reasonably estimated. These various other ordinary course proceedings are not expected to have a material impact on the Company's consolidated financial position, cash flows, or results of operations, however regardless of the outcome, litigation can have an adverse impact on the Company because of defense and settlement costs, diversion of management resources, and other factors.

6. Stock-based Compensation

In accordance with ASC 718, *Compensation-Stock Compensation*, the Company measures compensation cost for all stock-based awards at fair value on the date of grant and recognizes compensation expense, net of forfeitures, using the straight-line method over the requisite service period of awards expected to vest, which for each of the awards is the service vesting period.

The table below presents components of stock-based compensation expense within the Company's Condensed Consolidated Statements of Operations and Comprehensive Income:

<i>in thousands</i>	Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022
General and administrative	\$ 18,927	\$ 16,911
Selling and store operating	1,409	318
Total stock-based compensation expense	<u>\$ 20,336</u>	<u>\$ 17,229</u>

Stock Options

The table below summarizes stock option activity for the thirty-nine weeks ended September 28, 2023.

	Options	Weighted Average Exercise Price
Outstanding at December 30, 2022	2,101,559	\$ 27.10
Exercised	(336,061)	\$ 23.53
Forfeited or expired	(3,983)	\$ 48.97
Outstanding at September 28, 2023	<u>1,761,515</u>	\$ 27.73
Vested and exercisable at September 28, 2023	<u>1,669,036</u>	\$ 25.39

Restricted Stock Units

The Company periodically grants restricted stock units (“RSUs”) that represent an unfunded, unsecured right to receive a share of the Company’s Class A common stock upon vesting. During the thirty-nine weeks ended September 28, 2023, the Company granted RSUs to certain employees, officers, and non-employee directors comprised of service-based RSUs, performance-based RSUs, and total shareholder return (“TSR”) awards. Service-based RSUs vest based on the grantee’s continued service through the vesting date. The performance-based RSUs cliff vest based on (i) the Company’s achievement of predetermined financial metrics at the end of a three-year performance period and (ii) the grantee’s continued service through the vesting date. Depending on the performance-based RSU grant and the extent to which the relevant performance goals are achieved, the number of common shares earned upon vesting may range from either 0% to 150% or 0% to 200% of the award granted. The TSR awards cliff vest based on (i) the Company’s relative TSR compared to a specified peer group and (ii) the grantee’s continued service through the vesting date. The number of common shares earned upon vesting of the TSR awards may range from 0% to 150% of the TSR awards granted with no vesting above the target awards amount if the Company’s three-year absolute TSR is negative. The Company assesses the probability of achieving all performance goals on a quarterly basis. The service periods for RSUs granted during the period varies by grantee and ranges between approximately two to four years from the grant date.

The following table summarizes restricted stock unit activity during the thirty-nine weeks ended September 28, 2023:

	Restricted Stock Units			
	Service-based	Performance-based	Total shareholder return	Total Restricted Stock Units
Unvested at December 30, 2022	408,829	36,117	—	444,946
Granted	374,685	188,543	58,854	622,082
Vested	(132,432)	—	—	(132,432)
Forfeited	(24,262)	(36,117)	—	(60,379)
Unvested at September 28, 2023	626,820	188,543	58,854	874,217

The aggregate fair value for all restricted stock units granted during the thirty-nine weeks ended September 28, 2023 was \$6.3 million. The grant-date fair value of service-based RSUs and performance-based RSUs is based on the closing market price of the Company’s Class A common stock on the date of grant. The grant-date fair value of TSR awards is estimated using a Monte Carlo valuation method, which included the following assumptions for TSR awards granted during the period:

	Thirty-nine Weeks Ended September 28, 2023
Expected term (in years)	2.8
Risk-free interest rate	4.5 %
Expected volatility	49.5 %
Dividend yield	— %

Restricted Stock Awards

The following table summarizes restricted stock award activity during the thirty-nine weeks ended September 28, 2023:

	Restricted Stock Awards			
	Service-based	Performance-based (1)	Total shareholder return (1)	Total Restricted Stock Awards
Unvested at December 30, 2022	103,326	134,318	87,517	325,161
Vested	(68,334)	(86,656)	(56,461)	(211,451)
Unvested at September 28, 2023	34,992	47,662	31,056	113,710

(1) The performance-based and total shareholder return restricted stock awards that vested during the period were issued at 100% of target based on achievement of the predetermined performance and total shareholder return criteria as specified in the underlying grant agreements.

7. Earnings Per Share

Net Income per Common Share

The Company calculates basic earnings per share by dividing net income by the weighted average number of common shares outstanding during the period. Diluted earnings per share is computed by dividing net income by the weighted average number of common shares outstanding adjusted for the dilutive effect of share-based awards using the treasury stock method.

The following table shows the computation of basic and diluted earnings per share:

<i>in thousands, except per share data</i>	Thirteen Weeks Ended		Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022	September 28, 2023	September 29, 2022
Net income	\$ 65,923	\$ 76,175	\$ 208,899	\$ 228,958
Basic weighted average shares outstanding	106,393	105,754	106,187	105,565
Dilutive effect of share-based awards	1,609	1,716	1,663	1,879
Diluted weighted average shares outstanding	108,002	107,470	107,850	107,444
Basic earnings per share	\$ 0.62	\$ 0.72	\$ 1.97	\$ 2.17
Diluted earnings per share	\$ 0.61	\$ 0.71	\$ 1.94	\$ 2.13

The following potentially dilutive securities were excluded from the computation of diluted earnings per share as a result of their anti-dilutive effect:

<i>in thousands</i>	Thirteen Weeks Ended		Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022	September 28, 2023	September 29, 2022
Stock options	56	71	56	70
Restricted stock	—	12	—	—
Restricted stock units	8	301	14	229

8. Fair Value Measurements

As of September 28, 2023 and December 29, 2022, the Company had certain financial assets and liabilities on its Condensed Consolidated Balance Sheets that were required to be measured at fair value on a recurring or non-recurring basis. The estimated fair values of financial assets and liabilities such as cash and cash equivalents, receivables, prepaid expenses and other current assets, other assets, accounts payable, and accrued expenses and other current liabilities approximate their respective carrying values as reported within the Condensed Consolidated Balance Sheets. See Note 3, "Debt" for discussion of the fair value of the Company's debt.

Contingent Earn-out Liabilities

As of September 28, 2023, the contingent earn-out liabilities had an aggregate estimated fair value of \$10.9 million (classified as Level 3 within the fair value hierarchy), of which \$5.6 million is included in accrued expenses and other current liabilities and \$5.3 million is included in other liabilities within the Condensed Consolidated Balance Sheets.

The table below summarizes changes in contingent earn-out liabilities during the thirty-nine weeks ended September 28, 2023.

<i>in thousands</i>	Contingent Earn-out Liabilities
Balance at December 29, 2022	\$ 11,019
Acquisition (1)	2,750
Fair value adjustments	2,329
Payments	(5,241)
Balance at September 28, 2023	<u>\$ 10,857</u>

(1) During the thirty-nine weeks ended September 28, 2023, the Company acquired a commercial flooring and installation supplies distributor for total consideration of \$ 20.1 million, including \$17.4 million of cash and contingent earn-out consideration with an estimated fair value of \$2.8 million. The estimated fair value of the contingent earn-out consideration was determined using a discounted cash flow model which included significant unobservable inputs related to projected revenue and gross margin. Payout of the contingent consideration is subject to the acquired company's achievement of certain annual gross margin and gross profit targets in fiscal years 2023 through 2025. A portion of these earn-out opportunities is payable each year only to the extent the applicable performance targets for that year are met, with a maximum potential payout of \$4.0 million requiring that each of the individual annual targets are achieved. Refer to Note 10, "Acquisition" for additional information.

The \$2.3 million net increase in the fair value of contingent earn-out liabilities during the thirty-nine weeks ended September 28, 2023 was recognized in general and administrative expense within the Condensed Consolidated Statements of Operations and Comprehensive Income.

Interest Rate Cap Contracts

Changes in interest rates impact the Company's results of operations. In an effort to manage exposure to this risk, the Company enters into derivative contracts and may adjust its derivative portfolio as market conditions change.

The Company has outstanding interest rate cap contracts that are designated as cash flow hedges. The effective portion of the gain or loss on effective cash flow hedges is reported as a component of Accumulated Other Comprehensive Income ("AOCI") and reclassified into earnings in the same period in which the hedged transaction affects earnings. The effective portion of the derivative represents the change in fair value of the hedge that offsets the change in fair value of the hedged item. To the extent the change in the fair value of the hedge does not perfectly offset the change in the fair value of the hedged item, the ineffective portion of the hedge is immediately recognized in earnings.

The Company's outstanding interest rate cap contracts were valued primarily using Level 2 inputs based on data readily observable in public markets. The Company's interest rate cap contracts were negotiated with counterparties without going through a public exchange. Accordingly, the Company's fair value assessments for these derivative contracts gave consideration to the risk of counterparty default as well as the Company's own credit risk. As of September 28, 2023 and December 29, 2022, the total fair value of the Company's interest rate cap contracts was approximately \$3.2 million and \$5.9 million, respectively, which are presented as a component of AOCI within stockholders' equity on the Condensed Consolidated Balance Sheets net of tax of \$0.7 million and \$1.4 million, respectively. During the thirteen and thirty-nine weeks ended September 28, 2023, the Company reclassified \$1.4 million and \$3.7 million, respectively, of interest income from AOCI into earnings related to the interest rate cap contracts. During the thirteen and thirty-nine weeks ended September 29, 2022, \$0.2 million of interest income was reclassified from AOCI into earnings.

9. Supply Chain Finance

The Company facilitates supply chain finance programs through financial intermediaries, which provide certain suppliers the option to be paid by the financial intermediaries earlier than the due date on the applicable invoice. When a supplier utilizes one of the supply chain finance programs and receives an early payment from a financial intermediary, it takes a discount on the invoice. The Company then pays the financial intermediary the invoice on the original due date. The Company does not reimburse suppliers for any costs they incur for participation in the program. Supplier participation is voluntary, and there are no assets pledged as security or other forms of guarantees provided for the committed payment to the financial intermediaries. As a result, all amounts owed to the financial intermediaries are presented as trade accounts payable in the Condensed Consolidated Balance Sheets. Amounts due to the financial intermediaries reflected in trade accounts payable at September 28, 2023 and December 29, 2022 were \$135.7 million and \$82.5 million, respectively.

