

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

FORM 10-Q

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

For the quarterly period ended July 7, 2019

Commission File Number: 1-9390



JACK IN THE BOX INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

95-2698708
(I.R.S. Employer Identification No.)

9330 Balboa Avenue
San Diego, California 92123
(Address of principal executive offices)

Registrant's telephone number, including area code **(858) 571-2121**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	JACK	NASDAQ Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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.

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of the close of business August 2, 2019, 25,824,470 shares of the registrant's common stock were outstanding.

JACK IN THE BOX INC. AND SUBSIDIARIES

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PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)
(Unaudited)

	July 7, 2019	September 30, 2018
ASSETS		
Current assets:		
Cash	\$ 12,447	\$ 2,705
Accounts and other receivables, net	57,647	57,422
Inventories	1,937	1,858
Prepaid expenses	17,484	14,443
Current assets held for sale	13,236	13,947
Other current assets	3,246	4,598
Total current assets	<u>105,997</u>	<u>94,973</u>
Property and equipment:		
Property and equipment, at cost	1,178,894	1,190,031
Less accumulated depreciation and amortization	(788,956)	(770,362)
Property and equipment, net	<u>389,938</u>	<u>419,669</u>
Other assets:		
Intangible assets, net	451	600
Goodwill	46,747	46,749
Deferred tax assets	72,903	62,140
Other assets, net	215,234	199,266
Total other assets	<u>335,335</u>	<u>308,755</u>
	<u>\$ 831,270</u>	<u>\$ 823,397</u>
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Current maturities of long-term debt	\$ 42,895	\$ 31,828
Accounts payable	51,131	44,970
Accrued liabilities	124,823	106,922
Total current liabilities	<u>218,849</u>	<u>183,720</u>
Long-term liabilities:		
Long-term debt, net of current maturities	971,763	1,037,927
Other long-term liabilities	221,219	193,449
Total long-term liabilities	<u>1,192,982</u>	<u>1,231,376</u>
Stockholders' deficit:		
Preferred stock \$0.01 par value, 15,000,000 shares authorized, none issued	—	—
Common stock \$0.01 par value, 175,000,000 shares authorized, 82,146,917 and 82,061,661 issued, respectively	821	821
Capital in excess of par value	478,256	470,826
Retained earnings	1,565,287	1,561,353
Accumulated other comprehensive loss	(94,486)	(94,260)
Treasury stock, at cost, 56,325,632 shares	(2,530,439)	(2,530,439)
Total stockholders' deficit	<u>(580,561)</u>	<u>(591,699)</u>
	<u>\$ 831,270</u>	<u>\$ 823,397</u>

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
(In thousands, except per share data)
(Unaudited)

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Revenues:				
Company restaurant sales	\$ 78,434	\$ 87,574	\$ 257,948	\$ 371,149
Franchise rental revenues	63,359	61,622	208,895	196,682
Franchise royalties and other	40,180	38,787	130,840	124,387
Franchise contributions for advertising and other services	40,386	—	131,189	—
	<u>222,359</u>	<u>187,983</u>	<u>728,872</u>	<u>692,218</u>
Operating costs and expenses, net:				
Company restaurant costs (excluding depreciation and amortization):				
Food and packaging	23,058	24,946	74,350	106,448
Payroll and employee benefits	23,121	24,875	76,163	106,911
Occupancy and other	11,052	13,715	38,165	59,608
Total company restaurant costs	<u>57,231</u>	<u>63,536</u>	<u>188,678</u>	<u>272,967</u>
Franchise occupancy expenses (excluding depreciation and amortization)	38,371	37,401	127,702	119,987
Franchise support and other costs	2,695	2,829	8,337	7,894
Franchise advertising and other services expenses	41,882	—	136,397	—
Selling, general and administrative expenses	24,389	19,671	66,057	80,326
Depreciation and amortization	12,786	13,194	42,645	46,306
Impairment and other charges, net	(3,256)	3,265	5,567	10,449
Gains on the sale of company-operated restaurants	—	(28,676)	(219)	(43,088)
	<u>174,098</u>	<u>111,220</u>	<u>575,164</u>	<u>494,841</u>
Earnings from operations	48,261	76,763	153,708	197,377
Other pension and post-retirement expenses, net	342	423	1,141	1,410
Interest expense, net	36,494	10,873	67,144	34,066
Earnings from continuing operations and before income taxes	11,425	65,467	85,423	161,901
Income tax (benefit) expense	(2,048)	17,334	15,699	75,898
Earnings from continuing operations	13,473	48,133	69,724	86,003
(Losses) earnings from discontinued operations, net of income taxes	(284)	(2,826)	2,652	19,099
Net earnings	<u>\$ 13,189</u>	<u>\$ 45,307</u>	<u>\$ 72,376</u>	<u>\$ 105,102</u>
Net earnings per share - basic:				
Earnings from continuing operations	\$ 0.52	\$ 1.72	\$ 2.69	\$ 2.97
(Losses) earnings from discontinued operations	(0.01)	(0.10)	0.10	0.66
Net earnings per share (1)	<u>\$ 0.51</u>	<u>\$ 1.62</u>	<u>\$ 2.79</u>	<u>\$ 3.63</u>
Net earnings per share - diluted:				
Earnings from continuing operations	\$ 0.51	\$ 1.70	\$ 2.67	\$ 2.94
(Losses) earnings from discontinued operations	(0.01)	(0.10)	0.10	0.65
Net earnings per share (1)	<u>\$ 0.50</u>	<u>\$ 1.60</u>	<u>\$ 2.77</u>	<u>\$ 3.59</u>
Cash dividends declared per common share	\$ 0.40	\$ 0.40	\$ 1.20	\$ 1.20

(1) Earnings per share may not add due to rounding.

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Net earnings	\$ 13,189	\$ 45,307	\$ 72,376	\$ 105,102
Cash flow hedges:				
Net change in fair value of derivatives	(11,499)	1,494	(23,625)	16,080
Net loss reclassified to earnings	23,715	539	24,328	3,089
	12,216	2,033	703	19,169
Tax effect	(6,132)	(517)	(3,165)	(4,868)
	6,084	1,516	(2,462)	14,301
Unrecognized periodic benefit costs:				
Actuarial losses and prior service costs reclassified to earnings	904	1,152	3,013	3,838
Tax effect	(232)	(292)	(777)	(1,126)
	672	860	2,236	2,712
Other:				
Foreign currency translation adjustments	—	—	—	6
Tax effect	—	—	—	(2)
	—	—	—	4
Derecognition of foreign currency translation adjustments due to sale	—	—	—	76
	—	—	—	80
Other comprehensive income (loss), net of taxes	6,756	2,376	(226)	17,093
Comprehensive income	<u>\$ 19,945</u>	<u>\$ 47,683</u>	<u>\$ 72,150</u>	<u>\$ 122,195</u>

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Year-to-date	
	July 7, 2019	July 8, 2018
Cash flows from operating activities:		
Net earnings	\$ 72,376	\$ 105,102
Earnings from discontinued operations	2,652	19,099
Earnings from continuing operations	69,724	86,003
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	42,645	46,306
Amortization of franchise tenant improvement allowances and other	1,524	497
Deferred finance cost amortization	1,903	2,268
Excess tax benefits from share-based compensation arrangements	(66)	(2,084)
Deferred income taxes	(1,745)	38,544
Share-based compensation expense	6,589	7,830
Pension and postretirement expense	1,141	1,789
Gains on cash surrender value of company-owned life insurance	(3,117)	(1,335)
Gains on the sale of company-operated restaurants	(219)	(43,088)
(Gains) losses on the disposition of property and equipment, net	(5,756)	958
Impairment charges and other	1,624	2,205
Changes in assets and liabilities, excluding dispositions:		
Accounts and other receivables	(3,555)	945
Inventories	(79)	1,330
Prepaid expenses and other current assets	1,509	(27,448)
Accounts payable	24,321	3,135
Accrued liabilities	9,363	(34,653)
Pension and postretirement contributions	(5,126)	(4,384)
Franchise tenant improvement allowance distributions	(7,875)	(9,099)
Other	(16,012)	(10,351)
Cash flows provided by operating activities	116,793	59,368
Cash flows from investing activities:		
Purchases of property and equipment	(25,041)	(25,730)
Purchases of assets intended for sale and leaseback	—	(5,491)
Proceeds from the sale and leaseback of assets	3,056	7,571
Proceeds from the sale of company-operated restaurants	133	23,666
Collections on notes receivable	15,239	34,057
Proceeds from the sale of property and equipment	7,563	3,799
Other	—	2,921
Cash flows provided by investing activities	950	40,793
Cash flows from financing activities:		
Borrowings on revolving credit facilities	229,798	560,800
Repayments of borrowings on revolving credit facilities	(252,800)	(412,100)
Principal repayments on debt	(32,611)	(293,671)
Debt issuance costs	(5,088)	(1,367)
Dividends paid on common stock	(30,929)	(34,609)
Proceeds from issuance of common stock	696	2,365
Repurchases of common stock	(14,362)	(200,000)
Change in book overdraft	—	(573)
Payroll tax payments for equity award issuances	(2,705)	(7,250)
Cash flows used in financing activities	(108,001)	(386,405)
Cash flows provided by (used in) continuing operations	9,742	(286,244)
Net cash provided by operating activities of discontinued operations	—	5,159
Net cash provided by investing activities of discontinued operations	—	273,653
Net cash used in financing activities of discontinued operations	—	(78)
Net cash provided by discontinued operations	—	278,734
Effect of exchange rate changes on cash	—	6

Cash at beginning of period	<u>2,705</u>	<u>7,642</u>
Cash at end of period	<u>\$ 12,447</u>	<u>\$ 138</u>

See accompanying notes to condensed consolidated financial statements.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

1. BASIS OF PRESENTATION

Nature of operations — Founded in 1951, Jack in the Box Inc. (the “Company”) operates and franchises Jack in the Box® quick-service restaurants. The following table summarizes the number of restaurants as of the end of each period:

	<u>July 7, 2019</u>	<u>July 8, 2018</u>
Company-operated	137	146
Franchise	2,105	2,095
Total system	<u>2,242</u>	<u>2,241</u>

References to the Company throughout these notes to condensed consolidated financial statements are made using the first person notations of “we,” “us” and “our.”

Basis of presentation — The accompanying condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) and the rules and regulations of the Securities and Exchange Commission (“SEC”).

These financial statements should be read in conjunction with the consolidated financial statements and related notes contained in our Annual Report on Form 10-K for the fiscal year ended September 30, 2018 (“2018 Form 10-K”). The accounting policies used in preparing these condensed consolidated financial statements are the same as those described in our 2018 Form 10-K with the exception of two new accounting pronouncements adopted in fiscal 2019, which are described below.

On December 19, 2017, we entered into a definitive agreement to sell Qdoba Restaurant Corporation (“Qdoba”), a wholly owned subsidiary of the Company which operates and franchises more than 700 Qdoba Mexican Eats® fast-casual restaurants, to certain funds managed by affiliates of Apollo Global Management, LLC (together with its consolidated subsidiaries, the “Buyer”). The sale was completed on March 21, 2018. For all periods presented in our condensed consolidated statements of earnings, all sales, costs, expenses and income taxes attributable to Qdoba, except as related to the impact of the decrease in the federal statutory tax rate (see Note 9, *Income Taxes*), have been aggregated under the caption “(Losses) earnings from discontinued operations, net of income taxes.” Refer to Note 3, *Discontinued Operations*, for additional information.

Unless otherwise noted, amounts and disclosures throughout these notes to condensed consolidated financial statements relate to our continuing operations. In our opinion, all adjustments considered necessary for a fair presentation of financial condition and results of operations for these interim periods have been included. Operating results for one interim period are not necessarily indicative of the results for any other interim period or for the full year.

Segment reporting — As a result of our sale of Qdoba, which has been classified as discontinued operations, we now have one reporting segment.

Reclassifications and adjustments — We recorded certain adjustments in fiscal 2019 upon the adoption of a new accounting pronouncement; see details regarding the effects of the adoption on our condensed consolidated financial statements below.

Fiscal year — Our fiscal year is 52 or 53 weeks ending the Sunday closest to September 30. Fiscal years 2019 and 2018 include 52 weeks. Our first quarter includes 16-weeks and all other quarters include 12-weeks. All comparisons between 2019 and 2018 refer to the 12-weeks (“quarter”) and 40-weeks (“year-to-date”) ended July 7, 2019 and July 8, 2018, respectively, unless otherwise indicated.

Use of estimates — In preparing the condensed consolidated financial statements in conformity with U.S. GAAP, management is required to make certain assumptions and estimates that affect reported amounts of assets, liabilities, revenues, expenses and the disclosure of contingencies. In making these assumptions and estimates, management may from time to time seek advice and consider information provided by actuaries and other experts in a particular area. Actual amounts could differ materially from these estimates.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

Advertising costs — We administer a marketing fund which includes contractual contributions. In 2019 and 2018, marketing fund contributions from franchise and company-operated restaurants were approximately 5.0% of gross revenues, and year-to-date incremental contributions made by the Company were \$2.0 million and \$3.3 million, respectively.

Production costs of commercials, programming and other marketing activities are charged to the marketing fund when the advertising is first used for its intended purpose, and the costs of advertising are charged to operations as incurred. Total contributions made by the Company, including incremental contributions, are included in “Selling, general, and administrative expenses” in the accompanying condensed consolidated statements of earnings. Advertising costs for the quarter and year-to-date in 2019 were \$4.0 million and \$15.0 million, respectively, and in 2018 were \$5.9 million and \$22.0 million, respectively.

Effect of new accounting pronouncements adopted in fiscal 2019 — In May 2014, the FASB issued ASU 2014-09, *Revenue Recognition - Revenue from Contracts with Customers (Topic 606)* (“ASC 606”), which provides a comprehensive new revenue recognition model that requires an entity to recognize revenue in an amount that reflects the consideration the entity expects to receive for the transfer of promised goods or services to its customers. The standard also requires additional disclosure regarding the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. We adopted the new standard on October 1, 2018 using the modified retrospective method, whereby the cumulative effect of this transition to applicable contracts with customers that were not completed as of October 1, 2018 was recorded as an adjustment to beginning retained earnings as of this date. The comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods.

The new revenue recognition standard did not impact our recognition of restaurant sales, rental revenues, or royalty fees from franchisees. The new pronouncement changed the way initial fees from franchisees for new restaurant openings or new franchise terms are recognized. Under the previous revenue recognition guidance, initial franchise fees were recognized as revenue at the time when a new restaurant opened or at the start of a new franchise term. In accordance with the new guidance, the initial franchise services are not distinct from the continuing rights and services offered during the term of the franchise agreement and will therefore be treated as a single performance obligation together with the continuing rights and services. As such, initial fees received will be recognized over the franchise term and any unamortized portion will be recorded as deferred revenue in our condensed consolidated balance sheet. An adjustment to opening retained earnings and a corresponding contract liability of approximately \$50.3 million (of which \$5.0 million was current and \$45.3 million was long-term) was established on the date of adoption. A deferred tax asset of approximately \$13.0 million related to this contract liability was also established on the date of adoption.

The new standard also had an impact on transactions presented net and not included in our revenues and expenses such as franchisee contributions to and expenditures from our advertising fund, and sourcing and technology fee contributions from franchisees and the related expenses. We determined that we are the principal in these arrangements, and as such, contributions to and expenditures from the advertising fund, and sourcing and technology fees and expenditures are now reported on a gross basis within our consolidated statements of earnings. While this change materially impacted our gross amount of reported revenues and expenses, the impact will be largely offsetting with no material impact to our reported net earnings. However, any annual surplus or deficit in the marketing fund will impact income from operations and net income.

JACK IN THE BOX INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

The following table summarizes the impacts of adopting ASC 606 on the Company's condensed consolidated financial statements as of and for the 12-weeks and 40-weeks ended July 7, 2019 (in thousands):

	As Reported	Adjustments			Balances without Adoption
		Franchise Fees	Marketing and Sourcing Fees	Technology Support Fees	
Condensed Consolidated Statements of Earnings					
12-Weeks Ended July 7, 2019					
Franchise royalties and other	\$ 40,180	\$ (918)	\$ —	\$ —	\$ 39,262
Franchise contributions for advertising and other services	\$ 40,386	\$ —	\$ (38,133)	\$ (2,253)	\$ —
Total revenues	\$ 222,359	\$ (918)	\$ (38,133)	\$ (2,253)	\$ 181,055
Franchise advertising and other services expenses	\$ 41,882	\$ —	\$ (38,133)	\$ (3,749)	\$ —
Selling, general and administrative expenses	\$ 24,389	\$ —	\$ —	\$ 1,496	\$ 25,885
Total operating costs and expenses, net	\$ 174,098	\$ —	\$ (38,133)	\$ (2,253)	\$ 133,712
Earnings from operations	\$ 48,261	\$ (918)	\$ —	\$ —	\$ 47,343
Earnings from continuing operations and before income taxes	\$ 11,425	\$ (918)	\$ —	\$ —	\$ 10,507
Income tax (benefit) expense	\$ (2,048)	\$ (237)	\$ —	\$ —	\$ (2,285)
Earnings from continuing operations	\$ 13,473	\$ (681)	\$ —	\$ —	\$ 12,792
Net earnings	\$ 13,189	\$ (681)	\$ —	\$ —	\$ 12,508
40-Weeks Ended July 7, 2019					
Franchise royalties and other	\$ 130,840	\$ (2,983)	\$ —	\$ —	\$ 127,857
Franchise contributions for advertising and other services	\$ 131,189	\$ —	\$ (124,187)	\$ (7,002)	\$ —
Total revenues	\$ 728,872	\$ (2,983)	\$ (124,187)	\$ (7,002)	\$ 594,700
Franchise advertising and other services expenses	\$ 136,397	\$ —	\$ (124,187)	\$ (12,210)	\$ —
Selling, general and administrative expenses	\$ 66,057	\$ —	\$ —	\$ 5,208	\$ 71,265
Total operating costs and expenses, net	\$ 575,164	\$ —	\$ (124,187)	\$ (7,002)	\$ 443,975
Earnings from operations	\$ 153,708	\$ (2,983)	\$ —	\$ —	\$ 150,725
Earnings from continuing operations and before income taxes	\$ 85,423	\$ (2,983)	\$ —	\$ —	\$ 82,440
Income tax (benefit) expense	\$ 15,699	\$ (769)	\$ —	\$ —	\$ 14,930
Earnings from continuing operations	\$ 69,724	\$ (2,214)	\$ —	\$ —	\$ 67,510
Net earnings	\$ 72,376	\$ (2,214)	\$ —	\$ —	\$ 70,162
Condensed Consolidated Balance Sheet					
July 7, 2019					
Prepaid expenses	\$ 17,484	\$ 769	\$ —	\$ —	\$ 18,253
Total current assets	\$ 105,997	\$ 769	\$ —	\$ —	\$ 106,766
Deferred tax assets	\$ 72,903	\$ (12,958)	\$ —	\$ —	\$ 59,945
Other assets, net	\$ 215,234	\$ 269	\$ —	\$ —	\$ 215,503
Total other assets	\$ 335,335	\$ (12,689)	\$ —	\$ —	\$ 322,646
Total assets	\$ 831,270	\$ (11,920)	\$ —	\$ —	\$ 819,350
Accrued liabilities	\$ 124,823	\$ (4,968)	\$ —	\$ —	\$ 119,855
Total current liabilities	\$ 218,849	\$ (4,968)	\$ —	\$ —	\$ 213,881
Other long-term liabilities	\$ 221,219	\$ (42,067)	\$ —	\$ —	\$ 179,152
Total long-term liabilities	\$ 1,192,982	\$ (42,067)	\$ —	\$ —	\$ 1,150,915
Retained earnings	\$ 1,565,287	\$ 35,114	\$ —	\$ —	\$ 1,600,401
Total stockholders' deficit	\$ (580,561)	\$ 35,114	\$ —	\$ —	\$ (545,447)
Total liabilities and stockholders' deficit	\$ 831,270	\$ (11,921)	\$ —	\$ —	\$ 819,349

The adoption of ASC 606 had no impact on the Company's cash provided by or used in operating, investing or financing activities as previously reported in its condensed consolidated statement of cash flows.

