

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

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**Form 10-Q**

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(mark one)

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

For the quarterly period ended August 1, 2015.  
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: 001-35600

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**Five Below, Inc.**

(Exact name of Registrant as Specified in its Charter)

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Pennsylvania  
(State or Other Jurisdiction of  
Incorporation or Organization)

75-3000378  
(I.R.S. Employer  
Identification No.)

1818 Market Street, Suite 2000  
Philadelphia, PA  
(Address of Principal Executive Offices)

19103  
(Zip Code)

(215) 546-7909  
(Registrant's Telephone Number, Including Area Code)

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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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No ☐

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

|                         |                                                                        |                           |                          |
|-------------------------|------------------------------------------------------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/>                                    | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/> (Do not check if a smaller reporting company) | Smaller reporting company | <input type="checkbox"/> |

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

The number of shares of the registrant's common stock, \$0.01 par value, outstanding as of September 2, 2015 was 54,526,499.

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## INDEX

### **PART I - FINANCIAL INFORMATION**

|                                                                                                                                               | <b>Page</b>        |
|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Item 1.                                                                                                                                       |                    |
| <a href="#">Consolidated Financial Statements (unaudited)</a>                                                                                 | <a href="#">3</a>  |
| <a href="#">Unaudited Consolidated Balance Sheets as of August 1, 2015, January 31, 2015 and August 2, 2014</a>                               | <a href="#">3</a>  |
| <a href="#">Unaudited Consolidated Statements of Operations for the Thirteen and Twenty-Six Weeks Ended August 1, 2015 and August 2, 2014</a> | <a href="#">4</a>  |
| <a href="#">Unaudited Consolidated Statement of Shareholders' Equity for the Twenty-Six Weeks Ended August 1, 2015</a>                        | <a href="#">5</a>  |
| <a href="#">Unaudited Consolidated Statements of Cash Flows for the Twenty-Six Weeks Ended August 1, 2015 and August 2, 2014</a>              | <a href="#">6</a>  |
| <a href="#">Notes to Unaudited Consolidated Financial Statements</a>                                                                          | <a href="#">7</a>  |
| Item 2.                                                                                                                                       |                    |
| <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>                                         | <a href="#">13</a> |
| Item 3.                                                                                                                                       |                    |
| <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>                                                                    | <a href="#">22</a> |
| Item 4.                                                                                                                                       |                    |
| <a href="#">Controls and Procedures</a>                                                                                                       | <a href="#">22</a> |

### **PART II - OTHER INFORMATION**

|          |                                                                             |                    |
|----------|-----------------------------------------------------------------------------|--------------------|
| Item 1.  | <a href="#">Legal Proceedings</a>                                           | <a href="#">23</a> |
| Item 1A. | <a href="#">Risk Factors</a>                                                | <a href="#">24</a> |
| Item 2.  | <a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a> | <a href="#">24</a> |
| Item 3.  | <a href="#">Defaults Upon Senior Securities</a>                             | <a href="#">24</a> |
| Item 4.  | <a href="#">Mine Safety Disclosures</a>                                     | <a href="#">24</a> |
| Item 5.  | <a href="#">Other Information</a>                                           | <a href="#">24</a> |
| Item 6.  | <a href="#">Exhibits</a>                                                    | <a href="#">25</a> |

**PART I - FINANCIAL INFORMATION**

**ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS**

**FIVE BELOW, INC.**  
Consolidated Balance Sheets  
(Unaudited)  
(in thousands, except share and per share data)

|                                                                                                                                                   | <b>August 1, 2015</b> | <b>January 31, 2015</b> | <b>August 2, 2014</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|-----------------------|
| <b>Assets</b>                                                                                                                                     |                       |                         |                       |
| Current assets:                                                                                                                                   |                       |                         |                       |
| Cash and cash equivalents                                                                                                                         | \$ 60,916             | \$ 63,186               | \$ 25,550             |
| Inventories                                                                                                                                       | 123,847               | 115,652                 | 106,749               |
| Prepaid income taxes                                                                                                                              | 6,694                 | 1,939                   | 2,247                 |
| Deferred income taxes                                                                                                                             | 8,958                 | 8,623                   | 5,145                 |
| Prepaid expenses and other current assets                                                                                                         | 24,349                | 18,180                  | 19,913                |
| Total current assets                                                                                                                              | 224,764               | 207,580                 | 159,604               |
| Property and equipment, net of accumulated depreciation and amortization of \$69,065, \$59,385 and \$51,685, respectively.                        | 113,196               | 86,998                  | 82,902                |
| Deferred income taxes                                                                                                                             | 1,025                 | —                       | 1,281                 |
| Other assets                                                                                                                                      | 316                   | 284                     | 293                   |
|                                                                                                                                                   | \$ 339,301            | \$ 294,862              | \$ 244,080            |
| <b>Liabilities and Shareholders' Equity</b>                                                                                                       |                       |                         |                       |
| Current liabilities:                                                                                                                              |                       |                         |                       |
| Line of credit                                                                                                                                    | \$ —                  | \$ —                    | \$ —                  |
| Accounts payable                                                                                                                                  | 66,562                | 39,222                  | 46,529                |
| Income taxes payable                                                                                                                              | 478                   | 14,442                  | 1,748                 |
| Accrued salaries and wages                                                                                                                        | 4,023                 | 5,275                   | 3,364                 |
| Other accrued expenses                                                                                                                            | 28,379                | 20,462                  | 19,279                |
| Total current liabilities                                                                                                                         | 99,442                | 79,401                  | 70,920                |
| Deferred rent and other                                                                                                                           | 47,422                | 40,450                  | 40,442                |
| Deferred income taxes                                                                                                                             | —                     | 742                     | —                     |
| Total liabilities                                                                                                                                 | 146,864               | 120,593                 | 111,362               |
| Commitments and contingencies (note 4)                                                                                                            |                       |                         |                       |
| Shareholders' equity:                                                                                                                             |                       |                         |                       |
| Common stock, \$0.01 par value. Authorized 120,000,000 shares; issued and outstanding 54,526,194, 54,420,228 and 54,300,398 shares, respectively. | 545                   | 544                     | 543                   |
| Additional paid-in capital                                                                                                                        | 300,820               | 293,992                 | 289,066               |
| Accumulated deficit                                                                                                                               | (108,928)             | (120,267)               | (156,891)             |
| Total shareholders' equity                                                                                                                        | 192,437               | 174,269                 | 132,718               |
|                                                                                                                                                   | \$ 339,301            | \$ 294,862              | \$ 244,080            |

See accompanying notes to consolidated financial statements.

**FIVE BELOW, INC.**  
Consolidated Statements of Operations  
(Unaudited)  
(in thousands, except share and per share data)

|                                                     | Thirteen Weeks Ended |                | Twenty-Six Weeks Ended |                |
|-----------------------------------------------------|----------------------|----------------|------------------------|----------------|
|                                                     | August 1, 2015       | August 2, 2014 | August 1, 2015         | August 2, 2014 |
| Net sales                                           | \$ 182,191           | \$ 152,479     | \$ 335,918             | \$ 278,483     |
| Cost of goods sold                                  | 122,365              | 101,574        | 228,931                | 188,643        |
| Gross profit                                        | 59,826               | 50,905         | 106,987                | 89,840         |
| Selling, general and administrative expenses        | 48,269               | 37,570         | 88,409                 | 71,243         |
| Operating income                                    | 11,557               | 13,335         | 18,578                 | 18,597         |
| Interest expense, net                               | 2                    | 10             | 11                     | 82             |
| Loss on debt extinguishment                         | —                    | —              | —                      | 244            |
| Other expense                                       | 325                  | —              | 325                    | —              |
| Income before income taxes                          | 11,230               | 13,325         | 18,242                 | 18,271         |
| Income tax expense                                  | 4,169                | 5,005          | 6,903                  | 6,871          |
| Net income                                          | 7,061                | 8,320          | 11,339                 | 11,400         |
| Net income attributable to participating securities | —                    | —              | —                      | (38)           |
| Net income attributable to common shareholders      | \$ 7,061             | \$ 8,320       | \$ 11,339              | \$ 11,362      |
| Basic income per common share                       | \$ 0.13              | \$ 0.15        | \$ 0.21                | \$ 0.21        |
| Diluted income per common share                     | \$ 0.13              | \$ 0.15        | \$ 0.21                | \$ 0.21        |
| Weighted average shares outstanding:                |                      |                |                        |                |
| Basic shares                                        | 54,501,257           | 54,280,336     | 54,474,946             | 54,072,660     |
| Diluted shares                                      | 54,786,092           | 54,669,600     | 54,751,620             | 54,481,540     |

See accompanying notes to consolidated financial statements.

**FIVE BELOW, INC.**  
Consolidated Statement of Shareholders' Equity  
(Unaudited)  
(in thousands, except share data)

|                                                                          | <b>Common stock</b> |               | <b>Additional</b>      |    | <b>Accumulated</b> | <b>Total</b>                |
|--------------------------------------------------------------------------|---------------------|---------------|------------------------|----|--------------------|-----------------------------|
|                                                                          | <b>Shares</b>       | <b>Amount</b> | <b>paid-in capital</b> |    | <b>deficit</b>     | <b>shareholders' equity</b> |
| Balance, January 31, 2015                                                | 54,420,228          | \$ 544        | \$ 293,992             | \$ | (120,267)          | \$ 174,269                  |
| Share-based compensation expense                                         | —                   | —             | 5,312                  |    | —                  | 5,312                       |
| Issuance of unrestricted stock awards                                    | 3,926               | —             | 140                    |    | —                  | 140                         |
| Exercise of options to purchase common stock                             | 93,020              | 1             | 764                    |    | —                  | 765                         |
| Vesting of restricted stock units                                        | 6,972               | —             | —                      |    | —                  | —                           |
| Excess tax benefit related to exercises of stock options                 | —                   | —             | 531                    |    | —                  | 531                         |
| Issuance of common stock to employees under employee stock purchase plan | 2,048               | —             | 81                     |    | —                  | 81                          |
| Net income                                                               | —                   | —             | —                      |    | 11,339             | 11,339                      |
| Balance, August 1, 2015                                                  | 54,526,194          | \$ 545        | \$ 300,820             | \$ | (108,928)          | \$ 192,437                  |

See accompanying notes to consolidated financial statements.

**FIVE BELOW, INC.**  
Consolidated Statements of Cash Flows  
(Unaudited)  
(in thousands)

|                                                                                   | Twenty-Six Weeks Ended |                |
|-----------------------------------------------------------------------------------|------------------------|----------------|
|                                                                                   | August 1, 2015         | August 2, 2014 |
| Operating activities:                                                             |                        |                |
| Net income                                                                        | \$ 11,339              | \$ 11,400      |
| Adjustments to reconcile net income to net cash provided by operating activities: |                        |                |
| Depreciation and amortization                                                     | 10,232                 | 8,042          |
| Share-based compensation expense                                                  | 5,460                  | 2,441          |
| Deferred income tax benefit                                                       | (2,102)                | (1,608)        |
| Other non-cash expenses                                                           | 28                     | 284            |
| Changes in operating assets and liabilities:                                      |                        |                |
| Prepaid income taxes                                                              | (4,755)                | (750)          |
| Inventories                                                                       | (8,195)                | (17,372)       |
| Prepaid expenses and other assets                                                 | (6,215)                | (4,665)        |
| Accounts payable                                                                  | 17,396                 | 11,836         |
| Income taxes payable                                                              | (13,964)               | (4,259)        |
| Accrued salaries and wages                                                        | (1,251)                | 692            |
| Deferred rent                                                                     | 7,475                  | 5,025          |
| Other accrued expenses                                                            | 10,806                 | 1,553          |
| Net cash provided by operating activities                                         | 26,254                 | 12,619         |
| Investing activities:                                                             |                        |                |
| Capital expenditures                                                              | (29,901)               | (19,700)       |
| Net cash used in investing activities                                             | (29,901)               | (19,700)       |
| Financing activities:                                                             |                        |                |
| Repayment of note payable under Term Loan Facility                                | —                      | (19,500)       |
| Net proceeds from issuance of common stock                                        | 81                     | 105            |
| Proceeds from exercise of options to purchase common stock                        | 765                    | 706            |
| Excess tax benefit related to exercises of stock options                          | 531                    | 1,136          |
| Net cash provided by (used in) financing activities                               | 1,377                  | (17,553)       |
| Net decrease in cash and cash equivalents                                         | (2,270)                | (24,634)       |
| Cash and cash equivalents at beginning of period                                  | 63,186                 | 50,184         |
| Cash and cash equivalents at end of period                                        | \$ 60,916              | \$ 25,550      |
| Supplemental disclosures of cash flow information:                                |                        |                |
| Non-cash investing activities                                                     |                        |                |
| Decrease in accrued purchases of property and equipment                           | \$ (6,544)             | \$ (891)       |

See accompanying notes to consolidated financial statements.

**FIVE BELOW, INC.**  
Notes to Consolidated Financial Statements  
(Unaudited)

**(1) Summary of Significant Accounting Policies**

**(a) *Nature of Business***

Five Below, Inc. (collectively with its wholly owned subsidiary as the "Company") is a specialty value retailer offering merchandise targeted at the teen and pre-teen demographic. The Company offers an edited assortment of products, priced at \$5 and below. The Company's edited assortment of products includes select brands and licensed merchandise. The Company believes its merchandise is readily available, and that there are a number of potential vendors that could be utilized, if necessary, under approximately the same terms the Company is currently receiving; thus, it is not dependent on a single vendor or a group of vendors.

The Company is incorporated in the Commonwealth of Pennsylvania and, as of August 1, 2015, operated in 26 states that include Pennsylvania, New Jersey, Delaware, Maryland, Virginia, Massachusetts, New Hampshire, West Virginia, North Carolina, New York, Connecticut, Rhode Island, Ohio, Illinois, Indiana, Michigan, Missouri, Georgia, Texas, Tennessee, Maine, Alabama, Kentucky, Kansas, Florida, and South Carolina. As of August 1, 2015 and August 2, 2014, the Company operated 417 stores and 353 stores, respectively, each operating under the name "Five Below."

**(b) *Fiscal Year***

The Company operates on a 52/53-week fiscal year ending on the Saturday closest to January 31. References to "fiscal year 2015" or "fiscal 2015" refer to the period from February 1, 2015 to January 30, 2016 and consists of a 52-week fiscal year. References to "fiscal year 2014" or "fiscal 2014" refer to the period from February 2, 2014 to January 31, 2015 and consists of a 52-week fiscal year. References to "fiscal year 2013" or "fiscal 2013" refer to the period from February 3, 2013 to February 1, 2014 and consists of a 52-week fiscal year. The fiscal quarters ended August 1, 2015 and August 2, 2014 refer to the thirteen weeks ended as of those dates. The year-to-date periods ended August 1, 2015 and August 2, 2014 refer to the twenty-six weeks ended as of those dates.

