

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 9, 2017

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, CA
(Address of principal executive offices)

92123
(Zip Code)

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

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

Yes No

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

Yes No

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
		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 4, 2017, 29,424,476 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 9, 2017	October 2, 2016
ASSETS		
Current assets:		
Cash	\$ 7,560	\$ 17,030
Accounts and other receivables, net	56,245	73,360
Inventories	7,418	8,229
Prepaid expenses	52,071	40,398
Assets held for sale	36,755	14,259
Other current assets	2,656	2,129
Total current assets	<u>162,705</u>	<u>155,405</u>
Property and equipment, at cost	1,516,247	1,605,576
Less accumulated depreciation and amortization	(881,240)	(886,526)
Property and equipment, net	<u>635,007</u>	<u>719,050</u>
Intangible assets, net	14,776	14,042
Goodwill	172,963	166,046
Other assets, net	269,768	290,469
	<u>\$ 1,255,219</u>	<u>\$ 1,345,012</u>
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Current maturities of long-term debt	\$ 60,115	\$ 55,935
Accounts payable	34,857	40,736
Accrued liabilities	151,580	181,250
Total current liabilities	<u>246,552</u>	<u>277,921</u>
Long-term debt, net of current maturities	1,124,798	935,372
Other long-term liabilities	322,865	348,925
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, 81,835,883 and 81,598,524 issued, respectively	818	816
Capital in excess of par value	450,830	432,564
Retained earnings	1,467,671	1,399,721
Accumulated other comprehensive loss	(167,876)	(187,021)
Treasury stock, at cost, 52,411,407 and 49,190,992 shares, respectively	(2,190,439)	(1,863,286)
Total stockholders' deficit	<u>(438,996)</u>	<u>(217,206)</u>
	<u>\$ 1,255,219</u>	<u>\$ 1,345,012</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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Revenues:				
Company restaurant sales	\$ 264,839	\$ 278,829	\$ 911,176	\$ 903,842
Franchise rental revenues	52,849	52,878	175,639	175,218
Franchise royalties and other	40,158	37,231	128,353	121,852
	<u>357,846</u>	<u>368,938</u>	<u>1,215,168</u>	<u>1,200,912</u>
Operating costs and expenses, net:				
Company restaurant costs:				
Food and packaging	80,159	81,825	272,007	272,802
Payroll and employee benefits	74,898	76,910	264,578	250,954
Occupancy and other	61,716	59,118	209,330	196,344
Total company restaurant costs	<u>216,773</u>	<u>217,853</u>	<u>745,915</u>	<u>720,100</u>
Franchise occupancy expenses	39,837	38,848	129,703	128,475
Franchise support and other costs	2,928	3,654	9,507	12,423
Selling, general and administrative expenses	38,365	42,768	129,861	155,535
Impairment and other charges, net	6,212	10,519	15,600	14,598
Gains on the sale of company-operated restaurants	(13,250)	(409)	(21,166)	(1,224)
	<u>290,865</u>	<u>313,233</u>	<u>1,009,420</u>	<u>1,029,907</u>
Earnings from operations	66,981	55,705	205,748	171,005
Interest expense, net	11,433	7,613	35,091	22,699
Earnings from continuing operations and before income taxes	55,548	48,092	170,657	148,306
Income taxes	18,427	17,308	62,682	54,597
Earnings from continuing operations	37,121	30,784	107,975	93,709
Losses from discontinued operations, net of income tax benefit	(770)	(595)	(2,601)	(1,617)
Net earnings	<u>\$ 36,351</u>	<u>\$ 30,189</u>	<u>\$ 105,374</u>	<u>\$ 92,092</u>
Net earnings per share - basic:				
Earnings from continuing operations	\$ 1.26	\$ 0.94	\$ 3.49	\$ 2.75
Losses from discontinued operations	(0.03)	(0.02)	(0.08)	(0.05)
Net earnings per share (1)	<u>\$ 1.23</u>	<u>\$ 0.92</u>	<u>\$ 3.40</u>	<u>\$ 2.70</u>
Net earnings per share - diluted:				
Earnings from continuing operations	\$ 1.25	\$ 0.93	\$ 3.46	\$ 2.72
Losses from discontinued operations	(0.03)	(0.02)	(0.08)	(0.05)
Net earnings per share (1)	<u>\$ 1.22</u>	<u>\$ 0.91</u>	<u>\$ 3.37</u>	<u>\$ 2.67</u>
Weighted-average shares outstanding:				
Basic	29,474	32,642	30,976	34,073
Diluted	29,718	33,016	31,234	34,469
Cash dividends declared per common share				
	\$ 0.40	\$ 0.30	\$ 1.20	\$ 0.90

(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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Net earnings	\$ 36,351	\$ 30,189	\$ 105,374	\$ 92,092
Cash flow hedges:				
Net change in fair value of derivatives	2,887	(7,825)	21,992	(28,008)
Net loss reclassified to earnings	1,009	860	4,294	3,180
	3,896	(6,965)	26,286	(24,828)
Tax effect	(1,507)	2,696	(10,170)	9,610
	2,389	(4,269)	16,116	(15,218)
Unrecognized periodic benefit costs:				
Actuarial losses and prior service costs reclassified to earnings	1,483	1,050	4,944	3,498
Tax effect	(574)	(408)	(1,916)	(1,355)
	909	642	3,028	2,143
Other:				
Foreign currency translation adjustments	3	2	2	(19)
Tax effect	(1)	—	(1)	8
	2	2	1	(11)
Other comprehensive income (loss), net of tax	3,300	(3,625)	19,145	(13,086)
Comprehensive income	<u>\$ 39,651</u>	<u>\$ 26,564</u>	<u>\$ 124,519</u>	<u>\$ 79,006</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 9, 2017	July 3, 2016
Cash flows from operating activities:		
Net earnings	\$ 105,374	\$ 92,092
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	69,527	70,314
Deferred finance cost amortization	2,707	2,049
Excess tax benefits from share-based compensation arrangements	(4,133)	(3,822)
Deferred income taxes	5,824	15,672
Share-based compensation expense	8,855	9,220
Pension and postretirement expense	3,242	10,374
Gains on cash surrender value of company-owned life insurance	(364)	(5,008)
Gains on the sale of company-operated restaurants	(21,166)	(1,224)
Losses on the disposition of property and equipment	2,186	2,295
Impairment charges and other	4,320	2,928
Changes in assets and liabilities, excluding acquisitions and dispositions:		
Accounts and other receivables	6,026	(16,333)
Inventories	1,000	(557)
Prepaid expenses and other current assets	(8,057)	(7,677)
Accounts payable	2,238	(7,466)
Accrued liabilities	(27,485)	1,534
Pension and postretirement contributions	(4,110)	(14,700)
Other	(6,077)	(2,992)
Cash flows provided by operating activities	<u>139,907</u>	<u>146,699</u>
Cash flows from investing activities:		
Purchases of property and equipment	(47,210)	(74,971)
Purchases of assets intended for sale and leaseback	(3,248)	(5,593)
Proceeds from the sale and leaseback of assets	2,466	7,748
Proceeds from the sale of company-operated restaurants	62,923	1,434
Collections on notes receivable	1,426	3,237
Acquisition of franchise-operated restaurants	—	324
Proceeds from the sale of property and equipment	2,898	140
Other	(1,713)	(89)
Cash flows provided by (used in) investing activities	<u>17,542</u>	<u>(67,770)</u>
Cash flows from financing activities:		
Borrowings on revolving credit facilities	638,500	576,000
Repayments of borrowings on revolving credit facilities	(400,000)	(376,000)
Principal repayments on debt	(43,162)	(19,651)
Dividends paid on common stock	(37,194)	(30,513)
Proceeds from issuance of common stock	5,166	5,093
Repurchases of common stock	(334,361)	(250,000)
Excess tax benefits from share-based compensation arrangements	4,133	3,822
Change in book overdraft	—	1,213
Cash flows used in financing activities	<u>(166,918)</u>	<u>(90,036)</u>
Effect of exchange rate changes on cash	<u>(1)</u>	<u>11</u>
Net decrease in cash	(9,470)	(11,096)
Cash at beginning of period	17,030	17,743
Cash at end of period	<u>\$ 7,560</u>	<u>\$ 6,647</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 and Qdoba Mexican Eats® (“Qdoba”) fast-casual restaurants. The following table summarizes the number of restaurants as of the end of each period:

	July 9, 2017	July 3, 2016
Jack in the Box:		
Company-operated	340	415
Franchise	1,915	1,839
Total system	2,255	2,254
Qdoba:		
Company-operated	381	344
Franchise	339	344
Total system	720	688

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”). During fiscal 2012, we entered into an agreement to outsource our Jack in the Box distribution business. In fiscal 2013, we closed 62 Qdoba restaurants (the “2013 Qdoba Closures”) as part of a comprehensive Qdoba market performance review. The results of operations for our distribution business and for the 2013 Qdoba Closures are reported as discontinued operations for all periods presented. Refer to Note 2, *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.

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 October 2, 2016 (“2016 Form 10-K”). The accounting policies used in preparing these condensed consolidated financial statements are the same as those described in our 2016 Form 10-K with the exception of three new accounting pronouncements adopted in fiscal 2017 which are described below.

Reclassifications and adjustments — Certain prior year amounts in the condensed consolidated balance sheets have been reclassified due to the adoption of a new accounting pronouncement. See discussion below.

Fiscal year — Our fiscal year is 52 or 53 weeks ending the Sunday closest to September 30. Fiscal year 2017 includes 52 weeks, while fiscal year 2016 includes 53 weeks. Our first quarter includes 16 weeks and all other quarters include 12 weeks, with the exception of the fourth quarter of fiscal 2016, which includes 13 weeks. All comparisons between 2017 and 2016 refer to the 12-weeks (“quarter”) and 40-weeks (“year-to-date”) ended July 9, 2017 and July 3, 2016, respectively, unless otherwise indicated.

Principles of consolidation — The condensed consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and the accounts of any variable interest entities (“VIEs”) where we are deemed the primary beneficiary. All significant intercompany accounts and transactions are eliminated. The financial results and position of our VIE are immaterial to our condensed consolidated financial statements.

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.

Effect of new accounting pronouncements adopted in fiscal 2017 — In April 2015, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2015-03, *Simplifying the Presentation of Debt Issuance Costs*, which changes the presentation of debt issuance costs in financial statements. Under this ASU, an entity presents such costs on the balance sheet as a direct deduction from the related debt liability rather than as an asset. This new standard is effective for annual reporting periods beginning after December 15, 2015, including interim periods within that reporting period. We adopted this standard in the first quarter of 2017 and the prior period was retrospectively adjusted. The adjustment resulted in a reclassification of \$3.8 million in debt issuance costs from other assets, net to current maturities of long-term debt and long-term debt, net of current maturities in the amount of \$1.6 million and \$2.2 million, respectively, in our October 2, 2016 condensed consolidated balance sheet.

In August 2015, the FASB issued ASU No. 2015-15, *Interest-Imputation of Interest: Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements*, which addresses line-of-credit arrangements that were omitted from ASU No. 2015-03. This ASU states that the SEC staff would not object to an entity deferring and presenting debt issuance costs related to a line-of-credit arrangement as an asset and subsequently amortizing those costs ratably over the term of the arrangement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. This new standard is effective for annual reporting periods beginning after December 15, 2015, including interim periods within that reporting period. We adopted this standard in the first quarter of 2017 and there was no impact on our consolidated financial statements as we continue to present debt issuance costs associated with our line-of-credit arrangement as an asset on our condensed consolidated balance sheets.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. The standard simplifies the subsequent measurement of goodwill, requiring only a single-step quantitative test to identify and measure impairment based on the excess of a reporting unit's carrying amount over its fair value. A qualitative assessment may still be completed first for an entity to determine if a quantitative impairment test is necessary. This standard is effective for fiscal years beginning after December 15, 2019, with early adoption permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. The standard requires adoption on a prospective basis. We adopted this standard in the second quarter of 2017 and we do not expect the adoption of this standard to have an impact on our consolidated financial statements.