10. Acquisition

As part of the Company's continued expansion into commercial flooring, the Company acquired commercial flooring and installation supplies distributor Salesmaster Associates, Inc. ("Salesmaster") on June 7, 2023 ("acquisition date"). Total estimated consideration for the acquisition was \$20.1 million, including \$17.4 million of cash and contingent consideration with an estimated fair value of \$2.8 million (refer to Note 8, "Fair Value Measurements" for additional information regarding the contingent consideration). The acquisition was accounted for in accordance with ASC 805, *Business Combinations*, and, accordingly, Salesmaster's results of operations, financial position, and cash flows have been consolidated in the Company's condensed consolidated financial statements since the date of acquisition. Net sales and net earnings for fiscal 2023 attributable to Salesmaster since the completion of the acquisition were immaterial. Results of operations would not be materially different as a result of the acquisition and therefore pro forma information is not presented. Acquisition-related costs totaling \$0.9 million were expensed as incurred and recognized within general and administrative expenses within the Condensed Consolidated Statements of Operations and Comprehensive Income during the thirty-nine weeks ended September 28, 2023. No acquisition-related costs were incurred during the thirteen weeks ended September 28, 2023.

In accordance with ASC 805, the Company provisionally recorded the following assets and liabilities at their preliminary estimated acquisition date fair values: \$12.1 million of net working capital consisting primarily of inventory and receivables, \$6.0 million of lease right-of-use assets and fixed assets, \$5.0 million of customer relationships, \$2.5 million of goodwill, and \$5.5 million of operating lease liabilities. The preliminary fair value of the customer relationships was determined with assistance from a third-party valuation specialist using the multi-period excess earnings method and included significant assumptions such as the amount and timing of projected cash flows, growth rates, customer attrition rates, and discount rates, resulting in a Level 3 classification within the fair value hierarchy. The customer relationships will be amortized over an estimated useful life of 12 years.

The goodwill arising from the acquisition is primarily attributable to operational synergies and acceleration of growth strategies. The goodwill and intangible assets from the Salesmaster acquisition are fully deductible for U.S. federal and state tax purposes.

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

The following discussion and analysis of the financial condition and results of our operations should be read together with the financial statements and related notes of Floor & Decor Holdings, Inc. and Subsidiaries included in Item 1 of this quarterly report on Form 10-Q (this “Quarterly Report”) and with our audited financial statements and the related notes included in our Annual Report on Form 10-K for the fiscal year ended December 29, 2022 and filed with the Securities and Exchange Commission (the “SEC”) on February 23, 2023 (the “Annual Report”). As used in this Quarterly Report, except where the context otherwise requires or where otherwise indicated, the terms “Floor & Decor,” “Company,” “we,” “our,” or “us” refer to Floor & Decor Holdings, Inc. and its subsidiaries.

Overview

Founded in 2000, Floor & Decor is a high-growth, differentiated, multi-channel specialty retailer and commercial distributor of hard surface flooring and related accessories with 207 warehouse-format stores across 36 states as of September 28, 2023. We believe that we offer the industry’s broadest in-stock assortment of tile, wood, laminate, vinyl, and natural stone flooring along with decorative and installation accessories and adjacent categories at everyday low prices, positioning us as the one-stop destination for our customers’ entire hard surface flooring needs. We appeal to a variety of customers, including professional installers and commercial businesses (“Pro”), do it yourself customers (“DIY”), and buy it yourself customers who buy the products for professional installation (“BIY”).

We operate on a 52- or 53-week fiscal year ending the Thursday on or preceding December 31. The following discussion contains references to the thirteen and thirty-nine weeks ended September 28, 2023 and September 29, 2022, respectively.

During the thirty-nine weeks ended September 28, 2023, we continued to make key long-term strategic investments, including:

- opening 17 new warehouse-format stores and closing one warehouse-format store, ending the quarter with 207 warehouse-format stores and five design studios;
- continuing our strategic expansion into commercial flooring through our acquisition of Salesmaster, a commercial flooring and installation supplies distributor that primarily serves end users and flooring contractors in New York City and certain New England markets (refer to Note 10, “Acquisition” for additional details);
- focusing on innovative new products and localized assortments, supported by inspirational in-store and online visual merchandising solutions;
- investing in our Pro, connected customer, in-store designer, customer relationship, and store focused technology;
- adding more resources dedicated to serving our Pro customers, including hiring professional external sales staff to drive more commercial sales; and
- investing capital to continue enhancing the in-store shopping experience for our customers.

Key Performance Indicators

We consider a variety of performance and financial measures in assessing the performance of our business. The key performance and financial measures we use to determine how our business is performing are comparable store sales, the number of new store openings, gross profit and gross margin, operating income, and EBITDA and Adjusted EBITDA. For definitions and a discussion of how we use our key performance indicators, see the “Key Performance Indicators” section of “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” of our Annual Report. See “Non-GAAP Financial Measures” below for a discussion of how we define EBITDA and Adjusted EBITDA and a reconciliation of EBITDA and Adjusted EBITDA to net income, the most directly comparable financial measure calculated and presented in accordance with accounting principles generally accepted in the United States (“GAAP”).

Other key financial terms we use include net sales, selling and store operating expenses, general and administrative expenses, and pre-opening expenses. For definitions and a discussion of how we use other key financial terms, see the “Other Key Financial Definitions” section of “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” of our Annual Report.

Results of Operations

See Item 1A., “Risk Factors” for information about the potential impacts that risks, such as global supply chain disruptions, inflation, geopolitical instability, and COVID-19, among others, may have on our results of operations and overall financial performance for future periods.

The following table summarizes key components of our results of operations for the periods indicated (certain numbers may not sum due to rounding):

<i>dollars in thousands</i>	Thirteen Weeks Ended					
	September 28, 2023		September 29, 2022		Increase (Decrease)	
	Amount	% of Net Sales	Amount	% of Net Sales	\$	%
Net sales	\$ 1,107,812	100.0 %	\$ 1,097,824	100.0 %	\$ 9,988	0.9 %
Cost of sales	640,357	57.8	650,349	59.2	(9,992)	(1.5)%
Gross profit	467,455	42.2	447,475	40.8	19,980	4.5 %
Operating expenses:						
Selling and store operating	308,581	27.9	280,735	25.6	27,846	9.9 %
General and administrative	59,870	5.3	54,697	5.0	5,173	9.5 %
Pre-opening	14,232	1.3	10,386	0.9	3,846	37.0 %
Total operating expenses	382,683	34.5	345,818	31.5	36,865	10.7 %
Operating income	84,772	7.7	101,657	9.3	(16,885)	(16.6)%
Interest expense, net	1,246	0.2	3,032	0.3	(1,786)	(58.9)%
Income before income taxes	83,526	7.5	98,625	9.0	(15,099)	(15.3)%
Income tax expense	17,603	1.5	22,450	2.0	(4,847)	(21.6)%
Net income	\$ 65,923	6.0 %	\$ 76,175	6.9 %	\$ (10,252)	(13.5)%

<i>dollars in thousands</i>	Thirty-nine Weeks Ended					
	September 28, 2023		September 29, 2022		Increase (Decrease)	
	Amount	% of Net Sales	Amount	% of Net Sales	\$	%
Net sales	\$ 3,365,763	100.0 %	\$ 3,216,404	100.0 %	\$ 149,359	4.6 %
Cost of sales	1,949,557	57.9	1,924,589	59.8	24,968	1.3 %
Gross profit	1,416,206	42.1	1,291,815	40.2	124,391	9.6 %
Operating expenses:						
Selling and store operating	923,658	27.4	798,437	24.8	125,221	15.7 %
General and administrative	185,060	5.5	162,449	5.1	22,611	13.9 %
Pre-opening	32,226	1.0	28,890	0.9	3,336	11.5 %
Total operating expenses	1,140,944	33.9	989,776	30.8	151,168	15.3 %
Operating income	275,262	8.2	302,039	9.4	(26,777)	(8.9)%
Interest expense, net	9,006	0.3	5,866	0.2	3,140	53.5 %
Income before income taxes	266,256	7.9	296,173	9.2	(29,917)	(10.1)%
Income tax expense	57,357	1.7	67,215	2.1	(9,858)	(14.7)%
Net income	\$ 208,899	6.2 %	\$ 228,958	7.1 %	\$ (20,059)	(8.8)%

Selected Financial Information

	Thirteen Weeks Ended				Thirty-nine Weeks Ended			
	September 28, 2023		September 29, 2022		September 28, 2023		September 29, 2022	
Comparable store sales	(9.3)	%	11.6	%	(6.3)	%	11.6	%
Comparable average ticket	(2.8)	%	19.5	%	1.8	%	18.0	%
Comparable customer transactions	(6.8)	%	(6.7)	%	(7.9)	%	(5.4)	%
Number of warehouse-format stores	207		178		207		178	
Adjusted EBITDA (in thousands) (1)	\$	140,939	\$	147,909	\$	443,366	\$	433,983
Adjusted EBITDA (% of net sales)	12.7	%	13.5	%	13.2	%	13.5	%

(1) EBITDA and Adjusted EBITDA are non-GAAP financial measures. See the "Non-GAAP Financial Measures" section below for additional information and a reconciliation of EBITDA and Adjusted EBITDA to net income.

Net Sales

Net sales during the thirteen weeks ended September 28, 2023 increased \$10.0 million, or 0.9%, compared to the corresponding prior year period primarily due to sales from the 30 new warehouse-format stores that we opened since September 29, 2022 and growth in our commercial business, partially offset by a decrease in comparable store sales of 9.3% and closing one store. The comparable store sales decline during the period of 9.3%, or \$102.0 million, was driven by a 6.8% decrease in comparable customer transactions and a 2.8% decrease in comparable average ticket. Non-comparable store sales of \$112.0 million during the same period were primarily driven by new stores and revenue from our Spartan subsidiary.

Net sales during the thirty-nine weeks ended September 28, 2023 increased \$149.4 million, or 4.6%, compared to the corresponding prior year period primarily due to sales from the 30 new warehouse-format stores that we opened since September 29, 2022 and growth in our commercial business, partially offset by a decrease in comparable store sales of 6.3% and closing one store. The comparable store sales decline during the period of 6.3%, or \$199.8 million, was driven by a 7.9% decrease in comparable customer transactions, partially offset by a 1.8% increase in comparable average ticket. Non-comparable store sales of \$349.2 million during the same period were primarily driven by new stores and revenue from our Spartan subsidiary.