**(c) *Basis of Presentation***

The consolidated balance sheets as of August 1, 2015 and August 2, 2014, the consolidated statements of operations for the thirteen and twenty-six weeks ended August 1, 2015 and August 2, 2014, the consolidated statement of shareholders' equity for the twenty-six weeks ended August 1, 2015 and the consolidated statements of cash flows for the twenty-six weeks ended August 1, 2015 and August 2, 2014 have been prepared by the Company in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") for interim reporting and are unaudited. In the opinion of management, the aforementioned financial statements include all known adjustments (which consist primarily of normal, recurring accruals, estimates and assumptions that impact the financial statements) necessary to present fairly the financial position at the balance sheet dates and the results of operations and cash flows for the periods ended August 1, 2015 and August 2, 2014. The balance sheet as of January 31, 2015, presented herein, has been derived from the audited balance sheet included in the Company's Annual Report on Form 10-K for fiscal 2014 as filed with the Securities and Exchange Commission on March 26, 2015 and referred to herein as the "Annual Report," but does not include all annual disclosures required by U.S. GAAP. These consolidated financial statements should be read in conjunction with the financial statements for the fiscal year ended January 31, 2015 and footnotes thereto included in the Annual Report. The consolidated results of operations for the thirteen and twenty-six weeks ended August 1, 2015 and August 2, 2014 are not necessarily indicative of the consolidated operating results for the year ending January 30, 2016 or any other period. The Company's business is seasonal and as a result, the Company's net sales fluctuate from quarter to quarter. Net sales are usually highest in the fourth fiscal quarter due to the year-end holiday season.

**(d) *Use of Estimates***

The preparation of the consolidated financial statements requires management of the Company to make estimates and assumptions that affect the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the carrying amount of property and equipment, valuation allowances for inventories, income taxes and share-based compensation expense.

**(e) Fair Value of Financial Instruments**

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities measured at fair value are classified using the following hierarchy, which is based upon the transparency of inputs to the valuation at the measurement date:

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

Level 2: Inputs, other than Level 1, that are either directly or indirectly observable.

Level 3: Unobservable inputs developed using the Company's estimates and assumptions which reflect those that market participants would use.

The classification of fair value measurements within the hierarchy is based upon the lowest level of input that is significant to the measurement.

The Company's financial instruments consist primarily of cash equivalents, accounts payable, and borrowings, if any, under a line of credit. The Company believes that: (1) the carrying value of cash equivalents and accounts payable are representative of their respective fair value due to the short-term nature of these instruments; and (2) the carrying value of the borrowings, if any, under the line of credit approximates fair value because the line of credit's interest rates vary with market interest rates. The Company considers the inputs utilized to determine the fair value of any of the borrowings, if any, under the line of credit to be Level 2 inputs. As of August 1, 2015, January 31, 2015, and August 2, 2014, the Company had cash equivalents of \$40.4 million, \$43.1 million and \$4.3 million, respectively. The Company's cash equivalents consist of credit and debit card receivables, money market funds, certificates of deposit, and short-term municipal bonds. Fair value for cash equivalents was determined based on Level 1 inputs.

**(2) Income Per Common Share**

Basic income per common share amounts are calculated using the weighted-average number of common shares outstanding for the period. Diluted income per common share amounts are calculated using the weighted-average number of common shares outstanding for the period and include the dilutive impact of exercise of stock options as well as assumed lapse of restrictions on restricted stock awards and shares currently available for purchase under the Company's Employee Stock Purchase Plan, using the treasury stock method. Performance-based restricted stock units are considered contingently issuable shares for diluted income per common share purposes and the dilutive impact, if any, is not included in the weighted-average shares until the performance conditions are met.

The two-class method was used to calculate basic and diluted income per common share for the twenty-six weeks ended August 2, 2014 since certain of the Company's restricted stock were participating securities. The two-class method is an earnings allocation formula that determines income per share for each class of common stock and participating security according to dividends declared (or accumulated) and participation rights in undistributed earnings. Under the two-class method, basic income per common share is computed by dividing net income attributable to common shares after allocation of income to participating securities by the weighted-average number of common shares outstanding during the year. Diluted income per common share is computed using the more dilutive of the two-class method or the if-converted method. In periods of net loss, no effect is given to participating securities since they do not contractually participate in the losses of the Company. The two-class method is the more dilutive method for the twenty-six weeks ended August 2, 2014. For the thirteen and twenty-six weeks ended August 1, 2015 and thirteen weeks ended August 2, 2014, the Company did not have any outstanding participating securities.

The following table reconciles net income and the weighted average common shares outstanding used in the computations of basic and diluted income per common share (in thousands, except for share and per share data):



|                                                                                     | Thirteen Weeks Ended |                | Twenty-Six Weeks Ended |                |
|-------------------------------------------------------------------------------------|----------------------|----------------|------------------------|----------------|
|                                                                                     | August 1, 2015       | August 2, 2014 | August 1, 2015         | August 2, 2014 |
| <b>Numerator:</b>                                                                   |                      |                |                        |                |
| Net income                                                                          | \$ 7,061             | \$ 8,320       | \$ 11,339              | \$ 11,400      |
| Net income attributable to participating securities                                 | —                    | —              | —                      | (38)           |
| Net income attributable to common shareholders                                      | \$ 7,061             | \$ 8,320       | \$ 11,339              | \$ 11,362      |
| <b>Denominator:</b>                                                                 |                      |                |                        |                |
| Weighted average common shares outstanding - basic                                  | 54,501,257           | 54,280,336     | 54,474,946             | 54,072,660     |
| Dilutive impact of options, restricted stock units and employee stock purchase plan | 284,835              | 389,264        | 276,674                | 408,880        |
| Weighted average common shares outstanding - diluted                                | 54,786,092           | 54,669,600     | 54,751,620             | 54,481,540     |
| <b>Per common share:</b>                                                            |                      |                |                        |                |
| Basic income per common share                                                       | \$ 0.13              | \$ 0.15        | \$ 0.21                | \$ 0.21        |
| Diluted income per common share                                                     | \$ 0.13              | \$ 0.15        | \$ 0.21                | \$ 0.21        |

The effects of the assumed exercise of stock options for 718,633 and 703,829 shares of common stock for the thirteen and twenty-six weeks ended August 1, 2015, respectively, were excluded from the calculation of diluted net income per share as their impact would have been anti-dilutive.

The effects of the assumed exercise of stock options for 555,081 and 581,127 shares of common stock for the thirteen and twenty-six weeks ended August 2, 2014, respectively, were excluded from the calculation of diluted net income per share as their impact would have been anti-dilutive.

The aforementioned excluded shares do not reflect the impact of any incremental repurchases under the treasury stock method.

### (3) Line of Credit

The Company has a Revolving Credit Facility that allows maximum borrowings of \$20.0 million with advances tied to a borrowing base and expires on the earliest to occur of (i) May 16, 2017 or (ii) upon the occurrence of an event of default. The Revolving Credit Facility may be increased to \$30.0 million upon certain conditions. The Revolving Credit Facility includes a \$5.0 million sub-limit for the issuance of letters of credit. The borrowing base is 90% of eligible credit card receivables plus 90% of the net recovery percentage of eligible inventory less established reserves.

The Revolving Credit Facility provides for interest on borrowings, at the Company's option, at (a) a prime rate plus a margin of (i) 0.75% if excess availability is greater than or equal to 75%, (ii) 1.0% if excess availability is less than 75% but greater than or equal to 33% or (iii) 1.25% if excess availability is less than 33% or (b) a LIBOR-based rate plus a margin of (i) 1.75% if excess availability is greater than or equal to 75%, (ii) 2.00% if excess availability is less than 75% but greater than or equal to 33% or (iii) 2.25% if excess availability is less than 33%. The Revolving Credit Facility further provides for a letter of credit fee equal to the LIBOR-based rate plus (i) 1.75% if excess availability is greater than or equal to 75%, (ii) 2.00% if excess availability is less than 75% but greater than or equal to 33% or (iii) 2.25% if excess availability is less than 33%. The Revolving Credit Facility also contains an unused credit facility fee of 0.375% per annum and is subject to a servicing fee of approximately \$12.0 thousand per year.

The Revolving Credit Facility includes a covenant which requires the Company to maintain minimum excess collateral availability of no less than the greater of (i) 10% of the then effective maximum credit and (ii) \$3.0 million.

The Revolving Credit Facility also includes customary negative and affirmative covenants including, among others, limitations on the Company's ability to (i) incur additional debt; (ii) create liens; (iii) make certain investments, loans and advances; (iv) sell assets; (v) pay dividends or make distributions or other restricted payments; (vi) engage in mergers or consolidations; or (vii) change the Company's business.

Additionally, the Revolving Credit Facility is subject to payment upon the receipt of certain proceeds, including those from the sale of certain assets and is subject to an increase in the interest rate on borrowings and the letter of credit fee of 2.0% upon an event of default. Amounts under the Revolving Credit Facility may become due upon certain events of default including, among others, failure to comply with the Revolving Credit Facility's covenants, bankruptcy, default on certain other indebtedness or a change in control.

As of August 1, 2015, the Company had no borrowings under the Revolving Credit Facility and had approximately \$20.0 million available on the line of credit.

All obligations under the Revolving Credit Facility are secured by substantially all of the Company's assets and are guaranteed by the Company's subsidiary. As of August 1, 2015 and August 2, 2014, the Company was in compliance with the covenants applicable to it under the Revolving Credit Facility.

#### **(4) Commitments and Contingencies**

##### ***Commitments***

###### ***Leases***

The Company leases property and equipment under non-cancelable operating leases. Certain retail store lease agreements provide for contingent rental payments if the store's net sales exceed stated levels (percentage rents) and/or contain escalation clauses, which provide for increases in base rental for increases in future operating costs. Many of the Company's leases provide for one or more renewal options for periods of five years. The Company's operating lease agreements, including assumed extensions, which are generally those that take the lease to a ten-year term, expire through fiscal 2025.

During the thirteen weeks ended August 1, 2015, the Company committed to 20 new store leases with terms of 10 years that have future minimum lease payments of approximately \$32.0 million.

In July 2014, the Company signed a lease for a new distribution center in Pedricktown, New Jersey, to support the Company's anticipated growth. The Company will initially occupy approximately 700,000 square feet and will expand to approximately one million square feet. The Company took possession of the new distribution center in June 2015. The lease agreement has future minimum lease payments of approximately \$45 million and expires in 2025 with options to renew for three successive five-year periods.

###### ***Other contractual commitments***

As of August 1, 2015, the Company has other purchase commitments of approximately \$1.1 million consisting of purchase agreements for materials that will be used in the construction of new stores.

##### ***Contingencies***

###### ***Legal Matters***

From time to time, the Company is involved in certain legal actions arising in the ordinary course of business. In management's opinion, the outcome of such actions will not have a material adverse effect on the Company's financial condition or results of operations. On January 9, 2015, a putative class action was filed against Five Below, Inc. and certain of the Company's current and former senior officers in the United States District Court for the Eastern District of Pennsylvania, purportedly on behalf of a class of the Company's investors who purchased our publicly traded securities between June 5, 2014 and December 4, 2014. The complaint alleged violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder in connection with various public statements made by the Company. By Order entered March 30, 2015, the Court appointed Arkansas Teacher Retirement System as Lead Plaintiff and approved its selection of counsel. On May 27, 2015, Lead Plaintiff filed a notice of voluntary dismissal dismissing all claims without prejudice.

On February 25, 2015, a shareholder derivative complaint was filed on behalf of Five Below, as nominal defendant, and asserting claims against certain of the Company's directors in the United States District Court for the District of Rhode Island. The complaint in this action alleged various violations of state law, including breach of fiduciary duties, arising from the alleged federal securities violations asserted in the securities class action. On March 31, 2015, the Court approved a stipulation staying the derivative action pending a ruling on the anticipated motion to dismiss the federal complaint. On June 3, 2015, the Plaintiff filed a notice of voluntary dismissal dismissing all claims without prejudice.

#### **(5) Share-Based Compensation**

##### ***Equity Incentive Plan***

Pursuant to the Company's 2002 Equity Incentive Plan (the "Plan"), the Company's board of directors may grant stock options, restricted shares, and restricted stock units to officers, directors, key employees and professional service providers. The Plan, as amended, allows for the issuance of up to a total of 7,600,000 shares under the Plan. As of August 1, 2015, 3,767,738 stock options, restricted shares, or restricted stock units were available for grant.

##### ***Common Stock Options***

All stock options have a term not greater than ten years. Stock options vest and become exercisable in whole or in part, in accordance with vesting conditions set by the compensation committee of the Company's board of directors. Options granted to date generally vest over four years from the date of grant.

Stock option activity under the Plan was as follows:

|                                  | Options<br>Outstanding | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Remaining<br>Contractual<br>Term<br>(in years) |
|----------------------------------|------------------------|------------------------------------------|-----------------------------------------------------------------------|
| Balance as of January 31, 2015   | 1,160,934              | \$ 24.80                                 | 8.0                                                                   |
| Granted                          | 116,894                | 28.58                                    |                                                                       |
| Forfeited                        | (53,953)               | 33.62                                    |                                                                       |
| Exercised                        | (93,020)               | 8.22                                     |                                                                       |
| Balance as of August 1, 2015     | 1,130,855              | 26.13                                    | 7.7                                                                   |
| Exercisable as of August 1, 2015 | 553,974                | \$ 19.56                                 | 6.9                                                                   |

The fair value of each option award granted to employees, including outside directors, is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

|                          | Twenty-Six Weeks Ended |                |
|--------------------------|------------------------|----------------|
|                          | August 1, 2015         | August 2, 2014 |
| Expected volatility      | 47.0%                  | 47.0%          |
| Risk-free interest rate  | 1.8%                   | 1.9%           |
| Expected life of options | 6.4 years              | 6.4 years      |
| Expected dividend yield  | —%                     | —%             |

The Company uses the simplified method to estimate the expected term of the option. The expected volatility incorporates historical and implied volatility of similar entities whose share prices are publicly available. The risk-free rate for the expected term of the option is based on the U.S. Treasury yield curve in effect at the time of grant.

The per-share weighted average grant-date fair value of stock options granted for the twenty-six weeks ended August 1, 2015 and August 2, 2014 was \$13.67 and \$17.74, respectively.

#### ***Restricted Stock Units and Performance-Based Restricted Stock Units***

All restricted stock units ("RSU") and performance-based restricted stock units ("PSU") vest in accordance with vesting conditions set by the compensation committee of the Company's board of directors. RSU's granted to date have vesting periods ranging from less than one year to five years from the date of grant. PSU's granted to date have vesting periods ranging from one year to five years from the date of grant, including grants that have a cumulative three year performance period, subject to satisfaction of the applicable performance goals established for the respective grant. The Company periodically assesses the probability of achievement of the performance criteria and adjusts the amount of compensation expense accordingly. Compensation is recognized over the vesting period and adjusted for the probability of achievement of the performance criteria.