In March 2017, the FASB issued ASU 2017-07, *Compensation - Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*. This standard requires the presentation of the service cost component of net benefit costs to be in the same line item as other compensation costs arising from services rendered by the pertinent employees during the period. All other components of net benefit costs should be presented separately from the service cost component and outside of a subtotal of earnings from operations, or separately disclosed. We adopted this standard in the first quarter of fiscal 2019 applying the retrospective method. As a result of the adoption, 2018 quarter and year-to-date amounts of \$0.4 million and \$1.4 million, respectively, previously reported within “Selling, general, and administrative expenses” have been reclassified to a separate line under earnings from operations to conform to current year presentation.

Effect of new accounting pronouncements to be adopted in future periods — In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* (as subsequently amended by ASU 2018-01, ASU 2018-10, ASU 2018-11, ASU 2018-20 and ASU 2019-01) which requires a lessee to recognize assets and liabilities on the balance sheet for those leases classified as operating leases under previous guidance. Based on a preliminary assessment, we expect that most of our operating lease commitments will be subject to the new guidance and recognized as operating lease liabilities and right-of-use assets upon adoption, resulting in a significant increase in the assets and liabilities on our consolidated balance sheets. The accounting guidance for lessors will remain largely unchanged from previous guidance, with the exception of the presentation of certain lease costs that the Company passes through to lessees, including but not limited to, property taxes and maintenance. These costs are generally paid by the Company and reimbursed by the lessee. Historically, these costs have been recorded on a net basis in the consolidated statements of operations, but will be presented gross upon adoption of the new guidance. While we are unable to quantify the impact at this time, we do not expect the adoption of this guidance to have a material impact on our consolidated statement of earnings and statement of cash flows.

We will be required to adopt this standard in the first quarter of fiscal 2020 and plan to utilize the alternative transition method, whereby an entity records a cumulative adjustment to opening retained earnings in the year of adoption without restating prior periods. The new standard also provides a number of optional practical expedients in transition. We expect to elect the transition package of three practical expedients, which, among other items, permits us not to reassess under the new standard our prior conclusions about lease identification, lease classification and initial direct costs. We also expect to elect the short-term lease recognition exemption for all leases that qualify, permitting us to not apply the recognition requirements of this standard to leases with a term of 12 months or less. We also expect to elect the practical expedient to not separate lease and non-lease components for all of our leases. We do not expect to elect the use-of-hindsight practical expedient, and therefore expect to continue to utilize lease terms determined under the existing lease guidance.

We are continuing our evaluation, which may identify additional impacts this standard and its amendments will have on our consolidated financial statements and related disclosures.

2. REVENUE

Nature of products and services — We derive revenue from retail sales at Jack in the Box company-operated restaurants and rental revenue, royalties, advertising, and franchise and other fees from franchise-operated restaurants.

Our franchise arrangements generally provide for an initial franchise fee of \$50,000 per restaurant and generally require that franchisees pay royalty and marketing fees at 5% of gross sales. The agreement also requires franchisees to pay sourcing, technology and other miscellaneous fees.

Significant accounting policy — “Company restaurant sales” include revenue recognized upon delivery of food and beverages to the customer at company-operated restaurants, which is when our obligation to perform is satisfied. Company restaurant sales exclude taxes collected from the Company’s customers. Company restaurant sales also include income for gift cards. Gift cards, upon customer purchase, are recorded as deferred income and are recognized in revenue as they are redeemed. The timing and amount of revenue recognized related to company restaurant sales was not impacted by the adoption of ASC 606.

“Franchise royalties and other” includes royalties fees and franchise and other fees received from franchisees. Royalties are based upon a percentage of sales of the franchised restaurant and are recognized as earned. Franchise royalties are billed on a monthly basis. Franchise fees when a new restaurant opens or at the start of a new franchise term are recorded as deferred revenue when received and recognized as revenue over the term of the franchise agreement.

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“Franchise contributions for advertising and other services” includes franchisee contributions to our marketing fund billed on a monthly basis and sourcing and technology fees, as required under the franchise agreements. Contributions to our marketing fund are based on a percentage of sales and recognized as earned. Sourcing and technology services are recognized when the goods or services are transferred to the franchisee. The adoption of the new revenue standard did not impact the timing of revenue recognition for these fees received; however, these arrangements are now presented on a gross basis because we believe we are the principal in the arrangement.

“Franchise rental revenues” received from franchised restaurants based on fixed rental payments are recognized as revenue over the term of the lease. Certain franchise rents, which are contingent upon sales levels, are recognized in the period in which the contingency is met. Rental revenues are accounted for in accordance with applicable guidance for leases and are excluded from the scope of the new revenue standard.

Disaggregation of revenue — The following table disaggregates revenue by primary source for the 12-weeks and 40-weeks ended July 7, 2019 (*in thousands*):

	Quarter	Year-to-date
Sources of revenue:		
Company restaurant sales	\$ 78,434	\$ 257,948
Franchise rental revenues	63,359	208,895
Franchise royalties	38,752	125,407
Marketing fees	37,269	121,078
Technology and sourcing fees	3,117	10,111
Franchise fees and other services	1,428	5,433
Total revenue	<u>\$ 222,359</u>	<u>\$ 728,872</u>

Contract liabilities — Our contract liabilities consist of deferred revenue resulting from initial fees received from franchisees for new restaurant openings or new franchise terms, which are generally recognized over the franchise term. We classify these contract liabilities as “Other long-term liabilities” and “Accrued liabilities” in our condensed consolidated balance sheets.

A summary of significant changes in our contract liabilities between the date of adoption (October 1, 2018) and July 7, 2019 is presented below (*in thousands*):

	Deferred Franchise Fees
Deferred franchise fees at October 1, 2018	\$ 50,018
Revenue recognized during the period	(3,953)
Additions during the period	970
Deferred franchise fees at July 7, 2019	<u>\$ 47,035</u>

The following table reflects the estimated franchise fees to be recognized in the future related to performance obligations that are unsatisfied at the end of the period (*in thousands*):

2019 (1)	\$ 1,145
2020	4,878
2021	4,856
2022	4,656
2023	4,501
Thereafter	26,999
	<u>\$ 47,035</u>

(1) Represents the estimate for remainder of fiscal year 2019.

We have applied the optional exemption, as provided for under ASC 606, which allows us to not disclose the transaction price allocated to unsatisfied performance obligations when the transaction price is a sales-based royalty.

3. DISCONTINUED OPERATIONS

Qdoba — In December 2017, we entered into a stock purchase agreement (the “Qdoba Purchase Agreement”) with the Buyer to sell all issued and outstanding shares of Qdoba. The Buyer completed the acquisition of Qdoba on March 21, 2018 (the “Qdoba Sale”).

We also entered into a Transition Services Agreement with the Buyer pursuant to which the Buyer is receiving certain services (the “Services”) to enable it to operate the Qdoba business after the closing of the Qdoba Sale. The Services include information technology, finance and accounting, human resources, supply chain and other corporate support services. Under the Agreement, the Services are being provided at cost for a period of up to 12 months, with two 3-month extensions available for certain services. We are still providing accounting and information technology services under the Agreement and currently estimate these services will be performed up to, but no later than, September 21, 2019. In 2019 and 2018, we recorded \$0.9 million and \$3.6 million in the quarter, respectively, and \$6.5 million and \$4.7 million year-to-date, respectively, in income related to the Services as a reduction of selling, general and administrative expenses in the condensed consolidated statements of earnings.

Further, in 2018, we entered into an Employee Agreement with the Buyer pursuant to which we continued to employ all Qdoba employees who work for the Buyer (the “Qdoba Employees”) from the date of closing of the Qdoba Sale through December 31, 2018. During the term of the Employee Agreement, we paid all wages and benefits of the Qdoba Employees and received reimbursement of these costs from the Buyer. From October 1, 2018 to December 31, 2018, we paid \$35.4 million of Qdoba wages and benefits pursuant to the Employee Agreement.

As the Qdoba Sale represents a strategic shift that had a major effect on our operations and financial results, in accordance with the provisions of FASB authoritative guidance on the presentation of financial statements, Qdoba results are classified as discontinued operations in our condensed consolidated statements of earnings and our condensed consolidated statements of cash flows for all periods presented.

Income taxes — In fiscal 2019, the Company entered into a bilateral California election with Quidditch Acquisition, Inc. to retroactively treat the divestment of Qdoba Restaurant Corporation on March 21, 2018 as a sale of assets instead of a stock sale for income tax purposes. This election reduced the Company’s fiscal year 2018 California tax liability on the divestment by \$2.8 million.

The following table summarizes the Qdoba-related activity for each period in discontinued operations (*in thousands, except per share data*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Company restaurant sales	\$ —	\$ —	\$ —	\$ 192,620
Franchise revenues	—	—	—	9,337
Company restaurant costs (excluding depreciation and amortization)	—	—	—	(166,122)
Franchise costs (excluding depreciation and amortization)	—	—	—	(2,338)
Selling, general and administrative expenses	(120)	(202)	123	(18,314)
Depreciation and amortization	—	—	—	(5,012)
Impairment and other charges, net	(262)	(123)	(262)	(2,386)
Interest expense, net	—	—	—	(4,787)
Operating (losses) earnings from discontinued operations before income taxes	(382)	(325)	(139)	2,998
Gain (loss) on Qdoba Sale	—	(3,648)	(85)	32,081
(Losses) earnings from discontinued operations before income taxes	(382)	(3,973)	(224)	35,079
Income tax benefit (expense)	98	1,097	2,876	(15,927)
(Losses) earnings from discontinued operations, net of income taxes	<u>\$ (284)</u>	<u>\$ (2,876)</u>	<u>\$ 2,652</u>	<u>\$ 19,152</u>
Net earnings per share from discontinued operations:				
Basic	\$ (0.01)	\$ (0.10)	\$ 0.10	\$ 0.66
Diluted	\$ (0.01)	\$ (0.10)	\$ 0.10	\$ 0.65

Selling, general and administrative expenses presented in the table above include corporate costs directly in support of Qdoba operations, as well as resolutions of certain matters that existed prior to the Qdoba sale. All other corporate costs were classified in results of continuing operations. Our credit facility required us to make a mandatory prepayment (“Qdoba Prepayment”) on our term loan upon the closing of the Qdoba Sale, which was \$260.0 million. In accordance with authoritative guidance on financial statement presentation, interest expense associated with our credit facility was allocated to discontinued operations in the prior year based on our estimate of the mandatory prepayment that was made upon closing of the Qdoba Sale.

Lease guarantees — While all operating leases held in the name of Qdoba were part of the Qdoba Sale, some of the leases remain guaranteed by the Company pursuant to one or more written guarantees (the “Guarantees”). In the event Qdoba fails to meet its payment and performance obligations under such guaranteed leases, we may be required to make rent and other payments to the landlord under the requirements of the Guarantees. Should we, as guarantor of the lease obligations, be required to make any lease payments due for the remaining term of the subject lease(s) subsequent to March 21, 2018, the maximum amount we may be required to pay is approximately \$33.8 million as of July 7, 2019. The lease terms extend for a maximum of approximately 16 more years as of July 7, 2019, and we would remain a guarantor of the leases in the event the leases are extended for any established renewal periods. In the event that we are obligated to make payments under the Guarantees, we believe the exposure is limited due to contractual protections and recourse available in the lease agreements, as well as the Qdoba Purchase Agreement, including a requirement of the landlord to mitigate damages by re-letting the properties in default, and indemnity from the Buyer. Qdoba continues to meet its obligations under these leases and there have not been any events that would indicate that Qdoba will not continue to meet the obligations of the leases. As such, we have not recorded a liability for the Guarantees as the likelihood of Qdoba defaulting on the assigned agreements was deemed to be less than probable.

4. INDEBTEDNESS

Amended credit facility — On May 1, 2019, we entered into the Fifth Amendment to the Credit Agreement (the “Fifth Amendment”). The Fifth Amendment extended the maturity date of both our term loan and revolving credit facility from March 19, 2020 to March 19, 2021. Fees of \$1.3 million paid to third parties in connection with the Fifth Amendment were capitalized as deferred loan costs during the quarter.

As of July 7, 2019, we had outstanding borrowings of \$304.4 million under the term loan and \$707.4 million under the revolving credit facility. In addition, letters of credit of \$29.9 million were outstanding. As of July 7, 2019, our unused borrowing capacity was \$162.7 million.

Subsequent events — See Note 16, *Subsequent Events*, as to events occurring after July 7, 2019 that impact the Company’s long-term debt.

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5. SUMMARY OF REFRANCHISINGS AND FRANCHISEE DEVELOPMENT

Refranchisings and franchisee development — The following table summarizes the number of restaurants sold to franchisees, the number of restaurants developed by franchisees, and gains recognized in each period (*dollars in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Restaurants sold to franchisees	—	42	—	127
New restaurants opened by franchisees	5	—	16	8
Proceeds from the sale of company-operated restaurants:				
Cash (1)	\$ —	\$ 6,822	\$ 133	\$ 23,666
Notes receivable	—	33,042	—	64,548
	—	39,864	133	88,214
Net assets sold (primarily property and equipment)	—	(6,745)	—	(19,891)
Lease commitment charges	—	—	—	(863)
Goodwill related to the sale of company-operated restaurants	—	(566)	(2)	(4,526)
Other (2)	—	(3,877)	88	(19,846)
Gains on the sale of company-operated restaurants	\$ —	\$ 28,676	\$ 219	\$ 43,088

- (1) The year-to-date amounts in 2019 and 2018 include additional proceeds of \$0.1 million and \$1.3 million, respectively, related to restaurants sold in prior years.
(2) Amounts in 2018 are primarily related to an \$8.8 million reduction of gains related to the modification of certain 2017 refranchising transactions. The quarter and year-to-date amounts in 2018 also include \$2.9 million and \$8.1 million, respectively, of costs related to franchise remodel incentives.

6. FAIR VALUE MEASUREMENTS

Financial assets and liabilities — The following table presents our financial assets and liabilities measured at fair value on a recurring basis (*in thousands*):

	Total	Quoted Prices in Active Markets for Identical Assets (3) (Level 1)	Significant Other Observable Inputs (3) (Level 2)	Significant Unobservable Inputs (3) (Level 3)
Fair value measurements as of July 7, 2019:				
Non-qualified deferred compensation plan (1)	\$ 31,012	\$ 31,012	\$ —	\$ —
Total liabilities at fair value	\$ 31,012	\$ 31,012	\$ —	\$ —
Fair value measurements as of September 30, 2018:				
Non-qualified deferred compensation plan (1)	\$ 37,447	\$ 37,447	\$ —	\$ —
Interest rate swaps (Note 7) (2)	703	—	703	—
Total liabilities at fair value	\$ 38,150	\$ 37,447	\$ 703	\$ —

- (1) We maintain an unfunded defined contribution plan for key executives and other members of management. The fair value of this obligation is based on the closing market prices of the participants' elected investments. The obligation is included in "Accrued liabilities" and "Other long-term liabilities" on our condensed consolidated balance sheets.
(2) We entered into interest rate swaps to reduce our exposure to rising interest rates on our variable rate debt. The fair values of our interest rate swaps are based upon Level 2 inputs which include valuation models as reported by our counterparties. These valuation models use a discounted cash flow analysis on the cash flows of each derivative. The key inputs for the valuation models are quoted market prices, discount rates, and forward yield curves. The Company also considers its own nonperformance risk and the respective counter-party's nonperformance risk in the fair value measurements. As further described in Note 7, *Derivatives*, the Company's interest rate swaps were terminated on July 2, 2019 and settled in connection with our refinancing transaction on July 8, 2019.
(3) We did not have any transfers in or out of Level 1, 2 or 3.

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The fair values of our debt instruments are based on the amount of future cash flows associated with each instrument discounted using our borrowing rate. At July 7, 2019, the carrying value of all financial instruments was not materially different from fair value, as the borrowings are prepayable without penalty. The estimated fair values of our capital lease obligations approximated their carrying values as of July 7, 2019.

Non-financial assets and liabilities — Our non-financial instruments, which primarily consist of property and equipment, goodwill and intangible assets, are reported at carrying value and are not required to be measured at fair value on a recurring basis. However, on an annual basis, or whenever events or changes in circumstances indicate that their carrying value may not be recoverable, non-financial instruments are assessed for impairment. If applicable, the carrying values are written down to fair value.

In connection with our impairment reviews performed during 2019, no material fair value adjustments were required. Refer to Note 8, *Impairment and Other Charges, Net*, for additional information regarding impairment charges.

