

I. INTRODUCTION

The question in this case is whether it is fair for California to tax over 60 percent of a taxpayer's income based on disparate treatment of company-owned and franchised restaurants when only 40 percent of its 2,200 systemwide locations are in California.¹

The standard apportionment formula is the method by which California divides a taxpayer's multistate income for taxation in proportion to the company's business activity in the State. When the formula works as intended, if a business has 40 percent of its activity in California, then roughly 40 percent of its income will be taxed by the State.

The standard formula, however, does not always work as intended, which is the case here where only 40 percent of Jack in the Box restaurants are in California, but the standard formula is attributing over 60 percent of Jack in the Box Inc. and Subsidiaries' ("Taxpayer" or "JIB") income to California. In such cases, the law permits taxpayers to petition the Franchise Tax Board ("FTB") for alternative apportionment. As explained below, the standard California apportionment formula as applied to JIB's unique facts reaches an unfair result because JIB is a California homegrown company.

JIB operates as a single, nationwide brand, but JIB owns some restaurants ("company-owned") and franchises others. Because Taxpayer is a homegrown California business, it began its expansion by building restaurants in California. Later, Taxpayer expanded to other states primarily by franchising restaurants. Thus, a disproportionate

¹ Store count data is for 2019. There are slight variations between the years at issue.

² The resulting distortion overstates the California apportionment by 50 percent.



number of company-owned restaurants are in California while franchised restaurants are predominantly located outside the state.

For JIB company-owned restaurants, every burger purchased is a "sale" or "receipt" included in the California apportionment formula that determines JIB's California tax liability. On the other hand, burgers purchased at JIB's franchised locations are not considered a "sale" or "receipt" in JIB's standard apportionment formula. The business activity at a company-owned and franchised location is the same, sales at either location drive profits for JIB in a comparable way, and sales at both are logged in the JIB point-of-sale system and reported in Taxpayer's financial statements. Moreover, the customer experience is identical. Yet, the two restaurants receive very different treatment for purposes of determining California taxation.

Because a disproportionate number of company-owned restaurants are in California, the exclusion of franchised burger sales under the standard apportionment formula causes a significant overstatement of Taxpayer's business activity in California. In other words, even though most of the Jack in the Box's restaurants and sales are outside the state, the standard formula over reflects the small percentage of company-owned restaurants that happen to be located in California. The result is a stark overstatement of California tax.³

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³ It is important to note that this issue does not exist for JIB's competitors that did not start their businesses in California or for historically California-based competitors that chose to sell their California locations and move their headquarters out of state. This only affects JIB due to JIB's commitment to retain ownership of California restaurants.



Due to this unique set of circumstances, the standard formula in this case does not fairly represent JIB's business activity in California over the years at issue,⁴ and Taxpayer seeks remedy from the FTB under California Revenue & Taxation Code ("CRTC") section 25137.

II. FACTUAL BACKGROUND

JIB opened its first restaurant in San Diego, California in 1951. Since then, the company has grown into one of the nation's largest burger chains. JIB began its expansion by opening more company-owned locations in California and the southwest. It was not until the 1970s that JIB began to franchise locations. Today, the JIB brand has over 2,200 restaurants. While other historically California-based restaurants quickly adopted the franchise business model and relocated their headquarters to other states, JIB remained devoted to its California locations and gradually expanded out of state through franchising. Consequently, over the tax years at issue, JIB's company-owned locations are mostly located in California, and its franchised locations are predominantly located outside the State.

For example, in 2019, only 6 percent of JIB's restaurants were company-owned, and 80 percent of those company-owned locations were in California. Stated differently, out of over 2,200 of JIB's total restaurants, 137 were company owned and 109 of those company-owned restaurants were in California. In contrast, 94 percent of JIB restaurants are franchised, and over 60 percent of those are located outside the state.⁵

^{4 2014-2020} are at issue in front of the Franchise Tax Board.

⁵ Exhibit 1 – Fiscal Year End ("FYE") 2014 - 2020 Restaurant Store Count.