RSU and PSU activity during the twenty-six weeks ended August 1, 2015 was as follows:

|                                           | Restricted Stock Units |                                              | Performance-Based<br>Restricted Stock Units |                                              |
|-------------------------------------------|------------------------|----------------------------------------------|---------------------------------------------|----------------------------------------------|
|                                           | Number                 | Weighted-Average<br>Grant Date<br>Fair Value | Number                                      | Weighted-Average<br>Grant Date<br>Fair Value |
| Non-vested balance as of January 31, 2015 | 147,770                | \$ 35.95                                     | 392,181                                     | \$ 38.20                                     |
| Granted                                   | 112,875                | 30.57                                        | 85,282                                      | 28.58                                        |
| Forfeited                                 | (824)                  | 38.75                                        | —                                           | —                                            |
| Non-vested balance as of August 1, 2015   | 259,821                | \$ 33.60                                     | 477,463                                     | \$ 36.48                                     |

As of August 1, 2015, there was \$28.3 million of total unrecognized compensation costs related to non-vested share-based compensation arrangements (including stock options, restricted stock units and performance-based restricted stock units) granted under the Plan. That cost is expected to be recognized over a weighted average vesting period of 3.0 years.

**(6) Income Taxes**

The following table summarizes the Company's income tax expense and effective tax rates for the thirteen and twenty-six weeks ended August 1, 2015 and August 2, 2014 (in thousands):

|                            | Thirteen Weeks Ended |                | Twenty-Six Weeks Ended |                |
|----------------------------|----------------------|----------------|------------------------|----------------|
|                            | August 1, 2015       | August 2, 2014 | August 1, 2015         | August 2, 2014 |
| Income before income taxes | \$ 11,230            | \$ 13,325      | \$ 18,242              | \$ 18,271      |
| Income tax expense         | \$ 4,169             | \$ 5,005       | \$ 6,903               | \$ 6,871       |
| Effective tax rate         | 37.1%                | 37.6%          | 37.8%                  | 37.6%          |

The effective tax rates for the thirteen and twenty-six weeks ended August 1, 2015 and August 2, 2014 were based on the Company's forecasted annualized effective tax rates and were adjusted for discrete items that occurred within the periods presented. The effective tax rate for the thirteen and twenty-six weeks ended August 1, 2015 is being impacted as a result of changes in pretax income across state jurisdictions.

The Company had no material accrual for uncertain tax positions or interest or penalties related to income taxes on the Company's balance sheets as of August 1, 2015, January 31, 2015, or August 2, 2014 and has not recognized any material uncertain tax positions or interest and/or penalties related to income taxes in the consolidated statements of operations for the thirteen and twenty-six weeks ended August 1, 2015 or August 2, 2014.

The Company files a federal income tax return as well as state tax returns. With the exception of the fiscal year ended February 2, 2013, the Company's U.S. federal income tax returns for the fiscal years ended January 28, 2012 and thereafter remain subject to examination by the U.S. Internal Revenue Service ("IRS"). State returns are filed in various state jurisdictions, as appropriate, with varying statutes of limitation and remain subject to examination for varying periods up to 3 to 4 years depending on the state.

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

*You should read the following discussion together with "Selected Financial and Other Data," and the consolidated financial statements and related notes included in our Annual Report on Form 10-K for our fiscal year ended January 31, 2015 and referred to herein as the "Annual Report," and the consolidated financial statements and related notes as of and for the thirteen and twenty-six weeks ended August 1, 2015 included in Part I, Item 1 of this Quarterly Report on Form 10-Q. The statements in this discussion regarding expectations of our future performance, liquidity and capital resources and other non-historical statements are forward-looking statements. These forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described below in "Special Note Regarding Forward-Looking Statements" and in Part II, Item 1A "Risk Factors." Our actual results may differ materially from those contained in or implied by any forward-looking statements.*

*We operate on a fiscal calendar widely used by the retail industry that results in a given fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to January 31 of the following year. References to "fiscal year 2015" or "fiscal 2015" refer to the period from February 1, 2015 to January 30, 2016 and consists of a 52-week fiscal year. References to "fiscal year 2014" or "fiscal 2014" refer to the period from February 2, 2014 to January 31, 2015 and consists of a 52-week fiscal year. References to "fiscal year 2013" or "fiscal 2013" refer to the period from February 3, 2013 to February 1, 2014 and consists of a 52-week fiscal year. The fiscal quarters ended August 1, 2015 and August 2, 2014 refer to the thirteen weeks ended as of those dates. The year-to-date periods ended August 1, 2015 and August 2, 2014 refer to the twenty-six weeks ended as of those dates. Historical results are not necessarily indicative of the results to be expected for any future period and results for any interim period may not necessarily be indicative of the results that may be expected for a full year.*

### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements pursuant to the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts or present facts or conditions, such as statements regarding our future financial condition or results of operations, our prospects and strategies for future growth, the introduction of new merchandise, and the implementation of our marketing and branding strategies. In many cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential" or the negative of these terms or other comparable terminology.

The forward-looking statements contained in this Quarterly Report on Form 10-Q reflect our views as of the date of this report about future events and are subject to risks, uncertainties, assumptions and changes in circumstances that may cause events or our actual activities or results to differ significantly from those expressed in any forward-looking statement. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future events, results, actions, levels of activity, performance or achievements. A number of important factors could cause actual results to differ materially from those indicated by the forward-looking statements, including, but not limited to, those factors described in Part I, Item 1A "Risk Factors" in our Annual Report, as amended by the risk factors included in Part II, Item 1A "Risk Factors" in this Quarterly Report on Form 10-Q. These factors include without limitation:

- *failure to successfully implement our growth strategy;*
- *disruptions in our ability to select, obtain, distribute and market merchandise profitably;*
- *increased competition from online retailers due to our lack of online sales;*
- *extreme weather conditions in the areas in which our stores are located could negatively affect our business and results of operations;*
- *inability to successfully expand our distribution network capacity;*
- *disruptions to our distribution network or the timely receipt of inventory;*
- *failure to secure customers' confidential or credit card information, or other private data relating to our employees or our company;*
- *inability to attract and retain qualified employees;*

- *inability to increase sales and improve the efficiencies, costs and effectiveness of our operations;*
- *dependence on our executive officers and other key personnel or inability to hire additional qualified personnel;*
- *inability to successfully manage our inventory balances and inventory shrinkage;*
- *our lease obligations;*
- *changes in our competitive environment, including increased competition from other retailers and the presence of online retailers;*
- *increasing costs due to inflation, increased operating costs or energy prices;*
- *the seasonality of our business;*
- *disruptions to our information technology systems in the ordinary course or as a result of system upgrades;*
- *failure to maintain adequate internal controls;*
- *complications with the design or implementation of the new enterprise resource system;*
- *natural disasters, unusual weather conditions, pandemic outbreaks, global political events, war and terrorism;*
- *current economic conditions and other economic factors;*
- *the impact of governmental laws and regulations;*
- *the costs and consequences of legal proceedings;*
- *inability to protect our brand name, trademarks and other intellectual property rights;*
- *the impact of product and food safety claims and effects of legislation;*
- *increased costs as a result of being a public company;*
- *inability to obtain additional financing, if needed; and*
- *restrictions imposed by our indebtedness on our current and future operations.*

Readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on these forward-looking statements. All of the forward-looking statements we have included in this Quarterly Report on Form 10-Q are based on information available to us on the date of this report. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except as otherwise required by law.

### **Overview**

Five Below is a rapidly growing specialty value retailer offering a broad range of trend-right, high-quality merchandise targeted at the teen and pre-teen customer. We offer a dynamic, edited assortment of exciting products, all priced at \$5 and below, including select brands and licensed merchandise across our category worlds. As of August 1, 2015, we operated 417 stores in 26 states.

### **How We Assess the Performance of Our Business**

In assessing the performance of our business, we consider a variety of performance and financial measures. These key measures include net sales, comparable store sales, cost of goods sold and gross profit, selling, general and administrative expenses and operating income.

#### ***Net Sales***

Net sales constitute gross sales net of merchandise returns for damaged or defective goods. Net sales consist of sales from comparable stores and non-comparable stores. Revenue from the sale of gift cards is deferred and not included in net sales until the gift cards are redeemed to purchase merchandise.

Our business is seasonal and as a result, our net sales fluctuate from quarter to quarter. Net sales are usually highest in the fourth fiscal quarter due to the year-end holiday season.

### ***Comparable Store Sales***

Comparable store sales include net sales from stores that have been open for at least 15 full months from their opening date. Comparable stores include the following:

- Stores that have been remodeled while remaining open;
- Stores that have been relocated within the same trade area, to a location that is not significantly different in size, in which the new store opens at about the same time as the old store closes; and
- Stores that have expanded, but are not significantly different in size, within their current locations.

For stores that are relocated or expanded, the following periods are excluded when calculating comparable store sales:

- The period beginning when the closing store receives its last merchandise delivery from one of our distribution centers through:
  - the last day of the fiscal year in which the store was relocated or expanded (for stores that increased significantly in size); or
  - the last day of the fiscal month in which the store re-opens (for all other stores); and
- The period beginning on the first anniversary of the date the store received its last merchandise delivery from one of our distribution centers through the first anniversary of the date the store re-opened.

There may be variations in the way in which some of our competitors and other retailers calculate comparable or “same store” sales. As a result, data in this Quarterly Report on Form 10-Q regarding our comparable store sales may not be comparable to similar data made available by other retailers. Non-comparable store sales are comprised of new store sales, sales for stores not open for a full 15 months, and sales from existing store relocation and expansion projects that were temporarily closed (or not receiving deliveries) and not included in comparable store sales.

Measuring the change in fiscal year-over-year comparable store sales allows us to evaluate how our store base is performing. Various factors affect comparable store sales, including:

- consumer preferences, buying trends and overall economic trends;
- our ability to identify and respond effectively to customer preferences and trends;
- our ability to provide an assortment of high-quality, trend-right and everyday product offerings that generate new and repeat visits to our stores;
- the customer experience we provide in our stores;
- the level of traffic near our locations in the power, community and lifestyle centers in which we operate;
- competition;
- changes in our merchandise mix;
- pricing;
- our ability to source and distribute products efficiently;
- the timing of promotional events and holidays;
- the timing of introduction of new merchandise and customer acceptance of new merchandise;
- our opening of new stores in the vicinity of existing stores;
- the number of items purchased per store visit; and
- weather conditions.

Opening new stores is an important part of our growth strategy. As we continue to pursue our growth strategy, we expect that a significant percentage of our net sales will continue to come from new stores not included in comparable store sales. Accordingly, comparable store sales is only one measure we use to assess the success of our growth strategy.

### ***Cost of Goods Sold and Gross Profit***

Gross profit is equal to our net sales less our cost of goods sold. Gross margin is gross profit as a percentage of our net sales. Cost of goods sold reflects the direct costs of purchased merchandise and inbound freight, as well as store occupancy, distribution and buying expenses. Store occupancy costs include rent, common area maintenance, utilities and property taxes for all store locations. Distribution costs include costs for receiving, processing, warehousing and shipping of merchandise to or from our distribution centers and between store locations. Buying costs include compensation expense and other costs for our internal buying organization, including our merchandising and product development team and our planning and allocation group. These costs are significant and can be expected to continue to increase as our company grows.

The components of our cost of goods sold may not be comparable to the components of cost of goods sold or similar measures of our competitors and other retailers. As a result, data in this Quarterly Report on Form 10-Q regarding our gross profit and gross margin may not be comparable to similar data made available by our competitors and other retailers.

The variable component of our cost of goods sold is higher in higher volume quarters because the variable component of our cost of goods sold generally increases as net sales increase. We regularly analyze the components of gross profit as well as gross margin. Any inability to obtain acceptable levels of initial markups, a significant increase in our use of markdowns, and a significant increase in inventory shrinkage or inability to generate sufficient sales leverage on the store occupancy, distribution and buying components of costs of goods sold could have an adverse impact on our gross profit and results of operations. Changes in the mix of our products may also impact our overall cost of goods sold.

#### ***Selling, General and Administrative Expenses***

Selling, general and administrative, or SG&A, expenses are composed of payroll and other compensation, marketing and advertising expense, depreciation and amortization expense and other selling and administrative expenses. SG&A expenses as a percentage of net sales are usually higher in lower sales volume quarters and lower in higher sales volume quarters.

The components of our SG&A expenses may not be comparable to those of other retailers. We expect that our SG&A expenses will increase in future periods due to our continuing store growth. In addition, any increase in future share-based grants or modifications will increase our share-based compensation expense included in SG&A.

#### ***Operating Income***

Operating income equals gross profit less SG&A expenses. Operating income excludes interest expense or income, loss on debt extinguishment and income tax expense or benefit. We use operating income as an indicator of the productivity of our business and our ability to manage SG&A expenses. Operating income percentage measures operating income as a percentage of our net sales.



## Results of Consolidated Operations

The following tables summarize key components of our results of consolidated operations for the periods indicated, both in dollars and as a percentage of our net sales.

|                                                                   | Thirteen Weeks Ended |                | Twenty-Six Weeks Ended |                |
|-------------------------------------------------------------------|----------------------|----------------|------------------------|----------------|
|                                                                   | August 1, 2015       | August 2, 2014 | August 1, 2015         | August 2, 2014 |
| (in millions, except total stores)                                |                      |                |                        |                |
| <b>Consolidated Statements of Operations Data <sup>(1)</sup>:</b> |                      |                |                        |                |
| Net sales                                                         | \$ 182.2             | \$ 152.5       | \$ 335.9               | \$ 278.5       |
| Cost of goods sold                                                | 122.4                | 101.6          | 228.9                  | 188.6          |
| Gross profit                                                      | 59.8                 | 50.9           | 107.0                  | 89.8           |
| Selling, general and administrative expenses                      | 48.3                 | 37.6           | 88.4                   | 71.2           |
| Operating income                                                  | 11.6                 | 13.3           | 18.6                   | 18.6           |
| Interest expense, net                                             | —                    | —              | —                      | 0.1            |
| Loss on debt extinguishment                                       | —                    | —              | —                      | 0.2            |
| Other expense                                                     | 0.3                  | —              | 0.3                    | —              |
| Income before income taxes                                        | 11.2                 | 13.3           | 18.2                   | 18.3           |
| Income tax expense                                                | 4.2                  | 5.0            | 6.9                    | 6.9            |
| Net income                                                        | \$ 7.1               | \$ 8.3         | \$ 11.3                | \$ 11.4        |
| <b>Percentage of Net Sales <sup>(1)</sup>:</b>                    |                      |                |                        |                |
| Net sales                                                         | 100.0%               | 100.0%         | 100.0%                 | 100.0%         |
| Cost of goods sold                                                | 67.2                 | 66.6           | 68.2                   | 67.7           |
| Gross profit                                                      | 32.8                 | 33.4           | 31.8                   | 32.3           |
| Selling, general and administrative expenses                      | 26.5                 | 24.6           | 26.3                   | 25.6           |
| Operating income                                                  | 6.3                  | 8.7            | 5.5                    | 6.7            |
| Interest expense, net                                             | —                    | —              | —                      | —              |
| Loss on debt extinguishment                                       | —                    | —              | —                      | 0.1            |
| Other expense                                                     | 0.2                  | —              | 0.1                    | —              |
| Income before income taxes                                        | 6.2                  | 8.7            | 5.4                    | 6.6            |
| Income tax expense                                                | 2.3                  | 3.3            | 2.1                    | 2.5            |
| Net income                                                        | 3.9%                 | 5.5%           | 3.4%                   | 4.1%           |
| <b>Operational Data:</b>                                          |                      |                |                        |                |
| Total stores at end of period                                     | 417                  | 353            | 417                    | 353            |
| Comparable stores sales growth                                    | 3.0%                 | 3.2%           | 2.4%                   | 4.6%           |
| Average net sales per store <sup>(2)</sup>                        | \$ 0.4               | \$ 0.4         | \$ 0.8                 | \$ 0.8         |

(1) Components may not add to total due to rounding.