We believe the decreases in comparable customer transactions for the thirteen and thirty-nine weeks ended September 28, 2023 was primarily driven by declines in existing home sales, higher borrowing costs, pressure on housing affordability, inflation, and a shift in consumer spending toward travel and services. During the thirteen and thirty-nine weeks ended September 28, 2023, decreases in comparable customer transactions were partially offset by retail price increases related to higher supply chain and product costs compared to the same periods last year. These retail price increases were partially offset by some customers reducing project sizes, which resulted in a decrease in our comparable average ticket during the current fiscal quarter.

Gross Profit and Gross Margin

Gross profit during the thirteen weeks ended September 28, 2023 increased \$20.0 million, or 4.5%, compared to the corresponding prior year period. The increase in gross profit was driven by the 0.9% increase in net sales and an increase in gross margin to 42.2%, up approximately 140 basis points from 40.8% in the same period a year ago.

Gross profit during the thirty-nine weeks ended September 28, 2023 increased \$124.4 million, or 9.6%, compared to the corresponding prior year period. The increase in gross profit was driven by the 4.6% increase in net sales and an increase in gross margin to 42.1%, up approximately 190 basis points from 40.2% in the same period a year ago.

The increases in gross margin during the thirteen and thirty-nine weeks ended September 28, 2023 were primarily driven by retail price increases taken primarily in 2022 to offset higher supply chain and product costs and a decline in supply chain and product costs in 2023.

Selling and Store Operating Expenses

Selling and store operating expenses during the thirteen weeks ended September 28, 2023 increased \$27.8 million, or 9.9%, compared to the corresponding prior year period. As a percentage of net sales, selling and store operating expenses increased approximately 230 basis points to 27.9% from 25.6% in the corresponding prior year period.

Selling and store operating expenses during the thirty-nine weeks ended September 28, 2023 increased \$125.2 million, or 15.7%, compared to the corresponding prior year period. As a percentage of net sales, selling and store operating expenses increased approximately 260 basis points to 27.4% from 24.8% in the corresponding prior year period.

The increases in selling and store operating expenses in total and as a percentage of net sales during the thirteen and thirty-nine weeks ended September 28, 2023 were primarily attributable to growth in new stores, wage increases, higher credit card transaction processing fees, and deleverage in occupancy and other fixed costs resulting from a decrease in comparable store sales.

General and Administrative Expenses

General and administrative expenses during the thirteen weeks ended September 28, 2023 increased \$5.2 million, or 9.5%, compared to the corresponding prior year period. General and administrative expenses as a percentage of net sales increased approximately 30 basis points to 5.3% from 5.0% in the corresponding prior year period.

General and administrative expenses during the thirty-nine weeks ended September 28, 2023 increased \$22.6 million, or 13.9%, compared to the corresponding prior year period. General and administrative expenses as a percentage of net sales increased approximately 40 basis points to 5.5% from 5.1% in the corresponding prior year period.

The increases in general and administrative expenses during the thirteen and thirty-nine weeks ended September 28, 2023 were due to costs to support store growth, including additional store support staff, higher depreciation related to technology and other store support center investments, and operating expenses related to our Spartan subsidiary. The increases in general and administrative expenses as a percentage of net sales during the thirteen and thirty-nine weeks ended September 28, 2023 were primarily driven by deleverage from a decrease in comparable store sales, partially offset by lower accruals for employee incentive compensation.

Pre-Opening Expenses

Pre-opening expenses during the thirteen weeks ended September 28, 2023 increased \$3.8 million, or 37.0%, compared to the corresponding prior year period.

Pre-opening expenses during the thirty-nine weeks ended September 28, 2023 increased \$3.3 million, or 11.5%, compared to the corresponding prior year period.

The increases in pre-opening expenses during the thirteen and thirty-nine weeks ended September 28, 2023 primarily resulted from an increase in the number of future stores that we were preparing to open compared to the same periods a year ago.

Interest Expense, Net

Net interest expense during the thirteen weeks ended September 28, 2023 decreased \$1.8 million, or 58.9%, compared to the thirteen weeks ended September 29, 2022 primarily due to a decrease in average amounts outstanding under our ABL Facility, higher interest income from our interest cap derivative contracts, and an increase in interest capitalized, partially offset by interest rate increases on outstanding debt.

Net interest expense during the thirty-nine weeks ended September 28, 2023 increased \$3.1 million, or 53.5%, compared to the thirty-nine weeks ended September 29, 2022. The increase in interest expense for the thirty-nine weeks ended September 28, 2023 was primarily due to interest rate increases on outstanding debt and an increase in average amounts outstanding under our ABL Facility, partially offset by higher interest income from our interest cap derivative contracts and interest capitalized.

Income Tax Expense

Income tax expense was \$17.6 million during the thirteen weeks ended September 28, 2023 compared to \$22.5 million during the thirteen weeks ended September 29, 2022. The effective tax rate was 21.1% for the thirteen weeks ended September 28, 2023 compared to 22.8% in the corresponding prior year period.

Income tax expense was \$57.4 million during the thirty-nine weeks ended September 28, 2023 compared to \$67.2 million during the thirty-nine weeks ended September 29, 2022. The effective tax rate was 21.5% for the thirty-nine weeks ended September 28, 2023 compared to 22.7% in the corresponding prior year period.

The decreases in the effective tax rate during the thirteen and thirty-nine weeks ended September 28, 2023 were primarily due to an increase in excess tax benefits related to stock-based compensation awards that was partially offset by limitations on deductions for compensation to certain employees under Internal Revenue Code Section 162(m).

Non-GAAP Financial Measures

EBITDA and Adjusted EBITDA are key metrics used by management and our board of directors to assess our financial performance and enterprise value. We believe that EBITDA and Adjusted EBITDA are useful measures, as they eliminate certain expenses that are not indicative of our core operating performance and facilitate a comparison of our core operating performance on a consistent basis from period to period. We also use Adjusted EBITDA as a basis to determine covenant compliance with respect to our ABL Facility and Term Loan Facility (together, the "Credit Facilities"), to supplement GAAP measures of performance to evaluate the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other peer companies using similar measures. EBITDA and Adjusted EBITDA are also frequently used by analysts, investors, and other interested parties as performance measures to evaluate companies in our industry.

EBITDA and Adjusted EBITDA are supplemental measures of financial performance that are not required by or presented in accordance with GAAP. We define EBITDA as net income before interest, taxes, depreciation and amortization. We define Adjusted EBITDA as net income before interest, taxes, depreciation and amortization adjusted to eliminate the impact of non-cash stock-based compensation expense and certain items that we do not consider indicative of our core operating performance. See below for a reconciliation of EBITDA and Adjusted EBITDA to net income, the most directly comparable financial measure calculated and presented in accordance with GAAP.

EBITDA and Adjusted EBITDA are non-GAAP measures of our financial performance and should not be considered as alternatives to net income as a measure of financial performance or any other performance measure derived in accordance with GAAP, and they should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Additionally, EBITDA and Adjusted EBITDA are not intended to be measures of liquidity or free cash flow for management's discretionary use. In addition, these non-GAAP measures exclude certain non-recurring and other charges. Each of these non-GAAP measures has its limitations as an analytical tool, and you should not consider them in isolation or as a substitute for analysis of our results as reported under GAAP. In evaluating EBITDA and Adjusted EBITDA, you should be aware that in the future we may incur expenses that are the same as or similar to some of the items eliminated in the adjustments made to determine EBITDA and Adjusted EBITDA, such as stock-based compensation expense, distribution center relocation expenses, fair value adjustments related to contingent earn-out liabilities, and other adjustments. Our presentation of EBITDA and Adjusted EBITDA should not be construed to imply that our future results will be unaffected by any such adjustments. Definitions and calculations of EBITDA and Adjusted EBITDA differ among companies in the retail industry, and therefore EBITDA and Adjusted EBITDA disclosed by us may not be comparable to the metrics disclosed by other companies.

For the periods presented, the following table reconciles EBITDA and Adjusted EBITDA to net income, the most directly comparable financial measure calculated and presented in accordance with GAAP:

<i>in thousands</i>	Thirteen Weeks Ended		Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022	September 28, 2023	September 29, 2022
Net income	\$ 65,923	\$ 76,175	\$ 208,899	\$ 228,958
Depreciation and amortization (a)	50,336	39,600	145,439	111,237
Interest expense, net	1,246	3,032	9,006	5,866
Income tax expense	17,603	22,450	57,357	67,215
EBITDA	135,108	141,257	420,701	413,276
Stock-based compensation expense (b)	5,289	6,360	20,336	17,229
Other (c)	542	292	2,329	3,478
Adjusted EBITDA	\$ 140,939	\$ 147,909	\$ 443,366	\$ 433,983

(a) Excludes amortization of deferred financing costs, which is included as part of interest expense, net in the table above.

(b) Non-cash charges related to stock-based compensation programs, which vary from period to period depending on the timing of awards and forfeitures.

(c) Other adjustments include amounts management does not consider indicative of our core operating performance. Amounts for the thirteen and thirty-nine weeks ended September 28, 2023 relate to changes in the fair value of contingent earn-out liabilities. Amounts for the thirteen and thirty-nine weeks ended September 29, 2022 primarily relate to relocation expenses for our Houston distribution center and changes in the fair value of contingent earn-out liabilities.

Liquidity and Capital Resources

Liquidity is provided primarily by cash flows from operations and our \$800.0 million ABL Facility. Unrestricted liquidity based on our September 28, 2023 financial data was \$758.9 million, consisting of \$61.6 million in cash and cash equivalents and \$697.3 million immediately available for borrowing under the ABL Facility without violating any covenants thereunder. Our liquidity is not generally seasonal, and our uses of cash are primarily tied to when we open stores and make other capital expenditures.

Our primary cash needs are for merchandise inventories, payroll, store rent, and other operating expenses and capital expenditures associated with opening new stores and remodeling existing stores, as well as information technology, e-commerce, and store support center infrastructure. We also use cash for the payment of taxes and interest and, as applicable, acquisitions. We expect that cash generated from operations together with cash on hand, the availability of borrowings under our credit facilities, and if necessary, additional funding through other forms of external financing, will be sufficient to meet liquidity requirements, anticipated capital expenditures, and payments due under our credit facilities for the next twelve months and the foreseeable future.