Effect of new accounting pronouncements to be adopted in future periods — In May 2014, the FASB issued ASU No. 2014-09, *Revenue Recognition - Revenue from Contracts with Customers (Topic 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. Further, in March 2016, the FASB issued ASU No. 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net)*, which clarifies the guidance in ASU No. 2014-09 when evaluating when another party, along with the entity, is involved in providing a good or service to a customer. In April 2016, the FASB issued ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing*, which clarifies the guidance in ASU No. 2014-09 regarding assessing whether promises to transfer goods or services are distinct, and whether an entity's promise to grant a license provides a customer with a right to use, or right to access the entity's intellectual property. In December 2016, the FASB issued ASU No. 2016-20, *Technical Corrections and Improvements to Revenue from Contracts with Customers (Topic 606)*. This ASU clarifies the guidance in ASU 2014-09, providing technical corrections and improvements to clarify guidance and correct unintended applications of the guidance. All standards are effective for annual periods beginning after December 15, 2017, and interim periods within that reporting period. As such, we will be required to adopt these standards in the first quarter of fiscal 2019. These standards are to be applied retrospectively or using a cumulative effect transition method, and early adoption is not permitted. We do not believe the new revenue recognition standard will impact our recognition of restaurant sales, rental revenues or royalty fees from franchisees. However, we are still evaluating the impact that this pronouncement will have on the recognition of certain transactions on our consolidated financial statements, including the initial franchise fees currently recognized upon the opening of a franchise restaurant and our advertising arrangements with franchisees currently reported on a net versus gross basis in our consolidated statements of earnings, and the effect it will have on our disclosures. We have not yet selected a transition method.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, which requires a lessee to recognize assets and liabilities on the balance sheet for those leases classified as operating leases under previous guidance. This standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. As such, we will be required to adopt this standard in the first quarter of fiscal 2020. This standard requires adoption based upon a modified retrospective transition approach, with early adoption permitted. 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

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

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

In March 2016, the FASB issued ASU No. 2016-04, *Liabilities-Extinguishment of Liabilities (Subtopic 405-20): Recognition of Breakage for Certain Prepaid Stored-Value Products*, which is designed to provide guidance and eliminate diversity in the accounting for the derecognition of financial liabilities related to certain prepaid stored-value products using a revenue-like breakage model. This standard is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. As such, we will be required to adopt this standard in the first quarter of fiscal 2019. This standard is to be applied retrospectively or using a cumulative effect transition method as of the date of adoption. We are currently evaluating which transition method to use, but believe the impact this standard will have on our consolidated financial statements and related disclosures will be immaterial upon adoption.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation-Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*. This standard is intended to simplify various aspects of accounting for share-based compensation arrangements, including the income tax impact, classification on the statement of cash flows and forfeitures. This standard is effective for annual reporting periods beginning after December 15, 2016, and interim periods within that reporting period, with early adoption permitted. As such, we will be required to adopt this standard in fiscal 2018 and will classify the excess tax benefits from share-based compensation arrangements, which were \$4.1 million year-to-date 2017, as a discrete item within income tax expense on the consolidated statements of earnings, rather than recognizing such excess income tax benefits in capital in excess of par value on the consolidated statements of stockholders' deficit. This reclassification will be made on a prospective basis and will also impact the related classification on our consolidated statements of cash flows as excess tax benefits from share-based compensation arrangements will only be reported in cash flows from operating activities rather than as currently reported in cash flows from operating activities and cash flows used in investing activities. Other than these reclassifications, we do not believe the adoption of this ASU will materially impact our consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. This standard is intended to address eight classification issues related to the statement of cash flows to reduce diversity in practice in how certain transactions are classified. This standard is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. As such, we will be required to adopt this standard in the first quarter of fiscal 2019. This standard requires adoption based upon a retrospective transition method. We are currently evaluating this standard, but do not believe it will have a material impact on the classification of cash flows within our statement of cash flows.

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory*. This standard requires that an entity recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs, rather than deferring the recognition until the asset has been sold to an outside party. This standard is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. As such, we will be required to adopt this standard in the first quarter of fiscal 2019. The standard requires adoption on a modified retrospective basis through a cumulative-effect adjustment to retained earnings. We are currently evaluating this standard, but do not believe it will have a material impact on our consolidated financial statements.

In December 2016, the FASB issued ASU 2016-19, *Technical Corrections and Improvements*. This standard contains amendments that affect a wide variety of topics in the Accounting Standards Codification. The amendments include differences between original FASB guidance and the Accounting Standards Codification, guidance clarification and reference corrections, simplification and minor improvements. This standard is effective for annual reporting periods beginning after December 15, 2016, and interim periods within that reporting period, with early adoption permitted. As such, we will be required to adopt this standard in the first quarter of fiscal 2018. This standard is not expected have a significant effect on our accounting policies or on our consolidated financial statements and related disclosures.

In February 2017, the FASB issued ASU 2017-05, *Other Income - Gains and Losses from the Derecognition of Nonfinancial Assets (Subtopic 610-20): Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of Nonfinancial Assets*. The standard provides clarification about the term "in substance nonfinancial asset" and guidance for recognizing gains and losses from the transfer of nonfinancial assets and for partial sales of nonfinancial assets. The standard is required to be adopted retrospectively, in conjunction with ASU 2014-09. As such, we will be required to adopt this standard in the first quarter of fiscal 2019. This standard is not expected to have a material impact on our consolidated financial statements.

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 cost 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 cost

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

should be presented separately from the service cost component and outside of a subtotal of earnings from operations, or separately disclosed. The standard is effective for annual and interim periods beginning after December 15, 2017 and must be adopted retrospectively. Early adoption is permitted as of the beginning of an annual period, but we plan to adopt this standard in the first quarter of fiscal 2019. Upon adoption of this standard, we will separately present the components of net periodic benefit cost, excluding the service cost component, outside of earnings from operations. Net periodic benefit cost, excluding the service cost component, was \$1.6 million and \$6.3 million year-to-date in 2017 and 2016, respectively.

In May 2017, the FASB issued ASU 2017-09, *Compensation - Stock Compensation (Topic 718): Scope of Modification Accounting*. This standard provides guidance that clarifies when changes to the terms or conditions of a share-based payment award require the application of modification accounting under ASC 718. This new guidance will allow for certain changes to be made to awards without accounting for them as modifications. The standard is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years, with early adoption permitted. The standard is required to be applied prospectively to awards modified on or after the adoption date. We will be required to adopt this standard in the first quarter of fiscal 2019. This standard is not expected to have a significant effect on our accounting policies or on our consolidated financial statements and related disclosures.

2. DISCONTINUED OPERATIONS

Distribution business — During fiscal 2012, we entered into an agreement with a third party distribution service provider pursuant to a plan approved by our Board of Directors to sell our Jack in the Box distribution business. During fiscal 2013, we completed the transition of our distribution centers. The operations and cash flows of the business have been eliminated and in accordance with the provisions of the FASB authoritative guidance on the presentation of financial statements, the results are reported as discontinued operations for all periods presented.

In 2017 and 2016, results of discontinued operations were immaterial to our condensed consolidated results of operations. Our liability for lease commitments related to our distribution centers is immaterial to our condensed consolidated balance sheets as of July 9, 2017 and October 2, 2016. The lease commitment balance relates to one distribution center lease that expires in July 2017 and is currently subleased at a loss.

2013 Qdoba Closures — During fiscal 2013, we closed 62 Qdoba restaurants. The decision to close these restaurants was based on a comprehensive analysis that took into consideration levels of return on investment and other key operating performance metrics. Since the closed locations were not predominantly located near those remaining in operation, we did not expect the majority of cash flows and sales lost from these closures to be recovered. In addition, we did not anticipate any ongoing involvement or significant direct cash flows from the closed stores. Therefore, in accordance with the provisions of the FASB authoritative guidance on the presentation of financial statements, the results of operations for these restaurants are reported as discontinued operations for all periods presented.

The following table summarizes the results related to the 2013 Qdoba Closures for each period (*in thousands*):

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Unfavorable lease commitment adjustments	\$ (153)	\$ (675)	\$ (3,092)	\$ (2,143)
Bad debt related to subtenants	(524)	(225)	(72)	(349)
Ongoing facility related and other costs	(4)	(2)	(169)	(72)
Broker commissions	—	—	(56)	(21)
Loss before income tax benefit	<u>\$ (681)</u>	<u>\$ (902)</u>	<u>\$ (3,389)</u>	<u>\$ (2,585)</u>

We do not expect the remaining costs to be incurred related to these closures to be material; however, our estimates related to our future lease obligations, primarily sublease income, 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.

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Our liability for lease commitments related to the 2013 Qdoba Closures is included in accrued liabilities and other long-term liabilities in the accompanying condensed consolidated balance sheets and has changed as follows in 2017 (*in thousands*):

Balance as of October 2, 2016	\$ 2,943
Adjustments (1)	3,092
Cash payments	(3,335)
Balance as of July 9, 2017 (2)	<u>\$ 2,700</u>

- (1) Adjustments relate to revisions to certain sublease assumptions due to changes in market conditions, as well as charges to terminate five lease agreements, and includes interest expense.
- (2) The weighted average remaining lease term related to these commitments is approximately 2 years.

3. SUMMARY OF REFRANCHISINGS, FRANCHISEE DEVELOPMENT AND ACQUISITIONS

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

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Restaurants sold to Jack in the Box franchisees	58	—	118	1
New restaurants opened by franchisees:				
Jack in the Box	2	4	15	9
Qdoba	1	1	13	11
Initial franchise fees	\$ 2,352	\$ 205	\$ 5,354	\$ 710
Proceeds from the sale of company-operated restaurants (1)	\$ 31,534	\$ 413	\$ 62,923	\$ 1,434
Net assets sold (primarily property and equipment)	(9,532)	—	(19,838)	(196)
Lease commitment charges (2)	(3,203)	—	(10,854)	—
Goodwill related to the sale of company-operated restaurants	(4,453)	(5)	(4,795)	(15)
Other (3)	(1,096)	1	(6,270)	1
Gains on the sale of company-operated restaurants	<u>\$ 13,250</u>	<u>\$ 409</u>	<u>\$ 21,166</u>	<u>\$ 1,224</u>

- (1) Amounts in 2017 include additional proceeds of \$0.1 million year-to-date, and none in the quarter, related to restaurants sold in a prior year. Amounts in 2016 include additional proceeds of \$0.4 million and \$1.4 million in the quarter and year-to-date, respectively, related to the extension of the underlying franchise and lease agreements from the sale of restaurants in prior years.
- (2) Charges are for operating restaurant leases with lease commitments in excess of our sublease rental income.
- (3) Amounts in year-to-date 2017 primarily represent impairment of \$3.2 million and equipment write-offs of \$1.4 million related to restaurants closed in connection with the sale of the related markets. In the 2017 quarter, amounts primarily represent maintenance and repair charges related to the sales. As of July 9, 2017, there was \$8.8 million of property related to these closed restaurants classified as assets held for sale on our condensed consolidated balance sheet.

As of the end of the 2017 quarter, we had signed non-binding letters of intent with franchisees to sell an additional 63 company-operated restaurants. Pre-tax gross proceeds related to these sales are estimated at \$35.0 million to \$40.0 million. Equipment of \$10.6 million related to these sales has been classified as assets held for sale on our July 9, 2017 condensed consolidated balance sheet.