(2) Only includes stores open during the full fiscal quarter at each respective period.

### Thirteen Weeks Ended August 1, 2015 Compared to the Thirteen Weeks Ended August 2, 2014

#### Net Sales

Net sales increased to \$182.2 million in the thirteen weeks ended August 1, 2015 from \$152.5 million in the thirteen weeks ended August 2, 2014, an increase of \$29.7 million, or 19.5%. The increase was the result of a non-comparable store sales increase of \$25.7 million and a comparable store sales increase of \$4.0 million. The increase in non-comparable store sales was primarily driven by new stores in fiscal 2015 and the number of stores that opened in fiscal 2014 but have not been open for 15 full months. We plan to open approximately 70 net new stores in fiscal 2015.

Comparable store sales increased 3.0% for the thirteen weeks ended August 1, 2015 compared to the thirteen weeks ended August 2, 2014. This increase resulted from an increase of approximately 3.1% in the number of transactions in our stores offset by a decrease of approximately 0.1% in the average dollar value of transactions.

### ***Cost of Goods Sold and Gross Profit***

Cost of goods sold increased to \$122.4 million in the thirteen weeks ended August 1, 2015 from \$101.6 million in the thirteen weeks ended August 2, 2014, an increase of \$20.8 million, or 20.5%. The increase in cost of goods sold was primarily the result of an increase in the merchandise costs of goods resulting from the increase in net sales. Also contributing to the increase in cost of goods sold were an increase in store occupancy costs resulting from new store openings and an increase in distribution costs, primarily due to the increase in net sales.

Gross profit increased to \$59.8 million in the thirteen weeks ended August 1, 2015 from \$50.9 million in the thirteen weeks ended August 2, 2014, an increase of \$8.9 million, or 17.5%. Gross margin decreased to 32.8% for the thirteen weeks ended August 1, 2015 from 33.4% in the thirteen weeks ended August 2, 2014, a decrease of approximately 50 basis points. The decrease in gross margin was primarily the result of an increase in distribution costs, which included transitional costs related to our new distribution center in Pedricktown, New Jersey.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses increased to \$48.3 million in the thirteen weeks ended August 1, 2015 from \$37.6 million in the thirteen weeks ended August 2, 2014, an increase of \$10.7 million, or 28.5%. As a percentage of net sales, selling, general and administrative expenses increased approximately 190 basis points to 26.5% in the thirteen weeks ended August 1, 2015 compared to 24.6% in the thirteen weeks ended August 2, 2014. The increase in selling, general and administrative expense was primarily the result of increases of \$8.2 million in store-related expenses to support new store growth and our marketing initiatives, \$0.8 million of corporate-related expenses, and \$1.7 million in share-based compensation expense primarily driven by our leadership investments.

### ***Income Tax Expense***

Income tax expense decreased to \$4.2 million in the thirteen weeks ended August 1, 2015 from \$5.0 million in the thirteen weeks ended August 2, 2014, a decrease of \$0.8 million, or approximately 16.7%. The decrease in income tax expense was primarily the result of a \$2.1 million decrease in pre-tax income. Our effective tax rate for the thirteen weeks ended August 1, 2015 was 37.1% compared to 37.6% in the thirteen weeks ended August 2, 2014. Our effective tax rate for the thirteen weeks ended August 1, 2015 was lower than the comparable period as a result of changes in the mix of pretax income across state jurisdictions.

### ***Net Income***

As a result of the foregoing, net income decreased to \$7.1 million in the thirteen weeks ended August 1, 2015 from \$8.3 million in the thirteen weeks ended August 2, 2014, a decrease of approximately \$1.3 million, or 15.1%.

## **Twenty-Six Weeks Ended August 1, 2015 Compared to the Twenty-Six Weeks Ended August 2, 2014**

### ***Net Sales***

Net sales increased to \$335.9 million in the twenty-six weeks ended August 1, 2015 from \$278.5 million in the twenty-six weeks ended August 2, 2014, an increase of \$57.4 million, or 20.6%. The increase was the result of a non-comparable store sales increase of \$51.3 million and a comparable store sales increase of \$6.1 million. The increase in non-comparable store sales was primarily driven by the number of stores that opened in fiscal 2014 but have not been open for 15 full months and new stores in fiscal 2015. We plan to open approximately 70 net new stores in fiscal 2015.

Comparable store sales increased 2.4% for the twenty-six weeks ended August 1, 2015 compared to the twenty-six weeks ended August 2, 2014. This increase resulted from an increase of approximately 1.2% in the number of transactions in our stores and an increase in the average dollar value of transactions of approximately 1.2%.

### ***Cost of Goods Sold and Gross Profit***

Cost of goods sold increased to \$228.9 million in the twenty-six weeks ended August 1, 2015 from \$188.6 million in the twenty-six weeks ended August 2, 2014, an increase of \$40.3 million, or 21.4%. The increase in cost of goods sold was primarily the result of an increase in the merchandise costs of goods resulting from the increase in net sales. Also contributing to the increase in cost of goods sold were an increase in store occupancy costs resulting from new store openings and an increase in distribution costs primarily due to the increase in net sales.

Gross profit increased to \$107.0 million in the twenty-six weeks ended August 1, 2015 from \$89.8 million in the twenty-six weeks ended August 2, 2014, an increase of \$17.1 million, or 19.1%. Gross margin decreased to 31.8% for the twenty-six weeks ended August 1, 2015 from 32.3% in the twenty-six weeks ended August 2, 2014, a decrease of approximately 40 basis points. The decrease in gross margin was primarily the result of an increase in store occupancy costs.

***Selling, General and Administrative Expenses***

Selling, general and administrative expenses increased to \$88.4 million in the twenty-six weeks ended August 1, 2015 from \$71.2 million in the twenty-six weeks ended August 2, 2014, an increase of \$17.2 million, or 24.1%. As a percentage of net sales, SG&A expenses increased approximately 70 basis points to 26.3% in the twenty-six weeks ended August 1, 2015 compared to 25.6% in the twenty-six weeks ended August 2, 2014. The increase in SG&A expense was primarily the result of increases of \$12.2 million in store-related expenses to support new store growth and our marketing initiatives, and \$2.5 million of corporate-related expenses, and \$2.5 million in share-based compensation expense primarily driven by our leadership investments.

***Income Tax Expense***

Income tax expense was \$6.9 million in the twenty-six weeks ended August 1, 2015 and August 2, 2014. Our effective tax rate for the twenty-six weeks ended August 1, 2015 was 37.8% compared to 37.6% in the twenty-six weeks ended August 2, 2014.

***Net Income***

As a result of the foregoing, net income decreased to \$11.3 million in the twenty-six weeks ended August 1, 2015 from \$11.4 million in the twenty-six weeks ended August 2, 2014, a decrease of approximately \$0.1 million, or 0.5%.

## Liquidity and Capital Resources

### Overview

Our primary sources of liquidity are cash flows from operations, historical equity financings and borrowings under our Revolving Credit Facility (defined in “-Line of Credit”). Our primary cash needs are for capital expenditures and working capital.

Capital expenditures typically vary depending on the timing of new store openings and infrastructure-related investments. We plan to make capital expenditures of approximately \$56 million in fiscal 2015, which we expect to fund from cash generated from operations. We expect to devote approximately \$22 million of our capital expenditure budget in fiscal 2015 to construct and open 70 net new stores, with the remainder projected to be spent on our distribution centers, including the new distribution center in Pedricktown, New Jersey, corporate infrastructure and store relocations and remodels.

Our primary working capital requirements are for the purchase of store inventory and payment of payroll, rent, other store operating costs and distribution costs. Our working capital requirements fluctuate during the year, rising in the third and fourth fiscal quarters as we take title to increasing quantities of inventory in anticipation of our peak, year-end holiday shopping season in the fourth fiscal quarter. Fluctuations in working capital are also driven by the timing of new store openings.

Historically, we have funded our capital expenditures and working capital requirements during the fiscal year with cash on hand, net cash provided by operating activities and borrowings under our Revolving Credit Facility. When we have used our Revolving Credit Facility, the amount of indebtedness outstanding under it has tended to be the highest in the beginning of the fourth quarter of each fiscal year. Over the past three fiscal years, to the extent that we have drawn on the facility, we have paid down the borrowings before the end of the fiscal year with cash generated during our peak selling season in the fourth quarter. We did not have any direct borrowings under our Revolving Credit Facility during the thirteen and twenty-six weeks ended August 1, 2015.

Based on our growth plans, we believe that our cash position, net cash provided by operating activities and availability under our Revolving Credit Facility will be adequate to finance our planned capital expenditures, working capital requirements and debt service over the next 12 months and for the foreseeable future thereafter. If cash flows from operations and borrowings under our Revolving Credit Facility are not sufficient or available to meet our requirements, then we will be required to obtain additional equity or debt financing in the future. There can be no assurance that equity or debt financing will be available to us when we need it or, if available, that the terms will be satisfactory to us and not dilutive to our then-current shareholders.

### Cash Flows

A summary of our cash flows from operating, investing and financing activities is presented in the following table (in millions):

|                                                                        | Twenty-Six Weeks Ended |                |
|------------------------------------------------------------------------|------------------------|----------------|
|                                                                        | August 1, 2015         | August 2, 2014 |
| Net cash provided by operating activities                              | \$ 26.3                | \$ 12.6        |
| Net cash used in investing activities                                  | (29.9)                 | (19.7)         |
| Net cash provided by (used in) financing activities                    | 1.4                    | (17.6)         |
| Net decrease during period in cash and cash equivalents <sup>(1)</sup> | \$ (2.3)               | \$ (24.7)      |

<sup>(1)</sup> Components may not add to total due to rounding.

### Cash Provided by Operating Activities

Net cash provided by operating activities for the twenty-six weeks ended August 1, 2015 was \$26.3 million, an increase of \$13.7 million compared to the twenty-six weeks ended August 2, 2014. The increase was primarily due to an increase in operating cash flows from store performance and working capital changes offset by an increase in income taxes paid.

### Cash Used in Investing Activities

Net cash used in investing activities for the twenty-six weeks ended August 1, 2015 was \$29.9 million, an increase of \$10.2 million compared to the twenty-six weeks ended August 2, 2014 related solely to capital expenditures. The increase in capital expenditures was primarily for our new store construction, our distribution facilities, and our corporate infrastructure.

### ***Cash Provided by (Used in) Financing Activities***

Net cash provided by financing activities for the twenty-six weeks ended August 1, 2015 was \$1.4 million, an increase of \$19.0 million compared to net cash used in financing activities of \$17.6 million in the twenty-six weeks ended August 2, 2014. The increase in net cash provided by financing activities was primarily the result of the \$19.5 million principal repayment on the Term Loan Facility during the twenty-six weeks ended August 2, 2014.

### ***Line of Credit***

The Company has a Revolving Credit Facility that allows maximum borrowings of \$20.0 million with advances tied to a borrowing base and expires on the earliest to occur of (i) May 16, 2017 or (ii) upon the occurrence of an event of default. The Revolving Credit Facility may be increased to \$30.0 million upon certain conditions. The Revolving Credit Facility includes a \$5.0 million sub limit for the issuance of letters of credit. The borrowing base is 90% of eligible credit card receivables plus 90% of the net recovery percentage of eligible inventory less established reserves.

The Revolving Credit Facility provides for interest on borrowings, at our option, at (a) a prime rate plus a margin of (i) 0.75% if excess availability is greater than or equal to 75%, (ii) 1.0% if excess availability is less than 75% but greater than or equal to 33% or (iii) 1.25% if excess availability is less than 33% or (b) a LIBOR-based rate plus a margin of (i) 1.75% if excess availability is greater than or equal to 75%, (ii) 2.00% if excess availability is less than 75% but greater than or equal to 33% or (iii) 2.25% if excess availability is less than 33%. The Revolving Credit Facility further provides for a letter of credit fee equal to the LIBOR-based rate plus (i) 1.75% if excess availability is greater than or equal to 75%, (ii) 2.00% if excess availability is less than 75% but greater than or equal to 33% or (iii) 2.25% if excess availability is less than 33%. The Revolving Credit Facility also contains an unused credit facility fee of 0.375% per annum and is subject to a servicing fee of approximately \$12.0 thousand per year.

The Revolving Credit Facility includes a covenant which requires us to maintain minimum excess collateral availability of no less than the greater of (i) 10% of the then effective maximum credit and (ii) \$3.0 million.

The Revolving Credit Facility also includes customary negative and affirmative covenants including, among others, limitations on our ability to (i) incur additional debt; (ii) create liens; (iii) make certain investments, loans and advances; (iv) sell assets; (v) pay dividends or make distributions or other restricted payments; (vi) engage in mergers or consolidations; or (vii) change our business.

Additionally, the Revolving Credit Facility is subject to payment upon the receipt of certain proceeds, including those from the sale of certain assets and is subject to an increase in the interest rate on borrowings and the letter of credit fee of 2.0% upon an event of default. Amounts under the Revolving Credit Facility may become due upon certain events of default including, among others, failure to comply with the Revolving Credit Facility's covenants, bankruptcy, default on certain other indebtedness or a change in control.

As of August 1, 2015, we had no borrowings under the Revolving Credit Facility and had approximately \$20.0 million available on the line of credit.

All obligations under the Revolving Credit Facility are secured by substantially all of our assets and are guaranteed by the Company's subsidiary. As of August 1, 2015 and August 2, 2014, we were in compliance with the covenants applicable to us under the Revolving Credit Facility.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions. Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. Actual results may vary from estimates in amounts that may be material to the financial statements. An accounting policy is deemed to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact our consolidated financial statements. Our critical accounting policies and estimates are discussed in the Annual Report. We believe that there have been no significant changes to our critical accounting policies during the twenty-six weeks ended August 1, 2015.

### **Contractual Obligations**

Except as set forth below, there have been no material changes to our contractual obligations as disclosed in the Annual Report, other than those which occur in the ordinary course of business.

From February 1, 2015 to August 1, 2015, we have entered into 44 new fully executed retail leases with an average term of 10 years and other lease modifications that have future minimum lease payments of approximately \$78.5 million.

### **Off-Balance Sheet Arrangements**

For the quarterly period ended August 1, 2015, except for operating leases entered into in the normal course of business, we were not party to any material off-balance sheet arrangements that are reasonably likely to have a current or future effect on our financial condition, net sales, expenses, results of operations, liquidity, capital expenditures or capital resources.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

### ***Interest Rate Risk***

Our principal market risk relates to interest rate sensitivity, which is the risk that future changes in interest rates will reduce our net income or net assets. We have a Revolving Credit Facility which includes a revolving line of credit with advances tied to a borrowing base, which bears interest at a variable rate. Because our Revolving Credit Facility bears interest at a variable rate, we will be exposed to market risks relating to changes in interest rates.