A. JIB Business Model – A Franchise System with Company Restaurants

JIB works closely with dedicated and hard-working entrepreneurs to deliver a consistent and quality product across all its restaurants. JIB utilizes strict quality control measures with its franchisees to ensure that the restaurants present as one brand. Such that when a customer walks into a JIB restaurant, the customer cannot distinguish if the restaurant is franchised, or company owned. By design, the experience is the same. The branding, décor, menu items, ingredients, equipment, fixtures, supplies, software, and employee uniforms are all the same and controlled by JIB.

Once the customer orders a menu item, the order is completed on a central JIB point-of-sale system that logs what items are sold and the gross receipts received for those items. This process is the same, regardless of whether the restaurant is company owned or franchised. Further, every gross receipt logged by the JIB point-of-sale system is disclosed in JIB's public financial statements. These gross receipts are reported in the financial statements as "systemwide sales" in order to give investors insight into the brand's overall activities and financial health, rather than just the health and activities of the company-owned restaurants. It is crucial for JIB investors to know the systemwide sales figures because gross receipts, whether from franchised or company-owned restaurants, are the chief driver of JIB's profits. The business activity that generated the

⁶ Exhibit 2 — FTB, Preliminary Determination Letter, pg. 13.

⁷ Exhibit 3 — Jack in the Box, 2019 10K Annual Report, pg. 30.

⁸ "We believe franchised and system restaurant sales information is useful to investors as they have a direct effect on the Company's profitability." Exhibit 3 — Jack in the Box, 2019 10K Annual Report, pg. 30.



gross receipts — a restaurant making burgers — is the same down to every detail and is controlled by JIB.

Jack in the Box Restaurant Sales9

\$3,167,920,000
\$336,959,000
\$3,504,879,000
90%

B. Franchised restaurants pay JIB on gross receipts.

JIB earns income from franchisees primarily through royalties and rent. ¹⁰ The income earned from franchisees is based on a percentage of gross receipts earned by each franchised restaurant in the point-of-sale system. The franchisee pays JIB about 15 percent of the gross receipts earned by the restaurant. ¹¹ The royalty and rental payments are automatically debited from the franchisee's bank account weekly or monthly, depending on franchisee. ¹²

⁹ Exhibit 3 — Jack in the Box, 2019 10K Annual Report, pg. 30.

¹⁰ JIB also earns income from marketing fees paid by the franchisees for brand advertising, but the Franchise Tax Board staff has excluded marketing receipts from representation in the apportionment formula. Contrary to *Microsoft Corp. v. Franchise Tax Bd.*, the FTB staff argues that marketing receipts do not meet the definition of gross receipts. *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750.

¹¹ About 10 percent for rent and 5 percent for royalties.

¹² Exhibit 4 – JIB has a security interest in franchisee bank accounts. Franchise Disclosure Document, March 2022, Exhibit H-1, pg. 17-18.



Gross receipts earned by franchised restaurants account for the vast majority of all systemwide sales. For example, in 2019, franchised restaurants account for 90 percent of all systemwide sales. ¹³ In the same year, franchised restaurants accounted for 79 percent of JIB's operating profit.

Percentage of Franchise Sales compared to All Systemwide Sales	90%
Franchise Operating Profit	\$223M ¹⁴
Company-Owned Restaurant Operating Profit	\$58M ¹⁵
Total Operating Profit	\$281M ¹⁶
Franchise Operating Profit as a percentage of Total Operating Profit	~79%17

III. ISSUE

The underlying business activity of both company-owned and franchised restaurants is the same, yet the standard formula treats franchised receipts very differently. While this disparate treatment is not problematic if franchised and company-owned restaurants are evenly spread geographically, in Taxpayer's case, the

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¹³ Exhibit 3 — Jack in the Box, 2019 10K Annual Report, pg. 30.

¹⁴ See Exhibit 5. Total franchise revenues of \$613M – Total franchise costs of \$390M = \$223M. Franchise costs inclusive of depreciation on company-operated locations.

¹⁵ See Exhibit 5. Total company-owned revenues of \$336M – Total company-owned costs of \$278M = \$58M. Company owned costs inclusive of depreciation on company-operated locations and marketing costs.

¹⁶ See Exhibit 5. \$223M (Franchise Operating Profit) + \$58M (Company-owned Operating Profit) = \$281M.