7. DERIVATIVE INSTRUMENTS

Interest rate swaps — We have used interest rate swaps to mitigate interest rate volatility with regard to variable rate borrowings under our senior credit facility. In June 2015, we entered into forward-starting interest rate swap agreements that effectively converted \$500.0 million of our variable rate borrowings to a fixed rate from October 2018 through October 2022. These agreements were designated as cash flow hedges under the terms of the FASB authoritative guidance for derivatives and hedging. To the extent that they were effective in offsetting the variability of the hedged cash flows, changes in the fair values of the derivatives are not included in earnings but are included in other comprehensive income (“OCI”). These changes in fair value were subsequently reclassified into net earnings as a component of interest expense as the hedged interest payments are made on our variable rate debt.

Effective July 2, 2019, the Company terminated all interest rate swap agreements in anticipation of the securitization transaction and related retirement of our senior credit facility (see Note 16, *Subsequent Events*). The fair value of the interest rate swaps at the termination date was \$23.6 million, which was paid on July 8, 2019. As a result of the decision to extinguish the senior credit facility, forecasted cash flows associated with the variable-rate debt interest payments were no longer considered to be probable. Consequently, unrealized losses in other comprehensive income at the termination date were immediately reclassified to “Interest expense, net” in the condensed consolidated statement of earnings.

Financial position — The following derivative instruments were outstanding as of the end of each period (*in thousands*):

	Balance Sheet Location	Fair Value	
		July 7, 2019	September 30, 2018
Derivatives designated as hedging instruments:			
Interest rate swaps	Accrued liabilities	\$ —	\$ (26)
Interest rate swaps	Other long-term liabilities	—	(1,266)
Interest rate swaps	Other assets, net	—	589
Total derivatives		\$ —	\$ (703)

Financial performance — The following table summarizes the OCI activity related to our interest rate swap derivative instruments and the amounts reclassified from accumulated OCI (*in thousands*):

Location in Income	Quarter		Year-to-date		
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018	
(Loss) gain recognized in OCI	N/A	\$ (11,499)	\$ 1,494	\$ (23,625)	\$ 16,080
Loss reclassified from accumulated OCI into net earnings	Interest expense, net	\$ 23,715	\$ 539	\$ 24,328	\$ 3,089

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8. IMPAIRMENT AND OTHER CHARGES, NET

Impairment and other charges, net in the accompanying condensed consolidated statements of earnings is comprised of the following (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Restructuring costs	\$ (64)	\$ 1,872	\$ 6,722	\$ 4,805
Costs of closed restaurants and other	2,010	378	3,259	3,483
Accelerated depreciation	416	538	1,342	912
(Gains) losses on disposition of property and equipment, net (1)	(5,618)	477	(5,756)	958
Operating restaurant impairment charges (2)	—	—	—	291
	<u>\$ (3,256)</u>	<u>\$ 3,265</u>	<u>\$ 5,567</u>	<u>\$ 10,449</u>

(1) In 2019, includes a \$0.8 million gain recognized in the second quarter related to an eminent domain transaction and a \$5.7 million gain related to a sale of property recognized in the third quarter.

(2) In 2018, impairment charges relate to our landlord's sale of a restaurant property to a franchisee.

Restructuring costs — Restructuring charges include costs resulting from the exploration of strategic alternatives (the “Strategic Alternatives Evaluation”) in 2019, and a plan that management initiated to reduce our general and administrative costs. Restructuring charges in 2018 also include costs related to the evaluation of potential alternatives with respect to the Qdoba brand (the “Qdoba Evaluation”), which resulted in the Qdoba Sale. Refer to Note 3, *Discontinued Operations*, for information regarding the Qdoba Sale.

The following is a summary of our restructuring costs (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Employee severance and related costs	\$ 287	\$ 1,476	\$ 5,436	\$ 2,828
Strategic Alternatives Evaluation (1)	(351)	376	1,286	1,188
Qdoba Evaluation (2)	—	20	—	788
Other	—	—	—	1
	<u>\$ (64)</u>	<u>\$ 1,872</u>	<u>\$ 6,722</u>	<u>\$ 4,805</u>

(1) Strategic Alternative Evaluation costs are primarily related to third party advisory services.

(2) Qdoba Evaluation costs are primarily related to retention compensation and third party advisory services.

We currently expect to recognize severance and related costs of approximately \$0.2 million for the remainder of fiscal 2019 related to positions that have been identified for elimination. At this time, we are unable to estimate any additional charges to be incurred related to additional positions that may be identified for elimination or our other restructuring activities.

Total accrued severance costs related to our restructuring activities are included in “Accrued liabilities” on our condensed consolidated balance sheets, and changed as follows during 2019 (*in thousands*):

Balance as of September 30, 2018	\$ 5,309
Costs incurred	5,946
Accruals released	(605)
Cash payments	(8,167)
Balance as of July 7, 2019	<u>\$ 2,483</u>

Costs of closed restaurants and other — Costs of closed restaurants and other is generally comprised of future lease commitment charges and expected ancillary costs, net of anticipated sublease rentals, impairment and other costs associated with closed restaurants, and canceled project costs.

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The liability for lease termination costs related to closed restaurants, included in “Accrued liabilities” and “Other long-term liabilities” on our condensed consolidated balance sheets, changed as follows during 2019 (*in thousands*):

Balance as of September 30, 2018	\$ 3,534
Additions	—
Adjustments (1)	572
Interest expense	1,094
Cash payments	(3,156)
Balance as of July 7, 2019 (2) (3)	<u>\$ 2,044</u>

- (1) Adjustments relate primarily to revisions of certain sublease and cost assumptions. Our estimates related to our future lease obligations, primarily the sublease income we anticipate, are subject to a high degree of judgment and may differ from actual sublease income due to changes in economic conditions, desirability of the sites and other factors.
- (2) The weighted average remaining lease term related to these commitments is approximately 4 years.
- (3) This balance excludes \$1.7 million of restaurant closing costs that are included in “Accrued liabilities” and “Other long-term liabilities” on our condensed consolidated balance sheets, which were initially recorded as losses on the sale of company-operated restaurants to franchisees.

Accelerated depreciation — When a long-lived asset will be replaced or otherwise disposed of prior to the end of its estimated useful life, the useful life of the asset is adjusted based on the estimated disposal date and accelerated depreciation is recognized.

9. INCOME TAXES

Our tax rates for the quarter and year-to-date ended July 7, 2019 were impacted by the Tax Cuts and Jobs Act (the “Tax Act”), which was enacted into law on December 22, 2017. As a fiscal year taxpayer, the corporate federal tax rate reduction from 35% to 21% was phased in, resulting in a statutory federal tax rate of 24.5% for our fiscal year ending September 30, 2018, and 21.0% for our fiscal year ending September 29, 2019 and subsequent fiscal years.

In 2019 and 2018, income tax provisions reflect quarter tax rates of (17.9)% and 26.5%, respectively, and year-to-date tax rates of 18.4% and 46.9%, respectively. The major components of the year-over-year change in tax rates were the one-time, non-cash impact of the enactment of the Tax Act in fiscal year 2018, a decrease in the statutory tax rate, the impact of the termination of interest rate swap agreements, the release of valuation reserves on state tax credits and losses, and the release of a federal tax liability due to expiration of the statute of limitations. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual rate could differ from our current estimates.

The following is a summary of the components of each tax rate (*dollars in thousands*):

	Quarter				Year-to-date			
	July 7, 2019		July 8, 2018		July 7, 2019		July 8, 2018	
Income tax expense at statutory rate	\$ 2,948	25.8 %	\$ 18,715	28.6 %	\$ 22,040	25.8 %	\$ 46,752	28.9 %
One-time, non-cash impact of the Tax Act	—	— %	878	1.3 %	—	— %	32,082	19.8 %
Termination of interest rate swaps	(2,984)	(26.1)%	—	— %	(2,984)	(3.5)%	—	— %
Release of valuation reserve on state tax losses and credits	(873)	(7.6)%	(1,312)	(2.0)%	(1,023)	(1.2)%	(1,312)	(0.8)%
Release of federal tax liability	(817)	(7.2)%	—	— %	(817)	(1.0)%	—	— %
Stock compensation excess tax expense	(18)	(0.2)%	(1,268)	(1.9)%	(66)	(0.1)%	(2,084)	(1.3)%
Adjustment to state tax provision	—	— %	—	— %	(1,027)	(1.2)%	—	— %
Other	(304)	(2.6)%	321	0.5 %	(424)	(0.4)%	460	0.3 %
(1)	<u>\$ (2,048)</u>	<u>(17.9)%</u>	<u>\$ 17,334</u>	<u>26.5 %</u>	<u>\$ 15,699</u>	<u>18.4 %</u>	<u>\$ 75,898</u>	<u>46.9 %</u>

- (1) Percentages may not add due to rounding.

10. RETIREMENT PLANS

Defined benefit pension plans — We sponsor two defined benefit pension plans, a frozen “Qualified Plan” covering substantially all full-time employees hired prior to January 1, 2011, and an unfunded supplemental executive retirement plan (“SERP”) which provides certain employees additional pension benefits and was closed to new participants effective January 1, 2007. Benefits under both plans are based on the employee’s years of service and compensation over defined periods of employment.

Postretirement healthcare plans — We also sponsor two healthcare plans, closed to new participants, that provide postretirement medical benefits to certain employees who have met minimum age and service requirements. The plans are contributory; with retiree contributions adjusted annually, and contain other cost-sharing features such as deductibles and coinsurance.

Net periodic benefit cost — The components of net periodic benefit cost in each period were as follows (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Defined benefit pension plans:				
Interest cost	\$ 5,286	\$ 5,159	\$ 17,619	\$ 17,198
Service cost	—	114	—	379
Expected return on plan assets (1)	(6,077)	(6,108)	(20,257)	(20,360)
Actuarial loss (2)	914	1,124	3,046	3,745
Amortization of unrecognized prior service costs (2)	27	34	89	113
Net periodic benefit cost	<u>\$ 150</u>	<u>\$ 323</u>	<u>\$ 497</u>	<u>\$ 1,075</u>
Postretirement healthcare plans:				
Interest cost	\$ 229	\$ 220	\$ 766	\$ 734
Actuarial gain (2)	(37)	(6)	(122)	(20)
Net periodic benefit cost	<u>\$ 192</u>	<u>\$ 214</u>	<u>\$ 644</u>	<u>\$ 714</u>

(1) Determined as of the beginning of the year based on a return on asset assumption of 6.2%.

(2) Amounts were reclassified from accumulated OCI into net earnings as a component of “Other pension and post-retirement expenses, net.”

Changes in presentation — As discussed in Note 1, *Basis in Presentation*, we adopted ASU 2017-07 during the first quarter of 2019 using the retrospective method, which changed the financial statement presentation of service costs and the other components of net periodic benefit cost. The service cost component continues to be included in operating income; however, the other components are now presented in a separate line below earnings from operations captioned “Other pension and post-retirement expenses, net” in our condensed consolidated statements of earnings. Further, in connection with the adoption, plan administrative expenses historically presented as a component of service cost are now presented as a component of expected return on plan assets. The prior year components of net periodic benefit costs have been recast to conform to current year presentation.

Future cash flows — Our policy is to fund our plans at or above the minimum required by law. As of January 1, 2018, the date of our last actuarial funding valuation, there was no minimum contribution funding requirement. Details regarding 2019 contributions are as follows (*in thousands*):

	SERP	Postretirement Healthcare Plans
Net year-to-date contributions	\$ 4,213	\$ 913
Remaining estimated net contributions during fiscal 2019	\$ 800	\$ 500

We continue to evaluate contributions to our Qualified Plan based on changes in pension assets as a result of asset performance in the current market and the economic environment. We do not anticipate making any contributions to our Qualified Plan in fiscal 2019.

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11. STOCKHOLDERS' DEFICIT

Summary of changes in stockholders' deficit — A reconciliation of the beginning and ending amounts of stockholders' deficit is presented below (in thousands):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Balance at beginning of period	\$ (592,514)	\$ (430,910)	\$ (591,699)	\$ (388,130)
Shares issued under stock plans, including tax benefit	453	2,325	696	2,364
Share-based compensation	1,881	1,684	6,589	7,950
Dividends declared	(10,326)	(11,252)	(30,967)	(34,698)
Purchases of treasury stock	—	(100,000)	—	(200,000)
Net earnings	13,189	45,307	72,376	105,102
Other comprehensive income, net of taxes	6,756	2,376	(226)	17,093
Cumulative-effect from a change in accounting principle	—	—	(37,330)	(151)
Balance at end of period	<u>\$ (580,561)</u>	<u>\$ (490,470)</u>	<u>\$ (580,561)</u>	<u>\$ (490,470)</u>

Repurchases of common stock — In 2019, we have not repurchased any common shares. As of July 7, 2019, there was approximately \$101.0 million remaining under the Board-authorized stock buyback program which expires in November 2019.

Repurchases of common stock included in our condensed consolidated statement of cash flows for fiscal 2019 includes \$14.4 million related to repurchase transactions traded in the prior fiscal year that settled in 2019.

Dividends — During year-to-date 2019, the Board of Directors declared three cash dividends of \$0.40 per common share which were paid on June 14, 2019, March 19, 2019 and December 18, 2018 to shareholders of record as of the close of business on May 29, 2019, March 4, 2019 and December 5, 2018, respectively, and totaled \$31.2 million. Future dividends are subject to approval by our Board of Directors.

12. AVERAGE SHARES OUTSTANDING

Our basic earnings per share calculation is computed based on the weighted-average number of common shares outstanding. Our diluted earnings per share calculation is computed based on the weighted-average number of common shares outstanding adjusted by the number of additional shares that would have been outstanding had the potentially dilutive common shares been issued. Potentially dilutive common shares include stock options, nonvested stock awards and units, and non-management director stock equivalents. Performance share awards are included in the average diluted shares outstanding each period if the performance criteria have been met at the end of the respective periods.

The following table reconciles basic weighted-average shares outstanding to diluted weighted-average shares outstanding (in thousands):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Weighted-average shares outstanding – basic	25,958	28,042	25,933	28,989
Effect of potentially dilutive securities:				
Nonvested stock awards and units	206	215	205	241
Stock options	10	32	10	47
Performance share awards	2	7	2	7
Weighted-average shares outstanding – diluted	<u>26,176</u>	<u>28,296</u>	<u>26,150</u>	<u>29,284</u>
Excluded from diluted weighted-average shares outstanding:				
Antidilutive	186	192	186	139
Performance conditions not satisfied at the end of the period	89	67	89	67

13. CONTINGENCIES AND LEGAL MATTERS

Legal matters — We assess contingencies, including litigation contingencies, to determine the degree of probability and range of possible loss for potential accrual in our financial statements. An estimated loss contingency is accrued in the financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Because litigation is inherently unpredictable, assessing contingencies is highly subjective and requires judgments about future events. When evaluating litigation contingencies, we may be unable to provide a meaningful estimate due to a number of factors, including the procedural status of the matter in question, the availability of appellate remedies, insurance coverage related to the claim or claims in question, the presence of complex or novel legal theories, and the ongoing discovery and development of information important to the matter. In addition, damage amounts claimed in litigation against us may be unsupported, exaggerated, or unrelated to possible outcomes, and as such are not meaningful indicators of our potential liability or financial exposure. We regularly review contingencies to determine the adequacy of the accruals and related disclosures. The ultimate amount of loss may differ from these estimates.

Gessele v. Jack in the Box Inc. — In August 2010, five former employees instituted litigation in federal court in Oregon alleging claims under the federal Fair Labor Standards Act and Oregon wage and hour laws. The plaintiffs alleged that the Company failed to pay non-exempt employees for certain meal breaks and improperly made payroll deductions for shoe purchases and for workers' compensation expenses, and later added additional claims relating to timing of final pay and related wage and hour claims involving employees of a franchisee. In 2016, the court dismissed the federal claims and those relating to franchise employees. In June 2017, the court granted class certification with respect to state law claims of improper deductions and late payment of final wages. In February 2019, plaintiff's counsel reduced their earlier demand from \$62.0 million to \$42.0 million. We have accrued an amount that is not material to our financial statements relating to claims for which we believe a loss is both probable and estimable. We continue to believe that no additional losses are probable beyond this accrual and we cannot estimate a possible loss contingency or range of reasonably possible loss contingencies beyond this accrual. We plan to vigorously defend against this lawsuit. Nonetheless, an unfavorable resolution of this matter in excess of our current accrued loss contingencies could have a material adverse effect on our business, results of operations, liquidity, or financial condition.

Ramirez v. Jack in the Box Inc. — On June 11, 2019, an unfavorable jury verdict was delivered in a wrongful termination lawsuit against the Company in Los Angeles Superior Court. Plaintiff in the case was a restaurant employee who was terminated in 2013. The jury's verdict included \$5.4 million in compensatory damages and \$10.0 million in punitive damages. The Company disagrees with the verdict and the damages awarded by the jury and has filed post-trial motions with the trial judge for the purpose of setting aside or significantly reducing damages. The Company intends to appeal the verdict in the event its post-trial motions are unsuccessful and a judgment is entered by the trial court. Pending resolution of the appeals process, the payment of any damages in this matter will be stayed. During the third quarter of 2019, a charge of \$7.1 million was recorded in "Selling, general, and administrative expenses" related to this case, net of any amounts covered by insurance. We continue to believe that no additional losses are probable beyond this accrual, and we cannot estimate a possible loss contingency or range of reasonably possible loss contingencies beyond this accrual.

Other legal matters — In addition to the matter described above, we are subject to normal and routine litigation brought by former or current employees, customers, franchisees, vendors, landlords, shareholders or others. We intend to defend ourselves in any such matters. Some of these matters may be covered, at least in part, by insurance or other third party indemnity obligation. We record receivables from third party insurers when recovery has been determined to be probable. The amount of such receivables recorded at July 7, 2019 was \$13.6 million.

We believe that the ultimate determination of liability in connection with legal claims pending against us, if any, in excess of amounts already provided for such matters in the consolidated financial statements, will not have a material adverse effect on our business, our annual results of operations, liquidity or financial position; however, it is possible that our business, results of operations, liquidity, or financial condition could be materially affected in a particular future reporting period by the unfavorable resolution of one or more matters or contingencies during such period.