Total capital expenditures in fiscal 2023 are planned to be between approximately \$550 million to \$575 million and are expected to be funded primarily by cash generated from operations and borrowings under the ABL Facility. Our capital needs may change in the future due to changes in our business, new opportunities that we choose to pursue, or other factors. We currently expect the following for capital expenditures in fiscal 2023 (projected amounts are based on the gross costs that we expect to accrue for these investments on the Condensed Consolidated Balance Sheets in fiscal 2023, which may include amounts incurred but not yet settled in cash during the period):

- invest approximately \$430 million to \$445 million to open 32 warehouse-format stores, relocate stores, and begin construction on stores opening in fiscal 2024;
- invest approximately \$90 million to \$95 million in existing store remodeling projects and our distribution centers; and
- invest approximately \$30 million to \$35 million in information technology infrastructure, e-commerce, and other store support center initiatives.

Cash Flow Analysis

A summary of our operating, investing, and financing activities is shown in the following table:

<i>in thousands</i>	Thirty-nine Weeks Ended	
	September 28, 2023	September 29, 2022
Net cash provided by operating activities	\$ 698,975	\$ 7,325
Net cash used in investing activities	(431,070)	(319,173)
Net cash (used in) provided by financing activities	(216,071)	180,091
Net increase (decrease) in cash and cash equivalents	\$ 51,834	\$ (131,757)

Net Cash Provided by Operating Activities

Cash provided by operating activities consists primarily of (i) net income adjusted for non-cash items, including depreciation and amortization, stock-based compensation, deferred income taxes, and changes in the fair values of contingent earn-out liabilities and (ii) changes in working capital.

Net cash provided by operating activities during the thirty-nine weeks ended September 28, 2023 and September 29, 2022 was \$699.0 million and \$7.3 million, respectively. The increase in net cash provided by operating activities was primarily driven by a decrease in inventory, an increase in trade accounts payable, and an increase in cash earnings after adjusting net income for non-cash items such as depreciation and amortization.

Net Cash Used in Investing Activities

Investing activities typically consist primarily of capital expenditures for new store openings and existing store remodels, including leasehold improvements, racking, fixtures, vignettes, and design centers, as well as new infrastructure and information systems. Cash payments to acquire businesses are also included in investing activities.

Net cash used in investing activities during the thirty-nine weeks ended September 28, 2023 and September 29, 2022 was \$431.1 million and \$319.2 million, respectively. The increase in cash used in investing activities was due to an increase in capital expenditures and the Salesmaster acquisition. The growth in capital expenditures was primarily driven by an increase in new stores under construction and settlement of outstanding construction payables for recently completed stores compared to the corresponding prior year period.

Net Cash (Used in) Provided by Financing Activities

Financing activities consist primarily of borrowings and related repayments under our credit agreements, tax payments related to the vesting or exercise of stock-based compensation awards, proceeds from the exercise of stock options and our employee share purchase program, and payments of contingent earn-out consideration.

Net cash used in financing activities was \$216.1 million for the thirty-nine weeks ended September 28, 2023 compared to net cash provided by financing activities of \$180.1 million for the thirty-nine weeks ended September 29, 2022. The increase in net cash used in financing activities was primarily driven by ABL Facility repayments and an increase in tax payments related to the vesting or exercise of stock-based compensation awards.

Our Credit Facilities

As of September 28, 2023, total Term Loan Facility debt was \$202.9 million, and no amounts were outstanding under our ABL Facility. For additional information regarding our Term Loan Facility and ABL Facility, including applicable covenants and other details, please refer to Note 3, "Debt."

Credit Ratings

Our credit ratings are periodically reviewed by rating agencies. Standard & Poor's issuer credit rating of BB with a stable outlook and Moody's issuer credit rating of Ba3 with a positive outlook remain unchanged as of September 28, 2023. These ratings and our current credit condition affect, among other things, our ability to access new capital. Negative changes to these ratings may result in more stringent covenants and higher interest rates under the terms of any new debt. Our credit ratings could be lowered or rating agencies could issue adverse commentaries in the future, which could have a material adverse effect on our business, financial condition, results of operations, and liquidity. In particular, a weakening of our financial condition, including an increase in our leverage or decrease in our profitability or cash flows, could adversely affect our ability to obtain necessary funds, result in a credit rating downgrade or change in outlook, or otherwise increase our cost of borrowing.

U.S. Tariffs and Global Economy

The current domestic and international political environment, including existing and potential changes to U.S. policies related to global trade and tariffs, have resulted in uncertainty surrounding the future state of the global economy. In particular, the ongoing trade dispute between the U.S. and China has resulted in the U.S. imposing tariffs of 25% on many products from China. While exclusions from tariffs were granted for certain products from China, nearly all of these exclusions have expired. In fiscal 2022, approximately 29% of the products we sold were produced in China. As we continue to manage the impact these tariffs may have on our business, we continue taking steps to mitigate some of these cost increases through negotiating lower costs from our vendors, increasing retail pricing as we deem appropriate, and sourcing from alternative countries. While our efforts have mitigated a substantial portion of the overall effect of increased tariffs, the enacted tariffs have increased our inventory costs and associated cost of sales for the remaining products still sourced from China.

Critical Accounting Policies and Estimates

Our consolidated financial statements have been prepared in accordance with GAAP, which requires management to make estimates and assumptions that affect reported amounts. The estimates and assumptions are based on historical experience and other factors management believes to be reasonable. These estimates may change as new events occur and additional information is obtained. Actual results could differ materially from these estimates under different assumptions or conditions.

For a description of our critical accounting policies and estimates, refer to Part II, Item 7, "Critical Accounting Policies and Estimates" in our Annual Report. There have been no material changes to our critical accounting policies and estimates as disclosed in our Annual Report. See Note 1 to our condensed consolidated financial statements included in this Quarterly Report, which describes recent accounting pronouncements adopted by us.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

For quantitative and qualitative disclosures about market risk affecting the Company, see "Quantitative and Qualitative Disclosures About Market Risk" in Item 7A of Part II of the Annual Report. While our exposure to market risk has not changed materially since December 29, 2022, uncertainty with respect to the economic effects of global supply chain disruptions, inflation, geopolitical instability, including from the ongoing war in Ukraine, and COVID-19, among others, have introduced significant volatility in the financial markets, including interest rates and foreign currency exchange rates. See further discussion in Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations" for additional details.

Interest Rate Risk

Our operating results are subject to risk from interest rate fluctuations on our Credit Facilities, which have variable interest rates. Based on the \$202.9 million total outstanding principal balance of our Credit Facilities as of September 28, 2023, a 1.0% increase in the effective interest rate of this debt would cause an increase in interest expense of approximately \$2.0 million over the next twelve months, excluding the impact of interest rate cap agreements. To lessen our exposure to changes in interest rate risk, we entered into two \$75.0 million interest rate cap agreements in May 2021. The contracts effectively cap Secured Overnight Financing Rate ("SOFR") based interest payments on a portion of our Term Loan Facility to less than 1.68% through April 2024. The U.S. Federal Reserve has continued raising interest rates in fiscal 2023. As a result, these agreements are partially offsetting increases in interest expense on our Term Loan Facility as rates have increased to a level above the specified SOFR caps. For additional information related to the Company's Credit Facilities, refer to Note 3, "Debt."

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company's disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) are designed to provide reasonable assurance that the information required to be disclosed in the reports that the Company files or submits under the Exchange Act are recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in reports filed or submitted 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. The Company's management, including the Chief Executive Officer and the Chief Financial Officer, have reviewed the effectiveness of the Company's disclosure controls and procedures as of September 28, 2023 and, based on their evaluation, have concluded that the Company's disclosure controls and procedures were effective at the reasonable assurance level. The condensed consolidated financial statements included in this Quarterly Report fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with GAAP.

Changes in Internal Control Over Financial Reporting

There have been no changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) of the Exchange Act) during the fiscal quarter ended September 28, 2023 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

See the information under the "Litigation" caption in Note 5, Commitments and Contingencies to our Condensed Consolidated Financial Statements included in this Quarterly Report, which we incorporate here by reference.

Item 1A. Risk Factors

In addition to the other information set forth in this Quarterly Report, you should carefully consider the risk factors described in Part I, "Item 1A. Risk Factors" in our Annual Report filed with the SEC on February 23, 2023, which could materially affect our business, financial condition, and/or operating results.

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

During the thirteen weeks ended September 28, 2023, the Company did not sell any unregistered equity securities or repurchase any of its equity securities.

Item 5. Other Information

Second Amended and Restated Bylaws

On November 1, 2023, our board of directors (the "Board") approved and adopted, effective immediately, amended and restated bylaws of the Company (as amended and restated, the "Third Amended and Restated Bylaws"). The Amended and Restated Bylaws, among other things: (1) revise procedures and disclosure requirements for the nomination of directors and the submission of proposals for consideration at annual meetings of the stockholders of the Company, including, among other things, adding a requirement that a stockholder seeking to nominate director(s) at an annual meeting deliver to the Company reasonable evidence that it has complied with the requirements of Rule 14a-19 of the Exchange Act within eight business days of the meeting; (2) clarify the powers of the Board and the chair of a stockholder meeting to establish rules for the conduct of any meeting of stockholders; (3) clarify the manner for giving stockholders notice of meetings of stockholders; (4) clarify power of the chair of a stockholder meeting to adjourn a meeting of stockholders whether or not a quorum is present; (5) establish that special meetings of the Board may be called by either the Chairperson of the Board, the Chief Executive Officer, President or majority of the Board (rather than by the Chairperson, the Chief Executive Officer, President or any two directors); (6) specify that the U.S. federal district courts shall be the exclusive forum for the resolution of claims under the Securities Act of 1933, as amended; and (7) make certain administrative, modernizing, clarifying and confirming changes, including making updates to reflect recent amendments to the General Corporation Law of the State of Delaware.

The foregoing summary does not purport to be a complete description of the Third Amended and Restated Bylaws and is qualified in its entirety by reference to the full text of the Third Amended and Restated Bylaws, a copy of which is attached as Exhibit 3.2 and incorporated by reference herein.

Rule 10b5-1 Trading Plans

On August 17, 2023, Tom Taylor, Chief Executive Officer, adopted a Rule 10b5-1 trading arrangement intended to satisfy the affirmative defense of Rule 10b5-1(c) for the sale of up to 100,000 shares of the Company's common stock, subject to certain conditions. The plan will expire on February 16, 2024, or on any earlier date on which all of the shares have been sold.