As of August 1, 2015, we had no borrowings outstanding under the Revolving Credit Facility. The Revolving Credit Facility provides for interest on borrowings, at the Company's option, at (a) a prime rate plus a margin of (i) 0.75% if excess availability is greater than or equal to 75%, (ii) 1.0% if excess availability is less than 75% but greater than or equal to 33% or (iii) 1.25% if excess availability is less than 33% or (b) a LIBOR-based rate plus a margin of (i) 1.75% if excess availability is greater than or equal to 75%, (ii) 2.00% if excess availability is less than 75% but greater than or equal to 33% or (iii) 2.25% if excess availability is less than 33%. The Revolving Credit Facility further provides for a letter of credit fee equal to the LIBOR-based rate plus (i) 1.75% if excess availability is greater than or equal to 75%, (ii) 2.00% if excess availability is less than 75% but greater than or equal to 33% or (iii) 2.25% if excess availability is less than 33%. We do not use derivative financial instruments for speculative or trading purposes, but this does not preclude our adoption of specific hedging strategies in the future.

### ***Impact of Inflation***

Our results of operations and financial condition are presented based on historical cost. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe the effects of inflation, if any, on our historical results of operations and financial condition have been immaterial. We cannot assure you, however, that our results of operations and financial condition will not be materially impacted by inflation in the future.

## **ITEM 4. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

Our management has evaluated, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures, as defined in Rule 13(a)-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act"), as of the end of the period covered by this Quarterly Report on Form 10-Q pursuant to Rule 13a-15(b) of the Exchange Act. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q are effective at a reasonable assurance level in ensuring that information required to be disclosed in our Exchange Act reports is (1) recorded, processed, summarized and reported in a timely manner and (2) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures will prevent or detect all errors and all fraud. While our disclosure controls and procedures are designed to provide reasonable assurance of their effectiveness, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected.

### **Changes in Internal Control over Financial Reporting**

There were no changes to our internal control over financial reporting during the thirteen weeks ended August 1, 2015 that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II - OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

On January 9, 2015, a putative class action was filed against Five Below, Inc. and certain of our current and former senior officers in the United States District Court for the Eastern District of Pennsylvania, purportedly on behalf of a class of our investors who purchased our publicly traded securities between June 5, 2014 and December 4, 2014. The complaint alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rule 10b-5 promulgated thereunder in connection with various public statements made by us. By Order entered March 30, 2015, the Court appointed Arkansas Teacher Retirement System as Lead Plaintiff and approved its selection of counsel. On May 27, 2015, Lead Plaintiff filed a notice of voluntary dismissal dismissing all claims without prejudice.

On February 25, 2015, a shareholder derivative complaint was filed on behalf of Five Below, as nominal defendant, asserting claims against certain of our directors in the United States District Court for the District of Rhode Island. The complaint in this action alleged various violations of state law, including breach of fiduciary duties, arising from the alleged federal securities violations asserted in the securities class action. On March 31, 2015, the Court approved a stipulation staying the derivative action pending a ruling on the anticipated motion to dismiss the federal complaint. On June 3, 2015, the Plaintiff filed a notice of voluntary dismissal dismissing all claims without prejudice.

In addition, we are subject to various proceedings, lawsuits, disputes, and claims arising in the ordinary course of our business. Many of these actions raise complex factual and legal issues and are subject to uncertainties. Actions filed against us from time to time include commercial, intellectual property, customer, and employment actions, including class action lawsuits. The plaintiffs in some actions seek unspecified damages or injunctive relief, or both. Actions are in various procedural stages, and some are covered in part by insurance. We cannot predict with assurance the outcome of actions brought against us. Accordingly, adverse developments, settlements, or resolutions may occur and negatively impact income in the quarter of such development, settlement or resolution. If a potential loss arising from these lawsuits, claims and pending actions is probable and reasonably estimable, we record the estimated liability based on circumstances and assumptions existing at the time. Although the outcome of these and other claims cannot be predicted with certainty, management does not believe that the ultimate resolution of these matters will have a material adverse effect on our financial condition or results of operations.

**ITEM 1A. RISK FACTORS**

Risk factors that affect our business and financial results are discussed in Part I, Item 1A "Risk Factors," in our Annual Report. There have been no material changes in our risk factors from those previously disclosed in our Annual Report. You should carefully consider the risks described in our Annual Report, which could materially affect our business, financial condition or future results. The risks described in our Annual Report are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition, and/or operating results. If any of the risks actually occur, our business, financial condition, and/or results of operations could be negatively affected.

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

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

None.



**ITEM 6. EXHIBITS***(a) Exhibits*

| No.  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1  | Amended and Restated Articles of Incorporation of Five Below, Inc., as currently in effect.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 3.2  | Amended Bylaws, as currently in effect.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 10.1 | Amendment, dated July 20, 2015 to Employment Letter, dated June 8, 2014, by and between Joel D. Anderson and Five Below, Inc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 31.1 | Certification of Chief Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 31.2 | Certification of Chief Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| 101† | The following financial information from this Quarterly Report on Form 10-Q for the fiscal quarter ended August 1, 2015, formatted in XBRL (Extensible Business Reporting Language) and furnished electronically herewith: (i) the Unaudited Consolidated Balance Sheets as of August 1, 2015, January 31, 2015 and August 2, 2014; (ii) the Unaudited Consolidated Statements of Operations for the Thirteen Weeks Ended and Twenty-Six Weeks Ended August 1, 2015 and August 2, 2014; (iii) the Unaudited Consolidated Statement of Shareholders' Equity for the Twenty-Six Weeks Ended August 1, 2015; (iv) the Unaudited Consolidated Statements of Cash Flows for the Twenty-Six Weeks Ended August 1, 2015 and August 2, 2014 and (v) the Notes to Unaudited Consolidated Financial Statements, tagged in detail. |
| †    | Pursuant to applicable securities laws and regulations, this interactive data file is deemed not filed or part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of section 18 of the Exchange Act of 1934, as amended, and otherwise is not subject to liability under those sections.                                                                                                                                                                                                                                                                                                                                                                                                                           |

## 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.

### **FIVE BELOW, INC.**

Date: September 3, 2015

/s/ Joel D. Anderson

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Joel D. Anderson

President and Chief Executive Officer (Principal Executive Officer)

Date: September 3, 2015

/s/ Kenneth R. Bull

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Kenneth R. Bull

Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

## EXHIBIT INDEX

| No.  | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
FIVE BELOW, INC.**

**A Business-Stock Domestic Corporation**

In compliance with the requirements of the Pennsylvania Business Corporation Law of 1988, as amended, 15 Pa.C.S. § 1911 et. seq. (relating to amendment of articles of incorporation), the corporation hereby desires to amend and restate its Articles of Incorporation in their entirety as follows:

FIRST: The name of the corporation is: Five Below, Inc. (the “Corporation”).

SECOND: The location and address of the Corporation’s registered office in this Commonwealth of Pennsylvania and the county of venue is: 1818 Market Street, Suite 2000, Philadelphia, Pennsylvania, 19103, Philadelphia County.

THIRD: The purpose of the Corporation is to have unlimited power to engage in, and do any lawful act concerning, any or all lawful business for which corporations may be incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988, as amended (15 Pa. C.S. §§ 1101 et. seq.) (the “Business Corporation Law”).

FOURTH: The term for which the Corporation is to exist is perpetual.

FIFTH: The corporation was incorporated under the provisions of the Business Corporation Law on January 30, 2002 under the name Cheap Holdings, Inc.

SIXTH:

A. Authorized Shares

The total number of shares of capital stock which the Corporation has authority to issue is 125,000,000 shares, consisting of:

1. 5,000,000 shares of Preferred Stock, par value \$0.01 per share (the “Preferred Stock”); and
2. 120,000,000 shares of Common Stock, par value \$0.01 per share (the “Common Stock”).

The Preferred Stock and the Common Stock shall have the rights, preferences and limitations set forth below.

The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

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B. Preferred Stock

The Board of Directors of the Corporation (the “Board”) is hereby authorized to provide for the issuance of shares of Preferred Stock, in one or more series, by the filing of one or more certificates pursuant to the applicable law of the Commonwealth of Pennsylvania (each, a “Preferred Stock Designation”), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

1. the designation of the series, which may be by distinguishing number, letter or title;
2. the number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding);
3. whether dividends, if any, shall be cumulative or noncumulative and the dividend rate of the series;
4. the dates at which dividends, if any, shall be payable;
5. the redemption rights and price or prices, if any, for shares of the series;
6. the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;
7. the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
8. whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates as of which such shares shall be convertible and all other terms and conditions upon which such conversion may be made;
9. restrictions on the issuance of shares of the same series or of any other class or series; and
10. the voting rights, full or limited, if any, of the holders of shares of the series.

Except as may be provided in these Amended and Restated Articles of Incorporation (the “Restated Articles”) or in a Preferred Stock Designation, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, and holders of Preferred Stock shall not be entitled to receive notice of any meeting of shareholders at which they are not entitled to vote.

C. Common Stock

1. *Dividends.* Except as otherwise provided by the Business Corporation Law or these Restated Articles, and subject to the powers, rights, privileges, preferences and priorities of holders of any
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series of Preferred Stock or any other series or class of stock, as provided herein or in any Preferred Stock Designation, the holders of Common Stock shall share ratably in all dividends payable in cash, stock or otherwise and other distributions, whether in respect of liquidation or dissolutions (voluntary or involuntary) or otherwise, at such times and in such amounts as the Board in its sole discretion may determine.

2. *Conversion Rights.* The Common Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation's capital stock.

3. *Preemptive Rights.* No holder of Common Stock shall have any preemptive, subscription, redemption, conversion or sinking fund rights with respect to the Common Stock, or to any obligations convertible (directly or indirectly) into stock of the Corporation whether now or hereafter authorized.

4. *Voting Rights.* Except as otherwise provided by the Business Corporation Law or these Restated Articles and subject to the rights of holders of any series of Preferred Stock or any other series or class of stock, as provided herein or in any Preferred Stock Designation, all of the voting power of the shareholders of the Corporation shall be vested in the holders of the Common Stock, and each holder of Common Stock shall have one vote for each share held by such holder on all matters voted upon by the shareholders of the Corporation.

5. *Notices.* All notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any shareholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

D. Uncertificated Shares.

Any and all classes or series of shares of capital stock of the Corporation, or any part thereof, may be represented by uncertificated shares to the extent determined by the Board, except as required by applicable law, including that shares represented by a certificate that is issued and outstanding shall continue to be represented thereby until the certificate is surrendered to the Corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required by applicable law to be set forth or stated on certificates. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical.

SEVENTH: In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

EIGHTH: The shareholders of the Corporation shall not be entitled to cumulate their votes for the election of directors.

NINTH: If the Corporation solicits proxies generally with respect to a meeting of shareholders, the Corporation need not give notices of the meeting, or any material that accompanies the notice, to any shareholder to whom the Corporation is not required to send a proxy statement pursuant to the rules of the Securities and Exchange Commission.

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TENTH: The Corporation expressly elects not to be governed by Section 2538 (Adoption of Transactions with Interested Shareholders) and the provisions contained in Subchapters E (Control Transactions), G (Control-Share Acquisitions), H (Disgorgement by Certain Controlling Shareholders for Employees Terminated Following Attempts to Acquire Control), I (Severance Compensation for Employees Terminated Following Certain Control-Share Acquisitions) and J (Business Combination Transactions - Labor Contracts) of Chapter 25 of the Business Corporation Law.

ELEVENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Restated Articles, or any amendment hereof, in the manner now or hereafter prescribed herein and by the laws of the Commonwealth of Pennsylvania, and all rights conferred upon shareholders herein are granted subject to this reservation.

TWELFTH: Classification of Directors.

A. Subject to the rights of the holders of any series of Preferred Stock to elect directors under circumstances specified in any Preferred Stock Designation, the number of directors of the Corporation shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the whole Board, but shall not be less than three or greater than eleven. A director need not be a shareholder.

B. The directors, other than those who may be elected by the holders of any series of Preferred Stock or any other series or class of stock, as provided herein or in any Preferred Stock Designation, shall be divided into three classes, as nearly equal in number as possible. Members of each class shall hold office until their successors are duly elected and qualified, subject to their earlier death, resignation, disqualification or removal. At each annual meeting of the shareholders of the Corporation, the successors of the class of directors whose term expires at that meeting shall be elected by the shareholders in the manner set forth in the Bylaws of the Corporation, to hold office for a term expiring at the annual meeting of shareholders held in the third year following the year of their election. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of authorized directors constituting the whole Board shorten the term of any incumbent director.

C. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock as provided herein or in any Preferred Stock Designation, and unless the Board otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority vote of the directors then in office, though less than a quorum, and shall not be filled by the shareholders unless there are no directors remaining on the Board. Any director so chosen (a "Vacancy Director"), if chosen to fill a vacancy, shall be a director of the same class as the director whose vacancy he or she fills. Such Vacancy Director shall hold office until the next annual meeting of shareholders and until his or her successor shall have been elected and qualified, subject to his earlier death, resignation, disqualification or removal. The shareholders shall thereupon elect a director to fill the vacancy having been temporarily filled by the Vacancy Director, which individual may include the incumbent Vacancy Director. The director so elected shall be a director of the same class as the Vacancy Director and shall serve until the annual meeting of shareholders at which the term of office of such class expires and until such director's successor shall have been duly elected and qualified, subject to his earlier death, resignation, disqualification or removal.

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D. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock, as provided herein or in any Preferred Stock Designation, any director may be removed from office at any time in either of the following manners:

1. for cause by the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class; and
2. the Board may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year, or if, within one hundred twenty days after notice of election, the director does not accept such office either in writing or by attending a meeting of the Board.

THIRTEENTH: Notwithstanding any other provisions of these Restated Articles or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of the capital stock required by law or these Restated Articles, the affirmative vote of the holders of at least eighty percent (80%) of the Voting Stock shall be required to alter, amend or adopt any provision inconsistent with or repeal Articles EIGHTH, TENTH and TWELFTH hereof and Sections 2.2, 2.3, 2.16, 3.2, 3.3, 3.5, 3.6 and 3.7 of the Bylaws of the Corporation, unless such alteration, amendment, adoption or repeal shall be approved by the Board, in which case, approval by the shareholders will only require a majority of the then outstanding shares of the Corporation entitled to vote on such alteration, amendment, adoption or repeal. Notwithstanding anything contained in these Restated Articles to the contrary, the affirmative vote of at least eighty percent (80%) of the Voting Stock shall be required to alter, amend or adopt any provision inconsistent with or repeal this this Article THIRTEENTH.

Amendment and Restatement approved by Board of Directors: March 10, 2015

Amendment and Restatement approved by Shareholders: June 18, 2015



**AMENDED AND RESTATED  
BYLAWS  
OF  
FIVE BELOW, INC.**

**ARTICLE 1  
OFFICES**

Section 1.1 Registered Office. The registered office of Five Below, Inc. (the “Corporation”) in the Commonwealth of Pennsylvania shall be as specified in the Amended and Restated Articles of Incorporation of the Corporation, as they may be amended from time to time (the “Articles”), or at such other place as the Board of Directors of the Corporation (the “Board”) may specify in a statement of change of registered office filed with the Department of State of the Commonwealth of Pennsylvania.