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Lease guarantees — While all operating leases held in the name of Qdoba were part of the Qdoba Sale, some of the leases remain guaranteed by the Company pursuant to one or more written guarantees. In the event Qdoba fails to meet its payment and performance obligations under such guaranteed leases, we may be required to make rent and other payments to the landlord under the requirements of the Guarantees. Qdoba continues to meet its obligations under these leases and there have not been any events that would indicate that Qdoba will not continue to meet the obligations of the leases. As such, we have not recorded a liability for the Guarantees as the likelihood of Qdoba defaulting on the assigned agreements was deemed to be less than probable. Refer to Note 3, *Discontinued Operations*, for additional information regarding the Guarantees.

14. SUPPLEMENTAL CONSOLIDATED CASH FLOW INFORMATION (in thousands)

	Year-to-date	
	July 7, 2019	July 8, 2018
Non-cash investing and financing transactions:		
Decrease in obligations for treasury stock repurchases	\$ 14,362	\$ —
Decrease in obligations for purchases of property and equipment	\$ 5,421	\$ 2,456
Increase in dividends accrued or converted to common stock equivalents	\$ 184	\$ 218
Decrease in capital lease obligations from the termination of equipment and building leases	\$ 41	\$ 3,654
Increase in notes receivable from the sale of company-operated restaurants	\$ —	\$ 31,160
Equipment capital lease obligations incurred	\$ —	\$ 78

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15. SUPPLEMENTAL CONSOLIDATED BALANCE SHEET INFORMATION *(in thousands)*

	July 7, 2019	September 30, 2018
Accounts and other receivables, net:		
Trade	\$ 44,403	\$ 35,877
Notes receivable	1,854	11,480
Due from marketing fund	839	—
Income tax receivable	184	5,637
Other	12,059	6,123
Allowance for doubtful accounts	(1,692)	(1,695)
	<u>\$ 57,647</u>	<u>\$ 57,422</u>
Prepaid expenses:		
Prepaid rent	\$ 11,977	\$ —
Prepaid income taxes	—	4,837
Prepaid advertising	28	4,318
Other	5,479	5,288
	<u>\$ 17,484</u>	<u>\$ 14,443</u>
Other assets, net:		
Company-owned life insurance policies	\$ 113,025	\$ 109,908
Deferred rent receivable	49,204	48,372
Franchise tenant improvement allowance	24,328	22,506
Other	28,677	18,480
	<u>\$ 215,234</u>	<u>\$ 199,266</u>
Accrued liabilities:		
Insurance	\$ 30,206	\$ 35,405
Payroll and related taxes	24,807	29,498
Deferred franchise fees	4,968	375
Deferred rent income	16,960	1,387
Sales and property taxes	4,097	4,555
Gift card liability	2,109	2,081
Other	41,676	33,621
	<u>\$ 124,823</u>	<u>\$ 106,922</u>
Other long-term liabilities:		
Defined benefit pension plans	\$ 66,185	\$ 69,012
Deferred franchise fees	42,063	—
Straight-line rent accrual	29,700	31,762
Other	83,271	92,675
	<u>\$ 221,219</u>	<u>\$ 193,449</u>

16. SUBSEQUENT EVENTS

Securitized Refinancing Transaction — On July 8, 2019, the Company completed the sale of \$575.0 million of its Series 2019-1 3.982% Fixed Rate Senior Secured Notes, Class A-2-I (the “Class A-2-I Notes”), \$275.0 million of its Series 2019-1 4.476% Fixed Rate Senior Secured Notes, Class A-2-II (the “Class A-2-II Notes”), and \$450.0 million of its Series 2019-1 4.970% Fixed Rate Senior Secured Notes, Class A-2-III (the “Class A-2-III Notes” and, together with the Class A-2-I Notes and Class A-2-II Notes, the “2019 Notes”). Interest payments on the 2019 Notes are payable on a quarterly basis. The anticipated repayment dates of the Class A-2-I Notes, the Class A-2-II Notes and the Class A-2-III Notes are August 2023, August 2026 and August 2029, respectively, unless earlier prepaid to the extent permitted under the indenture that will govern the 2019 Notes. The 2019 Notes were issued in a privately placed securitization transaction.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

In addition, the Company also entered into a purchase agreement under which it will issue up to \$150 million of its Series 2019-1 Variable Funding Senior Secured Notes, Class A-1 (the "Class A-1 Notes"), which will allow us to borrow amounts from time to time on a revolving basis.

The net proceeds of the sale of the 2019 Notes were used to retire the Company's existing senior credit facility and to repay transaction costs related to the transaction. The Company intends to use remaining proceeds for working capital purposes and general corporate purposes, which may include a return of capital to the Company's equity holders.

Dividends — On August 2, 2019, the Board of Directors declared a cash dividend of \$0.40 per common share, to be paid on September 10, 2019 to shareholders of record as of the close of business on August 19, 2019.

Share Repurchases — On August 2, 2019, the Board of Directors authorized an additional \$200 million stock buy-back program that expires on November 30, 2020.

Purchase Agreement — On July 25, 2019, the Company completed the purchase of a commercial property in Los Angeles, California, on which an existing company restaurant and another retail tenant are located. The purchase price was \$17.3 million and we currently intend to sell the entire property and lease back the parcel on which our company operated restaurant is located within the next 12 months.

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

GENERAL

All comparisons between 2019 and 2018 refer to the 12-weeks ("quarter") and 40-weeks ("year-to-date") ended July 7, 2019 and July 8, 2018, respectively, unless otherwise indicated.

For an understanding of the significant factors that influenced our performance during 2019 and 2018, our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the condensed consolidated financial statements and related notes included in this Quarterly Report and our Annual Report on Form 10-K for the fiscal year ended September 30, 2018.

Our MD&A consists of the following sections:

- **Overview** — a general description of our business and 2019 highlights.
- **Financial reporting** — a discussion of changes in presentation, if any.
- **Results of operations** — an analysis of our condensed consolidated statements of earnings for the periods presented in our condensed consolidated financial statements.
- **Liquidity and capital resources** — an analysis of our cash flows including pension and postretirement health contributions, capital expenditures, sale of company-operated restaurants, franchise tenant improvement allowance distributions, our credit facility, share repurchase activity, dividends, known trends that may impact liquidity and the impact of inflation, if applicable.
- **Discussion of critical accounting estimates** — a discussion of accounting policies that require critical judgments and estimates.
- **New accounting pronouncements** — a discussion of new accounting pronouncements, dates of implementation and the impact on our consolidated financial position or results of operations, if any.
- **Cautionary statements regarding forward-looking statements** — a discussion of the risks and uncertainties that may cause our actual results to differ materially from any forward-looking statements made by management.

We have included in our MD&A certain performance metrics that management uses to assess company performance and which we believe will be useful in analyzing and understanding our results of operations. These metrics include:

- Changes in sales at restaurants open more than one year ("same-store sales"), system restaurant sales, franchised restaurant sales, and average unit volumes ("AUVs"). Same-store sales, restaurant sales, and AUVs are presented for franchised restaurants and on a system-wide basis, which includes company and franchise restaurants. Franchise sales represent sales at franchise restaurants and are revenues of our franchisees. We do not record franchise sales as revenues; however, our royalty revenues and percentage rent revenues are calculated based on a percentage of franchise sales. We believe franchise and system same-store sales, franchised and system restaurant sales, and AUV information are useful to investors as they have a direct effect on the Company's profitability.
- Adjusted EBITDA, which represents net earnings on a generally accepted accounting principles ("GAAP") basis excluding earnings or losses from discontinued operations, income taxes, interest expense, net, gains or losses on the sale of company-operated restaurants, impairment and other charges, net, depreciation and amortization, and the amortization of tenant improvement allowances and other. We are presenting Adjusted EBITDA because we believe that it provides a meaningful supplement to net earnings of the Company's core business operating results, as well as a comparison to those of other similar companies. Management believes that Adjusted EBITDA, when viewed with the Company's results of operations in accordance with GAAP and the accompanying reconciliations within MD&A, provides useful information about operating performance and period-over-period change, and provides additional information that is useful for evaluating the operating performance of the Company's core business without regard to potential distortions. Additionally, management believes that Adjusted EBITDA permits investors to gain an understanding of the factors and trends affecting our ongoing cash earnings, from which capital investments are made and debt is serviced.

Same-store sales, system restaurant sales, franchised restaurant sales, AUVs, and Adjusted EBITDA are not measurements determined in accordance with GAAP and should not be considered in isolation, or as an alternative to earnings from operations, or other similarly titled measures of other companies.

OVERVIEW

As of July 7, 2019, we operated and franchised 2,242 Jack in the Box quick-service restaurants, primarily in the western and southern United States, including one in Guam.

The following summarizes the most significant events occurring year-to-date in fiscal 2019, and certain trends compared to a year ago:

- **Same-store and system sales** — System same-store sales are up 0.8% year-to-date as compared with the prior year primarily due to menu price and favorable product mix, partially offset by a decline in transactions. System sales increased \$14.5 million, or 0.5%, compared with a year ago primarily due to the net increase in the number of open restaurants.
- **Company restaurant operations** — Company restaurant costs as a percentage of company restaurant sales decreased in 2019 to 73.1% from 73.5% a year ago primarily due to the benefit of refranchising units that had lower AUVs than the average for all company restaurants, partially offset by higher costs for labor and other operating expenses.
- **Franchise operations** — Excluding the impacts of the adoption of ASC 606 further described below, franchise costs as a percentage of franchise revenues were flat compared to prior year.
- **Restructuring costs** — In 2019, we have continued with our plan to reduce our general and administrative costs by revamping our organization and cost structures. Additionally, in the first quarter of fiscal 2019, we began an evaluation of strategic alternatives for the Company (the “Strategic Alternatives Evaluation”). In connection with these activities, we have recorded \$6.7 million of restructuring charges in 2019, which includes \$5.4 million related to severance costs, and \$1.3 million related to the Strategic Alternatives Evaluation. These costs are included in “Impairment and other costs, net” in the accompanying condensed consolidated statements of earnings.
- **Return of cash to shareholders** — We returned cash to shareholders in the form of cash dividends. We declared three cash dividends of \$0.40 per share totaling \$31.2 million.
- **Adjusted EBITDA** — Adjusted EBITDA decreased in 2019 to \$202.1 million from \$210.1 million in 2018.

FINANCIAL REPORTING

In fiscal 2019, we adopted ASU 2014-09, *Revenue Recognition - Revenue from Contracts with Customers (Topic 606)* (“ASC 606”), using the modified retrospective method, whereby the cumulative effect of initially adopting the guidance was recognized as an adjustment to beginning retained earnings at October 1, 2018. The comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods. The most significant effects of this transition that affect comparability of our results of operations between 2019 and 2018 include the following:

- Franchise fee revenue for franchise services will be recognized over the franchise term beginning in 2019 compared to upfront recognition under the previous revenue guidance.
- Franchise contribution for advertising and other services are reflected on a gross basis in 2019 compared to a net basis in 2018. Newly created captions “Franchise contribution for advertising and other services” and “Franchise advertising and other services expenses” include the gross-up of respective revenues and expenses; however, the 2018 results have not been restated to conform to current year presentation.

In fiscal 2018, we completed the sale of Qdoba on March 21, 2018. Qdoba results are included in discontinued operations for all periods presented.

RESULTS OF OPERATIONS

The following table presents certain income and expense items included in our condensed consolidated statements of earnings as a percentage of total revenues, unless otherwise indicated. Percentages may not add due to rounding.

CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS DATA

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Revenues:				
Company restaurant sales	35.3%	46.6%	35.4%	53.6%
Franchise rental revenues	28.5%	32.8%	28.7%	28.4%
Franchise royalties and other	18.1%	20.6%	18.0%	18.0%
Franchise contributions for advertising and other services	18.2%	—%	18.0%	—%
Total revenues	100.0%	100.0%	100.0%	100.0%
Operating costs and expenses, net:				
Company restaurant costs (excluding depreciation and amortization):				
Food and packaging (1)	29.4%	28.5%	28.8%	28.7%
Payroll and employee benefits (1)	29.5%	28.4%	29.5%	28.8%
Occupancy and other (1)	14.1%	15.7%	14.8%	16.1%
Total company restaurant costs (1)	73.0%	72.5%	73.1%	73.5%
Franchise occupancy expenses (excluding depreciation and amortization) (2)	60.6%	60.7%	61.1%	61.0%
Franchise support and other costs (3)	6.7%	7.3%	6.4%	6.3%
Franchise advertising and other services expenses (4)	103.7%	—%	104.0%	—%
Selling, general and administrative expenses	11.0%	10.5%	9.1%	11.6%
Depreciation and amortization	5.8%	7.0%	5.9%	6.7%
Impairment and other charges, net	(1.5%)	1.7%	0.8%	1.5%
Gains on the sale of company-operated restaurants	—%	(15.3)%	—%	(6.2)%
Earnings from operations	21.7%	40.8%	21.1%	28.5%
Income tax rate (5)	(17.9%)	26.5%	18.4%	46.9%

(1) As a percentage of company restaurant sales.

(2) As a percentage of franchise rental revenues.

(3) As a percentage of franchise royalties and other.

(4) As a percentage of franchise contributions for advertising and other services.

(5) As a percentage of earnings from continuing operations and before income taxes.

The following table summarizes changes in same-store sales for company-owned, franchised, and system-wide restaurants:

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Company	2.8%	0.6%	1.2%	0.5%
Franchise	2.7%	0.5%	0.8%	—%
System	2.7%	0.5%	0.8%	—%

The following table summarizes the year-to-date changes in the number and mix of company and franchise restaurants:

	2019			2018		
	Company	Franchise	Total	Company	Franchise	Total
Beginning of year	137	2,100	2,237	276	1,975	2,251
New	—	16	16	1	8	9
Refranchised	—	—	—	(127)	127	—
Closed	—	(11)	(11)	(4)	(15)	(19)
End of period	137	2,105	2,242	146	2,095	2,241
% of system	6%	94%	100%	7%	93%	100%

The following table summarizes the restaurant sales for company-owned, franchised, and total system sales (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Company-owned restaurant sales	\$ 78,434	\$ 87,574	\$ 257,948	\$ 371,149
Franchised restaurant sales (1)	747,398	716,453	2,428,708	2,301,031
System sales (1)	\$ 825,832	\$ 804,027	\$ 2,686,656	\$ 2,672,180

(1) Franchised restaurant sales represent sales at franchised restaurants and are revenues of our franchisees. System sales include company and franchised restaurant sales. We do not record franchised sales as revenues; however, our royalty revenues, marketing fees and percentage rent revenues are calculated based on a percentage of franchised sales. We believe franchised and system restaurant sales information is useful to investors as they have a direct effect on the Company's profitability.

Below is a reconciliation of Non-GAAP Adjusted EBITDA to the most directly comparable GAAP measure, net earnings (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Net earnings - GAAP	\$ 13,189	\$ 45,307	\$ 72,376	\$ 105,102
Losses (earnings) from discontinued operations, net of taxes	284	2,826	(2,652)	(19,099)
Income tax (benefit) expense	(2,048)	17,334	15,699	75,898
Interest expense, net	36,494	10,873	67,144	34,066
Gains on the sale of company-operated restaurants	—	(28,676)	(219)	(43,088)
Impairment and other charges, net	(3,256)	3,265	5,567	10,449
Depreciation and amortization	12,786	13,194	42,645	46,306
Amortization of franchise tenant improvement allowances and other	387	232	1,524	497
Adjusted EBITDA - Non-GAAP	\$ 57,836	\$ 64,355	\$ 202,084	\$ 210,131

Company Restaurant Operations

The following table presents company restaurant sales and costs, and restaurant costs as a percentage of the related sales. Percentages may not add due to rounding (*dollars in thousands*):

	Quarter				Year-to-date							
	July 7, 2019		July 8, 2018		July 7, 2019		July 8, 2018					
Company restaurant sales	\$	78,434	\$	87,574	\$	257,948	\$	371,149				
Company restaurant costs:												
Food and packaging		23,058	29.4%	24,946	28.5%	74,350	28.8%	106,448	28.7%			
Payroll and employee benefits		23,121	29.5%	24,875	28.4%	76,163	29.5%	106,911	28.8%			
Occupancy and other		11,052	14.1%	13,715	15.7%	38,165	14.8%	59,608	16.1%			
Total company restaurant costs	\$	57,231	73.0%	\$	63,536	72.5%	\$	188,678	73.1%	\$	272,967	73.5%

Company restaurant sales decreased \$9.1 million in the quarter, and \$113.2 million year-to-date as compared with the prior year primarily driven by a decrease in the number of company restaurants resulting from the execution of our refranchising strategy and, to a lesser extent, by a decrease in traffic, which was more than offset by menu price increases and favorable product mix. The following table presents the approximate impact of these (decreases) increases on company restaurant sales in 2019 (*in millions*):

	Quarter	Year-to-date
Decrease in the average number of restaurants	\$ (11.0)	\$ (116.3)
AUV increase	1.9	3.1
Total change in company restaurant sales	\$ (9.1)	\$ (113.2)

Same-store sales at company-operated restaurants increased 2.8% in the quarter and 1.2% year-to-date as compared with the prior year primarily due to menu price increases and favorable product mix, partially offset by a decline in transactions year-to-date. The following table summarizes the change in company-operated same-store sales versus a year ago:

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Average check (1)	2.8%	2.6%	3.2%	2.6%
Transactions	—%	(2.0)%	(2.0)%	(2.1)%
Change in same-store sales	2.8%	0.6%	1.2%	0.5%

(1) Amounts in 2019 include price increases of approximately 2.3% in the quarter and year-to-date. Amounts in 2018 include price increases of approximately 2.6% in the quarter and 2.2% year-to-date.

Food and packaging costs as a percentage of company restaurant sales increased to 29.4% in the quarter and 28.8% year-to-date in 2019, from 28.5% in the quarter and 28.7% year-to-date in 2018. The increases were primarily due to higher commodity costs and changes in product mix, partially offset by menu price increases. Commodity costs increased in the quarter and year-to-date by 2.9% and 1.4%, respectively, compared to a year ago. For fiscal 2019, we currently expect commodity costs to increase by approximately 2% compared with fiscal 2018.

Payroll and employee benefit costs as a percentage of company restaurant sales increased to 29.5% in the quarter and year-to-date in 2019 compared with 28.4% in the quarter, and 28.8% year-to-date in 2018 primarily due to wage inflation resulting from an increase in the minimum wage in certain markets and a highly competitive labor market, and a change in mix of restaurants due to refranchising.