Franchise acquisitions — During year-to-date 2017 and 2016, we acquired 50 and one Jack in the Box franchise restaurants, respectively. Of the 50 restaurants acquired in 2017, we took over 31 restaurants in the third quarter as a result of an agreement with an underperforming franchisee who was in violation of franchise and lease agreements with the Company. Under this agreement, the franchisee voluntarily agreed to turn over the restaurants. The acquisition of the additional 19 restaurants in 2017 was the result of a legal action filed in September 2013 against a franchisee in which we obtained a judgment in January 2017 granting us possession of the restaurants. Of the 50 restaurants acquired in 2017, we sold eight of the restaurants to a franchisee and closed three during the quarter. We plan to sell the remaining restaurants

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acquired in 2017 as part of our refranchising strategy. Refer to Note 6, *Impairment and Other Charges, Net*, for additional information regarding impairment charges related to the restaurants closed subsequent to acquisition.

We account for the acquisition of franchised restaurants using the acquisition method of accounting for business combinations. The purchase price allocations were based on fair value estimates determined using significant unobservable inputs (Level 3). The goodwill recorded primarily relates to the sales growth potential of the markets acquired and is expected to be deductible for income tax purposes.

Total consideration in each year is non-cash, and in 2017 is primarily comprised of \$2.2 million and \$10.1 million in the quarter and year-to-date, respectively, of receivables that were eliminated in the acquisition accounting. In 2017, consideration also includes accounts payable of \$0.4 million and \$4.2 million in the quarter and year-to-date, respectively, that was recorded in acquisition accounting and is primarily due to third parties to waive their liens and security interest on certain assets acquired.

The following table provides detail of the acquisitions in each period (*dollars in thousands*):

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Restaurants acquired from franchisees	31	—	50	1
Goodwill (gain on bargain purchase)	\$ 1,891	\$ —	\$ 11,712	\$ (289)
Intangible assets	793	—	1,260	37
Inventory	189	—	189	—
Property and equipment	—	—	2,238	58
Cash	—	—	—	324
Liabilities assumed	(302)	—	(1,116)	—
Total consideration	\$ 2,571	\$ —	\$ 14,283	\$ 130

4. 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 9, 2017:				
Non-qualified deferred compensation plan (1)	\$ (36,429)	\$ (36,429)	\$ —	\$ —
Interest rate swaps (Note 5) (2)	(21,479)	—	(21,479)	—
Total liabilities at fair value	<u>\$ (57,908)</u>	<u>\$ (36,429)</u>	<u>\$ (21,479)</u>	<u>\$ —</u>
Fair value measurements as of October 2, 2016:				
Non-qualified deferred compensation plan (1)	\$ (36,933)	\$ (36,933)	\$ —	\$ —
Interest rate swaps (Note 5) (2)	(47,765)	—	(47,765)	—
Total liabilities at fair value	<u>\$ (84,698)</u>	<u>\$ (36,933)</u>	<u>\$ (47,765)</u>	<u>\$ —</u>

- (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.
- (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. The key inputs for the valuation models are quoted market prices, discount rates and forward yield curves.
- (3) We did not have any transfers in or out of Level 1, 2 or 3.

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 9, 2017, 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 9, 2017.

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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 2017, no material fair value adjustments were required. Refer to Note 6, *Impairment and Other Charges, Net*, for additional information regarding impairment charges.

During fiscal 2017, we closed six Jack in the Box company-operated restaurants in connection with the sale of the related markets to franchisees, and recorded an impairment charge of \$3.1 million against the gain on sale of company-operated restaurants. Refer to Note 3, *Summary of Refranchisings, Franchisee Development and Acquisitions*, for additional information regarding these sales.

5. DERIVATIVE INSTRUMENTS

Objectives and strategies — We are exposed to interest rate volatility with regard to our variable rate debt. In April 2014, to reduce our exposure to rising interest rates, we entered into nine forward-starting interest rate swap agreements that effectively converted \$300.0 million of our variable rate borrowings to a fixed-rate basis from October 2014 through October 2018. Additionally, in June 2015, we entered into eleven forward-starting interest rate swap agreements that effectively converted an additional \$200.0 million of our variable rate borrowings to a fixed rate from October 2015 through October 2018, and \$500.0 million from October 2018 through October 2022.

These agreements have been designated as cash flow hedges under the terms of the FASB authoritative guidance for derivatives and hedging. To the extent that they are 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 are subsequently reclassified into net earnings as a component of interest expense as the hedged interest payments are made on our variable rate debt.

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

	Balance Sheet Location	Fair Value	
		July 9, 2017	October 2, 2016
Derivatives designated as cash flow hedging instruments:			
Interest rate swaps	Accrued liabilities	\$ (3,747)	\$ (5,857)
Interest rate swaps	Other long-term liabilities	(17,732)	(41,908)
Total derivatives (Note 4)		<u>\$ (21,479)</u>	<u>\$ (47,765)</u>

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

	Location of Loss in Income	Quarter		Year-to-date	
		July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Gain (loss) recognized in OCI	N/A	\$ 2,887	\$ (7,825)	\$ 21,992	\$ (28,008)
Loss reclassified from accumulated OCI into net earnings	Interest expense, net	\$ 1,009	\$ 860	\$ 4,294	\$ 3,180

Amounts reclassified from accumulated OCI into interest expense represent payments made to the counterparties for the effective portions of the interest rate swaps. During the periods presented, our interest rate swaps had no hedge ineffectiveness.

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6. 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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Costs of closed restaurants and other (primarily lease obligations)	\$ 2,244	\$ 914	\$ 5,434	\$ 2,489
Restructuring costs	1,837	7,744	6,081	7,744
Losses on disposition of property and equipment, net	952	637	2,186	2,283
Accelerated depreciation	674	673	1,394	1,531
Restaurant impairment charges	505	551	505	551
	<u>\$ 6,212</u>	<u>\$ 10,519</u>	<u>\$ 15,600</u>	<u>\$ 14,598</u>

Restructuring costs — Restructuring charges in 2017 and 2016 are the result of a plan that management initiated in fiscal 2016 to reduce our general and administrative costs. This plan includes cost saving initiatives from workforce reductions, relocation and consolidation of our Qdoba corporate support center, refranchising initiatives, and the consolidation of information technology across both brands. Restructuring charges in 2017 also include costs related to the evaluation of potential alternatives with respect to the Qdoba brand (the “Qdoba Evaluation”).

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

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Qdoba Evaluation costs (1)	\$ 1,654	\$ —	\$ 1,654	\$ —
Employee severance and related costs	179	6,487	722	6,487
Facility closing costs (2)	—	847	2,908	847
Other (3)	4	410	797	410
	<u>\$ 1,837</u>	<u>\$ 7,744</u>	<u>\$ 6,081</u>	<u>\$ 7,744</u>

- (1) Qdoba Evaluation costs are primarily comprised of third party consulting, legal services, and audit fees.
(2) Year-to-date 2017 facility closing costs includes \$2.9 million in costs for the accrual of the future lease commitment and expected ancillary costs, net of anticipated sublease rental, for our Qdoba corporate support center, which was offset by \$0.9 million due to the reversal of the related tenant improvement allowance, and \$0.3 million due to the reversal of the related straight-line rent expense. Year-to-date 2017, facility closing costs also includes \$1.2 million of accelerated depreciation related to the relocation of our Qdoba corporate support center.
(3) Other primarily represents employee relocation costs and moving expenses related to the relocation of our Qdoba corporate support center.

The following is a summary of our 2017 restructuring costs by operating segment (*in thousands*):

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Jack in the Box restaurant operations	\$ —	\$ 1,796	\$ 159	\$ 1,796
Shared services (1)	168	1,535	439	1,535
Qdoba restaurant operations (2)	1,669	4,413	5,483	4,413
	<u>\$ 1,837</u>	<u>\$ 7,744</u>	<u>\$ 6,081</u>	<u>\$ 7,744</u>

- (1) Shared service functions consist primarily of accounting/finance, information technology, human resources, audit services, legal, tax and treasury.
(2) Includes Qdoba Evaluation costs.

At this time, we are unable to estimate additional charges to be incurred.

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Total accrued facility closing costs related to our restructuring activities, which are comprised of the future lease commitment and expected ancillary costs, net of anticipated sublease rental, are included in accrued liabilities and other long-term liabilities, and changed as follows during 2017 (*in thousands*):

Balance as of October 2, 2016	\$	—
Additions		2,927
Interest expense		3
Cash payments		(212)
Balance as of July 9, 2017	\$	<u>2,718</u>

Total accrued severance costs related to our restructuring activities are included in accrued liabilities and changed as follows during 2017 (*in thousands*):

Balance as of October 2, 2016	\$	4,198
Additions		722
Cash payments		(4,253)
Balance as of July 9, 2017	\$	<u>667</u>

Restaurant closing costs — Costs of closed restaurants primarily consist of future lease commitments and expected ancillary costs, net of anticipated sublease rentals. In 2017, restaurant closing costs include \$0.5 million in property and equipment impairment charges and \$0.5 million in future lease commitment charges related to the closure of three underperforming Jack in the Box restaurants acquired in the third quarter of 2017, as well as \$0.4 million in equipment impairment charges resulting from the closure of one Qdoba restaurant in the second quarter of 2017.

Accrued restaurant closing costs, included in accrued liabilities and other long-term liabilities, changed as follows during 2017 (*in thousands*):

Balance as of October 2, 2016	\$	7,231
Additions		482
Adjustments (1)		966
Interest expense		1,196
Cash payments		(3,501)
Balance as of July 9, 2017 (2) (3)	\$	<u>6,374</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 \$2.2 million of restaurant closing costs that are included in accrued liabilities and other long-term liabilities, which were initially recorded as losses on the sale of company-operated restaurants upon sale to Jack in the Box franchisees in prior years.

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. In 2017, accelerated depreciation primarily relates to Jack in the Box and Qdoba restaurant remodels, as well as the anticipated closure of two Jack in the Box and three Qdoba company-operated restaurants. In 2016, accelerated depreciation was primarily related to expenses at Jack in the Box company-operated restaurants for exterior facility enhancements and the replacement of technology equipment.

7. INCOME TAXES

The 2017 income tax provisions reflect tax rates of 33.2% in the quarter and 36.7% year-to-date, compared with 36.0% and 36.8%, respectively, in 2016. The major components of the year-over-year change in tax rates were a partial release of valuation allowance against state tax credits, partially offset by a decrease in current year tax credits and a decrease in gains from the market performance of insurance products used to fund certain non-qualified retirement plans, which are excluded from taxable income. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual 2017 rate could differ from our current estimates.

We file income tax returns in the United States and all state and local jurisdictions in which we operate that impose an income tax. The federal statute of limitations has not expired for fiscal years 2014 and forward. The statutes of limitations for California and Texas, which constitute the Company's major state tax jurisdictions, have not expired for fiscal years 2012 and forward.

8. RETIREMENT PLANS

Defined benefit pension plans — We sponsor two defined benefit pension plans, a "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. In fiscal 2011, the Board of Directors approved the sunset of our Qualified Plan whereby participants no longer accrue benefits effective December 31, 2015. 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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Defined benefit pension plans:				
Interest cost	\$ 5,247	\$ 5,579	\$ 17,491	\$ 18,599
Service cost	505	1,212	1,682	4,040
Expected return on plan assets	(6,494)	(5,020)	(21,647)	(16,735)
Actuarial loss (1)	1,411	943	4,703	3,144
Amortization of unrecognized prior service costs (1)	35	56	117	185
Net periodic benefit cost	<u>\$ 704</u>	<u>\$ 2,770</u>	<u>\$ 2,346</u>	<u>\$ 9,233</u>
Postretirement healthcare plans:				
Interest cost	\$ 232	\$ 292	\$ 772	\$ 972
Actuarial loss (1)	37	51	124	169
Net periodic benefit cost	<u>\$ 269</u>	<u>\$ 343</u>	<u>\$ 896</u>	<u>\$ 1,141</u>

(1) Amounts were reclassified from accumulated OCI into net earnings as a component of selling, general and administrative expenses.