Sections 1.2 Other Offices. The Corporation may also have an office or offices at such other place or places either within or without the Commonwealth of Pennsylvania as the Board may from time to time determine or as the business of the Corporation requires.

**ARTICLE 2  
MEETINGS OF THE SHAREHOLDERS**

Section 2.1 Place. All meetings of the shareholders shall be held at such places, within or without the Commonwealth of Pennsylvania, as the Board may from time to time determine. If, as permitted by the Board pursuant to Section 2.15 hereof, a meeting of the shareholders is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders and pose questions to the directors, the meeting need not be held at a particular geographic location.

Section 2.2 Annual Meetings.

(1) A meeting of the shareholders for the election of directors and the transaction of such other business as may properly be brought before the meeting shall be held once each calendar year on such date and at such time as may be fixed by the Board.

(2) Nominations of persons for election to the Board and the proposal of business to be considered by the shareholders at an annual meeting of shareholders may be made (A) pursuant to the Corporation’s notice of meeting, (B) by or at the direction of the Board or (C) by any shareholder of the Corporation who was a shareholder of record at the time of giving of notice provided for in this Article 2, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Article 2.

(3) For nominations or other business to be properly brought before an annual meeting by a shareholder pursuant to clause (C) of paragraph (2) of this Section 2.2, the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation (the “Secretary”) and such other business must otherwise be a proper matter for shareholder action. To be timely, a shareholder’s notice must be received by the Secretary at the principal executive offices of the Corporation not later than the 60th day nor earlier than the 90th day prior to the first anniversary of the preceding year’s annual

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meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder must be so received not earlier than the 90th day prior to the annual meeting and not later than the later of the 60th day prior to the annual meeting or the 15th day following the day on which public announcement of the date of the meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period for the giving of a shareholder's notice as described above. Notwithstanding the foregoing, if the Corporation is required under Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act") to include a shareholder's proposal in its proxy statement, such shareholder shall be deemed to have given timely notice for purposes of this paragraph (3) of Section 2.2 with respect to such proposal. A shareholder's notice shall set forth (A) as to each person whom the shareholder proposes to nominate for election or reelection as a director: (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest or is otherwise required pursuant to Regulation 14A under the Exchange Act, (ii) a description of any arrangements or understandings among the shareholder and each such person and any other person with respect to such nomination, and (iii) the consent of each such person to being named in the proxy statement as a nominee and to serving as a director of the Corporation if so elected; (B) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such shareholder, as they appear on the Corporation's books, and of such beneficial owner; (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such shareholder and such beneficial owner; and (iii) a representation that such shareholder and beneficial owner intend to appear in person or by proxy at the meeting. At the request of the Corporation, any person nominated by a shareholder for election as a director must furnish to the Secretary such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such shareholder's nomination shall not be considered in proper form pursuant to this Section 2.2.

(4) Notwithstanding anything in paragraph (3) of this Section 2.2 to the contrary, in the event that the number of directors to be elected to the Board at the annual meeting is increased pursuant to an act of the Board and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board on or before the date which is 15 days before the latest date by which a shareholder may timely notify the Corporation of nominations or other business to be brought by a shareholder in accordance with paragraph (3) of this Section 2.2, a shareholder's notice required by this Section 2.2 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the 15th day following the day on which such public announcement is first made by the Corporation.

(5) In addition, to be timely, a shareholder's notice pursuant to Section 2.2 or Section 2.3 hereof shall further be 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 the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment 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 (5) business days after the record date for the

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meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

(6) In addition to the requirements of this Section 2.2 and Section 2.3, a shareholder must also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.2 and Section 2.3; provided, however, that any references in this Section 2.2 to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals as to any other business to be considered pursuant to this Section 2.2 or Section 2.3.

**Section 2.3 Special Meetings of Shareholders.** A special meeting of the shareholders for any purpose or purposes shall be called only by the Chair of the Board, the Chief Executive Officer, or the Board. Only such business shall be conducted at a special meeting of shareholders 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 shareholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board or (2) provided that the Board has determined that directors shall be elected at such meeting, by any shareholder of the Corporation who is a shareholder of record at the time of giving of notice provided for in this Section 2.3, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.3. In the event the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board, any such shareholder 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 shareholder's notice required by paragraph (3) of Section 2.2 shall be received by the Secretary at the principal executive offices of the Corporation not earlier than the 90th day prior to such special meeting and not later than the later of the 60th day prior to such special meeting or the 15th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period for the giving of a shareholder's notice as described above.

**Section 2.4 Written Ballot.** Unless required by vote of the shareholders before the voting begins, elections of directors need not be by written ballot.

**Section 2.5 Conduct of Shareholders Meeting.** There shall be a presiding officer at every meeting of the shareholders. The presiding officer shall be appointed in the manner provided by the Board. If the Board fails to designate a presiding officer, the Chair of the Board or in his absence by the Chief Executive Officer, or in their absence by the President, or in his absence by a Vice President, shall be the presiding officer. The Secretary of the Corporation shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The presiding officer shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting of the shareholders. Any action by the presiding officer in adopting rules for, and in conducting, a meeting of the shareholders shall be fair to the shareholders. The presiding officer shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

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Section 2.6 General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Article 2 and Section 3.5 shall be eligible to serve as directors to the Board and only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article 2. Except as otherwise provided by law, the Articles or the Bylaws of the Corporation (the "Bylaws"), the presiding officer at the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article 2 and, if any proposed nomination or business is not in compliance with this Article 2, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Article 2, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(3) Nothing in this Article 2 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors.

Section 2.7 Notice of Meetings. Written notice of every meeting of the shareholders, stating the place, the date and hour thereof and, in the case of a special meeting of the shareholders, the general nature of the business to be transacted thereat, shall be given in a manner consistent with the provisions of Section 11.4 of these Bylaws at the direction of the Secretary or, in the absence of the Secretary, any Assistant Secretary, at least ten (10) days prior to the day named for a meeting called to consider a fundamental change under Chapter 19 of the Pennsylvania Business Corporation Law of 1988, as it may from time to time be amended (the "1988 BCL"), or five (5) days prior to the day named for the meeting in any other case, to each shareholder entitled to vote thereat on the date fixed as a record date in accordance with Section 7.1 of these Bylaws or, if no record date be fixed, then of record at the close of business on the tenth (10th) day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day immediately preceding the day of the meeting, at such address (or telex, TWX, facsimile, electronic mail address or telephone number), as appears on the transfer books of the Corporation. Any notice of any meeting of shareholders may state that, for purposes of any meeting that has been previously adjourned for one or more periods aggregating at least fifteen (15) days because of an absence of a quorum, the shareholders entitled to vote who attend such a meeting, although less than a quorum pursuant to Section 2.8 of these Bylaws, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the original notice of the meeting that was so adjourned.

Section 2.8 Quorum.

(1) The shareholders present in person or by proxy, entitled to cast at least a majority of the votes that all shareholders are entitled to cast on any particular matter to be acted upon at the meeting, shall constitute a quorum for the purposes of consideration of, and action on, such matter. Treasury shares shall not be counted in determining the total number of outstanding shares for voting purposes at any given time. The shareholders present in person or by proxy at a duly organized meeting can continue to do business until the adjournment thereof notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If a meeting cannot be organized because a quorum has not been achieved, the shareholders present in person or by proxy may, except as otherwise provided by the

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1988 BCL and subject to the provisions of Section 2.9 of these Bylaws, adjourn the meeting to such time and place as they may determine.

(2) Abstentions and broker votes and broker nonvotes (only when accompanied by broker votes with respect to at least one matter at the meeting) are considered present and entitled to vote for purposes of establishing a quorum for the transaction of business at a meeting of shareholders. A “broker vote” occurs when a broker votes the shares on any matter pursuant to either (i) the voting instructions and authority received from its client who is the beneficial owner of the shares or (ii) the broker’s discretionary authority to vote the shares under the applicable rules and regulations of the NASDAQ Stock Market LLP ( “NASDAQ”) or other national securities exchange governing the voting authority of brokers. A “broker nonvote” occurs when a broker has not received voting instructions from its client who is the beneficial owner of the shares and the broker is barred from exercising its discretionary authority to vote the shares under the applicable rules and regulations of NASDAQ or other securities exchange governing the voting authority of brokers.

#### Section 2.9 Adjournments and Postponements.

(1) Any meeting of the shareholders, including one at which directors are to be elected, may be adjourned for such period as the shareholders present in person or by proxy and entitled to vote shall direct. Notice of the adjourned meeting or the business to be transacted thereat need not be given, other than announcement at the meeting at which adjournment is taken, unless the Board fixes a new record date for the adjourned meeting or the 1988 BCL requires notice of the business to be transacted and such notice has not previously been given. At any adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally noticed. Those shareholders entitled to vote present in person or by proxy, although less than a quorum pursuant to Section 2.8 of these Bylaws, shall nevertheless constitute a quorum for the purpose of (a) electing directors at a meeting called for the election of directors that has been previously adjourned for lack of a quorum, and (b) acting, at a meeting that has been adjourned for one or more periods aggregating fifteen (15) days because of an absence of a quorum, upon any matter set forth in the original notice of such adjourned meeting, provided that such original notice shall have complied with the last sentence of Section 2.7 of these Bylaws.

(2) Any meeting of the shareholders, including one at which directors are to be elected, may be postponed for any proper purpose for such period as the Board shall determine.

Section 2.10 Action at a Meeting. Subject to the provisions of Section 3.3, any matter brought before a duly organized meeting for a vote of the shareholders, including, without limitation, the amendment of any provision of these Bylaws, shall be decided by a majority of the votes cast at such meeting by the shareholders present in person or by proxy and entitled to vote thereon, unless the matter is one for which a different vote is required by express provision of the 1988 BCL, the Articles or a provision of these Bylaws adopted by the shareholders, in any of which case(s) such express provision shall govern and control the decision on such matter. For clarification purposes, abstentions and broker nonvotes will not be counted as votes cast.

Section 2.11 Voting Rights. Except as otherwise provided in the Articles, at every meeting of the shareholders, every shareholder entitled to vote shall have the right to one vote for each share having voting power standing in his or her name on the books of the Corporation. Shares of the Corporation owned by it, directly or indirectly, including treasury shares, shall not be voted.

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Section 2.12 Proxies. Every shareholder entitled to vote at a meeting of the shareholders or to express consent or dissent to a corporate action in writing may authorize another person to act for him or her by proxy appointed by an instrument in writing executed (or transmitted by electronic means which results in a writing) by such shareholder or by the shareholder's attorney thereunto authorized, and delivered to the Secretary or its designated agent. The presence of, or vote or other action at a meeting of shareholders, or the expression of consent or dissent to corporate action in writing, by a proxy of a shareholder, shall constitute the presence of, or vote or action by, or written consent or dissent of the shareholder. Every proxy shall be executed in writing by the shareholder or by the shareholder's duly authorized attorney-in-fact and filed with the Secretary or its designated agent. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until written notice of revocation has been given to the Secretary or its designated agent in writing. An unrevoked proxy shall not be valid after three (3) years from the date of its execution, unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary or its designated agent.

Section 2.13 Voting Lists. The officer or agent having charge of the transfer books for securities of the Corporation shall make a complete list of the shareholders entitled to vote at a meeting of the shareholders, arranged in alphabetical order, with the address of and the number of shares held by each shareholder, which list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list. If the Corporation has 5,000 or more shareholders, it may make such information available at the meeting by any other means.

Section 2.14 Judges of Election. In advance of any meeting of the shareholders, the Board may appoint judges of election, who need not be shareholders, to act at such meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of any such meeting may, and on the request of any shareholder shall, appoint judges of election at the meeting. The number of judges shall be either one (1) or three (3), as determined by the Board or presiding officer, as the case may be, to be appropriate under the circumstances. No person who is a candidate for office to be filled at the meeting shall act as a judge at the meeting. The judges of election shall do all such acts as may be proper to conduct the election or vote with fairness to all shareholders, and shall make a written report of any matter determined by them and execute a certificate of any fact found by them, if requested by the presiding officer of the meeting or any shareholder or the proxy of any shareholder. If there are three (3) judges of election, the decision, act or certificate of a majority shall be effective in all respects as the decision, act or certificate of all.

Section 2.15 Participation by Electronic Means. The right of any shareholder to participate in any shareholders' meeting by means of conference telephone, the Internet or other electronic means by which all persons participating in the meeting may hear each other and, in which event, all shareholders so participating shall be deemed present at such meeting, shall be granted solely in the discretion of the Board.

Section 2.16 No Written Consent in Lieu of a Meeting. The shareholders of the Corporation may not take any action by written consent in lieu of a meeting, and must take any actions at

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a duly called annual or special meeting of shareholders and the power of shareholders to consent in writing without a meeting is specifically denied.

### **ARTICLE 3 DIRECTORS**

Section 3.1 Powers. The business and affairs of the Corporation shall be managed under the direction of the Board, which may exercise all powers of the Corporation and do all such lawful acts and things as are not by statute or by the Articles or these Bylaws directed or required to be exercised and done by the shareholders.

Section 3.2 Number, Elections and Term of Office. Subject to the provisions of the Articles (including, but not limited to, for purposes of these Bylaws, pursuant to any duly authorized certificate of designation), the number of directors of the Corporation shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the whole Board, but the size of the Board shall not be less than three or greater than eleven. The directors, other than those who may be elected by the holders of any series or class of stock, as provided in the Articles, shall be divided into three (3) classes, as nearly equal in number as possible, shall be elected to serve a term of three (3) years and shall hold office until his or her successor shall have been duly elected and qualified, subject to his earlier death, resignation, disqualification or removal. No decrease in the number of authorized directors constituting the whole Board shall shorten the term of any incumbent director. At each annual meeting of the shareholders of the Corporation, the successors of the class of directors whose term expires at that meeting shall be elected by the shareholders, to hold office for a term expiring at the annual meeting of shareholders held in the third year following the year of their election.

Section 3.3 Majority Voting. Each director shall be elected by the vote of the majority of the votes cast with respect to such director's election at any meeting of the shareholders called for the purpose of the election of directors at which a quorum is present, provided that if as of a date that is ten (10) days in advance of the date the Corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission, the number of nominees exceeds the number of directors to be elected, the directors shall be elected by a plurality of votes cast by the shares entitled to vote in the election.

For the purposes of these Restated Bylaws, a "majority of the votes cast" means that the number of shares voted "for" a director must exceed the number of votes "against" with respect to that director.

Section 3.4 Qualifications. Directors shall be natural persons, shall be 18 years or older, and need not be residents of the Commonwealth of Pennsylvania or security holders of the Corporation.

Section 3.5 Nominations of Directors. Nominees for election to the Board shall be selected by the Board or a committee of the Board to which the Board has delegated the authority to make such selections pursuant to Section 3.13 of these Bylaws. Nominees for election to the Board may also be selected by shareholders, provided that such nominations are made in accordance with, and accompanied by the information required by, Section 2.2 and Section 2.3. Only persons duly nominated for election to the Board in accordance with this Section 3.5, Section 2.2 or Section 2.3 and for whose election proxies have been solicited pursuant to a proxy statement filed pursuant to the Exchange Act shall be eligible for election to the Board.