Occupancy and other costs decreased \$2.7 million in the quarter and \$21.4 million year-to-date in 2019 compared to the prior year, primarily due to a decrease in the average number of restaurants, impacting occupancy and other costs by approximately \$2.3 million in the quarter and \$22.7 million year-to-date. In the quarter and year-to-date, as a percentage of company restaurant sales, occupancy and other costs decreased to 14.1% and 14.8%, respectively, from 15.7% and 16.1% a year ago due primarily to refranchising and lower maintenance costs, partially offset by higher costs for delivery fees, information technology, and uniforms year-to-date, at the restaurants we continue to operate.

Franchise Operations

The following table presents franchise revenues and costs in each period and other information we believe is useful in analyzing the change in franchise operating results (*dollars in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Franchise rental revenues	\$ 63,359	\$ 61,622	\$ 208,895	\$ 196,682
Royalties	38,752	36,863	125,407	118,341
Franchise fees and other	1,428	1,924	5,433	6,046
Franchise royalties and other	40,180	38,787	130,840	124,387
Franchise contributions for advertising and other services	40,386	—	131,189	—
Total franchise revenues	\$ 143,925	\$ 100,409	\$ 470,924	\$ 321,069
Franchise occupancy expenses (excluding depreciation and amortization)	\$ 38,371	\$ 37,401	\$ 127,702	\$ 119,987
Franchise support and other costs	2,695	2,829	8,337	7,894
Franchise advertising and other services expenses	41,882	—	136,397	—
Total franchise costs	\$ 82,948	\$ 40,230	\$ 272,436	\$ 127,881
Franchise costs as a percentage of total franchise revenues	57.6%	40.1%	57.9%	39.8%
Average number of franchise restaurants	2,081	2,069	2,084	2,012
% increase	0.6%		3.6%	
Increase in franchise-operated same-store sales	2.7%	0.5%	0.8%	—%
Franchised restaurant sales	\$ 747,398	\$ 716,453	\$ 2,428,708	\$ 2,301,031
Franchised restaurant AUVs	\$ 359	\$ 346	\$ 1,166	\$ 1,144
Royalties as a percentage of total franchised restaurant sales	5.2%	5.1%	5.2%	5.1%

Franchise rental revenues increased \$1.7 million, or 2.8%, in the quarter and \$12.2 million, or 6.2%, year-to-date primarily due to an increase in the number of franchised restaurants and, to a lesser extent, an increase in franchise same-store sales in the quarter. The increase in the number of restaurants leased or subleased from the Company due to our refranchising strategy, contributed additional rental revenues in 2019 of \$0.9 million in the quarter and \$12.1 million year-to-date.

Franchise royalties and other increased \$1.4 million, or 3.6%, in the quarter and \$6.5 million, or 5.2%, year-to-date primarily due to an increase in the number of franchise-operated restaurants. Upon adoption of ASC 606 in 2019, franchise fees are now recognized over the franchise term compared to upfront recognition in the prior year.

In years prior to 2019, franchise contributions for advertising and other services were shown net with the related disbursements within “Selling, general, and administrative expenses” in our condensed consolidated statement of earnings. Upon adoption of ASC 606 in 2019, these revenues and expenses are presented on a gross basis within our consolidated statement of earnings. Refer to Note 2, *Revenue*, for additional information related to the adoption of this new accounting standard.

Franchise occupancy expenses, principally rents, increased \$1.0 million in the quarter and \$7.7 million year-to-date primarily due to a net increase in the average number of franchise-operated restaurants resulting from our refranchising strategy, contributing additional costs of approximately \$1.0 million in the quarter and \$7.0 million year-to-date.

Depreciation and Amortization

Depreciation and amortization decreased by \$0.4 million in the quarter and \$3.7 million year-to-date in 2019 as compared with the prior year, primarily due to a decrease in equipment depreciation driven by a decrease in the average number of company-operated restaurants resulting from our refranchising activities in 2018. A decline in depreciation resulting from our franchise building assets becoming fully depreciated also contributed to the decrease.

Selling, General and Administrative (“SG&A”) Expenses

The following table presents the change in 2019 SG&A expenses compared with the prior year (*in thousands*):

	Increase / (Decrease)	
	Quarter	Year-to-date
Insurance	\$ (5,062)	\$ (4,542)
Advertising	(1,956)	(6,975)
Technology fees	(1,113)	(3,676)
Cash surrender value of COLI policies, net	(979)	(3,035)
Region administration	(750)	(2,601)
Employee litigation matter	7,110	7,122
Incentive compensation (including share-based compensation and related payroll taxes)	5,208	786
Legal fees	384	1,531
Other (includes transition services income and savings related to our restructuring plan)	1,876	(2,879)
	<u>\$ 4,718</u>	<u>\$ (14,269)</u>

Insurance costs decreased in 2019 as compared to 2018 primarily due to favorable development factors related to prior year workers’ compensation and general liability claims.

Advertising costs represent company contributions to our marketing fund and are generally determined as a percentage of company-operated restaurant sales. Advertising costs decreased by \$2.0 million and \$7.0 million for the quarter and year-to-date, respectively, primarily due to a decrease in the number of company-operated restaurants compared to the prior year. Additionally, discretionary marketing fund contributions decreased by \$1.5 million for the quarter and \$1.3 million year-to-date in 2019.

Upon adoption of ASC 606 in 2019, technology fees and costs are recorded on a gross basis within our condensed consolidated statements of earnings within “Franchise contributions from advertising and other services” and “Franchise advertising and other services expenses.”

The cash surrender value of our Company-owned life insurance (“COLI”) policies, net of changes in our non-qualified deferred compensation obligation supported by these policies, are subject to market fluctuations. The changes in market values had a positive impact of \$1.3 million in the quarter and \$2.7 million year-to-date in 2019, compared with a positive impact of \$0.3 million in the quarter and a negative impact of \$0.3 million year-to-date in the prior year.

Region administration costs decreased in 2019 as compared to 2018 due primarily to workforce reductions related to our refranchising efforts.

Employee litigation matter represents costs recorded in 2019 pertaining to an adverse jury verdict. Refer to Note 13, *Contingencies and Legal Matters*, of the notes to the condensed consolidated financial statements for additional information regarding these charges.

Incentive compensation increased by \$5.2 million for the quarter and \$0.8 million year-to-date based on higher estimated achievement relative to annual targets compared to the prior year.

Impairment and Other Charges, Net

Impairment and other charges, net is comprised of the following (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Restructuring costs	\$ (64)	\$ 1,872	\$ 6,722	\$ 4,805
Costs of closed restaurants and other	2,010	378	3,259	3,483
Accelerated depreciation	416	538	1,342	912
(Gains) losses on disposition of property and equipment, net	(5,618)	477	(5,756)	958
Operating restaurant impairment charges	—	—	—	291
	<u>\$ (3,256)</u>	<u>\$ 3,265</u>	<u>\$ 5,567</u>	<u>\$ 10,449</u>

Restructuring costs decreased by \$1.9 million in the quarter and increased by \$1.9 million year-to-date, primarily due to timing of initiatives and related employee severance costs. Costs of closed restaurants increased by \$1.6 million and decreased \$0.2 million in the quarter and year-to-date, respectively, due to an increase in costs related to canceled projects, partially offset year-to-date by a decrease in closed restaurants costs. Gains on disposition of property and equipment, net, increased by \$6.1 million and \$6.7 million, respectively, primarily due to a \$5.7 million gain related to a sale of property in the third quarter of 2019 and a \$0.8 million gain related to an eminent domain transaction in the second quarter of 2019. Refer to Note 8, *Impairment and Other Charges, Net* of the notes to the condensed consolidated financial statements for additional information regarding these charges.

Gains on the Sale of Company-Operated Restaurants

Gains on the sale of company-operated restaurants, net is detailed in the following table (*dollars in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Number of restaurants sold to franchisees	—	42	—	127
Gains on the sale of company-operated restaurants	\$ —	\$ 28,676	\$ 219	\$ 43,088

Gains are impacted by the number of restaurants sold and changes in average gains or losses recognized, which primarily relate to the specific sales and cash flows of those restaurants. Gains in 2019 primarily relate to escrow funds released on restaurants sold in prior years. Refer to Note 5, *Summary of Refranchisings and Franchisee Development*, of the notes to the condensed consolidated financial statements for additional information regarding these gains.

Interest Expense, Net

Interest expense, net is comprised of the following (*in thousands*):

	Quarter		Year-to-date	
	July 7, 2019	July 8, 2018	July 7, 2019	July 8, 2018
Interest expense	\$ 36,561	\$ 11,209	\$ 67,587	\$ 34,491
Interest income	(67)	(336)	(443)	(425)
Interest expense, net	\$ 36,494	\$ 10,873	\$ 67,144	\$ 34,066

Interest expense, net increased \$25.6 million in the quarter and \$33.1 million year-to-date in 2019 compared with a year ago primarily due to a charge of \$23.6 million from the early termination of our interest rate swaps, as well as higher average interest rates which contributed to higher interest expense of approximately \$1.4 million and \$8.5 million, respectively.

Income Tax (Benefit) Expense

The tax rate in 2019 was (17.9)% in the quarter and 18.4% year-to-date, compared with 26.5% and 46.9%, respectively, in 2018. The major components of the change in tax rates were the non-cash impact of the enactment of the Tax Act in 2018, a decrease in the statutory tax rate, the impact of our interest rate swap termination, the release of valuation reserves on state tax credits and losses, and the release of a federal tax liability due to expiration of the statute of limitations. We expect the fiscal year tax rate to be approximately 20.0%. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual rate could differ from our current estimates. Refer to Note 9, *Income Taxes*, of the notes to the condensed consolidated financial statements for additional information regarding income taxes.

(Losses) Earnings from Discontinued Operations, Net

As described in Note 3, *Discontinued Operations*, in the notes to condensed consolidated financial statements, the results of operations from our distribution business and Qdoba have been reported as discontinued operations for all periods presented. Refer to Note 3 for additional information regarding discontinued operations.

LIQUIDITY AND CAPITAL RESOURCES

General

Our primary sources of short-term and long-term liquidity are expected to be cash flows from operations and available financing in place. On July 8, 2019, we completed a refinancing of our existing senior credit facility with a new securitized financing facility, comprised of \$1.3 billion of senior fixed-rate term notes and \$150 million of variable funding notes as further described below.

We generally reinvest available cash flows from operations to enhance existing restaurants, to reduce debt, to repurchase shares of our common stock, to pay cash dividends, and to develop new restaurants. Our cash requirements consist principally of:

- working capital;
- capital expenditures for restaurant renovations;
- income tax payments;
- debt service requirements;
- franchise tenant improvement allowance distributions; and
- obligations related to our benefit plans.

Based upon current levels of operations and anticipated growth, we expect that cash flows from operations, combined with our new securitized financing facility including our variable funding notes, will be sufficient to meet our capital expenditure, working capital and debt service requirements for at least the next twelve months and the foreseeable future.

As is common in the restaurant industry, we maintain relatively low levels of accounts receivable and inventories, and our vendors grant trade credit for purchases such as food and supplies. We also continually invest in our business through the addition of new units and refurbishment of existing units, which are reflected as long-term assets and not as part of working capital. As a result, we may at times maintain current liabilities in excess of current assets, which results in a working capital deficit.

Cash Flows

The table below summarizes our cash flows from continuing operations (*in thousands*):

	Year-to-date	
	July 7, 2019	July 8, 2018
Total cash provided by (used in):		
Operating activities	\$ 116,793	\$ 59,368
Investing activities	950	40,793
Financing activities	(108,001)	(386,405)
Net cash flows	\$ 9,742	\$ (286,244)

Operating Activities. Operating cash flows in 2019 increased \$57.4 million compared with a year ago due to favorable changes in working capital of \$83.1 million, primarily due to the timing of payments and spending for advertising expenses (\$32.2 million) and lower income tax payments (\$40.5 million), partially offset by lower net income adjusted for non-cash items of \$25.6 million.

Pension and Postretirement Contributions — Our policy is to fund our pension plans at or above the minimum required by law. As of January 1, 2018, the date of our last actuarial funding valuation, there was no minimum contribution funding requirement for our qualified pension plan. We continue to evaluate contributions to our Qualified Plan based on changes in pension assets as a result of asset performance in the current market and the economic environment. We do not anticipate making any contributions to our Qualified Plan in fiscal 2019. In 2019, we contributed \$5.1 million to our non-qualified pension plan and postretirement plans.

Investing Activities. Cash provided by investing activities decreased by \$39.8 million compared with a year ago primarily due to lower proceeds received from the sale of company-operated restaurants of \$42.4 million, including repayments of notes issued in connection with 2018 refranchising transactions, partially offset by higher proceeds from the sale of property and equipment of \$3.8 million.

Capital Expenditures — The composition of capital expenditures in each period follows (*in thousands*):

	Year-to-date	
	July 7, 2019	July 8, 2018
Jack in the Box:		
Restaurant facility expenditures	\$ 14,970	\$ 16,343
New restaurants	701	723
Other, including information technology	8,565	5,770
	<u>24,236</u>	<u>22,836</u>
Corporate Services:		
Information technology	120	2,773
Other, including facility improvements	685	121
	<u>805</u>	<u>2,894</u>
Total capital expenditures	<u>\$ 25,041</u>	<u>\$ 25,730</u>

We expect fiscal 2019 capital expenditures to be approximately \$30.0 million to \$35.0 million, excluding purchases of assets held for sale or leaseback. We use sale and leaseback financing to lower the initial cash investment in our restaurants, whenever possible. On July 25, 2019, the Company completed a \$17.3 million purchase of a commercial property on which a company operated restaurant is located. We currently intend to sell this property and lease back the parcel on which our company-operated restaurant is located within the next 12 months. Refer to Note 16, *Subsequent Events*, for further details on this acquisition.

Financing Activities. Cash flows used in financing activities decreased \$278.4 million compared with a year ago primarily due to lower stock repurchases of \$185.6 million and lower net borrowings of \$89.4 million on our senior credit facility.

Securitized Refinancing Transaction — On July 8, 2019, the Company announced that one of our indirect, limited-purpose subsidiaries (the “Master Issuer”) has completed the sale of \$575 million of its Series 2019-1 3.982% Fixed Rate Senior Secured Notes, Class A-2-I (the “Class A-2-I Notes”), \$275 million of its Series 2019-1 4.476% Fixed Rate Senior Secured Notes, Class A-2-II (the “Class A-2-II Notes”), and \$450 million of its Series 2019-1 4.970% Fixed Rate Senior Secured Notes, Class A-2-III (the “Class A-2-III Notes” and, together with the Class A-2-I Notes and Class A-2-II Notes, the “2019 Notes”). Interest payments on the 2019 Notes are payable on a quarterly basis. The anticipated repayment dates of the Class A-2-I Notes, the Class A-2-II Notes and the Class A-2-III Notes are August 2023, August 2026 and August 2029, respectively, unless earlier prepaid to the extent permitted under the indenture that governs the 2019 Notes. The 2019 Notes were issued by the Master Issuer in a privately placed securitization transaction.

The net proceeds of the sale of the 2019 Notes were used to retire the existing senior credit facility and to repay transaction costs related to the transaction. The Company intends to use remaining proceeds for working capital purposes and general corporate purposes, which may include a return of capital to the Company’s equity holders.

In connection with the issuance of the Series 2019-1 Class A-2 Notes, the Master Issuer also entered into a revolving financing facility of Series 2019-1 Variable Funding Senior Secured Notes, Class A-1 (the “Series 2019-1 Class A-1 Notes” and, together with the Series 2019-1 Class A-2 Notes, the “Series 2019-1 Senior Notes”), which allows for the drawing of up to \$150 million under the Variable Funding Notes, which includes a letter of credit facility. The Series 2019-1 Class A-1 Notes were issued under the Indenture and allow for drawings on a revolving basis.

The Series 2019-1 Senior Notes were issued in a privately placed securitization transaction pursuant to which most of the Company’s revenue-generating assets, consisting principally of franchise-related agreements, real estate assets, and intellectual property and license agreements for the use of intellectual property, were contributed or otherwise transferred to the Master Issuer and certain other limited-purpose, bankruptcy-remote, wholly-owned indirect subsidiaries of the Company that act as guarantors (the “Guarantors”) of the Series 2019-1 Senior Notes and that have pledged substantially all of their assets (excluding certain real estate assets) to secure the Series 2019-1 Senior Notes.

The Series 2019-1 Senior Notes are subject to a series of covenants and restrictions customary for transactions of this type, including (i) that the Master Issuer maintains specified reserve accounts to be used to make required payments in respect of the Series 2019-1 Senior Notes, (ii) provisions relating to optional and mandatory prepayments and the related payment of specified amounts, including specified make-whole payments in the case of the Series 2019-1 Class A-2 Notes under certain circumstances, (iii) certain indemnification payments in the event, among other things, the assets pledged as collateral for the Series 2019-1 Senior Notes are in stated ways defective or ineffective and (iv) covenants relating to recordkeeping, access to information and similar matters. The Series 2019-1 Senior Notes are also subject to customary rapid amortization events provided for in the Indenture, including events tied to failure to maintain stated debt service coverage ratios, the sum of global gross sales for specified restaurants being below certain levels on certain measurement dates, certain manager termination events, an event of default, and the failure to repay or refinance the Series 2019-1 Class A-2 Notes on the applicable scheduled maturity date. The Series 2019-1 Senior Notes are also subject to certain customary events of default, including events relating to non-payment of required interest, principal, or other amounts due on or with respect to the Series 2019-1 Senior Notes, failure to comply with covenants within certain time frames, certain bankruptcy events, breaches of specified representations and warranties, failure of security interests to be effective, and certain judgments.

Repurchases of Common Stock — We did not repurchase any common shares during 2019. As of July 7, 2019, there was approximately \$101.0 million remaining under Board-authorized stock-buyback programs which expires in November 2019. Repurchases of common stock included in our condensed consolidated statement of cash flows for fiscal 2019 includes \$14.4 million related to repurchase transactions traded in the prior fiscal year that settled in 2019.

Dividends — During 2019, the Board of Directors declared three cash dividends of \$0.40 per common share totaling \$31.2 million. Future dividends are subject to approval by our Board of Directors.