Future cash flows — Our policy is to fund our plans at or above the minimum required by law. As of January 1, 2016, the date of our last actuarial funding valuation, there was no minimum contribution funding requirement. Details regarding 2017 contributions are as follows (*in thousands*):

	SERP	Postretirement Healthcare Plans
Net year-to-date contributions	\$ 3,350	\$ 760
Remaining estimated net contributions during fiscal 2017	\$ 1,100	\$ 300

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 2017.

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9. SHARE-BASED COMPENSATION

We offer share-based compensation plans to attract, retain and motivate key officers, employees and non-employee directors to work towards the financial success of the Company. During 2017, we granted the following shares related to our share-based compensation awards:

Nonvested stock units	65,947
Performance share awards	29,625
Stock options	89,792

The components of share-based compensation expense recognized in each period are as follows (*in thousands*):

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Nonvested stock units	\$ 1,241	\$ 745	\$ 5,250	\$ 4,472
Performance share awards	496	238	1,736	2,372
Stock options	363	316	1,532	2,039
Nonvested stock awards	20	20	67	67
Deferred compensation for non-management directors	—	—	270	270
Total share-based compensation expense	<u>\$ 2,120</u>	<u>\$ 1,319</u>	<u>\$ 8,855</u>	<u>\$ 9,220</u>

10. STOCKHOLDERS' EQUITY

Repurchases of common stock — In fiscal 2017, we repurchased 3.2 million common shares at an aggregate cost of \$327.2 million. As of July 9, 2017, there was approximately \$181.0 million remaining under Board-authorized stock-buyback programs which expire in November 2018. In our condensed consolidated statement of cash flows for 2017, repurchases of common stock includes \$7.2 million related to repurchase transactions traded in the prior fiscal year that settled in 2017.

Dividends — During year-to-date 2017, the Board of Directors declared three cash dividends of \$0.40 per common share which were paid on June 12, 2017, March 20, 2017 and December 16, 2016 to shareholders of record as of the close of business on May 30, 2017, March 7, 2017 and December 5, 2016, respectively, and totaled \$37.4 million. Future dividends are subject to approval by our Board of Directors.

11. 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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Weighted-average shares outstanding – basic	29,474	32,642	30,976	34,073
Effect of potentially dilutive securities:				
Nonvested stock awards and units	175	176	180	182
Stock options	53	145	62	161
Performance share awards	16	53	16	53
Weighted-average shares outstanding – diluted	<u>29,718</u>	<u>33,016</u>	<u>31,234</u>	<u>34,469</u>
Excluded from diluted weighted-average shares outstanding:				
Antidilutive	90	170	72	176
Performance conditions not satisfied at the end of the period	79	61	79	61

12. 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/or 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 fiscal 2012, we accrued for a single claim for which we believe a loss is both probable and estimable; this accrued loss contingency did not have a material effect on our results of operations. We continue to believe that no additional losses are probable beyond this accrual. Nor can we estimate a possible loss contingency or range of reasonably possible loss contingencies beyond the 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.

Other legal matters — In addition to the matter described above, we are subject to normal and routine litigation brought by former, current or prospective 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. Our insurance liability (undiscounted) and reserves are established in part by using independent actuarial estimates of expected losses for reported claims and for estimating claims incurred but not reported. 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 condensed 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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13. SEGMENT REPORTING

Our principal business consists of developing, operating and franchising our Jack in the Box and Qdoba restaurant concepts, each of which we consider a reportable operating segment. This segment reporting structure reflects our current management structure, internal reporting method and financial information used in deciding how to allocate our resources. Based upon certain quantitative thresholds, each operating segment is considered a reportable segment.

We measure and evaluate our segments based on segment revenues and earnings from operations. The reportable segments do not include an allocation of the costs related to shared service functions; nor do they include unallocated costs such as pension expense, share-based compensation and restructuring expense. These costs are reflected in the caption "Shared services and unallocated costs." The following table provides information related to our operating segments in each period (*in thousands*):

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Revenues by segment:				
Jack in the Box restaurant operations	\$ 246,101	\$ 264,493	\$ 865,166	\$ 876,138
Qdoba restaurant operations	111,745	104,445	350,002	324,774
Consolidated revenues	<u>\$ 357,846</u>	<u>\$ 368,938</u>	<u>\$ 1,215,168</u>	<u>\$ 1,200,912</u>
Earnings from operations by segment:				
Jack in the Box restaurant operations	\$ 59,423	\$ 69,528	\$ 220,485	\$ 218,364
Qdoba restaurant operations	11,905	14,172	29,126	33,532
Shared services and unallocated costs	(17,597)	(28,404)	(65,029)	(82,115)
Gains on the sale of company-operated restaurants	13,250	409	21,166	1,224
Consolidated earnings from operations	66,981	55,705	205,748	171,005
Interest expense, net	11,433	7,613	35,091	22,699
Consolidated earnings from continuing operations and before income taxes	<u>\$ 55,548</u>	<u>\$ 48,092</u>	<u>\$ 170,657</u>	<u>\$ 148,306</u>
Total depreciation expense by segment:				
Jack in the Box restaurant operations	\$ 13,731	\$ 14,877	\$ 47,503	\$ 50,409
Qdoba restaurant operations	4,875	4,536	16,274	14,403
Shared services and unallocated costs	1,608	1,401	5,222	4,936
Consolidated depreciation expense	<u>\$ 20,214</u>	<u>\$ 20,814</u>	<u>\$ 68,999</u>	<u>\$ 69,748</u>

We do not evaluate, manage or measure performance of segments using asset, interest income and expense, or income tax information; accordingly, this information by segment is not prepared or disclosed.

The following table provides detail of the change in the balance of goodwill for each of our reportable segments (*in thousands*):

	Jack in the Box	Qdoba	Total
Balance at October 2, 2016	\$ 48,415	\$ 117,631	\$ 166,046
Sale of company-operated restaurants to franchisees	(4,795)	—	(4,795)
Acquisition of franchise-operated restaurants	11,712	—	11,712
Balance at July 9, 2017	<u>\$ 55,332</u>	<u>\$ 117,631</u>	<u>\$ 172,963</u>

Refer to Note 3, *Summary of Refranchisings, Franchisee Development and Acquisitions*, for information regarding the transactions resulting in the changes in goodwill.

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

14. SUPPLEMENTAL CONSOLIDATED CASH FLOW INFORMATION *(in thousands)*

	Year-to-date	
	July 9, 2017	July 3, 2016
Cash paid during the year for:		
Income tax payments	\$ 68,554	\$ 33,453
Interest, net of amounts capitalized	\$ 34,678	\$ 22,919
Decrease in obligations for purchases of property and equipment	\$ 6,066	\$ 4,882
Decrease in obligations for treasury stock repurchases	\$ 7,208	\$ —
Non-cash transactions:		
Consideration for franchise acquisitions	\$ 14,283	\$ 130
Decrease in equipment capital leases and related obligations from the sale of company-operated restaurants	\$ 3,825	\$ —
Equipment capital lease obligations incurred	\$ 1,286	\$ 702
Increase in dividends accrued or converted to common stock equivalents	\$ 230	\$ 163

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

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

	July 9, 2017	October 2, 2016
Accounts and other receivables, net:		
Trade	\$ 51,419	\$ 66,837
Notes receivable	1,381	1,603
Other	7,463	7,680
Allowance for doubtful accounts	(4,018)	(2,760)
	<u>\$ 56,245</u>	<u>\$ 73,360</u>
Prepaid expenses:		
Prepaid income taxes	\$ 29,539	\$ 12,113
Prepaid rent	14,753	18,613
Other	7,779	9,672
	<u>\$ 52,071</u>	<u>\$ 40,398</u>
Other assets, net:		
Company-owned life insurance policies	\$ 107,997	\$ 105,957
Deferred tax assets	99,668	117,587
Deferred rent receivable	46,646	47,485
Other	15,457	19,440
	<u>\$ 269,768</u>	<u>\$ 290,469</u>
Accrued liabilities:		
Insurance	\$ 39,148	\$ 38,368
Payroll and related taxes	29,584	44,627
Advertising	15,093	21,827
Deferred rent income	13,000	15,909
Sales and property taxes	10,593	14,311
Beverage allowance	9,783	5,926
Gift card liability	5,199	5,183
Deferred franchise fees	1,149	929
Other	28,031	34,170
	<u>\$ 151,580</u>	<u>\$ 181,250</u>
Other long-term liabilities:		
Defined benefit pension plans	\$ 155,178	\$ 161,003
Straight-line rent accrual	46,844	47,070
Other	120,843	140,852
	<u>\$ 322,865</u>	<u>\$ 348,925</u>

16. SUBSEQUENT EVENTS

On August 3, 2017, the Board of Directors declared a cash dividend of \$0.40 per common share, to be paid on September 5, 2017 to shareholders of record as of the close of business on August 22, 2017.

GENERAL

All comparisons between 2017 and 2016 refer to the 12-weeks ("quarter") and 40-weeks ("year-to-date") ended July 9, 2017 and July 3, 2016, respectively, unless otherwise indicated.

For an understanding of the significant factors that influenced our performance during 2017 and 2016, our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") should be read in conjunction with the consolidated financial statements and related notes included in this Quarterly Report and our Annual Report on Form 10-K for the fiscal year ended October 2, 2016.

Our MD&A consists of the following sections:

- **Overview** — a general description of our business and 2017 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, 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") and average unit volumes ("AUVs"). Same-store 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 and AUV information is useful to investors as a significant indicator of the overall strength of our business.

Due to the transition from a 53-week year in fiscal 2016 to a 52-week year in fiscal 2017, year-over-year same-store sales comparisons are off by one week. As such, we have included changes in same-store sales on a calendar basis to provide a clearer comparison. Same-store sales data that matches the periods presented in our financial statements is referred to as fiscal basis same-store sales.

Same-store sales and AUVs are not measurements determined in accordance with generally accepted accounting principles ("GAAP") and should not be considered in isolation, or as an alternative to income from operations, or other similarly titled measures of other companies.

OVERVIEW

As of July 9, 2017, we operated and franchised 2,255 Jack in the Box quick-service restaurants, primarily in the western and southern United States, including one in Guam, and 720 Qdoba fast-casual restaurants operating primarily throughout the United States and Canada.

Our primary source of revenue is from retail sales at Jack in the Box and Qdoba company-operated restaurants. We also derive revenue from Jack in the Box and Qdoba franchise restaurants, including rental revenue, royalties (based upon a percent of sales) and franchise fees. In addition, we recognize gains or losses from the sale of company-operated restaurants to franchisees, which are included as a line item within operating costs and expenses, net in the accompanying condensed consolidated statements of earnings.