On August 18, 2023, David Christopherson, Executive Vice President, General Counsel, and Secretary, adopted a Rule 10b5-1 trading arrangement intended to satisfy the affirmative defense of Rule 10b5-1(c) for the sale of up to 25,565 shares of the Company's common stock, subject to certain conditions. The plan will expire on February 26, 2024, or on any earlier date on which all of the shares have been sold.

Item 6. Exhibits

Exhibit No.	Exhibit Description
3.1	Amended & Restated Certificate of Incorporation of Floor & Decor Holdings, Inc. (1)
3.2	Third Amended and Restated Bylaws of Floor & Decor Holdings, Inc.
10.1	Addendum to Employment Agreement, dated August 25, 2023, between Floor & Decor Holdings, Inc., Floor and Decor Outlets of America, Inc. and Brian K. Robbins (2)
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of CEO and CFO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

(1) Filed as an exhibit to the Registrant's Form 10-Q (File No. 001-38070) filed with the SEC on August 5, 2021, and incorporated herein by reference.

(2) Filed as an exhibit to the Registrant's Form 8-K (File No. 001-38070) filed with the SEC on August 28, 2023, and incorporated herein by reference.

SIGNATURES

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

FLOOR & DECOR HOLDINGS, INC.

Dated: November 2, 2023

By: /s/ Thomas V. Taylor
Thomas V. Taylor
Chief Executive Officer
(Principal Executive Officer)

Dated: November 2, 2023

By: /s/ Bryan H. Langley
Bryan H. Langley
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Dated: November 2, 2023

By: /s/ Luke T. Olson
Luke T. Olson
Vice President, Chief Accounting Officer
(Principal Accounting Officer)

THIRD AMENDED AND RESTATED BYLAWS
OF
FLOOR & DECOR HOLDINGS, INC.

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I STOCKHOLDERS		
Section 1.1	<u>Place of Meetings</u>	1
Section 1.2	<u>Annual Meeting</u>	1
Section 1.3	<u>Special Meetings</u>	1
Section 1.4	<u>Notice of Meetings</u>	1
Section 1.5	<u>Voting List</u>	1
Section 1.6	<u>Quorum</u>	2
Section 1.7	<u>Adjournments</u>	2
Section 1.8	<u>Voting and Proxies</u>	3
Section 1.9	<u>Action at Meeting</u>	3
Section 1.10	<u>Nomination of Directors and Proposals of Other Business at Meetings of Stockholders</u>	4
Section 1.11	<u>Conduct of Meetings</u>	11
Section 1.12	<u>Certain Definitions</u>	12
ARTICLE II DIRECTORS		
Section 2.1	<u>General Powers</u>	13
Section 2.2	<u>Number, Election and Qualification</u>	13
Section 2.3	<u>Organization</u>	13
Section 2.4	<u>Quorum</u>	14
Section 2.5	<u>Action at Meeting</u>	14
Section 2.6	<u>Removal</u>	14
Section 2.7	<u>Resignation</u>	14
Section 2.8	<u>Vacancies</u>	14
Section 2.9	<u>Regular Meetings</u>	14
Section 2.10	<u>Special Meetings</u>	14
Section 2.11	<u>Notice of Special Meetings</u>	14
Section 2.12	<u>Meetings by Conference Communications Equipment</u>	15
Section 2.13	<u>Action by Consent</u>	15
Section 2.14	<u>Compensation of Directors</u>	15
ARTICLE III COMMITTEES		
Section 3.1	<u>Committees</u>	15
Section 3.2	<u>Conduct of Meetings</u>	16

ARTICLE IV
OFFICERS

Section 4.1	<u>Titles</u>	16
Section 4.2	<u>Qualification</u>	16
Section 4.3	<u>Tenure</u>	16
Section 4.4	<u>Removal</u>	16
Section 4.5	<u>Resignation</u>	16
Section 4.6	<u>Vacancies</u>	16
Section 4.7	<u>President; Chief Executive Officer</u>	17
Section 4.8	<u>Vice Presidents</u>	17
Section 4.9	<u>Secretary and Assistant Secretaries</u>	17
Section 4.10	<u>Treasurer and Assistant Treasurers</u>	17
Section 4.11	<u>Delegation of Authority</u>	18

ARTICLE V
CAPITAL STOCK

Section 5.1	<u>Issuance of Stock</u>	18
Section 5.2	<u>Stock Certificates; Uncertificated Shares</u>	18
Section 5.3	<u>Signatures</u>	19
Section 5.4	<u>Transfers</u>	19
Section 5.5	<u>Lost, Stolen or Destroyed Certificates</u>	19
Section 5.6	<u>Record Date</u>	19
Section 5.7	<u>Transfer Agents and Registrars</u>	20
Section 5.8	<u>Regulations</u>	20

ARTICLE VI
GENERAL PROVISIONS

Section 6.1	<u>Fiscal Year</u>	20
Section 6.2	<u>Corporate Seal</u>	20
Section 6.3	<u>Dividends</u>	20
Section 6.4	<u>Waiver of Notice</u>	20
Section 6.5	<u>Voting of Securities</u>	21
Section 6.6	<u>Reliance Upon Books, Reports and Records</u>	21
Section 6.7	<u>Evidence of Authority</u>	21
Section 6.8	<u>Certificate of Incorporation</u>	21
Section 6.9	<u>Manner of Notice to Stockholders</u>	21
Section 6.10	<u>Severability</u>	22
Section 6.11	<u>Pronouns</u>	22

ARTICLE VII
AMENDMENTS

ARTICLE VIII
INDEMNIFICATION AND ADVANCEMENT

Section 8.1	<u>Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation</u>	22
Section 8.2	<u>Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation</u>	23
Section 8.3	<u>Authorization of Indemnification</u>	23
Section 8.4	<u>Good Faith Defined</u>	23
Section 8.5	<u>Right of Claimant to Bring Suit</u>	24
Section 8.6	<u>Expenses Payable in Advance</u>	24
Section 8.7	<u>Non-exclusivity of Indemnification and Advancement of Expenses</u>	24
Section 8.8	<u>Insurance</u>	25
Section 8.9	<u>Certain Definitions</u>	25
Section 8.10	<u>Survival of Indemnification and Advancement of Expenses</u>	25
Section 8.11	<u>Limitation on Indemnification</u>	25
Section 8.12	<u>Contract Rights</u>	25

ARTICLE IX
FEDERAL FORUM

Section 9.1	Federal Forum	26
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ARTICLE I
STOCKHOLDERS

Section 1.1 Place of Meetings. All meetings of stockholders for the election of directors or for any other purpose shall be held at such place, if any, within or without the State of Delaware, as may be designated from time to time by the Board of Directors (the “**Board**”) of Floor & Decor Holdings, Inc. (the “**Corporation**”) or the Chairperson of the Board or, if not so designated, at the principal office of the Corporation. The Board may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held in whole or in part by means of remote communication.

Section 1.2 Annual Meeting. Unless otherwise required by law or by the certificate of incorporation of the Corporation, as amended and restated from time to time (the “**Certificate of Incorporation**”), the annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board or the Chairperson of the Board, which date shall not be a legal holiday in the place, if any, where the meeting is to be held. The Board may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders.

Section 1.3 Special Meetings. Unless otherwise required by law or the Certificate of Incorporation, special meetings of stockholders for any purpose or purposes may be called at any time by the Board or the Chairperson of the Board, and may not be called by any other person or persons. The Board may postpone, reschedule or cancel any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting.

Section 1.4 Notice of Meetings. Except as otherwise provided in these Bylaws or required by the General Corporation Law of the State of Delaware (the “**DGCL**”) or the Certificate of Incorporation, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notices of all meetings shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting). The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called.

Section 1.5 Voting List. The Corporation shall prepare, no later than the 10th day before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided* that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days ending on the day before the meeting date: (i) on a reasonably accessible electronic

network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise provided by law, the stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.5 or vote in person or by proxy at any meeting of stockholders.

Section 1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the then outstanding shares of all classes and series of capital stock of the Corporation entitled to vote at the meeting, present in person or by means of remote communication in a manner, if any, authorized by the Board in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; *provided* that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the Corporation issued and outstanding and entitled to vote on such matter, present in person or by means of remote communication in a manner, if any, authorized by the Board in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. Shares of the Corporation's own stock belonging to (i) the Corporation, (ii) another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, or (iii) any other entity, if a majority of the voting power of such other entity is held, directly or indirectly, by the Corporation or such other entity is otherwise controlled, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; *provided* that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If a quorum shall fail to attend any meeting, the meeting may be adjourned in accordance with Section 1.7 until a quorum shall be present or represented.

Section 1.7 Adjournments. Any meeting of stockholders, annual or special, may be adjourned from time to time to any other date and time and to any other place, if any, at which a meeting of stockholders may be held under these Bylaws by the chairperson of the meeting, whether or not a quorum is present. If directed to be voted on by the chairperson of the meeting, any meeting of stockholders at which a quorum is not present may also be adjourned from time to time to any other date and time and to any other place, if any, at which a meeting of stockholders may be held under these Bylaws by the vote of a majority of the votes cast by the stockholders present or represented at the meeting and voting affirmatively or negatively on such adjournment, although less than a quorum. When a meeting is adjourned to another time and place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are (i) announced at the meeting at which adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on

the same electronic network used to enable stockholders and proxyholders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting, *provided* that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting.

Section 1.8 Voting and Proxies. Each stockholder shall have such number of votes, if any, for each share of stock entitled to vote and held of record by such stockholder as may be fixed in the Certificate of Incorporation and a proportionate vote for each fractional share so held, unless otherwise provided by law or the Certificate of Incorporation. There shall be no cumulative voting for the election of directors. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by applicable law. No such proxy shall be voted upon after three years from the date of its execution unless the proxy expressly provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation (the “**Secretary**”) a revocation of the proxy or a new proxy bearing a later date.

Section 1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the vote of a majority of the votes cast by the holders of all of the shares of stock present or represented at the meeting and voting affirmatively or negatively on such matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each such class or series, a majority of the votes cast by the holders of the shares of stock of that class or series present or represented at the meeting and voting affirmatively or negatively on such matter), except when a different or minimum vote is required by applicable law, regulation applicable to the Corporation or its securities, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws, in which case such different or minimum vote shall be the applicable vote on the matter.