 $^{^{17}}$ \$223M ÷ \$281M = 79%.



concentration of company-owned restaurants in California and franchised restaurants outside the State creates distortion in the standard formula that requires remedy.

To illustrate the issue, consider a simplified example: ¹⁸ JIB earns income from only two restaurants: both company owned. One restaurant is located in California and the other in Arizona. Both restaurants earned gross receipts of \$1M. JIB's California apportionment formula would be as follows:

$$\frac{\$1M \text{ (receipts in CA)}}{\$1M \text{ (receipts in AZ)} + \$1M \text{ (receipts in CA)}} = \frac{\$1M}{\$2M} = \mathbf{50}\%$$

Both restaurants' activities generate half of the total gross receipts, and therefore, half of the income is fairly apportioned to each state.

In contrast, consider the same example except one restaurant is franchised and the other is company-owned. The franchised restaurant is located in Arizona and the company-owned restaurant is in California. Both restaurants sold \$1M of food items, all of which were accounted for in Taxpayer's point-of-sale system, and thus have gross receipts of \$2M combined. JIB received \$150K from the franchised restaurant because it earns roughly 15 percent of gross receipts for royalties and rent. ¹⁹ Only \$150K of the net franchise receipts from franchisees ²⁰ are included in the standard formula. Accordingly, JIB's apportionment formula would be as follows:

²⁰ Excluding marketing receipts per the FTB.

¹⁸ The example is intentionally simplistic for illustration purposes. JIB's figures vary slightly on a per restaurant average basis. For example, in 2019, a Jack in the Box company-owned restaurant earned gross sales of roughly \$2.7M in Arizona and \$2.6M in California.

¹⁹ As noted, JIB actually receives an additional 5 percent for marketing fees, but the FTB has argued that marketing receipts are not gross receipts and have excluded them from the apportionment formula.



$$\frac{\$1M \text{ (company restaurant receipts in CA)}}{\$1M \text{ (company restaurant receipts in CA)} + \$150K \text{ (franchise receipts in AZ)}} = \frac{\$1M}{\$1.15M} = 87\%$$

Despite having identical underlying restaurant activity, the second example produces a drastically different and distortive result. This is because the activity generating the franchise income is ignored by the standard formula. Customers purchased the same number of food items in each restaurant between the two states, i.e., the activities generating the gross receipts were identical. However, in this example, the standard formula apportions 87 percent of JIB's income to California despite 50 percent of the underlying restaurant business activities being in Arizona. Luckily, the law affords a remedy for such circumstances.

IV. APPLICABLE LAW

CRTC section 25137 provides a mechanism whereby a taxpayer or the FTB may challenge the operation of the standard apportionment formula when the standard formula distorts the amount of income reported to a state in relation to a taxpayer's activity in the state. CRTC section 25137 states that, if the standard apportionment formula does "not fairly represent the extent of the taxpayer's business activity" in California, taxpayers may petition for an alternative apportionment method.

²¹ Cal. Rev. & Tax. Code § 25137.



V. DISCUSSION

A. The standard formula's exclusion of Taxpayer's franchised restaurant receipts severs the necessary relationship between how income is earned and how the formula apportions that income.

The United States Supreme Court in *Container Corp. v. Franchise Tax Board* ("Container"), has stated that the "factor or factors used in the apportionment formula must actually reflect a reasonable sense of how income is generated." ²² In other words, there should be a reasonable and fair relationship "between the particular sources of income that are included in the apportionable tax base and the factors that are used to apportion such income." ²³

In Taxpayer's case, franchised restaurants conduct the same underlying activities as company-owned restaurants and generate substantial gross receipts, which directly contribute to JIB's profits. Although the franchised restaurant gross receipts generate income for JIB, those receipts are not reflected in the standard apportionment formula. As displayed in the charts above, approximately 90 percent of Taxpayer's systemwide restaurant sales were from franchised restaurants and 94 percent of JIB's restaurants were franchised overall. Yet, franchise activity only accounts for approximately 50 percent of the standard apportionment formula.

²² Container Corp. of Am. v. Franchise Tax Bd. (1983) 463 U.S. 159, 169.

²³ Hellerstein, State Taxation (3rd ed. 2021) Allocation and Apportionment of Corporate Net Income Under State Law, §9.15, pg. 836.