The following summarizes the most significant events occurring year-to-date in fiscal 2017, and certain trends compared to a year ago:

- **Calendar Basis Same-Store Sales** — Calendar basis same-store sales increased 0.9% year-to-date at Jack in the Box system restaurants compared with a year ago primarily driven by an increase in franchise restaurant AUVs. Qdoba's year-to-date calendar basis same-store sales decreased 2.7% at company-operated restaurants compared with a year ago, driven primarily by declines in traffic, partially offset by catering growth and an increase in the average check.
- **Commodity Costs** — Commodity costs decreased approximately 1.1% and 0.4% year-to-date at our Jack in the Box and Qdoba restaurants, respectively, in 2017 compared with a year ago. We expect our overall commodity costs in fiscal year 2017 to be approximately flat at both our Jack in the Box and Qdoba restaurants. Beef represents the largest portion, or approximately 20%, of the Company's overall commodity spend. We typically do not enter into fixed price contracts for our beef needs. For the full year, we currently expect beef costs to decrease approximately 1%.
- **Company Restaurant Operations** — Consolidated company restaurant costs as a percentage of company restaurant sales increased in 2017 to 81.9% from 79.7% a year ago. Jack in the Box company restaurant costs as a percentage of company restaurant sales increased to 79.6% from 78.7% a year ago primarily due to sales deleverage, higher labor costs related to wage inflation, and higher maintenance and repair costs, partially offset by the impact from refranchising completed year-to-date in 2017. Restaurant costs as a percentage of restaurant sales at our Qdoba company-operated restaurants increased in 2017 to 85.7% from 81.6% a year ago primarily reflecting sales deleverage, an increase in food costs resulting from unfavorable mix, and new restaurant activity, partially offset by lower costs for insurance.
- **Jack in the Box Franchise Operations** — Franchise costs as a percent of franchise revenues decreased in 2017 to 47.1%, from 48.8% in the prior year, primarily driven by an increase in franchise fees resulting from the sale of 118 company-operated restaurants to franchisees, and a decrease in franchise support costs primarily due to savings realized in connection with our restructuring plan.
- **Jack in the Box Franchising Program** — Franchisees opened a total of 15 restaurants. As part of our refranchising strategy, we sold 118 company-operated restaurants to franchisees in several different markets during 2017 resulting in proceeds of approximately \$62.9 million. In fiscal year 2017, we expect to open approximately 20 to 25 Jack in the Box restaurants system-wide, the majority of which will be franchise locations. Our Jack in the Box system was 85% franchised as of July 9, 2017. We plan to increase franchise ownership of the Jack in the Box system to over 90%. Prior to the end of the third quarter, we additionally signed non-binding letters of intent with franchisees to sell 63 company-operated restaurants in several markets. Pre-tax gross proceeds related to these sales are estimated at \$35.0 million to \$40.0 million, and we have classified \$10.6 million of equipment related to these sales as assets held for sale in our July 9, 2017 condensed consolidated balance sheet.
- **Jack in the Box Acquisition of Franchise-Operated Restaurants** — We acquired 50 franchise-operated Jack in the Box restaurants from two franchisees for total consideration of \$14.3 million in two non-cash transactions. In the third quarter of 2017, we took back 31 restaurants as the result of an agreement with an underperforming franchisee who voluntarily agreed to turn over the restaurants. The additional 19 restaurants acquired in 2017 were the result of a legal action filed in September 2013 against a franchisee in which we obtained a judgment in January 2017 granting the Company possession of the restaurants.
- **Qdoba New Unit Growth** — We opened 18 company-operated restaurants, and franchisees opened 13 restaurants of which nine were in non-traditional locations such as military bases and college campuses. In fiscal 2017, we expect approximately 45 Qdoba restaurants to open system-wide, of which 25 are expected to be company-operated restaurants.
- **Restructuring Costs (including costs related to the Qdoba Evaluation)** — In 2016, we announced a plan to reduce our general and administrative costs, and in the third quarter of 2017, we began an evaluation of potential alternatives with respect to the Qdoba brand. In connection with these activities, we have recorded \$6.1 million of restructuring charges in 2017, which includes \$1.7 million related to the Qdoba Evaluation, which 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 share repurchases and cash dividends. We repurchased 3.2 million shares of our common stock in 2017 at an average price of \$101.59 per share, totaling \$327.2 million, including the costs of brokerage fees. We also declared three cash dividends of \$0.40 per share totaling \$37.4 million.

FINANCIAL REPORTING

During fiscal 2012, we entered into an agreement to outsource our Jack in the Box distribution business. In fiscal 2013, we closed 62 Qdoba restaurants (the “2013 Qdoba Closures”) as part of a comprehensive Qdoba market performance review. All charges related to our distribution business and the 2013 Qdoba Closures are reported as discontinued operations for all periods presented. Refer to Note 2, *Discontinued Operations*, in the notes to condensed consolidated financial statements for additional information. Unless otherwise noted, amounts and disclosures throughout our MD&A relate to our continuing operations.

In the first quarter of fiscal 2017, we adopted an Accounting Standards Update (“ASU”) which changes the presentation of debt issuance costs on the balance sheet. Under this ASU, debt issuance costs are to be presented on the balance sheet as a direct deduction from the related debt liability rather than as an asset. We retrospectively adopted this guidance which resulted in the reclassification of \$3.8 million in debt issuance costs from other assets, net to current maturities of long-term debt and long-term debt, net of current maturities in the amount of \$1.6 million and \$2.2 million, respectively, in our October 2, 2016 condensed consolidated balance sheet. Refer to Note 1, *Basis of Presentation*, in the notes to condensed consolidated financial statements for more information.

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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Revenues:				
Company restaurant sales	74.0%	75.6%	75.0%	75.3%
Franchise rental revenues	14.8%	14.3%	14.5%	14.6%
Franchise royalties and other	11.2%	10.1%	10.6%	10.1%
Total revenues	100.0%	100.0%	100.0%	100.0%
Operating costs and expenses, net:				
Company restaurant costs:				
Food and packaging (1)	30.3%	29.3%	29.9%	30.2%
Payroll and employee benefits (1)	28.3%	27.6%	29.0%	27.8%
Occupancy and other (1)	23.3%	21.2%	23.0%	21.7%
Total company restaurant costs (1)	81.9%	78.1%	81.9%	79.7%
Franchise occupancy expenses (2)	75.4%	73.5%	73.8%	73.3%
Franchise support and other costs (3)	7.3%	9.8%	7.4%	10.2%
Selling, general and administrative expenses	10.7%	11.6%	10.7%	13.0%
Impairment and other charges, net	1.7%	2.9%	1.3%	1.2%
Gains on the sale of company-operated restaurants	(3.7)%	(0.1)%	(1.7)%	(0.1)%
Earnings from operations	18.7%	15.1%	16.9%	14.2%
Income tax rate (4)	33.2%	36.0%	36.7%	36.8%

(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 earnings from continuing operations and before income taxes.

CHANGES IN SAME-STORE SALES

	Quarter			Year-to-date		
	Calendar Basis	Fiscal Basis		Calendar Basis	Fiscal Basis	
	July 9, 2017	July 9, 2017	July 3, 2016	July 9, 2017	July 9, 2017	July 3, 2016
Jack in the Box:						
Company	(1.6)%	(1.8)%	(0.2)%	(0.9)%	(1.0)%	(0.2)%
Franchise	0.1 %	— %	1.5 %	1.5 %	1.4 %	1.3 %
System	(0.2)%	(0.4)%	1.1 %	0.9 %	0.9 %	0.9 %
Qdoba:						
Company	(1.1)%	(1.7)%	1.0 %	(2.7)%	(2.7)%	1.8 %
Franchise	2.3 %	1.1 %	0.1 %	0.5 %	0.2 %	1.3 %
System	0.5 %	(0.4)%	0.6 %	(1.2)%	(1.3)%	1.6 %

The following table summarizes the changes in Jack in the Box and Qdoba company-operated same-store sales:

	Quarter			Year-to-date		
	Calendar Basis	Fiscal Basis		Calendar Basis	Fiscal Basis	
	July 9, 2017	July 9, 2017	July 3, 2016	July 9, 2017	July 9, 2017	July 3, 2016
Jack in the Box:						
Average check (1)	2.8 %	3.2 %	3.5 %	4.3 %	4.5 %	2.8 %
Transactions	(4.4)%	(5.0)%	(3.7)%	(5.2)%	(5.5)%	(3.0)%
Change in same-store sales	(1.6)%	(1.8)%	(0.2)%	(0.9)%	(1.0)%	(0.2)%
Qdoba:						
Transactions	(2.8)%	(3.6)%	0.4 %	(4.4)%	(4.4)%	1.8 %
Average Check (2)	0.7 %	1.1 %	— %	1.0 %	1.1 %	(0.7)%
Catering	1.0 %	0.8 %	0.6 %	0.7 %	0.6 %	0.7 %
Change in same-store sales	(1.1)%	(1.7)%	1.0 %	(2.7)%	(2.7)%	1.8 %

(1) Amounts in 2017 on a calendar and fiscal basis include price increases of approximately 1.7% in the quarter, and 2.5% year-to-date. Amounts in 2016 include price increases of approximately 3.3% in the quarter, and 3.1% year-to-date.

(2) Amounts in 2017 on a calendar and fiscal basis include price changes of approximately flat in the quarter, and an increase of 0.3% year-to-date. Amounts in 2016 include price increases of approximately 1.3% in the quarter, and 1.0% year-to-date.

The following table summarizes the year-to-date changes in the number and mix of Jack in the Box (“JIB”) and Qdoba company and franchise restaurants:

	2017			2016		
	Company	Franchise	Total	Company	Franchise	Total
Jack in the Box:						
Beginning of year	417	1,838	2,255	413	1,836	2,249
New	2	15	17	2	9	11
Refranchised	(118)	118	—	(1)	1	—
Acquired from franchisees	50	(50)	—	1	(1)	—
Closed	(11)	(6)	(17)	—	(6)	(6)
End of period	340	1,915	2,255	415	1,839	2,254
% of JIB system	15%	85%	100%	18%	82%	100%
Qdoba:						
Beginning of year	367	332	699	322	339	661
New	18	13	31	26	11	37
Closed	(4)	(6)	(10)	(4)	(6)	(10)
End of period	381	339	720	344	344	688
% of Qdoba system	53%	47%	100%	50%	50%	100%
Consolidated:						
Total system end of period	721	2,254	2,975	759	2,183	2,942
% of consolidated system	24%	76%	100%	26%	74%	100%

Jack in the Box Brand

Company Restaurant Operations

The following table presents Jack in the Box 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 9, 2017		July 3, 2016		July 9, 2017		July 3, 2016					
Company restaurant sales	\$	157,772	\$	179,458	\$	576,618	\$	595,401				
Company restaurant costs:												
Food and packaging		46,182	29.3%	51,893	28.9%	166,213	28.8%	179,142	30.1%			
Payroll and employee benefits		46,486	29.5%	50,654	28.2%	171,198	29.7%	167,744	28.2%			
Occupancy and other		34,644	22.0%	36,446	20.3%	121,723	21.1%	121,522	20.4%			
Total company restaurant costs	\$	127,312	80.7%	\$	138,993	77.5%	\$	459,134	79.6%	\$	468,408	78.7%

Jack in the Box company restaurant sales decreased \$21.7 million in the quarter and \$18.8 million year-to-date in 2017 as compared with the prior year primarily driven by a decrease in the average number of restaurants and, to a lesser extent, by a decrease in traffic, partially 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 thousands*):

	Quarter	Year-to-date
Decrease in the average number of restaurants	\$ (23,700)	\$ (15,600)
AUV increase (decrease)	2,000	(3,200)
Total change in company restaurant sales	\$ (21,700)	\$ (18,800)

Fiscal basis same-store sales at Jack in the Box company-operated restaurants decreased 1.8% in the quarter, and 1.0% year-to-date versus last year primarily due to a decline in transactions, offset by menu price increases and favorable mix. The following table summarizes the change in company-operated fiscal basis same-store sales:

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Average check (1)	3.2 %	3.5 %	4.5 %	2.8 %
Transactions	(5.0)%	(3.7)%	(5.5)%	(3.0)%
Change in fiscal-basis same-store sales	(1.8)%	(0.2)%	(1.0)%	(0.2)%

(1) Amounts in 2017 and 2016 include price increases of approximately 1.7% and 3.3%, respectively, in the quarter, and 2.5% and 3.1%, respectively, year-to-date.

Food and packaging costs as a percentage of company restaurant sales increased to 29.3% in the quarter, and decreased to 28.8% year-to-date in 2017, compared with 28.9% and 30.1%, respectively, in 2016. In the quarter, an increase in commodity costs was partially offset by favorable product mix changes and menu price increases. The year-to-date decrease was driven by favorable product mix changes, lower commodity costs, and menu price increases. Commodity costs increased 4.9% in the quarter, and decreased 1.1% year-to-date compared to a year ago. In the quarter, the increase in commodity costs was due primarily to higher costs for beef, produce, pork, and beverages. Year-to-date, the decrease was driven by lower costs for eggs, produce, and pork, partially offset by higher costs for beverages and potatoes. Beef, our most significant commodity, increased approximately 17.0% in the quarter and approximately 0.6% year-to-date compared with the prior year. For fiscal 2017, we currently expect commodity costs to be approximately flat at our Jack in the Box restaurants compared with fiscal 2016.