Other than directors who may be elected by the holders of shares of any series of Preferred Stock, each director shall be elected by the vote of the majority of the votes cast with respect to that director’s election at any meeting for the election of directors at which a quorum is present, *provided* that if, as of the 10th day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation, the number of nominees exceeds the number of directors to be elected, then the directors shall be elected by the vote of a plurality of the votes cast. For purposes of the foregoing sentence of this Section 1.9, a majority of the votes cast shall mean that the number of votes cast “for” a director’s election exceeds the number of votes

cast “against” that director’s election (with “abstentions” and “broker nonvotes” not counted as votes cast either “for” or “against” any director’s election). Voting at meetings of stockholders need not be by written ballot.

Section 1.10 Nomination of Directors and Proposals of Other Business at Meetings of Stockholders. The following procedures shall govern all cases in which a stockholder seeks to nominate persons for election to the Board or propose other business to be considered by stockholders at a meeting of stockholders.

(a) *Annual Meetings of Stockholders*

(i) To be properly brought before an annual meeting of stockholders, nominations of persons for election to the Board proposals of other business must be (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (B) otherwise properly brought before the meeting by or at the direction of the Board or any duly authorized committee thereof, or (C) otherwise properly brought before the annual meeting by a stockholder (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 1.10, on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting and at the time of such annual meeting, (y) who is entitled to vote at such annual meeting and (z) who complies with the notice procedures set forth in this Section 1.10. Except for (I) any directors entitled to be elected by the holders of Preferred Stock or (II) any directors elected in accordance with Section 2.8 hereof by the Board to fill a vacancy or newly created directorship, at any meeting of stockholders, only persons who are nominated in accordance with the procedures in this Section 1.10 shall be eligible for election as directors.

(ii) In addition to any other applicable requirements, for nominations or proposals of other business to be properly brought before an annual meeting by a stockholder of record pursuant to clause (C) of paragraph (a)(i) of this Section 1.10, the stockholder of record bringing the notice (the “**Noticing Stockholder**”) must have delivered (as defined below) timely notice thereof in proper written form to the Secretary at the principal executive offices of the Corporation, and any such proposed business other than nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, the Noticing Stockholder’s notice must be delivered in proper written form to the Secretary at the principal executive offices of the Corporation not later than the Close of Business (as defined below) on the 90th day nor earlier than the Close of Business on the 120th day prior to the anniversary date of the immediately preceding annual meeting of stockholders; *provided, however*, that if the date of the annual meeting is more than 30 days before or more than 60 days after the anniversary date of the preceding year’s annual meeting, notice by the Noticing Stockholder in order to be timely must be so delivered not earlier than the Close of Business on the 120th day prior to the annual meeting and not later than the Close of Business on the later of the 90th day prior to the annual meeting or the 10th day following the day on which public announcement (as defined below) of the date of the annual meeting is first made by the Corporation. Public announcement of an adjournment, recess, rescheduling or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a Noticing Stockholder’s notice. Notwithstanding anything in this paragraph (a)(ii) to the contrary, if the number of directors to be elected to the Board is increased and there is no public announcement by the Corporation naming all of the

nominees for director proposed by the Board or specifying the size of the increased Board at least 10 days prior to the last day a Noticing Stockholder may deliver a notice of nominations in accordance with the second sentence of this paragraph (a)(ii), a Noticing Stockholder's notice required by this Section 1.10(a) shall also be considered timely, but only with respect to proposed nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the Close of Business on the 10th day following the day on which a public announcement of such increase is first made by the Corporation.

(iii) To be in proper written form, the Noticing Stockholder's notice must also set forth the following.

(A) As to each person whom the Noticing Stockholder proposes to nominate for election or re-election as a director (1) the name, age, business address and residence address of the person, (2) a biography and statement of such person's qualifications, including the principal occupation or employment of the person (at present and for the past five years), (3) the Specified Information (as defined below) for the person and any member of the immediate family of the person sharing the same household, or any affiliate or associate (as such terms are defined below) of the person, or any person acting in concert therewith, (4) a complete and accurate description of all direct and indirect compensation and other monetary or non-monetary agreements, arrangements and understandings (whether written or oral) existing presently, that existed during the past three years or were offered during the past three years (whether accepted or declined), and any other material relationships, between or among the Holders or any Stockholder Associated Person (as such terms are defined below), on the one hand, and the person, and any member of the immediate family of the person sharing the same household, and the person's respective affiliates and associates, or others acting in concert therewith, or any other person or persons, on the other hand (including the names of such persons) and all biographical, related party transaction and other information that would be required to be disclosed pursuant to the federal and state securities laws, including Item 404 promulgated under Regulation S-K under the Securities Act of 1933, as amended (the "**Securities Act**") (or any successor provision), if any Holder or any Stockholder Associated Person were the "registrant" for purposes of such rule and such person were a director or executive officer of such registrant, (5) information relevant to a determination of whether the person can be considered an independent director, (6) any other information relating to the person that would be required to be disclosed in a proxy statement or any other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election or that is otherwise required pursuant to and in accordance with Section 14 of the Exchange Act (including such person's written consent to being named in proxy statements (including the Corporation's proxy statement) as a proposed nominee of the Noticing Stockholder and to serving as a director if elected) and (7) a completed and signed questionnaire, representation and agreement and any and all other information required by paragraph (a)(iii)(E) of this Section 1.10.

(B) as to any other business that the Noticing Stockholder proposes to bring before the meeting (1) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend these Bylaws, the text of the proposed amendment), and (3) a

description of all agreements, arrangements and understandings between each Holder and any Stockholder Associated Person and any other person or persons (including their names) in connection with the proposal of such business by the Noticing Stockholder and any material interest of each such Holder or any Stockholder Associated Person in such business.

(C) As to the Noticing Stockholder and the beneficial owner, if any, on whose behalf the nomination is made or the other business is being proposed (collectively with the Noticing Stockholder, the “**Holders**” and each a “**Holder**”): (1) the name and address of each Holder, as the name and address appear on the Corporation’s books, and the name and address of each Stockholder Associated Person, if any, (2) (I) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, held of record or owned beneficially by each Holder and any Stockholder Associated Person (*provided* that, for the purposes of this Section 1.10, any such person shall in all events be deemed to beneficially own any shares of stock of the Corporation as to which such person has a right to acquire beneficial ownership at any time in the future (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both)), (II) any short position, profits interest, 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 shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the Holder and any Stockholder Associated Person may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a “**Derivative Instrument**”) directly or indirectly owned or held, including beneficially, by each Holder and any Stockholder Associated Person, (III) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which each Holder and any Stockholder Associated Person has any right to vote or has granted a right to vote any shares of stock or any other security of the Corporation, (IV) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, involving any Holder or any Stockholder Associated Person, on the one hand, and any person acting in concert therewith, on the other hand, directly or indirectly, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Holder or any Stockholder Associated Person with respect to any class or series of the shares or other securities of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares or other securities of the Corporation (any of the foregoing, a “**Short Interest**”), and any Short Interest held by each Holder or any Stockholder Associated

Person within the last 12 months in any class or series of the shares or other securities of the Corporation, (V) any rights to dividends or payments in lieu of dividends on the shares of the Corporation owned beneficially by each Holder or any Stockholder Associated Person that are separated or separable from the underlying shares of stock or other security of the Corporation, (VI) any proportionate interest in shares of stock or other securities of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or other entity in which any Holder or any Stockholder Associated Person is a general partner or directly or indirectly beneficially owns an interest in a general partner, is the manager, managing member or directly or indirectly beneficially owns an interest in the manager or managing member of a limited liability company or other entity, (VII) any performance-related fees (other than an asset-based fee) that each Holder or any Stockholder Associated Person is or may be entitled to based on any increase or decrease in the value of stock or other securities of the Corporation or Derivative Instruments, if any, including without limitation, any such interests held by members of the immediate family sharing the same household of such Holder or any Stockholder Associated Person, (VIII) any direct or indirect legal, economic or financial interest (including Short Interest) of each Holder and each Stockholder Associated Person, if any, in the outcome of any (x) vote to be taken at any annual or special meeting of stockholders of the Corporation or (y) any meeting of stockholders of any other entity with respect to any matter that is related, directly or indirectly, to any nomination or business proposed by any Holder under these Bylaws, (IX) any direct or indirect legal, economic or financial interest or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by each Holder or any Stockholder Associated Person, (X) any direct or indirect interest of each Holder or any Stockholder Associated Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement); and (XI) any material pending or threatened action, suit or proceeding (whether civil, criminal, investigative, administrative or otherwise) in which any Holder or any Stockholder Associated Person is, or is reasonably expected to be made, a party or material participant involving the Corporation or any of its officers, directors or employees, or any affiliate of the Corporation, or any officer, director or employee of such affiliate (subclause (a)(iii)(C) (2) of this Section 1.10 shall be referred to as the “**Specified Information**”), (3) a representation by the Noticing Stockholder that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting, will continue to be a stockholder of record of the Corporation entitled to vote at such meeting through the date of such meeting and intends to appear in person or by proxy at the meeting to propose such nomination or other business, (4) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by each Holder and each Stockholder Associated Person, if any, (5) any other information relating to each Holder and each Stockholder Associated Person, if any, that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (6) a representation by the Noticing Stockholder as to whether the Noticing Stockholder will engage in a solicitation with respect to the nomination(s) or other business and, if so, the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and (I) in the case of a proposal, a representation by the

Noticing Stockholder as to whether any Holder and/or any Stockholder Associated Person intends or is part of a group which intends 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 other business being proposed and (II) in the case of a nomination or nominations, the statement required by Rule 14a-19(b)(3) of the Exchange Act (or any successor provision) and the names of all nominees for whom the Noticing Stockholder intends to solicit proxies as required by Rule 14a-19(b)(2), (7) a certification by the Noticing Stockholder that each Holder and any Stockholder Associated Person has complied with all applicable federal, state and other legal requirements in connection with its acquisition of shares of capital stock or other securities of the Corporation and/or such person's acts or omissions as a stockholder of the Corporation, (8) the names and addresses of other stockholders (including beneficial owners) known by any Holder or Stockholder Associated Person to support such proposals and/or nominations, and to the extent known the class or series and number of all shares of the Corporation's capital stock owned beneficially or of record by each such other stockholder or other beneficial owner, and (9) a representation by the Noticing Stockholder as to the accuracy of the information set forth in the notice.