Off-Balance Sheet Arrangements

We have entered into certain off-balance sheet contractual obligations and commitments in the ordinary course of business, which are recognized in our condensed consolidated financial statements in accordance with U.S. generally accepted accounting principles. There has been no material change in these arrangements as disclosed in our Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2018. We are not a party to any other off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our financial condition, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources.

Contractual Obligations

Due to the refinancing of our long-term debt on July 8, 2019, our contractual obligations have changed materially from those previously disclosed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2018. The following is a summary of future principal and interest payments under our new securitized debt as of July 8, 2019 (*in thousands*):

	Payments Due by Fiscal Year				
	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
Contractual Obligations:					
Principal payments	\$ 1,300,000	\$ 9,750	\$ 26,000	\$ 573,688	\$ 690,562
Interest payments	\$ 393,387	\$ 50,586	\$ 113,270	\$ 94,524	\$ 135,007

There have been no material changes to our contractual obligations and commitments outside the ordinary course of business from those disclosed above.

DISCUSSION OF CRITICAL ACCOUNTING ESTIMATES

Critical accounting estimates are those that we believe are most important for the portrayal of the Company's financial condition and results, and that require management's most subjective and complex judgments. Judgments and uncertainties regarding the application of these policies may result in materially different amounts being reported under various conditions or using different assumptions. There have been no material changes to the critical accounting estimates previously disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2018.

NEW ACCOUNTING PRONOUNCEMENTS

Refer to Note 1, *Basis of Presentation*, of the notes to condensed consolidated financial statements.

CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of the federal securities laws. Any statements contained herein that are not historical facts may be deemed to be forward-looking statements. Forward-looking statements may be identified by words such as “anticipate,” “assume,” “believe,” “estimate,” “expect,” “forecast,” “goals,” “guidance,” “intend,” “plan,” “project,” “may,” “will,” “would,” “should” and similar expressions. These statements are based on management’s current expectations, estimates, forecasts and projections about our business and the industry in which we operate. These estimates and assumptions involve known and unknown risks, uncertainties, and other factors that are in some cases beyond our control. Factors that may cause our actual results to differ materially from any forward-looking statements include, but are not limited to:

- We face significant competition in the food service industry and our inability to compete may adversely affect our business.
- Changes in demographic trends and in customer tastes and preferences could cause sales and the royalties we receive from franchisees to decline.
- Changes in consumer confidence and declines in general economic conditions could negatively impact our financial results.
- Increases in food and commodity costs could decrease our profit margins or result in a modified menu, which could adversely affect our financial results.
- Changes in the structure or management of our distribution organization, or failure of our restaurants to receive scheduled deliveries of high quality food ingredients and other supplies at favorable costs could negatively impact the financial success of our franchise and company restaurants, and could harm our operations, promotions and reputation.
- We have a limited number of suppliers for our major products and rely on a distribution network with a limited number of distribution partners for the majority of our national distribution program in the United States. If our suppliers or distributors are unable to fulfill their obligations under their contracts, it could harm our operations.
- Food safety and food-borne illness concerns may have an adverse effect on our business by reducing demand and increasing costs.
- Negative publicity relating to our business or industry could adversely impact our reputation.
- Our business could be adversely affected by increased labor costs or difficulties in finding and retaining top-performing personnel.
- We may not have the same resources as our competitors for advertising and promotion.
- We may be adversely impacted by severe weather conditions, natural disasters, terrorist acts or civil unrest that could result in property damage, injury to employees and staff, and lost restaurant sales.
- Our business is subject to seasonal fluctuations.
- We may not achieve our development goals.
- Our highly franchised business model presents a number of risks, and the failure of our franchisees to operate successful and profitable restaurants could negatively impact our business.
- We are subject to financial and regulatory risks associated with our owned and leased properties and real estate development projects.
- Changes to estimates related to our property, fixtures, and equipment or operating results that are lower than our current estimates at certain restaurant locations may cause us to incur impairment charges on certain long-lived assets, which may adversely affect our results of operations.
- Our tax provision may fluctuate due to changes in expected earnings.
- Activities related to our sale of Qdoba, and our refranchising, restructuring, and cost savings initiatives entail various risks and may negatively impact our financial results.
- We are subject to the risk of cybersecurity breaches, intrusions, data loss, or other data security incidents.
- We may not be able to adequately protect our intellectual property, which could harm the value of our brands and adversely affect our business.
- The securitized debt instruments issued by certain of our wholly-owned subsidiaries have restrictive terms, and any failure to comply with such terms could result in default, which could harm the value of our brand and adversely affect our business.
- We have a significant amount of debt outstanding that, along with the other contractual commitments, could affect our ability or that of certain of our subsidiaries to meet debt obligations, or could otherwise adversely affect our business.
- The securitization transaction documents impose certain restrictions on our activities or the activities of our subsidiaries, and the failure to comply with such restrictions could adversely affect our business.

- Changes in accounting standards may negatively impact our results of operations.
- We are subject to increasing legal complexity and may be subject to claims or lawsuits that are costly to defend and could result in our payment of substantial damages or settlement costs.
- Unionization activities or labor disputes may disrupt our operations and affect our profitability.
- Our insurance may not provide adequate levels of coverage against claims.
- Our quarterly results and, as a result, the price of our common stock, may fluctuate significantly and could fall below the expectations of securities analysts and investors due to various factors.
- Activities of activist stockholders could cause us to incur substantial costs, divert management’s attention and resources, and have an adverse effect on our business.
- Governmental regulation may adversely affect our existing and future operations and results, including by harming our ability to profitably operate our restaurants.
- The proliferation of federal, state, and local regulations increases our compliance risks, which in turn could adversely affect our business.
- Legislation and regulations regarding our products and ingredients, including the nutritional content of our products, could impact customer preferences and negatively impact our financial results.
- Failure to obtain and maintain required licenses and permits or to comply with food control regulations could lead to the loss of our food service licenses and, thereby, harm our business.
- Jack in the Box may be subject to risk associated with disagreements with key stakeholders, such as franchisees.

These and other factors are identified and described in more detail in our filings with the Securities and Exchange Commission, including, but not limited to: the “Discussion of Critical Accounting Estimates,” and other sections in this Form 10-Q and the “Risk Factors” section of our most recent Annual Report on Form 10-K for the fiscal year ended September 30, 2018 (“Form 10-K”). These documents may be read free of charge on the SEC’s website at www.sec.gov. Potential investors are urged to consider these factors, more fully described in our Form 10-K, carefully in evaluating any forward-looking statements, and are cautioned not to place undue reliance on the forward-looking statements. All forward-looking statements are made only as of the date issued, and we do not undertake any obligation to update any forward-looking statements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

In connection with the securitized refinancing completed on July 8, 2019, we are only exposed to interest rate risk on borrowings under our \$150.0 million variable funding notes. As of July 8, 2019, we had no outstanding borrowings under our variable funding notes. Our fixed rate securitized debt exposes the Company to changes in market interest rates reflected in the fair value of the debt and to the risk that the Company may need to refinance maturing debt with new debt at a higher rate.

We are also exposed to the impact of commodity and utility price fluctuations. Many of the ingredients we use are commodities or ingredients that are affected by the price of other commodities, weather, seasonality, production, availability and various other factors outside our control. In order to minimize the impact of fluctuations in price and availability, we monitor the primary commodities we purchase and may enter into purchasing contracts and pricing arrangements when considered to be advantageous. However, certain commodities remain subject to price fluctuations. We are exposed to the impact of utility price fluctuations related to unpredictable factors such as weather and various other market conditions outside our control. Our ability to recover increased costs for commodities and utilities through higher prices is limited by the competitive environment in which we operate.

ITEM 4. CONTROLS AND PROCEDURES

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Based on an evaluation of the Company's disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 of the Securities Exchange Act of 1934, as amended), as of the end of the Company's quarter ended July 7, 2019, the Company's Chief Executive Officer and Chief Financial Officer (its principal executive officer and principal financial officer, respectively) have concluded that the Company's disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There have been no changes in the Company's internal control over financial reporting that occurred during the Company's fiscal quarter ended July 7, 2019 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

There is no information required to be reported for any items under Part II, except as follows:

ITEM 1. LEGAL PROCEEDINGS

See Note 13, *Contingencies and Legal Matters*, of the notes to condensed consolidated financial statements for a discussion of our contingencies and legal matters.

ITEM 1A. RISK FACTORS

The risk factors set forth below contain material changes to the risk factors previously disclosed and included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2018. When evaluating our business and our prospects, you should consider the risks and uncertainties described under Item 1A of Part I of our Annual Report on Form 10-K for the fiscal year ended September 30, 2018, which we filed with the SEC on November 21, 2018, as updated in this Item 1A. You should also consider the risks and uncertainties discussed under the heading “Cautionary Statements Regarding Forward-Looking Statements” in Item 2 of this Quarterly Report on Form 10-Q. You should also refer to the other information set forth in this Quarterly Report and in our Annual Report on Form 10-K for the fiscal year ended September 30, 2018, including our financial statements and the related notes. These risks and uncertainties are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impair our business operations. If any of the risks or uncertainties actually occurs, our business and financial results could be harmed. In that case, the market price of our common stock could decline.

Jack in the Box may be subject to risk associated with disagreements with key stakeholders, such as franchisees.

In addition to its shareholders, Jack in the Box has several key stakeholders, including its independent franchise operators. Third parties such as franchisees are not subject to the control of the Company and may take actions or behave in ways that are adverse to the Company. Because the ultimate interests of franchisees and the Company are largely aligned around maximizing restaurant profits, the Company does not believe that any areas of disagreement between the company and franchisees are likely to create material risk to the Company or its shareholders. Nevertheless, it is possible that conflict and disagreements with these or other critical stakeholders could have a material adverse effect on the Company’s business.

The securitized debt instruments issued by certain of our wholly-owned subsidiaries have restrictive terms, and any failure to comply with such terms could result in default, which could harm the value of our brand and adversely affect our business.

The Series 2019-1 Senior Notes are subject to a series of covenants and restrictions customary for transactions of this type, including (i) that the Master Issuer maintains specified reserve accounts to be used to make required payments in respect of the Series 2019-1 Senior Notes, (ii) provisions relating to optional and mandatory prepayments and the related payment of specified amounts, including specified make-whole payments in the case of the Series 2019-1 Class A-2 Notes under certain circumstances, (iii) certain indemnification payments in the event, among other things, the assets pledged as collateral for the Series 2019-1 Senior Notes are in stated ways defective or ineffective and (iv) covenants relating to recordkeeping, access to information and similar matters. The Series 2019-1 Senior Notes are also subject to customary rapid amortization events provided for in the Indenture, including events tied to failure to maintain stated debt service coverage ratios, the sum of global gross sales for specified restaurants being below certain levels on certain measurement dates, certain manager termination events, an event of default, and the failure to repay or refinance the Series 2019-1 Class A-2 Notes on the applicable scheduled maturity date. The Series 2019-1 Senior Notes are also subject to certain customary events of default, including events relating to non-payment of required interest, principal, or other amounts due on or with respect to the Series 2019-1 Senior Notes, failure to comply with covenants within certain time frames, certain bankruptcy events, breaches of specified representations and warranties, failure of security interests to be effective, and certain judgments.

In the event that a rapid amortization event occurs under the Indenture (including, without limitation, upon an event of default under the Indenture or the failure to repay the securitized debt at the end of the applicable term) which would require repayment of the Series 2019-1 Senior Notes, the funds available to us would be reduced or eliminated, which would in turn reduce our ability to operate and/or grow our business. If our subsidiaries are not able to generate sufficient cash flow to service their debt obligations, they may need to refinance or restructure debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If our subsidiaries are unable to implement one or more of these alternatives, they may not be able to meet debt payment and other obligations which could have a material adverse effect on our financial condition.

We have a significant amount of debt outstanding. Such indebtedness, along with the other contractual commitments of our Company or its subsidiaries, could adversely affect our business, financial condition and results of operations, as well as the ability of certain of our subsidiaries to meet debt payment obligations.

Under the Indenture, the Master Issuer has \$1.3 billion of outstanding debt as of August 7, 2019. Additionally, the Master Issuer has the ability to borrow amounts from time to time on a revolving basis, up to an aggregate principal amount of \$150.0 million pursuant to the Series 2019-1 Class A-1 Notes. Under the prior credit facility that was terminated on July 8, 2019, we had outstanding borrowings of \$304.4 million under the term loan, \$707.4 million under the revolving credit facility, and unused borrowing capacity of \$162.7.

This level of debt could have certain material adverse effects on the Company, including but not limited to:

- our available cash flow in the future to fund working capital, capital expenditures, acquisitions, and general corporate or other purposes could be impaired, and our ability to obtain additional financing for such purposes is limited;
- a substantial portion of our cash flows could be required for debt service and, as a result, might not be available for our operations or other purposes;
- any substantial decrease in net operating cash flows or any substantial increase in expenses could make it difficult for us to meet our debt service requirements or could force us to modify our operations or sell assets;
- our ability to operate our business and our ability to repurchase stock or pay cash dividends to our stockholders may be restricted by the financial and other covenants set forth in the Indenture;
- the variable interest rate on the \$150 million of Series 2019-1 Class A-1 Notes subjects us to an increased sensitivity to interest rate increases on indebtedness;
- our ability to withstand competitive pressures may be decreased; and
- our level of indebtedness may make us more vulnerable to economic downturns and reduce our flexibility in responding to changing business, regulatory, and economic conditions.

The ability to meet payment and other obligations under the debt instruments of our subsidiaries depends on our ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors beyond our control as described in our Annual Report on Form 10-K. Our business may not generate cash flow from operations, and there can be no assurances that future borrowings will be available to us in an amount sufficient to enable our subsidiaries to meet our debt payment obligations and to fund other liquidity needs. If our subsidiaries are not able to generate sufficient cash flow to service our debt obligations, our subsidiaries may need to refinance or restructure debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If our subsidiaries are unable to implement one or more of these alternatives, they may not be able to meet debt payment and other obligations, which could have a material adverse effect on our financial condition.

In addition, we may incur additional indebtedness in the future. If new debt or other liabilities are added to our current consolidated debt levels, the related risks that it now faces could intensify.

The securitization transaction documents impose certain restrictions on our activities or the activities of our subsidiaries, and the failure to comply with such restrictions could adversely affect our business.

The Indenture and the management agreement entered into between certain of our subsidiaries and the Indenture trustee (the “Management Agreement”) contain various covenants that limit our and our subsidiaries’ ability to engage in specified types of transactions. For example, the Indenture and the Management Agreement contain covenants that, among other things, restrict, subject to certain exceptions, the ability of certain subsidiaries to:

- incur or guarantee additional indebtedness;
- sell certain assets;
- alter the business conducted by our subsidiaries;
- create or incur liens on certain assets to secure indebtedness; or
- consolidate, merge, sell or otherwise dispose of all or substantially all of the assets held within the securitization entities.

As a result of these restrictions, we may not have adequate resources or the flexibility to continue to manage the business and provide for growth of the Jack in the Box system, including product development and marketing for the Jack in the Box brand, which could adversely affect our future growth prospects, financial condition, results of operations and liquidity.

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

Stock Repurchases — We have not repurchased any shares of our common stock in 2019. As of July 7, 2019, there was approximately \$101.0 million remaining under Board-authorized stock-buyback programs which expire in November 2019.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Effective, August 2, 2019, the Board of Directors approved the Amended and Restated Bylaws of the Company, which were updated to provide for gender-neutral references and to clarify the roles and responsibilities of the position of the President of the Company in the event that the company shall designate a President of the Company.

The foregoing summary does not purport to be complete and is subject to, and qualified in its entirety by reference to, the complete copy of the Amended and Restated Bylaws, which has been filed as Exhibit 3.1, hereto and is hereby incorporated herein by reference. Interested parties should read the document in its entirety.

ITEM 6. EXHIBITS

<u>Number</u>	<u>Description</u>	<u>Form</u>	<u>Filed with SEC</u>
3.1	<u>Amended and Restated Bylaws, dated August 2, 2019.</u>	—	Filed herewith
4.1	<u>Base Indenture, dated as of July 8, 2019, by and between Jack in the Box Funding, LLC, as Master Issuer, and Citibank, N.A., as Trustee and Securities Intermediary.</u>	8-K	7/8/2019
4.2	<u>Series 2019-1 Supplement to Base Indenture, dated as of July 8, 2019, by and between Jack in the Box Funding, LLC, as Master Issuer of the Series 2019-1 fixed rate senior secured notes, Class A-2, and Series 2019-1 variable funding senior notes, Class A-1, and Citibank, N.A., as Trustee and Series 2019-1 Securities Intermediary.</u>	8-K	7/8/2019
10.1	<u>Class A-1 Note Purchase Agreement, dated as of July 8, 2019, by and among Jack in the Box Funding, LLC, as Master Issuer, each of Different Rules, LLC, Jack in the Box Properties, LLC and Jack in the Box SPV Guarantor, LLC, as Guarantors, Jack in the Box Inc. as Manager, the conduit investors party thereto, the financial institutions party thereto, certain funding agents, and Coöperatieve Rabobank, U.A., New York Branch, as L/C Provider, Swingline Lender and Administrative Agent.</u>	8-K	7/8/2019
10.1.19	<u>Fifth Amendment, dated as of May 1, 2019, by and among Jack in the Box Inc., the Guarantors party thereto, Wells Fargo Bank, National Association, as administrative agent, and the lenders party thereto</u>	8-K	5/2/2019
10.2	<u>The Guarantee and Collateral Agreement, dated July 8, 2019, by and among Jack in the Box SPV Guarantor, LLC, Different Rules, LLC, and Jack in the Box Properties, LLC, each as a Guarantor and Citibank, N.A., as Trustee.</u>	8-K	7/8/2019
10.3	<u>Management Agreement, dated as of July 8, 2019, by and among Jack in the Box Funding, LLC, as Master Issuer, certain subsidiaries of Jack in the Box Funding, LLC party thereto, Jack in the Box Inc., as Manager, and Citibank, N.A., as Trustee.</u>	8-K	7/8/2019
31.1	<u>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>	—	Filed herewith
31.2	<u>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>	—	Filed herewith
32.1	<u>Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>	—	Filed herewith
32.2	<u>Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>	—	Filed herewith
101.INS	XBRL Instance Document		
101.SCH	XBRL Taxonomy Extension Schema Document		
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document		
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document		
101.LAB	XBRL Taxonomy Extension Label Linkbase Document		
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document		

SIGNATURE

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.