Payroll and employee benefit costs as a percentage of company restaurant sales increased to 29.5% in the quarter, and 29.7% year-to-date in 2017 compared with 28.2% in 2016 due primarily to wage inflation resulting from an increase in the minimum wage in certain markets, highly competitive labor markets, and labor management, and an increase in worker's compensation costs during the quarter.

Occupancy and other costs decreased \$1.8 million in the quarter, and increased \$0.2 million year-to-date in 2017 compared to the prior year due to a decrease in the average number of restaurants, impacting occupancy and other costs by approximately \$5.2 million in the quarter and \$3.3 million year-to-date. This decrease was partially offset in the quarter, and more than offset year-to-date, by higher maintenance and repair expenses, an increase in property rent on a per store average basis due to routine rent increases, and higher costs for utilities.

Franchise Operations

The following table presents Jack in the Box 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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Franchise rental revenues	\$ 52,824	\$ 52,849	\$ 175,555	\$ 175,126
Royalties	33,150	31,770	107,426	104,190
Franchise fees and other	2,355	416	5,567	1,421
Franchise royalties and other	35,505	32,186	112,993	105,611
Total franchise revenues	88,329	85,035	288,548	280,737
Rental expense	32,547	31,571	106,280	103,708
Depreciation and amortization	7,266	7,253	23,342	24,692
Franchise occupancy expenses	39,813	38,824	129,622	128,400
Franchise support and other costs	1,952	2,515	6,223	8,614
Total franchise costs	\$ 41,765	\$ 41,339	\$ 135,845	\$ 137,014
Franchise costs as a % of total franchise revenues	47.3%	48.6%	47.1%	48.8%
Average number of franchise restaurants	1,875	1,839	1,848	1,838
% increase	2.0%		0.5%	
Increase in franchise-operated fiscal basis same-store sales	—%	1.5%	1.4%	1.3%
Franchise restaurant AUVs	\$ 342	\$ 340	\$ 1,135	\$ 1,115
Royalties as a percentage of total franchise restaurant sales	5.2%	5.1%	5.1%	5.1%

Franchise rental revenues stayed relatively consistent in the quarter, and year-to-date, decreasing less than \$0.1 million in the quarter, and increasing \$0.4 million, or 0.2%, year-to-date, as compared with a year ago. In the quarter, the increase in franchise rental revenues was driven by an increase in the average number of franchise restaurants, offset by a reduction in revenues of \$1.0 million due to the termination of lease agreements associated with the 31 franchise restaurants that we acquired in the third quarter of 2017. The slight increase in year-to-date franchise rental revenues is primarily due to an increase in revenues from percentage rent due to an increase in franchise-operated fiscal basis same-store sales, and an increase in the average number of franchise restaurants, which was partially offset by the \$1.0 million reduction in revenues due to the termination of lease agreements mentioned above.

Franchise royalties and other increased \$3.3 million, or 10.3%, in the quarter, and \$7.4 million, or 7.0% year-to-date in 2017 versus a year ago primarily reflecting an increase in franchise fees related to the sale of 60 and 58 company-operated restaurants to franchisees during the second and third quarters of 2017, respectively, and an increase in royalties driven by the increase in average number of franchise restaurants primarily resulting from refranchising, and an increase in year-to-date AUVs.

Franchise occupancy expenses, principally rents and depreciation on properties subleased or leased to franchisees, increased \$1.0 million in the quarter, and \$1.2 million year-to-date in 2017 versus a year ago due primarily to a decrease of \$0.1 million in the quarter and \$1.8 million year-to-date in favorable lease commitment adjustments related to previously refranchised markets based on sales performance over the first year resulting in higher rent, and an increase in company-operated restaurants sold to franchisees in 2017. These increases were partially offset by the impact of restaurants acquired by the Company in 2017, and, year-to-date, a decrease in depreciation expense as our building assets become fully depreciated.

Franchise support and other costs decreased \$0.6 million in the quarter, and \$2.4 million year-to-date in 2017 as compared with prior year, primarily due to savings realized in connection with our restructuring plan.

Qdoba Brand

Company Restaurant Operations

The following table presents Qdoba 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 9, 2017		July 3, 2016		July 9, 2017		July 3, 2016					
Company restaurant sales	\$	107,067	\$	99,371	\$	334,558	\$	308,441				
Company restaurant costs:												
Food and packaging		33,977	31.7%	29,932	30.1%	105,794	31.6%	93,660	30.4%			
Payroll and employee benefits		28,412	26.5%	26,256	26.4%	93,380	27.9%	83,210	27.0%			
Occupancy and other		27,072	25.3%	22,672	22.8%	87,607	26.2%	74,822	24.3%			
Total company restaurant costs	\$	89,461	83.6%	\$	78,860	79.4%	\$	286,781	85.7%	\$	251,692	81.6%

Company restaurant sales increased \$7.7 million in the quarter, and \$26.1 million year-to-date in 2017 as compared with the prior year due primarily to the net addition of 37 Qdoba company-operated restaurants since a year ago, partially offset by a decline in AUVs. The following table presents the approximate impact of these increases (decreases) on company restaurant sales (*in thousands*):

	Quarter	Year-to-date
Increase in the average number of company restaurants	\$ 9,700	\$ 37,000
AUV decrease	(2,000)	(10,900)
Total change in company restaurant sales	\$ 7,700	\$ 26,100

Fiscal basis same-store sales at Qdoba company-operated restaurants decreased 1.7% in the quarter, and 2.7% year-to-date in 2017 as compared with the prior year primarily driven by a decline in traffic, partially offset by catering growth, and year-to-date, menu price increases. The following table summarizes the change in company-operated fiscal basis same-store sales:

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Transactions	(3.6)%	0.4%	(4.4)%	1.8 %
Average check (1)	1.1 %	—%	1.1 %	(0.7)%
Catering	0.8 %	0.6%	0.6 %	0.7 %
Change in fiscal basis same-store sales	(1.7)%	1.0%	(2.7)%	1.8 %

(1) Amounts in 2017 and 2016 include price changes of approximately flat and an increase of 1.3%, respectively, in the quarter and increases of 0.3% and 1.0%, respectively, year-to-date.

Food and packaging costs as a percentage of company restaurant sales in 2017 increased to 31.7% in the quarter, and 31.6% year-to-date, compared with 30.1% and 30.4%, respectively, in 2016. In the quarter, unfavorable product mix and higher commodity costs were partially offset by a decrease in discounting. Year-to-date, unfavorable product mix was partially offset by a decrease in discounting, lower commodity costs and menu price increases. Commodity costs increased approximately 2.5% in the quarter due to higher costs for avocados and produce, partially offset by lower costs for beef and tortillas. Year-to-date, commodity costs decreased by approximately 0.4% due to lower costs for beef, tortillas, cheese and poultry which were partially offset by higher costs for avocados and beans. In 2017, beef costs decreased most significantly by approximately 8% in the quarter and year-to-date as compared with a year ago. Avocados increased most significantly by approximately 60% in the quarter, and 37% year-to-date as compared with a year ago. For fiscal 2017, we currently expect commodity costs to be approximately flat at our Qdoba restaurants compared with fiscal 2016.

Payroll and employee benefit costs as a percentage of company restaurant sales in 2017 increased to 26.5% in the quarter and 27.9% year-to-date, from 26.4% and 27.0%, respectively, in 2016. The percent of sales increase in both periods is primarily due to the impact of new restaurant openings, wage inflation due to highly competitive labor markets, deleverage from a decrease in fiscal basis same-store sales and, year-to-date, labor inefficiencies, partially offset by lower insurance costs and lower levels of incentive compensation driven by operating results. Restaurants opened since the third quarter of the prior year negatively impacted payroll and employee benefit costs as a percentage of company restaurant sales by approximately 40 basis points in both the 2017 quarter and year-to-date periods.

Occupancy and other costs increased \$4.4 million in the quarter, and \$12.8 million year-to-date in 2017 compared with the prior year, primarily driven by an increase in the number of restaurants, impacting occupancy and other costs by approximately \$2.5 million in the quarter, and \$9.7 million year-to-date. To a lesser extent, the increase in occupancy and other costs was driven by increases in utilities, increases in property rent due to routine rent increases and higher average rent for new locations, as well as higher maintenance and repair expenses, and equipment upgrades.

Franchise Operations

The following table presents Qdoba 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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Franchise rental revenues	\$ 25	\$ 29	\$ 84	\$ 92
Royalties	4,359	4,784	14,212	15,148
Franchise fees and other	294	261	1,148	1,093
Franchise royalties and other	4,653	5,045	15,360	16,241
Total franchise revenues	4,678	5,074	15,444	16,333
Rental expense (1)	24	24	81	75
Franchise support and other costs	976	1,139	3,284	3,809
Total franchise costs	\$ 1,000	\$ 1,163	\$ 3,365	\$ 3,884
Franchise costs as a % of total franchise revenues	21.4 %	22.9%	21.8 %	23.8%
Average number of franchise restaurants	338	346	336	343
% (decrease)	(2.3)%		(2.0)%	
Increase in franchise-operated fiscal basis same-store sales	1.1 %	0.1%	0.2 %	1.3%
Franchise restaurant AUVs	\$ 270	\$ 270	\$ 876	\$ 881
Royalties as a percentage of total franchise restaurant sales	4.8 %	5.1%	4.8 %	5.0%

(1) Included in franchise occupancy expenses in the accompanying condensed consolidated statements of earnings.

Franchise royalties and other decreased \$0.4 million, or 7.8%, in the quarter, and \$0.9 million, or 5.4%, year-to-date in 2017 as compared with 2016 primarily due to a decrease in the average number of franchise restaurants as we acquired 14 franchise-operated locations in the fourth quarter of 2016. The decrease was also partially attributable to a reduction in royalties as a percentage of franchise restaurant sales related to development incentives offering reduced royalties to franchisees who open new restaurants.

Franchise costs, principally support costs, decreased \$0.2 million in the quarter, and \$0.5 million year-to-date in 2017 versus a year ago primarily due to a decrease in support costs.

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

The following table presents the change in 2017 SG&A expenses compared with the prior year (*in thousands*):

	(Decrease) / Increase	
	Quarter	Year-to-date
Incentive compensation (including share-based compensation and related payroll taxes)	\$ (3,537)	\$ (8,575)
Pension and postretirement benefits	(2,139)	(7,132)
Insurance	(2,050)	(3,661)
Qdoba brand conference	—	(833)
Consulting	33	(1,039)
Cash surrender value of COLI policies, net	73	1,554
Advertising	553	(2,439)
Pre-opening costs	1,728	352
Legal settlement	2,543	2,543
Other (including savings related to our restructuring plan)	(1,607)	(6,444)
	<u>\$ (4,403)</u>	<u>\$ (25,674)</u>

Incentive compensation decreased due to lower levels of performance as compared to target bonus levels.

Pension and postretirement benefit costs decreased primarily due to \$80.0 million of accelerated contributions made to our qualified pension plan in 2016 which are expected to result in a higher return on plan assets in fiscal 2017, and a resulting decrease in our fiscal 2017 Pension Benefit Guaranty Corporation premiums, which is a component of our pension expense. To a lesser extent, the sunseting of our qualified pension plan during fiscal 2016 resulted in a decrease in the service cost component of our expense in 2017.

Insurance costs decreased due to a decrease in workers’ compensation and general liability claim developments compared with a year ago, and a decrease in costs for group insurance related to lower claim payments.

Advertising costs at our Jack in the Box brand are primarily contributions to our marketing fund and are determined as a percentage of gross restaurant sales. Jack in the Box advertising costs decreased \$1.5 million in the quarter and \$3.0 million year-to-date in 2017 compared with a year ago due to a decrease in the number of company-operated restaurants, and year-to-date, a decrease in discretionary marketing fund contributions. In 2017, advertising costs associated with our Qdoba brand increased \$2.0 million in the quarter and \$0.6 million year-to-date versus a year ago due primarily to a shift in the timing of spending.