(D) The Corporation may also, as a condition to any such nomination or business being deemed properly brought before a meeting of stockholders, require any Holder or any proposed nominee to deliver to the Secretary, within five Business Days (as defined below) of any such request, such other information as may reasonably be requested by the Corporation, including (1) such other information as may be reasonably required by the Board, in its sole discretion, to determine (x) the eligibility of such proposed nominee to serve as a director of the Corporation, and (y) whether such proposed nominee qualifies as an "independent director" or "audit committee financial expert," or otherwise meets heightened standards of independence, under applicable law, securities exchange rule or regulation or any publicly disclosed corporate governance guideline or committee charter of the Corporation and (2) such other information that the Board determines, in its sole discretion, could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(E) In addition to the other requirements of this Section 1.10, each person who a Noticing Stockholder proposes to nominate for election or re-election as a director of the Corporation must deliver in writing (in accordance with the time periods prescribed for delivery of notice under this Section 1.10) to the Secretary at the principal executive offices of the Corporation (1) a complete and accurate, signed 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 (which questionnaire shall be provided by the Secretary upon written request of any stockholder of record identified by name within five Business Days of such written request) and (2) a complete and accurate, signed written representation and agreement (in the form provided by the Secretary upon written request of any stockholder of record identified by name within five Business Days of such written request) that such person (I) is not and will not become a party to (x) 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 on any issue or question (solely for purposes of this Section 1.10, a "**Voting Commitment**") that has not been disclosed to the Corporation or (y) 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, (II) is not

and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, (III) 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 rules of the exchanges upon which the securities of the Corporation are listed and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation, and (IV) in such person's individual capacity and on behalf of any Holder on whose behalf the nomination is being made, intends to serve a full term if elected as a director of the Corporation.

(b) *Special Meetings of Stockholders.*

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting: (i) by or at the direction of the Board or (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 1.10, on the record date for the determination of stockholders entitled to notice of and to vote at such special meeting and at the time of such special meeting, (y) who is entitled to vote at such special meeting and (z) who complies with the notice procedures set forth in this Section 1.10. If the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any Noticing Stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the Noticing Stockholder's notice as required by paragraphs (a)(ii) and (a)(iii) of this Section 1.10 shall be delivered to the Secretary at the principal executive offices of the Corporation in proper written form not earlier than the Close of Business on the 120th day prior to the special meeting and not later than the Close of Business on the later of the 90th day prior to the special meeting or the 10th day following the day on which public announcement is first made by the Corporation of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment, recess, rescheduling or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a Noticing Stockholder's notice as described above. Notwithstanding anything in this paragraph (b) to the contrary, if the number of directors to be elected to the Board is increased and there is no public announcement by the Corporation naming all of the nominees for director proposed by the Board or specifying the size of the increased Board at least 10 days prior to the last day a Noticing Stockholder may deliver a notice of nominations in accordance with the third sentence of this paragraph (b), a Noticing Stockholder's notice required by this Section 1.10 shall also be considered timely, but only with respect to proposed nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the Close of Business on the 10th day following the day on which a public announcement of such increase is first made by the Corporation.

(c) *General.*

(i) Only such persons who are nominated in accordance with the procedures set forth in subsections (a) and (b) of this Section 1.10 (in the case of an annual or special meeting) shall be eligible for election to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.10. The number of proposed nominees with respect to whom a stockholder may submit notice in accordance with the procedures set forth in these Bylaws shall not exceed the number of directors to be elected at such meeting, and for the avoidance of doubt, no stockholder shall be entitled to make additional or substitute nominations following the expiration of the time periods set forth in this Section 1.10. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairperson of the meeting of stockholders (or, in advance of the meeting, the Board) shall have the power and duty to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws (including whether the Noticing Stockholder or other Holder, if any, on whose behalf the nomination is made or other business is being proposed solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such Noticing Stockholder's nominee or other business in compliance with such stockholder's representations and statement as required by clause (C)(6) of paragraph (a)(iii) of this Section 1.10). If any proposed nomination or other business was not made or proposed in compliance with these Bylaws, the chairperson of the meeting of stockholders shall have the power and duty to declare to the meeting that any such nomination or other business was not properly brought before the meeting and in accordance with the provisions of these Bylaws, and that such nomination or other business not properly brought before the meeting shall be disregarded and/or shall not be transacted.

(ii) Nothing in these Bylaws shall be deemed to affect any rights (x) of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation to elect directors under specified circumstances, or (y) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or any other applicable federal or state securities law with respect to that stockholder's request to include proposals in the Corporation's proxy statement.

(iii) In addition, to be considered timely, a Noticing Stockholder's notice shall be further updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is 10 Business Days prior to the meeting or any adjournment, recess, rescheduling or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five Business Days after the record date for determining the stockholders entitled to notice of the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight Business Days prior to the date for the meeting or any adjournment, recess, rescheduling or postponement thereof 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. In addition, if the Noticing Stockholder has delivered to the Corporation a notice relating to the nomination of directors, the Noticing Stockholder shall deliver to the

Corporation not later than eight Business Days prior to the date of the meeting or any adjournment, recess, rescheduling or postponement thereof reasonable evidence that it has complied with the requirements of Rule 14a-19 of the Exchange Act (or any successor provision). For the avoidance of doubt, the obligation to update and supplement set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and/or resolutions proposed to be brought before a meeting of stockholders.

(iv) Notwithstanding anything to the contrary in these Bylaws, if the Noticing Stockholder (or a qualified representative of the Noticing Stockholder) does not appear at the annual or special meeting of stockholders, as applicable, to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.10, to be considered a "qualified representative" of the Noticing Stockholder, a person must be authorized by a document authorizing another person or persons to act for such stockholder as proxy at the meeting of stockholders and such person must produce the document or a reliable reproduction of such document at the meeting of stockholders. A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such transmission must either set forth or be submitted with information from which it can be determined that the transmission was authorized by the stockholder. If it is determined that such transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which such inspectors or such persons relied.

Section 1.11 Conduct of Meetings.

(a) Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or, in the Chairperson's absence, by the Vice Chairperson of the Board, if any, or, in the Vice Chairperson's absence, by the Chief Executive Officer, or, in the Chief Executive Officer's absence, by the President, or, in the President's absence, by a Vice President, or, in the absence of all of the foregoing persons, by a chairperson designated by the Board. The Secretary shall act as secretary of the meeting, but, in the Secretary's absence, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

(b) The Board may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate, including, without limitation, such rules, regulations, guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations, guidelines or procedures as adopted by the Board, the chairperson of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations, guidelines and procedures and to do all such acts as, in

the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations, guidelines or procedures, whether adopted by the Board or prescribed by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present, including regulation of the manner of voting and the conduct of discussion; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants; and (vi) restrictions on the use of cell phones, audio or video recording devices and other devices at the meeting. Unless and to the extent determined by the Board or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairperson of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board, the Chairperson of the Board, the Chief Executive Officer or the President may, and shall if required by applicable law, appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law. Every vote taken by ballots shall be counted by a duly appointed inspector or duly appointed inspectors.

Section 1.12 Certain Definitions. For purposes of these Bylaws:

(a) “**affiliate**” shall have the meaning attributed to such term in Rule 12b-2 under the Exchange Act;

(b) “**associate**” shall have the meaning attributed to such term in Rule 12b-2 under the Exchange Act;

(c) “**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in Atlanta, Georgia or New York, New York are authorized or obligated by law or executive order to close;

(d) “**Close of Business**” on a particular day means 5:00 p.m. local time at the principal executive offices of the Corporation, and if an applicable deadline falls on the Close of Business on

a day that is not a Business Day, then the applicable deadline shall be deemed to be the Close of Business on the immediately preceding Business Day;

(e) “**delivered**” means, solely for purposes of this Article I of these Bylaws, both (i) hand delivery, overnight courier service or sent and received by certified or registered mail, return receipt requested, in each case to the Secretary at the principal executive offices of the Corporation, and (ii) electronic mail to the Secretary;

(f) “**public announcement**” means disclosure (i) in a press release released by the Corporation, provided such press release is released by the Corporation following its customary procedures, as reported by the Dow Jones News Service, Associated Press or a comparable national news service, or is generally available on internet news sites, or (ii) in a document publicly filed by the Corporation with the U.S. Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act; and

(g) “**Stockholder Associated Person**” of any Holder means (i) any person acting in concert with such Holder, (ii) any person controlling, controlled by or under common control with such Holder or any of their respective affiliates and associates (as those terms are defined in Rule 12b-2 under the Exchange Act), or person acting in concert therewith, and (iii) any member of the immediate family of such Holder sharing the same household or an affiliate or associate of such Holder.

ARTICLE II DIRECTORS

Section 2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all of the powers of the Corporation except as otherwise provided by law or the Certificate of Incorporation.

Section 2.2 Number, Election and Qualification. The total number of directors constituting the Board shall be as fixed by, or in the manner provided by, the Certificate of Incorporation. Election of directors need not be by written ballot. Directors need not be stockholders of the Corporation. Each director shall hold office until a successor is duly elected and qualified or until the director’s earlier death, resignation, disqualification or removal.

Section 2.3 Organization. The Board may appoint from its members a Chairperson of the Board and a Vice Chairperson of the Board, neither of whom need be an employee or officer of the Corporation. If the Board appoints a Chairperson of the Board, such Chairperson shall perform such duties and possess such powers as are provided in these Bylaws or assigned by the Board and, if the Chairperson of the Board is also designated as the Corporation’s Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 4.7 of these Bylaws. If the Board appoints a Vice Chairperson of the Board, such Vice Chairperson shall perform such duties and possess such powers as are assigned by the Board. Unless otherwise provided by the Board, the Chairperson of the Board or, in the Chairperson’s absence, the Vice Chairperson of the Board, if any, shall preside at all meetings of the Board.

Section 2.4 Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to the Certificate of Incorporation shall constitute a quorum of the Board. If at any meeting of the Board there shall be less than a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

Section 2.5 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the Certificate of Incorporation or these Bylaws.

Section 2.6 Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed only as expressly provided in the Certificate of Incorporation.

Section 2.7 Resignation. Any director may resign at any time by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairperson of the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

Section 2.8 Vacancies. Subject to the rights of the holders of any series of Preferred Stock, any newly created directorship or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from a newly created directorship shall hold office for the remaining term of his or her predecessor.

Section 2.9 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as shall be determined from time to time by the Board; *provided* that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board may be held without notice immediately after and at the same place as the annual meeting of stockholders.

Section 2.10 Special Meetings. Special meetings of the Board may be held at any time and place and may be called by either the Chairperson of the Board, the Chief Executive Officer, the President or the majority of the directors then in office.