JACK IN THE BOX INC.

By: _____ /s/ LANCE TUCKER

Lance Tucker

**Executive Vice President and Chief Financial Officer (principal financial officer)
(Duly Authorized Signatory)**

Date: August 8, 2019

JACK IN THE BOX INC.
(a Delaware corporation)

BY-LAWS
AMENDED AND RESTATED
Effective August 2, 2019

ARTICLE II

Offices

SECTION 1.01 Registered Office. The registered office of Jack in the Box Inc. (hereinafter called the "Corporation") in the State of Delaware shall be at 1209 Orange Street, City of Wilmington, County of New Castle, and the name of the registered agent in charge thereof shall be The Corporation Trust Company.

SECTION 1.02 Other Offices. The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the Board of Directors (hereinafter called the "Board") may from time to time determine or as the business of the Corporation may require.

ARTICLE II

Meetings of Stockholders

SECTION 2.01 Annual Meetings. Annual meetings of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings may be held at such time, date and place as the Board shall determine by resolution. In lieu of holding an annual meeting of stockholders at a designated place, the Board may, in its sole discretion, determine that any annual meeting of stockholders may be held solely by means of remote communication.

SECTION 2.02 Special Meetings. A special meeting of the stockholders for the transaction of any proper business may be called at any time by the Board or by the Chief Executive Officer for any purpose or purposes prescribed in the notice of the meeting and shall be held at such place (if any) on such date and at such time as the Board may fix. In lieu of holding a special meeting of stockholders at a designated place, the Board may, in its sole discretion, determine that any special meeting of stockholders may be held solely by means of remote communication. Business transacted at a special meeting of stockholders shall be confined to the purpose or purposes stated in the notice of meeting.

SECTION 2.03 Place of Meetings. All meetings of the stockholders shall be held at such places (if any), within or without the State of Delaware, as may from time to time be designated by the person or persons calling the respective meeting and specified in the respective notices or waivers of notice thereof.

SECTION 2.04 Notice of Meetings.

(a) Except as otherwise required by law or in the Certificate of Incorporation, notice of each meeting of the stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Every notice of a meeting of the stockholders shall state the place, if any, date and hour of the meeting, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting. The notice of a special meeting, shall state, in addition, the purpose or purposes for which the meeting is called. Notice of any meeting of stockholders shall be deemed waived by any stockholder who shall attend such meeting in person or by proxy, except as a stockholder who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(b) Notice to stockholders may be given by personal delivery, mail, or, with the consent of the stockholder entitled to receive notice, by facsimile or other means of electronic transmission. If mailed, such notice shall be delivered by postage prepaid envelope directed to each stockholder at such stockholder's address as it appears in the records of the Corporation and shall be deemed given when deposited in the United States mail. Notice given by electronic transmission pursuant to this subsection shall be deemed given: (i) if by facsimile telecommunication, when directed to a facsimile telecommunication number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder in a form in which such stockholder has consented to receive notice. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given by personal delivery, by mail, or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) Notice of any meeting of stockholders need not be given to any stockholder if waived by such stockholder either in a writing signed by such stockholder or by electronic transmission, whether such waiver is given before or after such meeting is held. If such a waiver is given by electronic transmission, the electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

SECTION 2.05 Adjournments. Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these By-laws by the chairman of the meeting or, in the absence of such person, by any officer entitled to preside at or to act as secretary of such meeting, or by the holders of a majority of the shares of stock present or represented at the meeting and entitled to vote, although less than a quorum. When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which

stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

SECTION 2.06 Quorum. Except as otherwise provided by law or these By-laws, the holders of a majority of the shares of the capital stock of the Corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate class vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.

SECTION 2.07 Voting.

(a) Each stockholder shall, at each meeting of the stockholders, be entitled to vote in person or by proxy each share or fractional share of the stock of the Corporation having voting rights on the matter in question and which shall have been held by him or her and registered in his or her name on the books of the Corporation:

- (i) on the date fixed pursuant to Section 6.05 of these By-laws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or
- (ii) if no such record date shall have been so fixed, then (a) at the close of business on the day next preceding the day on which notice of the meeting shall be given or (b) if notice of the meeting shall be waived, at the close of business on the day next preceding the day on which the meeting shall be held.

(b) Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors in such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Persons holding stock of the Corporation in a fiduciary capacity shall be entitled to vote such stock. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he or she shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his or her proxy, may represent such stock and vote thereon. Stock having voting power standing of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants in common, tenants by entirety or otherwise, or with respect to which two or more persons have the same fiduciary relationship, shall be voted in accordance with the provisions of the General Corporation Law of the State of Delaware.

(c) Any such voting rights may be exercised by the stockholder entitled thereto in person or by his or her proxy appointed by an instrument in writing, subscribed by such stockholder or by his or her attorney thereunto authorized, or by any other means permitted by the Delaware General Corporation Law, and delivered to the secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after three years from its date unless said proxy shall provide for a longer period. The attendance at any meeting of a stockholder who may theretofore have given a proxy shall not have the effect of revoking the same unless he or she shall in writing so notify the secretary of the meeting prior to the voting of the proxy. At any meeting of the stockholders all matters, except as otherwise provided in the Certificate of Incorporation, in these By-laws or by law, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat and thereon, a quorum being present. The vote at any meeting of the stockholders on any question need not be by ballot, unless so directed by the chairman of the meeting. On a vote by ballot each ballot shall be signed by the stockholder voting, or by his or her proxy, if there be such proxy, and it shall state the number of shares voted.

SECTION 2.08 Voting List. The Secretary of the Corporation shall prepare at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, in the manner provided by law. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. This list shall determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

SECTION 2.09 Inspector of Elections. The Corporation shall appoint one or more inspectors to act at any meeting of stockholders. If an inspector is not able to act, the person presiding at the meeting of stockholders shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. The inspector shall decide upon the validity of proxies and ballots and shall report the number of shares represented at the meeting and entitled to vote on each question; shall count the votes and ballots, and, when the voting is completed, shall ascertain and report the number of shares voted respectively for and against each question. Reports of inspectors shall be in writing and subscribed and delivered by them to the Secretary of the Corporation.

SECTION 2.10 Action Without Meeting.

(a) Request for Record Date. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be as fixed by the board of directors or as otherwise established under this section. Any person seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written notice addressed to the secretary of the Corporation and delivered to the Corporation and signed by a stockholder of record, request that a record date be fixed for such purpose. The written

notice must contain the information set forth in paragraph (b) of this section. Following receipt of the notice, the board shall have ten days to determine the validity of the request, and if appropriate, adopt a resolution fixing the record date for such purpose. The record date for such purpose shall be no more than ten days after the date upon which the resolution fixing the record date is adopted by the board and shall not precede the date such resolution is adopted. If the board fails within ten days after the Corporation receives such notice to fix a record date for such purpose, the record date shall be the day on which the first written consent is delivered to the Corporation in the manner described in paragraph (d) of this section; except that, if prior action by the board is required under the provisions of Delaware law, the record date shall be at the close of business on the day on which the board adopts the resolution taking such prior action.

(b) Notice Requirements. Any stockholder's notice required by paragraph (a) of this section must describe the action that the stockholder proposes to take by consent. For each such proposal, every notice by a stockholder must state (i) the information required by Article II, Section 2.11 as though such stockholder was intending to make a nomination or to bring any other matter before a meeting of stockholders, (ii) the text of the proposal (including the text of any resolutions to be effected by consent and the language of any proposed amendment to the Bylaws of the Corporation), (iii) the reasons for soliciting consents for the proposal, (iv) any material interest in the proposal held by the stockholder and the beneficial owner, if any, on whose behalf the action is to be taken, and (v) any other information relating to the stockholder, the beneficial owner, or the proposal that would be required to be disclosed in filings in connection with the solicitation of proxies or consents pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder (or any successor provision of the Exchange Act or the rules or regulations promulgated thereunder). In addition to the foregoing, the notice must state as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the notice is given (i) the class and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner, as to the stockholder giving the notice, (ii) a description of all arrangements or understandings between such stockholder and any other person or persons regarding the proposed action by consent, and (iii) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends to (a) deliver a proxy statement and/or consent solicitation statement to stockholders of at least the percentage of the Corporation's outstanding capital stock required to effect the action by consent either to solicit consents or to solicit proxies to execute consents, and/or (b) otherwise solicit proxies or consents from stockholders in support of the action to be taken by consent, and (c) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies or consents relating to the proposed action by consent pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (or any successor provision of the Exchange Act or the rules or regulations promulgated thereunder). The Corporation may require the stockholder of record and/or beneficial owner requesting a record date for proposed stockholder action by consent to furnish such other information as it may reasonably require to determine the validity of the request for a record date.

(c) Date of Consent. Every written consent purporting to take or authorize the taking of corporate action (each such written consent is referred to in this paragraph and in paragraph (d) as

a “Consent”) must bear the date of signature of each stockholder who signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by this section, Consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation.

(d) Delivery of Consent. Consent must be delivered to the Corporation by delivery to its registered office in the State of Delaware or its principal place of business. Delivery must be made by hand or by certified or registered mail, return receipt requested. In the event of the delivery to the Corporation of Consents, the secretary of the Corporation, or such other officer of the Corporation as the board of directors may designate, shall provide for the safe-keeping of such Consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all Consents and any related revocations and of the validity of the action to be taken by stockholder consent as the secretary of the Corporation, or such other officer of the Corporation as the board may designate, as the case may be, deems necessary or appropriate, including, without limitation, whether the stockholders of a number of shares having the requisite voting power to authorize or take the action specified in Consents have given consent; provided, however, that the secretary of the Corporation, or such other officer of the Corporation as the board may designate, as the case may be, may alternatively designate two persons, who shall not be members of the board, to serve as inspectors (“Inspectors”) with respect to such Consent and such Inspectors shall discharge the functions of the secretary of the Corporation, or such other officer of the Corporation as the board may designate, as the case may be, under this section. If after such investigation the secretary of the Corporation, such other officer of the Corporation as the board may designate, or the Inspectors, as the case may be, shall determine that the action purported to have been taken is duly authorized by the Consents, that fact shall forthwith be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders, and the Consents shall be filed in such records. In conducting the investigation required by this section, the secretary of the Corporation, such other officer of the Corporation as the board may designate, or the Inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors, and such other personnel as such person or persons may deem necessary or appropriate and shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(e) Effectiveness of Consent. No action by written consent without a meeting shall be effective until such date as the secretary of the Corporation, such other officer of the Corporation as the board may designate, or the Inspectors, as applicable, certify to the Corporation that the consents delivered to the Corporation in accordance with paragraph (d) of this section, represent at least the minimum number of votes that would be necessary to take the corporate action.

(f) Challenge to Validity of Consent. Nothing contained in this section shall in any way be construed to suggest or imply that the board of directors of the Corporation or any stockholder shall not be entitled to contest the validity of any Consent or related revocations, whether before or after such certification by the secretary of the Corporation, such other officer of the Corporation as the board may designate, or the Inspectors, as the case may be, or to take any other action (including, without limitation, the commencement, prosecution, or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

SECTION 2.11 Stockholder Proposals at Annual Meetings.

(a) Other than a proposal sought to be included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act"), or a nomination for election as a director of the Corporation governed by Section 3.16 hereof, business may be properly brought before an annual meeting by a stockholder only upon the stockholder's timely notice thereof in writing to the Secretary of the Corporation pursuant to the terms of this Section 2.11 and only if such business is a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than one hundred twenty (120) days and not more than one hundred fifty (150) days in advance of the first anniversary of the date of the previous year's annual meeting of stockholders; provided, however, that if either (i) no annual meeting was held in the previous year, or (ii) the date of the annual meeting is advanced by more than thirty (30) calendar days or delayed by more than seventy (70) calendar days from the date of the previous year's annual meeting, then notice by the stockholder must be received not earlier than one hundred fifty (150) days prior to such annual meeting and not later than the close of business on the later of: (i) one hundred twenty (120) days prior to such annual meeting or (ii) the tenth (10th) day following the day on which the date of the annual meeting is publicly announced. A public announcement for purposes of these By-laws means 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 Section 13, 14 or 15(d) of the Exchange Act. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For purposes of this Section 2.11, any adjournment(s) or postponement(s) of the original meeting that do not require a new written notice to stockholders shall be deemed for purposes of notice to be a continuance of the original meeting and no new business may be brought before any reconvened meeting by a stockholder unless timely notice of such business was given to the Secretary of the Corporation for the meeting as originally scheduled.

(b) To be proper, a stockholder's notice to the Secretary pursuant to Section 2.11(a) must set forth, as to each matter the stockholder proposes to bring before the annual meeting:

(i) the name and address of each of the Proponents (as defined below);

(ii) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the By-laws of the Corporation, the language of the proposed amendment);

(iii) any interest in such business, including any anticipated benefit of such business to any of the Proponents other than solely as a result of their ownership of the Corporation's stock, that is material to any Proponent individually, or to the Proponents in the aggregate;

(iv) the class and number of all shares of stock of the Corporation owned, of record or beneficially, by the Proponents as of the date of the notice;

(v) a description of all Derivative Transactions (as defined below) that have been entered into by the Proponents as of the date of the Proponents' notice, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions;

(vi) whether any of the Proponents holds a proxy, or is a party to any contract, arrangement, understanding, or relationship pursuant to which any of the Proponents has the right to vote, or control or direct the voting of, the Corporation's stock, the material terms thereof and the number of shares of the Corporation's stock subject thereto;

(vii) a brief description of all plans, proposals, understandings, agreements and arrangements (whether oral or in writing) in connection with which the Proponents are providing the notice and intending to bring the business named therein before the meeting, including without limitation any plans, proposals, understandings, agreements and arrangements that would be required to be disclosed pursuant to Items 4, 5 and 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the Proponents);

(viii) a representation that the Proponents intend to appear in person or by proxy to bring such matter before the meeting, and, if any of the Proponents intend to solicit proxies in respect to the business named in the notice, a representation to that effect; and

(ix) to the extent known by the Proponents, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice.

(c) The following definitions apply for purposes of these By-laws:

(i) "Affiliate" means, with respect to a specified natural person or entity, any natural person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person.

(ii) "Derivative Transaction" means any (A) transaction in, or arrangement, agreement or understanding with respect to, any option, warrant, convertible security, stock appreciation right or similar right with an exercise, conversion or exchange privilege, or settlement payment or mechanism related to, any security of the Corporation, or similar instrument with a value derived in whole or in part from the value of a security of the Corporation, in any such case whether or not it is subject to settlement in a security of the Corporation or otherwise, and (B) any transaction, arrangement, agreement or understanding (including short positions, hedging transactions and transactions involving borrowed or loaned shares) that included or includes an opportunity for such person, directly or indirectly, to profit or share in any

profit derived from any increase or decrease in the value of any security of the Corporation, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Corporation or to increase or decrease the number of securities of the Corporation that such person was, is or will be entitled to vote, in any case whether or not such security is subject to settlement in a security of the Corporation or otherwise.

(iii) “Proponents” means, collectively, the stockholder of record providing the notice to the Corporation, any beneficial owner or beneficial owners (within the meaning of Section 13(d) of the Exchange Act) upon whose behalf such stockholder of record is providing such notice, and any Stockholder Associated Person. Any one of the foregoing is referred to herein as a “Proponent”.

(iv) “Stockholder Associated Person” means any Affiliate of either the stockholder of record providing notice to the Corporation or, if different, the beneficial owner or beneficial owners on whose behalf such notice is being provided, and any other person knowingly acting in concert, or towards a common goal, with the proposing stockholder of record or the beneficial owner or beneficial owners on whose behalf the notice is being provided.

(d) Notwithstanding anything to the contrary in Section 2.11(b), a broker acting solely as the nominee record holder of shares of the Corporation’s stock held in street name on behalf of a beneficial owner need not provide the information required by Section 2.11(b)(v) and Section 2.11(b)(vi) with respect to such broker or any of its Affiliates, so long as such broker (including its Affiliates): (i) will not share in any of the profits earned, or bear the risk of any losses incurred, by the beneficial owner of the Corporation’s stock held by such broker; (ii) does not hold investment control with respect to the Corporation’s stock held by such broker for the beneficial owner on whose behalf the notice is being provided, or voting control of such stock with respect to the business being proposed by such stockholder of record; and (iii) is not acting pursuant to any arrangement, agreement or understanding other than a usual and customary brokerage relationship.

(e) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.11 is true and correct in all material respects as of the record date for the meeting and as of the date that is five (5) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than three (3) business days prior to the date for the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of five (5) business days prior to the meeting or any adjournment or postponement thereof).

(f) Nothing in this By-law shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) The chairman of the annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 2.11, and in such case, any such business not properly brought before the meeting shall not be transacted.

(h) The provisions of this Section 2.11 shall apply to any amendments to these By-laws proposed by the shareholders under Section 8.08.

ARTICLE III
Board of Directors

SECTION 3.01 General Powers. The property, business and affairs of the Corporation shall be managed by the Board.

SECTION 3.02 Number and Term of Office. The exact number of directors shall be fixed from time to time by resolution of the board of directors or the stockholders. Directors need not be stockholders. Each of the directors of the Corporation shall hold office until his or her successor shall have been duly elected and shall qualify or until he or she shall resign or shall have been removed in the manner hereinafter provided.

SECTION 3.03 Election of Directors.

(a) The directors shall be elected annually by the stockholders of the Corporation. Directors shall hold office until the next annual meeting and until their successors shall be duly elected and qualified.

(b) Except as provided in Section 3.05 of this Article, each director shall be elected by the vote of a majority of the votes cast with respect to the director at any meeting for the election of directors at which a quorum is present, provided that if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a "majority of votes cast" means that the number of shares voted "for" a director must exceed the number of votes cast against that director. The Nominating and Governance Committee shall establish procedures under which any director who is not elected shall tender his or her resignation to the Board. The Nominating and Governance Committee will make a recommendation to the Board on whether to accept or reject the resignation, or whether other action should be taken. The Board will act on the Committee's recommendation and publicly disclose its decision and the rationale behind it within ninety (90) days from the date of the certification of the election results. If, for any cause, the board of Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these By-laws.