Pre-opening costs in both periods of 2017 increased over prior year periods primarily due to the acquisition of Jack in the Box restaurants in the current quarter, resulting in \$2.2 million in costs that were incurred while the restaurants were closed. Higher year-to-date pre-opening costs related to the Jack brand acquisitions were partially offset by a decrease of \$1.6 million in Qdoba brand pre-opening costs due to a decrease in the number of Qdoba restaurants opened and under construction during the period.

In the third quarter of 2016, we received notice that a claim we made in connection with the Deepwater Horizon Court Supervised Settlement Program was approved by the United States District Court for the Eastern District of Louisiana, resulting in a recovery of \$2.5 million. The program compensated businesses for economic damages they incurred in connection with the 2010 oil rig spill in the Gulf of Mexico. Our claim related to certain Jack in the Box restaurants in Louisiana and Texas.

Other includes savings related to our restructuring plan announced in 2016 that includes workforce reductions and the relocation of our Qdoba corporate support center to reduce our corporate general and administrative costs.

Impairment and Other Charges, Net

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

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Costs of closed restaurants and other (primarily lease obligations)	\$ 2,244	\$ 914	\$ 5,434	\$ 2,489
Restructuring costs	1,837	7,744	6,081	7,744
Losses on disposition of property and equipment, net	952	637	2,186	2,283
Accelerated depreciation	674	673	1,394	1,531
Restaurant impairment charges	505	551	505	551
	<u>\$ 6,212</u>	<u>\$ 10,519</u>	<u>\$ 15,600</u>	<u>\$ 14,598</u>

Impairment and other charges, net decreased \$4.3 million in the quarter, and increased \$1.0 million year-to-date in 2017 compared with a year ago. In the quarter, the decrease was primarily driven by a \$5.9 million reduction in restructuring charges recognized, offset by a \$1.3 million increase in costs associated with closed restaurant properties which includes \$1.0 million in costs related to the closure of three underperforming restaurants acquired from a franchisee. The year-to-date increase was primarily driven by a \$2.9 million increase in costs associated with closed restaurant properties primarily related to revisions of certain sublease assumptions for our lease obligations and including \$1.0 million in costs related to the closure of three underperforming restaurants acquired from a franchisee, partially offset by a \$1.7 million decrease in restructuring charges recognized. Restructuring charges in 2017 and 2016 are the result of a plan that management initiated in fiscal 2016 to reduce our general and administrative costs. This plan includes cost saving initiatives from workforce reductions, relocation and consolidation of our Qdoba corporate support center, refranchising initiatives, and the consolidation of information technology across both brands. Restructuring charges in 2017 also include \$1.7 million of costs related to the evaluation of potential alternatives with respect to the Qdoba brand. Refer to Note 6, *Impairment and Other Charges, Net* of the notes to the condensed consolidated financial statements for additional information regarding these costs.

Gains on the Sale of Company-Operated Restaurants (*dollars in thousands*)

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

	Quarter		Year-to-date	
	July 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Number of restaurants sold to Jack in the Box franchisees	58	—	118	1
Gains on the sale of company-operated restaurants	\$ 13,250	\$ 409	\$ 21,166	\$ 1,224

Gains (losses) are impacted by the number of restaurants sold and changes in average gains or losses recognized, which relate to the specific sales and cash flows of those restaurants. Gains in 2017 include additional proceeds of \$0.1 million year-to-date, and none in the quarter, related to Jack in the Box restaurants sold in a prior year. Gains in 2016 include additional proceeds of \$0.4 million and \$1.4 million in the quarter and year-to-date, respectively, related to the extension of the underlying franchise and lease agreements from the sale of Jack in the Box restaurants in prior years. Refer to Note 3, *Summary of Refranchisings, Franchisee Development and Acquisitions*, 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 9, 2017	July 3, 2016	July 9, 2017	July 3, 2016
Interest expense	\$ 11,447	\$ 7,653	\$ 35,163	\$ 23,009
Interest income	(14)	(40)	(72)	(310)
Interest expense, net	\$ 11,433	\$ 7,613	\$ 35,091	\$ 22,699

Interest expense, net increased \$3.8 million in the quarter, and \$12.4 million year-to-date in 2017 compared with a year ago primarily due to higher average borrowings, which contributed additional interest expense of approximately \$2.0 million and \$5.7 million, respectively, and to a lesser extent, higher average interest rates, which contributed additional interest expense of approximately \$1.2 million and \$3.5 million, respectively.

Income Taxes

The tax rate in 2017 was 33.2% in the quarter and 36.7% year-to-date, compared with 36.0% and 36.8%, respectively, in 2016. We expect the fiscal year tax rate to be approximately 37.0%. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual 2017 rate could differ from our current estimates. Refer to Note 7, *Income Taxes*, of the notes to the condensed consolidated financial statements for additional information regarding income taxes.

Losses from Discontinued Operations, Net

As described in Note 2, *Discontinued Operations*, in the notes to condensed consolidated financial statements, the results of operations from our distribution business and the 2013 Qdoba Closures have been reported as discontinued operations for all periods presented. The losses from discontinued operations are immaterial to our condensed consolidated statements of earnings, and the majority of the discontinued operations activity in both years is related to the 2013 Qdoba Closures.

LIQUIDITY AND CAPITAL RESOURCES

General

Our primary sources of short-term and long-term liquidity are expected to be cash flows from operations and our revolving bank credit facility.

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

- working capital;
- capital expenditures for new restaurant construction and restaurant renovations;
- income tax payments;
- debt service requirements; 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 other financing alternatives in place or available, 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 operating, investing and financing activities (*in thousands*):

	Year-to-date	
	July 9, 2017	July 3, 2016
Total cash provided by (used in):		
Operating activities	\$ 139,907	\$ 146,699
Investing activities	17,542	(67,770)
Financing activities	(166,918)	(90,036)
Effect of exchange rate changes on cash	(1)	11
Net decrease in cash	\$ (9,470)	\$ (11,096)

Operating Activities. Operating cash flows in 2017 decreased \$6.8 million compared with a year ago primarily due to a \$35.1 million and \$11.8 million increase in income tax and interest payments, respectively, made in 2017 compared to 2016, partially offset by the timing of October rent payments of \$16.8 million made prior to the end of 2016, and an increase in net earnings in 2017.

Pension and Postretirement Contributions — Our policy is to fund our pension plans at or above the minimum required by law. As of January 1, 2016, the date of our last actuarial funding valuation, there was no minimum contribution funding requirement for our qualified pension plan (“Qualified Plan”). In fiscal 2016, we made an \$80.0 million accelerated contribution to our Qualified Plan and as such do not expect to make any contributions in fiscal 2017. Year-to-date 2017, we contributed \$4.1 million to our non-qualified pension plan and postretirement plans.

Investing Activities. Cash provided by (used in) investing activities changed from a use of \$67.8 million in 2016 to a source of \$17.5 million in 2017. This change primarily resulted from \$62.9 million in proceeds from the sale of 118 company-operated Jack in the Box restaurants in 2017, and a \$27.8 million decrease in capital expenditures.

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

	Year-to-date	
	July 9, 2017	July 3, 2016
Jack in the Box:		
Restaurant facility expenditures	\$ 18,329	\$ 23,182
New restaurants	1,500	8,615
Other, including information technology	2,818	448
	<u>22,647</u>	<u>32,245</u>
Qdoba:		
New restaurants	13,629	32,302
Restaurant facility expenditures	7,909	3,796
Other, including information technology	991	3,129
	<u>22,529</u>	<u>39,227</u>
Shared Services:		
Information technology	1,974	3,310
Other, including facility improvements	60	189
	<u>2,034</u>	<u>3,499</u>
Consolidated capital expenditures	<u>\$ 47,210</u>	<u>\$ 74,971</u>

Our capital expenditure program includes, among other things, investments in new locations and equipment, restaurant remodeling, and information technology enhancements. Capital expenditures decreased \$27.8 million compared to a year ago primarily resulting from a \$18.7 million and \$7.1 million decrease in spending related to building new Qdoba and Jack in the Box restaurants, respectively, and a \$4.9 million decrease in spending related to Jack in the Box facility expenditures, primarily exterior facility enhancements. These decreases were partially offset by an increase in spending of \$4.1 million associated with Qdoba restaurant facility expenditures primarily related to new signage. We expect fiscal 2017 capital expenditures to be approximately \$80.0 million to \$90.0 million. In fiscal 2017, we plan to open approximately 25 new Qdoba company-operated locations, and approximately five new Jack in the Box company-operated locations.

Assets Held for Sale and Leaseback — We use sale and leaseback financing to limit the initial cash investment in our restaurants to the cost of the equipment, whenever possible. During 2017 and 2016, we exercised our right of first refusal related to two and three leased properties, respectively, which we intend to sell and leaseback within the next 12 months of the respective balance sheet date. The following table summarizes the cash flow activity related to sale and leaseback transactions in each period (*dollars in thousands*):

	Year-to-date	
	July 9, 2017	July 3, 2016
Number of restaurants sold and leased back	1	4
Purchases of assets intended for sale and leaseback	\$ (3,248)	\$ (5,593)
Proceeds from the sale and leaseback of assets	\$ 2,466	\$ 7,748

As of July 9, 2017, we had investments of \$17.2 million relating to eight restaurant properties that we expect to sell and leaseback during the next 12 months.

Acquisition of Franchise-Operated Restaurants — We acquired 50 Jack in the Box franchise restaurants in 2017, and one Jack in the Box franchise restaurant in 2016. In 2017, 31 restaurants were acquired in the third quarter resulting from an agreement with an underperforming franchisee that was in violation of franchise and lease agreements with the Company. Under this agreement, the franchisee voluntarily agreed to turn over the restaurants. The acquisition of an additional 19 restaurants in 2017 was the result of a legal action filed in September 2013 against a franchisee in which we obtained a judgment in January 2017 granting us possession of the restaurants.

Of the 50 restaurants acquired in 2017, we sold eight of the restaurants to a franchisee and closed three during the quarter. We plan to sell the remaining restaurants acquired in 2017 as part of our refranchising strategy. For additional information, refer to Note 3, *Summary of Refranchisings, Franchisee Development and Acquisitions*, and Note 6, *Impairment and Other Charges, Net*, of the notes to the condensed consolidated financial statements.

Sale of Company-Operated Restaurants — We continue to expand franchise ownership in the Jack in the Box system primarily through the sale of company-operated restaurants to franchisees. The following table details proceeds received in connection with our refranchising activities in each period (*dollars in thousands*):

	Year-to-date	
	July 9, 2017	July 3, 2016
Number of restaurants sold to Jack in the Box franchisees	118	1
Proceeds from the sale of company-operated restaurants	\$ 62,923	\$ 1,434

Proceeds in 2017 include additional gains of \$0.1 million related to Jack in the Box restaurants sold in previous years, and proceeds in 2016 include additional gains of \$1.4 million related to the extension of the underlying franchise and lease agreements related to Jack in the Box restaurants sold in a prior year. For additional information, refer to Note 3, *Summary of Refranchisings, Franchisee Development and Acquisitions*, of the notes to condensed consolidated financial statements.

Financing Activities. Cash flows used in financing activities increased \$76.9 million in 2017 compared with a year ago primarily due to an increase in cash used to repurchase common stock, a net increase in payments under our credit facility, and an increase in cash used to pay dividends, partially offset by an increase in proceeds from the issuance of our common stock.

Credit Facility — Our credit facility consists of (i) a \$900.0 million revolving credit agreement and (ii) a \$700.0 million term loan. Both the revolving credit agreement and the term loan have maturity dates of March 19, 2019. As part of the credit agreement, we may also request the issuance of up to \$75.0 million in letters of credit, the outstanding amount of which reduces our net borrowing capacity under the agreement. As of July 9, 2017, we had \$653.1 million outstanding under the term loan, borrowings under the revolving credit agreement of \$520.9 million, and letters of credit outstanding of \$31.4 million.