Section 2.11 Notice of Special Meetings. Notice of the date, place and time of any special meeting of the Board shall be given to each director by the Secretary or by the person or persons calling the meeting. Notice shall be duly given to each director (a) in person, by telephone or electronic mail transmission at least 24 hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy or facsimile, or delivering written notice by hand, to such director's last known business, home or means of electronic transmission address at least 48 hours in advance of the meeting, (c) by sending written notice by first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting or (d) on such

shorter notice as the person or persons calling the meeting may deem necessary or appropriate in the circumstances. A notice or waiver of notice of a meeting of the Board need not specify the purposes of the meeting.

Section 2.12 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

Section 2.13 Action by Consent. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all members of the Board consent to the action in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.14 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service. Members of special or standing committees may be allowed like compensation for service as committee members.

ARTICLE III COMMITTEES

Section 3.1 Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation with such lawfully delegable powers and duties as the Board thereby confers, to serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of an alternate member to replace the absent or disqualified member, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by applicable law and provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize any seal of the Corporation to be affixed to all papers that may require it. Each such committee shall keep minutes and make such reports as the Board may from time to time request. Except as otherwise provided in the Certificate of Incorporation, these Bylaws or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Section 3.2 Conduct of Meetings. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or in the resolution or resolutions of the Board designating such committee or as otherwise required by the DGCL. Except as otherwise provided by these Bylaws, in the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these Bylaws. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting if all members of the committee consent to the action in writing or by electronic transmission. Any consent of a member of a committee may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the committee.

ARTICLE IV OFFICERS

Section 4.1 Titles. The officers of the Corporation shall consist of a Chief Executive Officer, a Secretary, a Treasurer and such other officers with such other titles as the Board shall determine, including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries, each of whom shall be appointed by the Board. The Board may appoint such other officers as it may deem appropriate, and the Board may delegate to any officer of the Corporation the power to appoint such other officers and prescribe their respective duties and powers. The Board may, but is not required to, appoint a President. Any number of offices may be held by the same person, unless otherwise prohibited by applicable law, the Certificate of Incorporation or these Bylaws.

Section 4.2 Qualification. No officer need be a stockholder.

Section 4.3 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is duly elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation, disqualification or removal.

Section 4.4 Removal. Any officer may be removed at any time by the Board.

Section 4.5 Resignation. Any officer may resign by delivering a written resignation to the Corporation at its principal office or to the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

Section 4.6 Vacancies. The Board may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices. Except as otherwise specified in the resolution electing or appointing such successor, each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is duly elected and qualified, or until such officer's earlier death, resignation, disqualification or removal.

Section 4.7 President; Chief Executive Officer. Unless the Board has designated another person as the Corporation's President, the Chief Executive Officer shall be the President of the Corporation. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board, and shall perform all duties and have all powers set forth in these Bylaws or that are commonly incident to the office of chief executive or that are delegated to such officer by the Board. The President shall perform such other duties and shall have such other powers as set forth in these Bylaws or as the Board or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

Section 4.8 Vice Presidents. Each Vice President shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. The Board may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board.

Section 4.9 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers set forth in these Bylaws or as the Board or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board, to attend all meetings of stockholders and the Board and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and any corporate seal and to affix and attest to the same on documents.

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

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairperson of the meeting shall designate a temporary secretary to keep a record of the meeting.

Section 4.10 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as set forth in these Bylaws or as may from time to time be assigned by the Board or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board) shall perform the duties and exercise the powers of the Treasurer.

Section 4.11 Delegation of Authority. The Board may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

ARTICLE V CAPITAL STOCK

Section 5.1 Issuance of Stock. Subject to the provisions of the Certificate of Incorporation and applicable law, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any shares held in the Corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board in such manner, for such lawful consideration and on such terms as the Board may determine.

Section 5.2 Stock Certificates; Uncertificated Shares. The shares of the Corporation shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the DGCL.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, *provided* that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Within a reasonable time after the issuance or transfer of uncertificated shares, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to Section 151 or Sections 156, 202(a) or 218(a) of the DGCL or, with respect to Section 151 of the DGCL, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 5.3 Signatures. Any or all of the signatures on a certificate may be a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. In case any officer, transfer agent or registrar who has signed or whose signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.4 Transfers. Shares of stock of the Corporation shall be transferable in the manner prescribed by law, the Certificate of Incorporation and these Bylaws. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation or by transfer agents designated to transfer shares of stock of the Corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require, and payment of all necessary transfer taxes. Uncertificated shares shall be transferred only on the books and records of the Corporation upon delivery of an assignment, power of attorney or instruction, properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require, and payment of all necessary transfer taxes. Except as may be otherwise required by law, the Certificate of Incorporation or these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws and applicable law. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5.5 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate or uncertificated shares in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Corporation may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Corporation may require for the protection of the Corporation or any transfer agent or registrar.

Section 5.6 Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting

shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided* that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

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

Section 5.7 Transfer Agents and Registrars. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board.

Section 5.8 Regulations. The issue and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board may establish.

ARTICLE VI GENERAL PROVISIONS

Section 6.1 Fiscal Year. Except as from time to time otherwise designated by the Board, the fiscal year of the Corporation shall be the 52- or 53-week period ending on the Thursday on or preceding December 31.

Section 6.2 Corporate Seal. Any corporate seal shall be in such form as shall be approved by the Board.

Section 6.3 Dividends. The Board, subject to any restrictions contained in the DGCL or the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, subject to the provisions of the Certificate of Incorporation.

Section 6.4 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. Attendance of a person at a meeting shall constitute a

waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 6.5 Voting of Securities. Except as the Board may otherwise designate, the Chief Executive Officer, the President or the Treasurer or any other officer authorized to do so by the Board may waive notice, vote, consent or appoint any person or persons to waive notice, vote or consent, on behalf of the Corporation, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this Corporation (with or without power of substitution) with respect to the securities of any other entity which may be held by this Corporation.

Section 6.6 Reliance Upon Books, Reports and Records. Each director of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 6.7 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

Section 6.8 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time.

Section 6.9 Manner of Notice to Stockholders.

(a) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation. Notice shall be given (i) if mailed, when deposited in the United States mail, postage prepaid, (ii) if delivered by courier service, the earlier of when the notice is received or left at the stockholder's address, or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address (unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL to be given by electronic transmission). A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files or information. Any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws provided by means of electronic transmission (other than any such notice given by electronic mail) may only be

given in a form consented to by such stockholder, and any such notice by such means of electronic transmission shall be deemed to be given as provided by the DGCL. The terms “electronic mail,” “electronic mail address,” “electronic signature” and “electronic transmission” as used herein shall have the meanings ascribed thereto in the DGCL.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the Corporation under any provision of applicable law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 6.9(b), shall be deemed to have consented to receiving such single written notice.

Section 6.10 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

Section 6.11 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

ARTICLE VII AMENDMENTS

These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board or by the stockholders as expressly provided in the Certificate of Incorporation.

ARTICLE VIII INDEMNIFICATION AND ADVANCEMENT

Section 8.1 Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation. Subject to Section 8.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is involved in (as a witness or otherwise), any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a

plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner that such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 8.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 8.3, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is involved in (as a witness or otherwise), any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 8.3 Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 8.1 or Section 8.2, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding set forth in Section 8.1 or Section 8.2 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 8.4 Good Faith Defined. For purposes of any determination under Section 8.3, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on good faith reliance on the records or books of account

of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise, or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term “another enterprise” as used in this Section 8.4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 8.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 8.1 or 8.2, as the case may be.

Section 8.5 Right of Claimant to Bring Suit. If (i) notwithstanding any contrary determination in the specific case under Section 8.3, and notwithstanding the absence of any determination thereunder, a claim under Sections 8.1 or 8.2 of this Article VIII is not paid in full by the Corporation within 90 days after a written claim for indemnification has been received by the Corporation, or (ii) a claim for advancement of expenses under Section 8.6 is not paid in full by the Corporation within 30 days after a written claim for the advancement of expenses has been received by the Corporation, the claimant may at any time thereafter (but not before) bring suit against the Corporation in the Court of Chancery of the State of Delaware to recover the unpaid amount of the claim, together with interest thereon. Neither a contrary determination in the specific case under Section 8.3 nor the absence of any determination thereunder shall be a defense to such action or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any action for indemnification or advancement pursuant to this Section 8.5 shall be given to the Corporation promptly upon the filing of such action. If successful, in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such action to the fullest extent permitted by applicable law.

Section 8.6 Expenses Payable in Advance. Expenses, including without limitation attorneys’ fees, incurred by a current or former director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such current or former director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 8.7 Non-exclusivity of Indemnification and Advancement of Expenses. The rights to indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 8.1 and 8.2 shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 8.1 or 8.2 but

whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL or otherwise.

Section 8.8 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 8.9 Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect of any employee benefit plan; references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation that imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 8.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.11 Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings governed by Section 8.5 of this Article VIII, the Corporation shall not be obligated to indemnify any director, officer, employee or agent in connection with an action, suit, or proceeding (or part thereof) initiated by such person unless such action, suit or proceeding (or part thereof) was authorized by the Board.

Section 8.12 Contract Rights. The obligations of the Corporation under this Article VIII to indemnify a person and advance expenses shall be considered a contract between the Corporation and such person, and no modification or repeal of any provision of this Article VIII shall affect, to the detriment of such person, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

ARTICLE IX
FEDERAL FORUM

Section 9.1 Federal Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

* * *

Adopted as of: November 1, 2023

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Thomas V. Taylor, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Floor & Decor Holdings, Inc. for the fiscal quarter ended September 28, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

te: November 2, 2023

/s/ Thomas V. Taylor
Thomas V. Taylor
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Bryan H. Langley, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Floor & Decor Holdings, Inc. for the fiscal quarter ended September 28, 2023;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2023

/s/ Bryan H. Langley

Bryan H. Langley

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q for the fiscal quarter ended September 28, 2023 of Floor & Decor Holdings, Inc. (the “Company”) as filed with the Securities and Exchange Commission (the “SEC”) on the date hereof (the “Report”), Thomas V. Taylor, as Chief Executive Officer of the Company, and Bryan H. Langley, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (“Section 906”), that, to the best of his knowledge:

- (i) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 2, 2023

/s/ Thomas V. Taylor
Thomas V. Taylor
Chief Executive Officer
(Principal Executive Officer)

Date: November 2, 2023

/s/ Bryan H. Langley
Bryan H. Langley
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement as required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.