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Section 3.6 Vacancies. Subject to the rights of the holders of any capital stock of the Corporation, as specified in the Articles, and unless the Board otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority vote of the directors then in office, though less than a quorum, and shall not be filled by the shareholders unless there are no directors remaining on the Board. Any director so chosen (a “Vacancy Director”), if chosen to fill a vacancy, shall be a director of the same class as the director whose vacancy he or she fills. Such Vacancy Director shall hold office until the next annual meeting of shareholders and until his or her successor shall have been elected and qualified, subject to his earlier death, resignation, disqualification or removal. The shareholders shall thereupon elect a director to fill the vacancy having been temporarily filled by the Vacancy Director, which individual may include the incumbent Vacancy Director. The director so elected shall be a director of the same class as the Vacancy Director and shall serve until the annual meeting of shareholders at which the term of office of such class expires and until such director’s successor shall have been duly elected and qualified, subject to his earlier death, resignation, disqualification or removal.

Section 3.7 Removal.

(1) Removal by the Shareholders. Subject to the rights of the holders of any series or class of capital stock pursuant to provisions of the Articles, any director may be removed from office at any time by the shareholders, but only for cause and by the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(2) Removal by the Board. The Board may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year, or if, within one hundred twenty days after notice of election, the director does not accept such office either in writing or by attending a meeting of the Board.

Section 3.8 Resignation. Any director of the Corporation may resign at any time by giving written notice to the Board, to the Chairman of the Board (if one has been elected), to the President, or to the Secretary of the Corporation. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.9 Place of Board Meetings. Meetings of the Board may be held at such place within or without the Commonwealth of Pennsylvania as the Board may from time to time appoint or as may be designated in the notice of the meeting.

Section 3.10 First Meeting of Newly Elected Board. The first meeting of each newly elected Board may be held at the same place and immediately after the meeting at which such directors were elected and no notice shall be required other than announcement at such meeting. If such first meeting of the newly elected Board is not so held, notice of such meeting shall be given in the same manner as set forth in Section 3.11 of these Bylaws with respect to notice of regular meetings of the Board.

Section 3.11 Regular Board Meetings; Notice. Regular meetings of the Board may be held at such times and places as shall be determined from time to time by resolution of the Board at a duly

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convened meeting, or by unanimous written consent. Notice of each regular meeting of the Board shall specify the purpose, date, place and hour of the meeting and shall be given to each director at least five (5) days before the meeting. Notice shall be given in a manner consistent with Section 11.4 of these Bylaws.

Section 3.12 Special Board Meetings; Notice. Special meetings of the Board may be called by the Chair of the Board, if any, by the Chief Executive Officer or President, or by a majority of the directors then in office on one day's notice to each director, either by telephone, or, if in writing, in accordance with the provisions of Section 11.4 of these Bylaws.

Section 3.13 Quorum of the Board; Action of the Board. At all meetings of the Board, the presence of a majority of the directors then in office shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the Board. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting. It shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken.

Section 3.14 Committees of Directors. The Board may establish one or more committees, each committee to consist of one or more of the directors, and 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 or for the purposes of any written action by the committee. Any such committee, to the extent provided in such resolution of the Board or in these Bylaws, shall have and may exercise all of the powers and authority of the Board; provided, however, that no such committee shall have any power or authority to (a) submit to the shareholders any action requiring approval of the shareholders under the 1988 BCL, (b) create or fill vacancies on the Board, (c) amend or repeal these Bylaws or adopt new Bylaws, (d) amend or repeal any resolution of the Board that by its terms is amendable or repealable only by the Board, (e) act on any matter committed by these Bylaws or by resolution of the Board to another committee of the Board, (f) amend the Articles or adopt a resolution proposing an amendment to the Articles, or (g) adopt a plan or an agreement of merger or consolidation, share exchange, asset sale or division. In the absence or disqualification of a member or alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not a quorum is present, may unanimously appoint another director to act at the meeting in the place of any absent or disqualified member. Minutes of all meetings of any committee of the Board shall be kept by the person designated by such committee to keep such minutes. Copies of such minutes and any writing setting forth an action taken by written consent without a meeting shall be distributed to each member of the Board promptly after such meeting is held or such action is taken. Each committee of the Board shall serve at the pleasure of the Board.

Section 3.15 Chairman of the Board. The Chairman of the Board, if one is elected, shall preside at all meetings of the Board and of the shareholders. The Chairman shall perform all duties incident to the office of Chairman of the Board and shall have such other powers and duties as the Board assigns to that individual.

Section 3.16 Participation in Board Meetings by Electronic Means. One or more directors may participate in a meeting of the Board or of a committee of the Board by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other, and all directors so participating shall be deemed present at the meeting.

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Section 3.17 Action by Written Consent of Directors. Any action required or permitted to be taken at a meeting of the Board or of a committee of the Board may be taken without a meeting if, prior or subsequent to the action, a consent or consents in writing setting forth the action so taken shall be signed by all of the directors then in office or the members of the committee, as the case may be, and filed with the Secretary. For purposes of this Section 3.16, a consent may be given by means of a physical written copy or may be transmitted by facsimile transmission, e-mail or similar electronic communications technology.

Section 3.18 Compensation of Directors. The Board may, by resolution, fix the compensation of directors for their services as directors. A director may also serve the Corporation in any other capacity and receive compensation therefor.

Section 3.19 Directors' Liability. A director of the Board shall not be personally liable for monetary damages as such (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expense of any nature (including, without limitation, attorneys' fees and disbursements)) for any action taken, or any failure to take any action, unless the director has breached or failed to perform the duties of his or her office under the Articles, these Bylaws or applicable provisions of law and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

## **ARTICLE 4 OFFICERS**

Section 4.1 Number, Qualifications and Designation. The officers of the Corporation shall be a President, one or more Vice Presidents (including executive or Senior Vice Presidents), a Secretary and a Treasurer, and such other officers as may be elected or appointed in accordance with the provisions of this Section 4.1 or Section 4.3 of this Article. One person may hold more than one office. Officers may but need not be directors or shareholders of the Corporation. The President and Secretary shall be natural persons of full age; the Treasurer, however, may be a company, but if a natural person, shall be of full age.

Section 4.2 Election and Term of Office. The officers of the Corporation, except those elected by delegated authority pursuant to Section 4.3 of this Article, shall be elected annually by the Board, and each such officer shall hold office until the next annual organization meeting of Board and until a successor shall have been duly chosen and qualified, or until his or her earlier death, resignation, or removal.

Section 4.3 Other and Subordinate Officers, Committees and Agents. The Board may from time to time appoint such other officers and appoint such committees, employees or other agents as the business of the Corporation may require, including an executive Chairman of the Board and one or more deputy or vice-chairmen, a chief executive officer, a chief operating officer, one or more assistant secretaries, and one or more assistant treasurers, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws, or as the Board may from time to time determine. The Board may delegate to any officer or committee the power to appoint subordinate officers and to retain or appoint employees or other agents, or committees thereof, and to prescribe the authority and duties of such subordinate officers, committees, employees or other agents.

Section 4.4 Resignations. Any officer or agent may resign at any time by giving written notice to the Board, or to the President or the Secretary. Any such resignation shall take effect at the date

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of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.5 Removal. Any officer, committee, employee or other agent of the Corporation may be removed, either with or without cause, by the Board or other authority which elected or appointed such officer, committee or other agent. Election or appointment of an officer or employee or other agent shall not of itself create contract rights.

Section 4.6 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled by the Board or by the officer or committee to which the power to fill such office has been delegated pursuant to Section 4.3 of this Article, as the case may be, and if the office is one for which these Bylaws prescribe a term, shall be filled for the unexpired portion of the term.

Section 4.7 General Powers. All officers of the Corporation as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided by or pursuant to resolutions or orders of the Board, or in the absence of controlling provisions in the resolutions or orders of the Board, as may be determined by or pursuant to these Bylaws.

Section 4.8 The President. Unless otherwise determined by the Board, the President shall be the Chief Executive Officer of the Corporation and shall have general supervision over the business and operations of the Corporation, subject, however, to the control of the Board. The President shall sign, execute, and acknowledge, in the name of the Corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the Board, except in cases where the signing and execution thereof shall be expressly delegated by the Board, or by these Bylaws, to some other officer or agent of the Corporation; and, in general, shall perform all duties incident to the office of President and such other duties as from time to time may be assigned by the Board.

Section 4.9 The Vice Presidents. In the absence of the President, a Vice President, as designated by the Board, shall perform the duties of the President and such other duties as may from time to time be assigned to them by the Board or by the President.

Section 4.10 The Secretary. The Secretary or an Assistant Secretary shall attend all meetings of the Shareholders and of the Board and shall record all the votes of the shareholders and of the directors and the minutes of the meetings of the shareholders and of the Board and of committees of the Board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the Corporation as required by law; shall be the custodian of the seal of the Corporation and see that it is affixed to all documents to be executed on behalf of the Corporation under its seal; and, in general, shall perform all duties incident to the office of Secretary, and such other duties as may from time to time be assigned by the Board or the President.

Section 4.11 The Treasurer. The Treasurer or an Assistant Treasurer shall have or provide for the custody of the funds or other property of the Corporation; shall collect and receive or provide for the collection and receipt of moneys earned by or in any manner due to or received by the Corporation; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the Board may from time to time designate; shall, whenever so required by the Board, render an account showing all transactions as treasurer, and the financial condition of the Corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the Board or the President.

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Section 4.12 Officers' Bonds. Any officer shall give a bond for the faithful discharge of the duties of the officer in such sum, if any, and with such surety or sureties as the Board may require.

Section 4.13 Salaries. The salaries of the officers elected by the Board shall be fixed from time to time by the Board or by such officer as may be designated by resolution of the Board. The salaries or other compensation of any other officers, employees and other agents shall be fixed from time to time by the officer or committee to which the power to elect such officers or to retain or appoint such employees or other agents has been delegated pursuant to Section 4.1 of this Article. No officer shall be prevented from receiving such salary or other compensation by reason of the fact that the officer is also a director of the Corporation.

## **ARTICLE 5 CERTIFICATES FOR SHARES**

Section 5.1 Share Certificates. Any or all classes and series of shares of the Corporation, or any part thereof, may be represented by uncertificated shares to the extent determined by the Board, except as otherwise required by law or the Articles. To the extent that certificates for shares of the Corporation are issued, such certificates shall be numbered and registered in a share register as they are issued. The share register shall exhibit the names and addresses of all registered holders and the number and class of shares and the series, if any, held by each. To the extent that certificates for shares of the Corporation are issued, each such certificate shall state that the Corporation is incorporated under the laws of the Commonwealth of Pennsylvania, the name of the registered holder and the number and class of shares and the series, if any, represented thereby. If, under its Articles, the Corporation is authorized to issue shares of the Corporation of more than one class or series and certificates for such shares are issued, each such certificate shall set forth, or shall contain a statement that the Corporation will furnish to any shareholder upon request and without charge, a full or summary statement of the designations, voting rights, preferences, limitations and special rights of the shares of each class or series authorized to be issued so far as they have been fixed and determined and the authority of the Board to fix and determine such rights.

Section 5.2 Execution of Certificates. Every share certificate shall be executed, by facsimile or otherwise, by or on behalf of the Corporation, by the Chief Executive Officer and/or President, by any Vice-President, or by the Secretary. In case any officer who has signed or whose facsimile signature has been placed upon any share certificate shall have ceased to be such officer, because of death, resignation or otherwise, before the certificate is issued, it may be issued by the Corporation with the same effect as if the officer had not ceased to be such at the time of issue.

## **ARTICLE 6 TRANSFER OF SHARES**

Section 6.1 Transfer. Transfers of shares shall be made on the share register of the Corporation only by the record holder of such shares, or by the appropriate person or accompanied by proper evidence of succession, assignment or authority to transfer, and, in the case of shares represented by a certificate, upon the presentment of the certificate therefore in the manner set forth herein. Upon presentment to the Corporation or its transfer agent of a share certificate endorsed by the appropriate person or accompanied by proper evidence of succession, assignment or authority to transfer, a new certificate shall be issued to the person entitled thereto and the old certificate canceled and the transfer registered upon the books of the Corporation, unless either: (a) the Corporation has received a demand from an appropriate person to make an indorsement on such certificate that the Corporation not register

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transfer; or (b) the Corporation has been served with a restraining order, injunction or other process from a court of competent jurisdiction enjoining it from registering the transfer. Any demand to the Corporation not to register transfer shall identify the registered owner and the issue of which such share is a part and provide an address to send communications directed to the person making the demand. No demand described in Section 6.1 (a) above shall be effective unless it is received by the Corporation at a time and in a manner affording the Corporation a reasonable opportunity to act on it. To the extent that shares are not represented by certificates, transfer of such shares shall be made pursuant to such procedures as the Board may adopt.

Section 6.2 Request to Register Transfer After Demand. If a share certificate is presented to the Corporation or its transfer agent with a request to register transfer after a demand that the Corporation not register transfer of such certificate has become effective pursuant to Section 6.1 of these Bylaws, then the Corporation shall promptly communicate to each of the person who initiated the demand and the person who presented the certificate for registration of transfer a notification stating that: (a) the certificate has been presented for registration of transfer; (b) a demand that the Corporation not register transfer of such certificate had previously been received; and (c) the Corporation will withhold registration of transfer of such certificate for a period of thirty (30) days (or such shorter period of time as stated in the notification that is not manifestly unreasonable) from the date of the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

Section 6.3 Limitation of Liability. The Corporation shall not be liable to a person who initiated a demand that the Corporation not register transfer for any loss the person suffers as a result of registration of transfer if the person who initiated demand does not, within the time stated in the notification described in Section 6.2 of these Bylaws, either (a) obtain an appropriate restraining order, injunction or other process from a court of competent jurisdiction enjoining the Corporation from registering the transfer, or (b) file with the Corporation an indemnity bond, sufficient in the Board's reasonable discretion to protect the Corporation or its transfer agent from any loss it or they may suffer by refusing to register the transfer.

## **ARTICLE 7**

### **RECORD DATE; IDENTITY OF SHAREHOLDERS**

Section 7.1 Record Date. The Board may fix a time, prior to the date of any meeting of the shareholders, as a record date for the determination of the shareholders entitled to notice of, or to vote at, the meeting, which time, except in the case of an adjourned meeting, shall not be more than ninety (90) days prior to the date of the meeting. Except as otherwise provided in Section 7.2 of these Bylaws, only the shareholders of record at the close of business on the date so fixed shall be entitled to notice of, or to vote at, such meeting, notwithstanding any transfer of securities on the books of the Corporation after any record date so fixed. The Board may similarly fix a record date for the determination of shareholders for any other purpose. When a determination of shareholders of record has been made as herein provided for purposes of a meeting, the determination shall apply to any adjournment thereof unless the Board fixes a new record date for the adjourned meeting.