The interest rate on our credit facility is based on our leverage ratio and can range from the London Interbank Offered Rate (“LIBOR”) plus 1.25% to 2.25% with a 0% floor on LIBOR. The current interest rate is LIBOR plus 2.00%.

We are subject to a number of customary covenants under our credit facility, including limitations on additional borrowings, acquisitions, loans to franchisees, lease commitments, stock repurchases and dividend payments, and requirements to maintain certain financial ratios as defined in the credit agreement. We were in compliance with all covenants as of July 9, 2017.

Interest Rate Swaps — To reduce our exposure to fluctuating interest rates under our credit facility, we consider interest rate swaps. In April 2014, we entered into nine forward-starting interest rate swap agreements that effectively converted \$300.0 million of our variable rate borrowings to a fixed-rate basis from October 2014 through October 2018. In June 2015, we entered into eleven forward-starting interest rate swap agreements that effectively converted an additional \$200.0 million of our variable rate borrowings to a fixed-rate from October 2015 through October 2018, and \$500.0 million from October 2018 through October 2022. For additional information, refer to Note 5, *Derivative Instruments*, of the notes to our condensed consolidated financial statements and Item 3, *Quantitative and Qualitative Disclosures About Market Risk*, of this report.

Repurchases of Common Stock — During year-to-date 2017, we repurchased 3.2 million common shares at an aggregate cost of \$327.2 million, compared with 3.5 million common shares at an aggregate cost of \$250.0 million in 2016. As of July 9, 2017, there was approximately \$181.0 million remaining under Board-authorized stock-buyback programs which expire in November 2018. In our condensed consolidated statement of cash flows for 2017, repurchases of common stock includes \$7.2 million related to repurchase transactions traded in the prior fiscal year that settled in 2017.

Dividends — During year-to-date 2017, the Board of Directors declared three cash dividends of \$0.40 per common share totaling \$37.4 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 October 2, 2016. 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.

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 October 2, 2016.

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:

- Food service businesses such as ours may be materially and adversely affected by changes in consumer preferences or dining habits, and economic, political and socioeconomic conditions. Adverse economic conditions such as unemployment and decreased discretionary spending may result in reduced restaurant traffic and sales, and impose practical limits on pricing. We are also subject to geographic concentration risks, with nearly 70% of system Jack in the Box restaurants located in California and Texas.
- Our profitability depends in part on food and commodity costs and availability, including animal feed costs, fuel costs, and other supply and distribution costs. The risks of increased commodities costs and volatility in costs could adversely affect our profitability and results of operations.
- The success of our business strategy depends on the value and relevance of our brands. Multi-unit food service businesses such as ours can be materially and adversely affected by widespread negative publicity of any type, particularly regarding food quality, food safety or public health issues. Negative publicity regarding our brands or the restaurant industry in general could cause a decline in system restaurant sales and could have a material adverse effect on our financial condition and results of operations.
- We are reliant on third party suppliers and distributors, and any shortages or interruptions in supply could adversely affect the availability, quality and cost of ingredients.
- Our business can be materially and adversely affected by severe weather conditions or natural disasters, which can result in lost restaurant sales, supply chain interruptions and increased costs.
- Growth and new restaurant development involve substantial risks, including risks associated with unavailability of suitable franchisees, limited financing availability, cost overruns and the inability to secure suitable sites on acceptable terms. In addition, our growth strategy includes opening restaurants in new or existing markets where we cannot assure that we will be able to successfully expand or acquire critical market presence, attract customers or otherwise operate profitably.
- There are risks associated with our franchise business model, including the demand for our franchises, the selection of appropriate franchisees and whether our franchisees and new restaurant developers will have the capabilities to be effective operators and remain aligned with us on operating, promotional and capital-intensive initiatives, in an ever-changing competitive environment. Additionally, our franchisees and operators could experience operational, financial or other challenges that could affect payments to us of rents and/or royalties, or could damage our brands and reputation.
- Our plan to increase the percentage of Jack in the Box franchise restaurants to over 90% is subject to risks and uncertainties, and we may not achieve the level or the accompanying cost reductions that we desire. We may not be able to identify franchisee candidates with appropriate experience and financial resources or to negotiate mutually acceptable agreements with potential franchisees. Our franchisee candidates may not be able to obtain financing at acceptable rates and terms. We may not be able to increase the percentage of franchised restaurants at the rate we desire or achieve the ownership mix of franchise to company-operated restaurants that we desire.
- The restaurant and take-away food industry is highly competitive with respect to price, service, location, brand identification, menu quality and product and service innovation. We cannot assure that we will be able to effectively respond to aggressive competitors (including competitors with significantly greater financial resources); or that our competitive strategies will increase our same-store sales and AUVs; or that our new products, service initiatives, overall strategies or execution of those strategies will be successful.
- Should our advertising and promotions be less effective than our competitors, there could be a material adverse effect on our results of operations and financial condition.
- In recent years, we have identified strategies and taken steps to reduce operating costs to align with the increased Jack in the Box franchise ownership and to further integrate Jack in the Box and Qdoba brand systems. The ability to evaluate, identify and implement operating cost reductions through these initiatives is subject to risks and uncertainties, and we cannot assure that these activities, or any other activities that we may undertake in the future, will achieve the desired cost savings and efficiencies.

- While we have commenced an evaluation of potential alternatives with respect to the Qdoba brand, there can be no assurance that our evaluation will result in a definitive action. In the event that we do proceed with a potential alternative action with respect to the Qdoba brand, there is no guarantee that such action will be successful.
- The loss of key personnel could have a material adverse effect on our business.
- The costs of compliance with government regulations, including those resulting in increased labor costs, could negatively affect our results of operations and financial condition.
- A material failure or interruption of service or a breach in security of our information technology systems, point of sale (“POS”) systems, or databases could cause reduced efficiency in operations, loss or misappropriation of data or, loss of consumer confidence and/or potential costs, fines and litigation, including costs associated with reputation damage, consumer fraud, privacy breach, or business interruptions, which in turn could affect cash flows or our operating results. In addition, the costs of information security, regulatory compliance, investment in technology and risk mitigation measures may negatively affect our financial results.
- We maintain a documented system of internal controls over financial reporting, which is reviewed and monitored by an Internal Controls Committee and tested by the Company’s full-time internal audit department. Any failures in the effectiveness of our internal controls could have a material adverse effect on our operating results or cause us to fail to meet our reporting obligations.
- We are subject to risks of owning, operating and leasing property, including but not limited to environmental risks. Any of this could result in the imposition of severe penalties or restrictions on operations by governmental agencies or courts of law, which could adversely affect operations.
- We have a significant amount of indebtedness, which could adversely affect our business and our ability to meet our obligations. Our ability to repay borrowings under our credit facility and to meet our other debt or contractual obligations will depend upon our future performance and our cash flows from operations, both of which are subject to prevailing economic conditions and financial, business and other known and unknown risks and uncertainties, certain of which are beyond our control.
- Changes in accounting standards, policies or related interpretations by accountants or regulatory entities may negatively impact our results.
- We are subject to litigation which is inherently unpredictable and can result in unfavorable resolutions where the amount of ultimate loss may exceed our estimated loss contingencies, impose other costs related to defense of claims, or occupy management’s time.

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 October 2, 2016 (“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

Our primary exposure to risks relating to our financial instruments is changes in interest rates. Our credit facility is comprised of a revolving credit facility and a term loan, bearing interest at a rate equal to the prime rate or LIBOR plus an applicable margin based on a financial leverage ratio. As of July 9, 2017, the applicable margin for the LIBOR-based revolving loans and term loan was set at 2.00%.

We use interest rate swap agreements to reduce exposure to interest rate fluctuations. In April 2014, we entered into nine forward-starting interest rate swap agreements that effectively converted \$300.0 million of our variable rate borrowings to a fixed-rate basis from October 2014 through October 2018. Additionally, in June 2015, we entered into eleven forward-starting interest rate swap agreements that effectively converted an additional \$200.0 million of our variable rate borrowings to a fixed-rate from October 2015 through October 2018, and \$500.0 million from October 2018 through October 2022. Based on the applicable margin in effect as of July 9, 2017, these twenty interest rate swaps would yield average fixed rates of 3.90%, 4.41%, 4.62%, 4.89%, 5.07%, 5.17% in years 2017 through 2022, respectively. For additional information related to our interest rate swaps, refer to Note 5, *Derivative Instruments*, of the notes to condensed consolidated financial statements.

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 9, 2017, 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 9, 2017 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 12, *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

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 October 2, 2016, which we filed with the SEC on November 22, 2016. 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 October 2, 2016, including our financial statements and the related notes. There have been no material changes from the risk factors as previously disclosed in our Annual Report on Form 10-K for the fiscal year ended October 2, 2016. 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.

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

Our credit agreement provides for the potential payment of cash dividends and stock repurchases, subject to certain limitations based on our leverage ratio as defined in our credit agreement.

Stock Repurchases — In the third quarter of fiscal 2017, we did not repurchase any shares of our common stock. During fiscal 2017, we repurchased 3.2 million common shares at an aggregate cost of \$327.2 million. As of July 9, 2017, there was approximately \$181.0 million remaining under stock-buyback programs which expire in November 2018.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On and effective August 4, 2017, the Board of Directors, upon the recommendation of the Nominating & Governance Committee of the Board, amended and restated the By-Laws of the Company (the “By-Laws”) to add to Article VIII new Section 8.07. Section 8.07 provides that 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. The amendment also renumbers previous Section 8.07.

The foregoing is a summary of the amendments made to the By-Laws. This summary is qualified in its entirety by reference to the By-Laws, as amended and restated and filed as Exhibit 3.2, attached hereto and incorporated herein by reference.

ITEM 6. EXHIBITS

<u>Number</u>	<u>Description</u>	<u>Form</u>	<u>Filed with SEC</u>
3.1	Restated Certificate of Incorporation, as amended, dated September 21, 2007	10-K	11/20/2009
3.1.1	Certificate of Amendment of Restated Certificate of Incorporation, dated September 21, 2007	8-K	9/24/2007
3.2	Amended and Restated Bylaws, dated August 4, 2017	10-Q	Filed herewith
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	—	Filed herewith
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	—	Filed herewith
32.1	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	—	Filed herewith
32.2	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	—	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		

* Management contract or compensatory plan.

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/ JERRY P. REBEL
Jerry P. Rebel
Executive Vice President and Chief Financial Officer (principal financial officer)
(Duly Authorized Signatory)

Date: August 10, 2017

JACK IN THE BOX INC.
(a Delaware corporation)

BY-LAWS
AMENDED AND RESTATED
Effective August 4, 2017

ARTICLE I

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 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 and registered in his 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 shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his 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 proxy appointed by an instrument in writing, subscribed by such stockholder or by his 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 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 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);
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- (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
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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 successor shall have been duly elected and shall qualify or until he 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 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 successor shall have been elected and shall qualify or until he 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 on account of his 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 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, 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 successor shall have been duly chosen and shall qualify or until his 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 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 4.08 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 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 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 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 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 in connection with such action, suit or proceeding if he acted in good faith and in a manner he 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 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 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 had reasonable cause to believe that his 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 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 in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he 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 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 shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him 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 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 and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him 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 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 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 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 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 10, 2017

/S/ LEONARD A. COMMA

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

CERTIFICATION

I, Jerry P. Rebel, 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 10, 2017

/S/ JERRY P. REBEL

Jerry P. Rebel
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 10, 2017

/S/ LEONARD A. COMMA

Leonard A. Comma
Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Jerry P. Rebel, 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 10, 2017

/S/ JERRY P. REBEL

Jerry P. Rebel

Chief Financial Officer