SECTION 3.04 Resignations. Any director may resign at any time by delivering his or her written resignation to the Secretary, who shall promptly inform the Nominating and Governance Committee. Such resignation shall specify whether it will be effective at a particular time, upon receipt by the Secretary, or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one (1) or more directors shall resign from the Board effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

SECTION 3.05 Vacancies. Except as otherwise provided in the Certificate of Incorporation, any vacancy in the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or if the stockholders fail at any meeting of stockholders at which directors are to be elected, to elect the number of directors then constituting the whole Board, or any other cause, may be filled by vote of the majority of the directors then in office, although less than a quorum, or by the sole remaining director. Each director so chosen to fill a vacancy shall hold office until his or her successor shall have been elected and shall qualify or until he or she shall resign or shall have been removed in the manner hereinafter provided.

SECTION 3.06 Place of Meeting, Etc. The Board may hold any of its meetings at such place or places within or without the State of Delaware as the Board may from time to time by resolution designate or as shall be designated by the person or persons calling the meeting or in the notice or a waiver of notice of any such meeting. Directors may participate in any regular or special meeting of the Board by means of conference telephone or similar communications equipment pursuant to which all persons participating in the meeting of the Board can hear each other, and such participation shall constitute presence in person at such meeting.

SECTION 3.07 First Meeting. The Board shall meet as soon as practicable after each annual election of directors and notice of such first meeting shall not be required.

SECTION 3.08 Regular Meetings. Regular meetings of the Board may be held at such times as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting shall be held at the same hour and place on the next succeeding business day not a legal holiday. Except as provided by law, notice of regular meetings need not be given.

SECTION 3.09 Special Meetings. Special meetings of the Board shall be held whenever called by the Chief Executive Officer or a majority of the authorized number of directors. Except as otherwise provided by law or by these By-laws, notice of the time and place of each such special meeting shall be given in accordance with Section 8.05 of these By-laws. Except where otherwise required by law or by these By-laws, notice of the purpose of a special meeting need not be given. Notice of any meeting of the Board shall not be required to be given to any director who is present at such meeting, except a director who shall attend such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 3.10 Quorum and Manner of Acting. Except as otherwise provided in these By-laws or by law, the presence of a majority of the authorized number of directors shall be required to constitute a quorum for the transaction of business at any meeting of the Board, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the directors present. In the absence of a quorum, a majority of directors present at any meeting may adjourn the same from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given. The directors shall act only as a Board, and the individual directors shall have no power as such.

SECTION 3.11 Action by Consent. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if a written consent thereto is signed by all members of the Board or of such committee, or an electronic transmission is delivered by such members of the Board or of such committee, as the case may be, and such written consent or electronic transmission is filed with the minutes of proceedings of the Board or committee.

SECTION 3.12 Emergency. In the event of any emergency, disaster or catastrophe, or similar emergency condition, as referred to in Section 110 of the Delaware General Corporation Law, as a result of which a quorum of the Board or a standing committee thereof cannot be readily convened for action, any director or officer of the Corporation may call a meeting of the Board or any standing committee of the Board. Notice of such meeting shall be adequate if the director or officer calling such meeting has informed, or attempted to inform all directors by means of telephone, facsimile, email and cell phone, using such telephone, facsimile, email and cell phone numbers and addresses as are on file with the Corporation for each director from time to time or, in the event such numbers and addresses are not readily available from the Corporation, at the most recent number or address available to the director or officer calling the meeting. If, as a result of such an emergency, disaster or catastrophe, a quorum of the Board or a standing committee of the Board cannot readily be convened for action, the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate.

SECTION 3.13 Removal of Directors. Subject to the provisions of the Certificate of Incorporation, any director may be removed at any time, either with or without cause, by the affirmative vote of the stockholders holding a majority of the outstanding shares entitled to vote at a special meeting of the stockholders called for the purpose.

SECTION 3.14 Compensation. The directors shall receive only such compensation for their services as directors as may be allowed by resolution of the Board. The Board may also provide that the Corporation shall reimburse each such director for any expense incurred by him or her on account of his or her attendance at any meetings of the Board or Committees of the Board. Neither the payment of such compensation nor the reimbursement of such expenses shall be construed to preclude any director from serving the Corporation or its subsidiaries in any other capacity and receiving compensation therefor.

SECTION 3.15 Committees. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board and except as otherwise limited by law, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Any such committee shall keep written minutes of its meetings and report the same to the Board at the next regular meeting of the Board. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

SECTION 3.16 Nominations for Election to the Board of Directors.

(a) Subject to the rights of holders of any class or series of Preferred Stock then outstanding, nominations for the election of directors at an annual meeting may be made by (i) the Board or a duly authorized committee thereof or (ii) any stockholder entitled to vote in the election of directors generally who complies with the procedures set forth in this By-law and who is a stockholder of record at the time notice is delivered to the Secretary of the Corporation. Any stockholder entitled to vote in the election of directors may nominate one or more persons for election as directors at an annual meeting only if timely notice of such stockholder's intent to make such nomination or nominations has been given in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation before the close of business not less than one hundred twenty (120) days and not more than one hundred fifty (150) days in advance of the first anniversary of the date of the previous year's annual meeting of stockholders; provided, however, that if either (i) no annual meeting was held in the previous year, or (ii) the date of the annual meeting is advanced by more than thirty (30) calendar days or delayed by more than seventy (70) calendar days from the date of the previous year's annual meeting, then notice by the stockholder must be received not earlier than one hundred fifty (150) days prior to such annual meeting and not later than the close of business on the later of: (i) one hundred twenty (120) days prior to such annual meeting or (ii) the close of business on the tenth (10th) day following the day on which the date of the annual meeting is publicly announced. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(b) To be proper, a stockholder's notice to the Secretary pursuant to Section 3.16(a) must set forth: (i) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (A) the name, age, business and residence of such person, (B) the class and number of any shares of stock of the Corporation that are beneficially owned or owned of record by such person (C) the date or dates such shares were acquired and the investment intent of such acquisition, (D) 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, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, (E) the written consent of each nominee to serve as a director of the Corporation if so elected, (F) such

other information as the Corporation may reasonably require to determine eligibility of such proposed nominee to serve as a director of the Corporation, specifically information related to the proposed nominee's ability to comply with established standards of director independence and (G) a completed and signed questionnaire, representation, and agreement as provided in subsection (h) of this Section 3.16; (ii) as to the Proponents of such nomination (as such term is defined in Section 2.11(c) hereof), (A) the name and address of each Proponent, (B) a representation that the stockholder making the nomination is a holder of record of stock of the Corporation entitled to vote for the election of directors on the date of such notice and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, (C) a description of all arrangements, agreements or understandings (oral or written) between any of the Proponents and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder, and (D) the information required to be set forth in a notice to the Corporation under clauses (iv), (v), (vi), (vii) and (ix) of Section 2.11(b) hereof.

(c) A stockholder nominating a person for election or re-election as a director shall further update and supplement such notice thereof, if necessary, so that the information provided or required to be provided in such notice pursuant to Section 3.16(b) is true and correct in all material respects as of the record date for the meeting and as of the date that is five (5) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than three (3) business days prior to the date for the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of five (5) business days prior to the meeting or any adjournment or postponement thereof).

(d) Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting by (i) or at the direction of the Board or a committee thereof or (ii) any stockholder of the Corporation who is entitled to vote at the meeting, who complies with the notice procedures set forth in this By-law and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as are specified in the Corporation's notice of meeting, if the stockholder's notice as required by paragraph (a) of this By-law shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the one hundred fiftieth (150th) day prior to such special meeting and not later than the close of business on the later of: (i) the one hundred twentieth (120th) day prior to such special meeting or (ii) the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board 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 (or extend any time period) for the giving of a stockholder's notice as described above.

(e) Notwithstanding the foregoing provisions of this By-law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-law. Nothing in this By-law shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(f) Only persons nominated in accordance with the procedures set forth in this Section 3.16 are eligible to serve as directors. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty (i) to determine whether a nomination was made in accordance with the procedures set forth in this Section 3.16 and (ii) if any proposed nomination was not made in compliance with this Section 3.16, to declare that such nomination shall be disregarded.

(g) If the Chairman of the meeting for the election of directors determines that a nomination of any candidate for election as a director at such meeting was not made in accordance with the applicable provisions of this Section 3.16, such nomination shall be void; provided, however, that nothing in this Section 3.16 shall be deemed to limit any voting rights upon the occurrence of dividend arrearages provided to holders of Preferred Stock pursuant to the Preferred Stock designation for any series of Preferred Stock.

(h) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under Section 3.16) to the secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the secretary upon written request) and a written representation and agreement (in a form provided by the secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and (iii) in such proposed nominee's individual capacity and on behalf of the Proponents on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

ARTICLE IV

Officers

SECTION 4.01 Number. The officers of the Corporation shall be a Chief Executive Officer and / or a President, one or more Vice Presidents (the number thereof and their respective titles to be determined by the Board), a Secretary and such other officers as the Board may determine from time to time.

SECTION 4.02 Election, Term of Office and Qualifications. The officers of the Corporation, except such officers as may be appointed in accordance with Section 4.03, shall be elected annually by the Board at the first meeting thereof held after the election thereof. Each officer shall hold office until his or her successor shall have been duly chosen and shall qualify or until his or her resignation or removal in the manner hereinafter provided.

SECTION 4.03 Assistants, Agents and Employees, Etc. In addition to the officers specified in Section 4.01, the Board may appoint other assistants, agents and employees as it may deem necessary or advisable, including one or more Assistant Secretaries each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. The Board may delegate to any officer of the Corporation or any committee of the Board the power to appoint, remove and prescribe the duties of any such assistants, agents or employees.

SECTION 4.04 Removal. Any officer, assistant, agent or employee of the Corporation may be removed, with or without cause, at any time: (i) in the case of an officer, assistant, agent or employee appointed by the Board, only by resolution of the Board; and (ii) in the case of an officer, assistant, agent or employee, by any officer of the Corporation or committee of the Board upon whom or which such power of removal may be conferred by the Board.

SECTION 4.05 Resignations. Any officer or assistant may resign at any time by giving written notice of his or her resignation to the Board or the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof by the Board or the Secretary, as the case may be; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 4.06 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or other cause, may be filled for the unexpired portion of the term thereof in the manner prescribed in these By-laws for regular appointments or elections to such office.

SECTION 4.07 The Chief Executive Officer. The Chief Executive Officer of the Corporation shall have, subject to the control of the Board, general and active supervision and management over the business of the Corporation and over its several officers, assistants, agents and employees.

SECTION 4.07A The President. To the extent that the Board has appointed a President of the Corporation, the President shall have such powers and perform such duties as the Board may from time to time prescribe. At the request of the Chief Executive Officer, or in case of the Chief

Executive Officer's absence or inability to act, upon the request of the Board, the President shall perform the duties of the Chief Executive Officer and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chief Executive Officer. In the event the Board has not appointed a Chief Executive Officer, the President shall be the chief executive officer of the Corporation.

SECTION 4.08 The Vice Presidents. Each Vice President shall have such powers and perform such duties as the Board may from time to time prescribe. At the request of the President, or in case of the President's absence or inability to act upon the request of the Board, a Vice President shall perform the duties of the President and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President.

SECTION 4.09 The Secretary. The Secretary or an Assistant Secretary shall record the proceedings of all meetings of the stockholders and directors in one or more books kept for that purpose, and, in general, perform all the duties incident to the office of Secretary and such other duties as may from time to time be assigned by the Board.

SECTION 4.10 Compensation. The compensation of the officers of the Corporation shall be fixed from time to time by the Board or the compensation committee of the Board. None of such officers shall be prevented from receiving such compensation by reason of the fact that he or she is also a director of the Corporation. Nothing contained herein shall preclude any officer from serving the Corporation, or any subsidiary Corporation, in any other capacity and receiving such compensation by reason of the fact that he or she is also a director of the Corporation. Nothing contained herein shall preclude any officer from serving the Corporation, or any subsidiary Corporation, in any other capacity and receiving proper compensation therefor.

ARTICLE V

Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 5.01 Execution of Contracts. The Board, except as in these By-laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board or by these By-laws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

SECTION 5.02 Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board. Each such officer, assistant, agent or attorney shall give such bond, if any, as the Board may require.

SECTION 5.03 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select, or as may be selected by any officer or officers, assistant or

assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chief Executive Officer, the President, or any Vice President (or any other officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation who shall from time to time be determined by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

SECTION 5.04 General and Special Bank Accounts. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may select or as may be selected by any officer or officers, assistant or assistants, agent or agents, or attorney or attorneys of the Corporation to whom such power shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these By-laws, as it may deem expedient.

ARTICLE VI

Shares and Their Transfer

SECTION 6.01 Certificates for Stock. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any class or series of its stock shall be uncertificated shares; provided, however, that no such resolution shall apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock of the Corporation represented by certificates, and, upon written request to the Corporation's transfer agent or registrar, any holder of uncertificated shares, shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board, certifying the number and class of shares owned by him or her in the Corporation. Each such certificate shall be signed by, or in the name of the Corporation by, the Chairman or Vice Chairman, if any, of the Board, or the President or a Vice President, or the Secretary or an Assistant Secretary of the Corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock that are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-laws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

SECTION 6.02 Transfers. Except as otherwise established by rules and regulations adopted by the Board, and subject to applicable law, shares of stock may be transferred on the books of the Corporation: (i) in the case of shares represented by a certificate, by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or authenticity of signature as the Corporation or its transfer agent may reasonably require; and (ii) in the case of uncertificated shares, upon the receipt of proper transfer instructions from the registered owner thereof. Except as may be otherwise required by law, the Certificate of

Incorporation or the By-laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-laws.

SECTION 6.03 Regulations. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer clerks or one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

SECTION 6.04 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, or it may issue uncertificated shares if the shares represented by such certificate have been designated as uncertificated shares in accordance with Section 4.2, upon such terms and conditions as the Board may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board may require for the protection of the Corporation or any transfer agent or registrar.

SECTION 6.05 Record Date. The Board may fix in advance a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, concession or exchange of stock, or for the purpose of any other lawful action, except as otherwise provided pursuant to Article II, Section 2.10 of these Bylaws. Such record date shall not precede the date on which the resolution fixing the record date is adopted and shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action to which such record date relates.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting shall be in accordance with Article II, Section 2.10 of these Bylaws. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating to such purpose. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE VII

Indemnification

SECTION 7.01 Action, Etc., Other Than by or in the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made 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, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, 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 acted 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 with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.

SECTION 7.02 Actions, Etc., by or in the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted 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, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

SECTION 7.03 Determination of Right of Indemnification. Any indemnification under Section 7.01 or 7.02 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 7.01 and 7.02. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a

quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, or (iv) by the stockholders.

SECTION 7.04 Indemnification Against Expenses of Successful Party. Notwithstanding the other provisions of this Article, to the extent that a present or former director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.01 or 7.02, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

SECTION 7.05 Prepaid Expenses. Expenses (including attorneys' fees) incurred by an officer or director in defending a civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

SECTION 7.06 Other Rights and Remedies. The indemnification and advancement of expenses provided by, or granted pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a By-law shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

SECTION 7.07 Insurance. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article.

SECTION 7.08 Constituent Corporations. For the purposes of this Article, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation, so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article

with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

SECTION 7.09 Other Enterprises, Fines, and Serving at Corporation's Request. For purposes of this Article, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article.

ARTICLE VIII

Miscellaneous

SECTION 8.01 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board.

SECTION 8.02 Waiver of Notice. Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these By-laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by electronic transmission or any other method permitted under the Delaware General Corporation Law, whether before, at or after the time stated in such waiver, or the appearance of such person or persons at such meeting in person or by proxy, shall be deemed equivalent to such notice. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting to the timeliness of notice.

SECTION 8.03 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

SECTION 8.04 Severability. Any determination that any provision of these By-laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-laws.

SECTION 8.05 Notices. Except as otherwise specifically provided herein or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by commercial courier service, or by facsimile or other electronic transmission, provided that notice to stockholders by electronic transmission shall be given in the manner provided in Section 232 of the Delaware

General Corporation Law. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice shall be deemed to be given shall be the time such notice is received by such stockholder, director, officer, employee or agent, or by any person accepting such notice on behalf of such person, if delivered by hand, facsimile, other electronic transmission or commercial courier service, or the time such notice is dispatched, if delivered through the mails. Without limiting the manner by which notice otherwise may be given effectively, notice to any stockholder shall be deemed given: (1) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the stockholder; and (5) if by mail, when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

SECTION 8.06 Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation as provided by law, including reports made to the Corporation by any of its officers, by an independent certified public accountant, or by an appraiser selected with reasonable care.

SECTION 8.07 Forum. Unless the Corporation, in writing, selects or consents to the selection of an alternative forum, the sole and exclusive forum for any current or former stockholder (including any current or former beneficial owner) to bring internal corporate claims (as defined below), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court or a federal court located within the State of Delaware). For purposes of this Section 8.07, internal corporate claims means claims, including claims in the right of the Corporation: (a) that are based upon a violation of a duty by a current or former director, officer, employee or stockholder in such capacity; or (b) as to which the Delaware General Corporation Law confers jurisdiction upon the Court of Chancery.

SECTION 8.08 Amendments. These By-laws, or any of them, may be altered, amended or repealed, and new By-laws may be made, (i) by the Board, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the Board, or (ii) by the stockholders, at any annual meeting of stockholders, or at any special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of special meeting. Any By-laws made or altered by the stockholders may be altered or repealed by either the Board or the stockholders.

CERTIFICATION

I, Leonard A. Comma, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Jack in the Box 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.

Dated: August 8, 2019

/S/ LEONARD A. COMMA

Leonard A. Comma
Chief Executive Officer & Chairman of the
Board

CERTIFICATION

I, Lance Tucker, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Jack in the Box 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.

Dated: August 8, 2019

/S/ LANCE TUCKER

Lance Tucker
Chief Financial Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Leonard A. Comma, Chief Executive Officer of Jack in the Box Inc. (the "Registrant"), do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the quarterly report on Form 10-Q of the Registrant, to which this certification is attached as an exhibit (the "Report"), fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: August 8, 2019

/S/ LEONARD A. COMMA

Leonard A. Comma
Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Lance Tucker, Chief Financial Officer of Jack in the Box Inc. (the "Registrant"), do hereby certify in accordance with 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the quarterly report on Form 10-Q of the Registrant, to which this certification is attached as an exhibit (the "Report"), fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Dated: August 8, 2019

/S/ LANCE TUCKER

Lance Tucker

Chief Financial Officer