Section 7.2 Certification of Nominee. The Board may adopt a procedure whereby a shareholder may certify in writing to the Secretary that all or a portion of the shares registered in the name of the shareholder are held for the account of a specified person or persons. The Board, in adopting such procedure, may specify (a) the classification of shareholder who may certify, (b) the purpose or purposes for which the certification may be made, (c) the form of certification and the information to be contained therein, (d) as to certifications with respect to a record date, the date after the record date by which the

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certification must be received by the Secretary, and (e) such other provisions with respect to the procedure as the Board deems necessary or desirable. Upon receipt by the Secretary of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified instead of the persons making the certification.

## **ARTICLE 8 REGISTERED SHAREHOLDERS**

Before due presentment for transfer of any shares, the Corporation shall treat the registered owner thereof as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner, and shall not be bound to recognize any equitable or other claim or interest in such securities, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the Commonwealth of Pennsylvania or Section 7.2 of these Bylaws.

## **ARTICLE 9 LOST CERTIFICATES**

If the owner of a share certificate claims that it has been lost, destroyed, or wrongfully taken, the Corporation shall issue a new certificate in place of the original certificate if the owner so requests before the Corporation has notice that the certificate has been acquired by a bona fide purchaser, and if the owner has filed with the Corporation an indemnity bond and an affidavit of the facts satisfactory to the Board or its designated agent, and has complied with such other reasonable requirements, if any, as the Board may deem appropriate.

## **ARTICLE 10 DISTRIBUTIONS**

Section 10.1 Distributions. Distributions upon the shares of the Corporation, whether by dividend, purchase or redemption or other acquisition of its shares subject to any provisions of the Articles related thereto, may be authorized by the Board at any regular or special meeting of the Board and may be paid directly or indirectly in cash, in property or by the incurrence of indebtedness by the Corporation.

Section 10.2 Reserves. Before the making of any distributions, there may be set aside out of any funds of the Corporation available for distributions such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board shall deem conducive to the interests of the Corporation, and the Board may abolish any such reserve in the manner in which it was created.

Section 10.3 Stock Dividends/Splits. Stock dividends or splits upon the shares of the Corporation, subject to any provisions of the Articles related thereto, may be authorized by the Board at any regular or special meeting of the Board.

## **ARTICLE 11 GENERAL PROVISIONS**

Section 11.1 Checks and Notes. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board may from time to time designate.

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Section 11.2 Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board.

Section 11.3 Seal. The corporate seal, if any, shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Pennsylvania." Such seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced. The affixation of the corporate seal shall not be necessary to the valid execution, assignment or endorsement of any instrument or other document by the Corporation.

Section 11.4 Notices. Whenever, under the provisions of the 1988 BCL or of the Articles or of these Bylaws or otherwise, written notice is required to be given to any person, it may be given to such person either personally or by sending a copy thereof by first class or express mail, postage prepaid, telegram (with messenger service specified), telex, TWX (with answerback received), courier service (with charges prepaid), electronic mail, facsimile transmission or by any other means permitted by the 1988 BCL, to his, her or its address, (or to his, her or its telex, TWX, electronic mail address, facsimile number or other place as specified in the 1998 BCL), appearing on the books of the Corporation or, in the case of directors, supplied by the director to the Corporation for the purpose of notice. If the notice is sent by mail, telegraph or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office or courier service for delivery to that person. A notice given by telex, TWX, electronic mail or facsimile transmission shall be deemed to have been given when dispatched. Notice or other communications need not be sent to any shareholder with whom the Corporation has been unable to communicate for more than 24 consecutive months because communications to the shareholder are returned unclaimed or the shareholder has otherwise failed to provide the Corporation with a current address. Whenever such shareholder provides the Corporation with a current address, the Corporation shall commence sending notices and other communications to such shareholder in the same manner as to other shareholders.

Section 11.5 Waiver of Notice. Whenever any notice is required to be given by the 1988 BCL or by the Articles or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted nor the purpose of a meeting need be specified in the waiver of notice of the meeting. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting, except where any person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened, and the person so objects at the beginning of the meeting.

## **ARTICLE 12 AMENDMENTS**

In furtherance and not in limitation of the powers conferred by the 1988 BCL, the Board is expressly authorized to make, alter, amend, change, add to or repeal any provision of these Bylaws by the affirmative vote of a majority of the total number of directors then in office, subject to the power of the holders of the then outstanding capital stock of the Corporation to alter, amend, change, add to or repeal any provision of these Bylaws made by the Board. Subject to Article THIRTEENTH of the Articles, any alteration, amendment, change, addition to, adoption or repeal of any provision of these Bylaws will require the affirmative vote of a majority of the total number of directors then in office, or the affirmative vote of a majority of the combined voting power of all of the then outstanding shares of the Corporation entitled to vote on such alteration, amendment, change, addition to, adoption or repeal of such provision of these Bylaws.

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## **ARTICLE 13**

### **INDEMNIFICATION**

Section 13.1 Officers and Directors - Direct Actions. The Corporation shall indemnify any director or officer of the Corporation (as used herein, the phrase “director or officer of the Corporation” shall mean any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise), who was or is a party (other than a party plaintiff suing on his or her own behalf), or who is threatened to be made such a party, to 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 he or she is or was a director or officer of the Corporation, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she met the standard of conduct of (a) acting in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and (b) with respect to any criminal proceeding, having no reasonable cause to believe his or her conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person (x) did not act in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and (y) with respect to any criminal proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 13.2 Officers and Directors - Derivative Actions. The Corporation shall indemnify any director or officer of the Corporation who was or is a party (other than a party suing in the right of the Corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in the Corporation’s favor by reason of the fact that he or she is or was a director or officer of the Corporation, against expenses (including attorneys’ fees) actually and reasonably incurred by him or her in connection with the defense or settlement of the action, suit or proceeding if he or she met the standard of conduct of acting in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation. Indemnification shall not be made under this Section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the Court of Common Pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action, suit or proceeding was brought determines 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 the expenses that the Court of Common Pleas or other court deems proper.

Section 13.3 Employees and Agents. The Corporation may, to the extent permitted by the 1988 BCL, indemnify any employee or agent of the Corporation (as used in this Article 13, the phrase “employee or agent of the Corporation” shall mean any person who is or was an employee or agent of the Corporation, other than an officer, or is or was serving at the request of the Corporation as an employee or agent of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise) who was or is a party, or who is threatened to be made such a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding by reason of the fact that he or she is or was an employee or agent of the Corporation,

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provided he or she has met the standard of conduct set forth in Sections 13.1 and 13.2, subject to the limitations set forth in Section 13.2 in the case of an action, suit or proceeding by or in the right of the Corporation to procure a judgment in the Corporation's favor.

Section 13.4 Mandatory Indemnification. To the extent that a director or officer of the Corporation or any employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in Sections 13.1, 13.2 or 13.3 of this Article 13, or in defense of any claim, issue or matter therein, he or she shall be indemnified by the Corporation against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 13.5 Advancing Expenses. Expenses (including attorneys' fees) incurred by a director or officer of the Corporation or an employee or agent of the Corporation in defending any action or proceeding referred to in this Article 13 may be paid by the Corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article 13.

Section 13.6 Procedure.

(a) Unless ordered by a court, any indemnification under Section 13.1, 13.2 or 13.3 or advancement of expenses under Section 13.5 of this Article 13 shall be made by the Corporation only as authorized in a specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 13.1, 13.2 or 13.3.

(b) All determinations under this Section 13.6 shall be made

(i) With respect to indemnification under Section 13.3 and advancement of expenses to an employee or agent of the Corporation, other than an officer, by the Board.

(ii) With respect to indemnification under Section 13.1 or 13.2 and advancement of expenses to a director or officer of the Corporation,

(A) By the Board, by a majority vote of a quorum consisting of directors who were not parties to such action or proceeding, or

(B) If such a quorum is not obtainable, or, if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or

(C) By the shareholders.

Section 13.7 Nonexclusivity of Indemnification.

(a) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article 13 shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to actions in his or her official capacity and as

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to actions in another capacity while holding that office. Section 1728 (relating to interested directors; quorum) of the 1988 BCL, or any successor section, shall be applicable to any bylaw, contract or transaction authorized by the directors under this Section 13.7. The Corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this Article 13 or otherwise.

(b) Indemnification pursuant to Section 13.7(a) hereof shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted self-dealing, willful misconduct or recklessness.

(c) Indemnification pursuant to Section 13.7(a) under any bylaw, agreement, vote of shareholders or directors or otherwise, may be granted for any action taken or any failure to take any action and may be made whether or not the Corporation would have the power to indemnify the person under any other provision of law except as provided in this Section 13.7 and whether or not the indemnified liability arises or arose from any threatened or pending or completed action by or in the right of the Corporation.

Section 13.8 Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation or an employee or agent of the Corporation, against any liability asserted against such person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against that liability under the provisions of this Article 13 or otherwise.

Section 13.9 Past Officers and Directors. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article 13 shall continue as to a person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of the heirs and personal representatives of that person.

Section 13.10 Surviving or New Corporations. References to “the Corporation” in this Article 13 include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporation resulting therefrom, so that any director, officer, employee or agent of the constituent, surviving or new corporation shall stand in the same position under the provisions of this Article 13 with respect to the surviving or new corporation as he or she would if he or she had served the surviving or new corporation in the same capacity.

Section 13.11 Employee Benefit Plans.

(a) References in this Article 13 to “other enterprise” shall include employee benefit plans and 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, the person with respect to an employee benefit plan, its participants or beneficiaries.

(b) Excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be deemed “fines.”

(c) Action with respect to an employee benefit plan taken or omitted in good faith by a director, officer, employee or agent of the Corporation in a manner he or she reasonably

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believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the Corporation.

#### **ARTICLE 14**

#### **FORUM FOR ADJUDICATION OF DISPUTES**

Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's shareholders, (iii) any action asserting a claim arising pursuant to, or involving any application, interpretation, enforcement or determination of validity of, any provision of the Pennsylvania Associations Code, the 1988 BCL or the articles of incorporation or bylaws of the Corporation, (iv) any action or proceeding brought under 15 Pa.C.S. Subchapter 15D (relating to dissenters rights), (v) any action or proceeding brought under 15 Pa.C.S. Subchapter 17G (relating to judicial supervision of corporate action), (vi) any action or proceeding brought under 15 Pa.C.S. Chapter 25 (relating to registered corporations), or (vii) any action asserting a claim peculiar to the relationships between or among the Corporation and its officers, directors, and shareholders, or otherwise governed by or involving the internal affairs doctrine, shall be a state or federal court located within the County of Philadelphia in the Commonwealth of Pennsylvania. Without limiting any of the foregoing, nothing contained in this Article 14 is intended to limit or otherwise adversely impact any property right vested in the Corporation's shareholders or is intended to limit, determine or address the merits or substance of any action or proceeding (including, whether any action or proceeding should be commenced or maintained against the Corporation or against any of the Corporation's directors, officers, shareholders, employees or agents, or whether any particular type or form of remedy or relief should be sought or is available against the Corporation or against any of its directors, officers or employees), but instead, the provisions of this Article 14 are solely procedural in nature and govern only the exclusive location, forum and venue for the commencement of actions and proceedings expressly enumerated in clauses (i) through (vii) of the immediately preceding sentence.

Amendment and Restatement approved by Board of Directors: March 10, 2015

Amendment and Restatement approved by Shareholders: June 18, 2015

Five Below, Inc.  
1818 Market Street, Suite 1900  
Philadelphia, PA 19103

July 20, 2015

**Personal and Confidential**

**VIA HAND DELIVERY**

Joel D. Anderson

**Re: Second Amendment to Employment Terms**

Dear Joel:

Reference is hereby made to the employment letter agreement dated as of June 8, 2014, as amended (the “*Employment Agreement*”) by and between Five Below, Inc. (the “*Company*”) and Joel D. Anderson (“*you*”).

Pursuant to its terms, the Employment Agreement may not be amended or revised except by a writing signed by both you and the Company. Accordingly, each of the Company and you desire to enter into this letter amendment (this “*Second Amendment*”) in order to modify and amend the Employment Agreement as follows:

(1) Effective June 18, 2015, the second paragraph under the heading entitled “RETENTION GRANT” in the Employment Agreement is hereby amended and restated to delete the following words “and the PSUs in the Retention Grant will be eligible to vest in equal parts on February 3, 2018 and February 2, 2019, based on the level of the Company’s performance achieved in fiscal years 2017 and 2018 against earnings growth measures established by the Compensation Committee not later than the first anniversary of the grant date” and to replace such words in their entirety with the following to read as follows:

“and the PSUs in the Retention Grant will be eligible to vest on February 3, 2018 and February 2, 2019, based on the attainment of the applicable performance goals as set forth below:

|                                                                   | Threshold                                              | Target                                              |
|-------------------------------------------------------------------|--------------------------------------------------------|-----------------------------------------------------|
| 2017 Performance Goal                                             | Attainment of 2017 Performance Goal at Threshold Level | Attainment of 2017 Performance Goal at Target Level |
| Number of PSUs that vest upon attainment of 2017 Performance Goal | 25% of the PSUs in the Retention Grant                 | 50% of the PSUs in the Retention Grant              |
| 2018 Performance Goal                                             | Attainment of 2018 Performance Goal at Threshold Level | Attainment of 2018 Performance Goal at Target Level |
| Number of PSUs that vest upon attainment of 2018 Performance Goal | 25% of the PSUs in the Retention Grant                 | 50% of the PSUs in the Retention Grant              |

The terms “2017 Performance Goal,” “2018 Performance Goal,” “Threshold Level,” and “Target Level” will be as defined in your PSU Award Agreement (the “*Award Agreement*”) and the PSUs will be subject to the other applicable terms of the Award Agreement.”

All terms of the Employment Agreement, except as expressly modified by this Second Amendment, are hereby acknowledged and ratified.

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If you are in agreement with the terms of this Second Amendment, please execute and return a fully executed copy of this Second Amendment to me.

Sincerely,

FIVE BELOW, INC.

/s/ Kenneth R. Bull

By: Kenneth R. Bull

Title: Chief Financial Officer

Agreed on this 20th day of July, 2015:

/s/ Joel D. Anderson

Joel D. Anderson

## CERTIFICATION

Exhibit 31.1

I, Joel D. Anderson, certify that:

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

By: /s/ Joel D. Anderson

Name: Joel D. Anderson

Title: President and Chief Executive Officer

Dated: September 3, 2015

## CERTIFICATION

Exhibit 31.2

I, Kenneth R. Bull, certify that:

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

By: /s/ Kenneth R. Bull

Name: Kenneth R. Bull

Title: Chief Financial Officer and Treasurer

Dated: September 3, 2015

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

In connection with the quarterly report of Five Below, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended August 1, 2015 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Joel D. Anderson, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ Joel D. Anderson

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Joel D. Anderson

President and Chief Executive Officer

Date: September 3, 2015



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

In connection with the quarterly report of Five Below, Inc. (the "Company") on Form 10-Q for the fiscal quarter ended August 1, 2015 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth R. Bull, Chief Financial Officer and Treasurer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ Kenneth R. Bull

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Kenneth R. Bull

Chief Financial Officer and Treasurer

Date: September 3, 2015