On the other hand, 137 restaurants — out of 2,243 total restaurants — were company-owned but those 137 restaurants make up nearly all the remaining everywhere sales under the standard apportionment formula.²⁴

Simply put, the standard formula does not "actually reflect a reasonable sense of how the [franchise] income is generated" as required by the Supreme Court in *Container*." ²⁵ The standard formula attenuates the required fair relationship between JIB's franchise income and the formula used to apportion that income.

B. Nearly 80 percent of Taxpayer's operating income is not fairly represented in the standard apportionment formula, which is distortive under California Supreme Court precedent.

In the California Supreme Court case *Microsoft Corp. v. Franchise Tax Board* ("*Microsoft*"), the court found that treasury receipts were distortive where the receipts generated less than 2 percent of Microsoft's income but 73 percent of its gross receipts. ²⁶ However, the court also noted that the inverse of Microsoft's facts, i.e., activity that generates a large portion of income, but minimal gross receipts could also be distortive. Specifically, the Court noted that the FTB's approach of removing large receipts can result in an exaggeration of California tax when the receipts account for a substantial portion of the taxpayer's income: ²⁷

We caution, however, that in other cases the Board's approach may go too far in the opposite direction and fail the test of reasonableness. *By mixing* net receipts for a particular set of out-of-state transactions with gross

²⁴ Franchise receipts and company-owned receipts do not make up 100 percent of the apportionment formula. Together franchise receipts and company-owned receipts make up approximately 92 percent of the apportionment formula. The remaining portion of the formula is largely made up of refranchising receipts and other income.

²⁵ Container Corp. of Am. v. Franchise Tax Bd. (1983) 463 U.S. 159, 169.

²⁶ Microsoft Corp. v. Franchise Tax Bd. (2006) 39 Cal.4th 750, 771.

²⁷ Microsoft Corp. v. Franchise Tax Bd. (2006) 39 Cal.4th 750, 771.



<u>receipts</u> for all other transactions, it minimizes the contribution of those out-of-state transactions to the taxpayer's income and exaggerates the resulting California tax. If, unlike here, treasury operations provide a substantial portion of a taxpayer's income, this exaggeration may result in an apportionment that does not fairly represent California business activity.²⁸

The situation that *Microsoft* warned of is present in this case. Most of the activity required to produce franchise income is not reflected in the apportionment formula, but franchising generates nearly *four times* as much net operating income for Taxpayer as operating company-owned restaurants. As summarized above, for tax year 2019, over 2,100 franchised restaurants account for 90 percent of JIB's sales and over 79 percent of JIB's total net operating income. Despite this, franchised restaurant gross receipts are not fully or fairly reflected in the formula. Conversely, 137 company-owned restaurants have nearly the same amount of receipts in the standard formula as the other 2,100 restaurants. Those 137 restaurants, 109 of which are in California, are greatly exaggerated in the standard formula. Essentially, JIB is punished under the standard apportionment formula for retaining ownership of California restaurants.

As *Microsoft* warned, when the activity that is not fully reflected in the apportionment formula produces "a substantial portion" of a taxpayer's income as it does here, the exaggeration can produce an unfair representation of California business activity. Taxpayer submits that the exaggeration of California company-owned

 28 Microsoft Corp. v. Franchise Tax Bd. (2006) 39 Cal.4th 750, 771. (emphasis added).



restaurant activity unfairly reflects Taxpayer's activity in the State. The distortion requires remedy under CRTC section 25137.

> C. Employing a restaurant count ratio or inclusion of franchised restaurant gross receipts in the apportionment formula are reasonable remedies.

CRTC section 25137 lists several remedies for distortion that may be used, including "[t]he employment of any . . . method to effectuate an equitable allocation and apportionment of the taxpayer's income."29 The party requesting relief must show its proposed alternative apportionment method is reasonable.

Taxpayer's first proposed remedy is to apportion restaurant income based on a ratio of California restaurants to total restaurants. For example, in 2019, there are 941 California restaurants (company-owned and franchised), and 2,243 total restaurants, which is about 42 percent of locations in California. If 42 percent of Taxpayer's restaurant business is located in the State, then 42 percent of its restaurant income should be apportioned to the State.³⁰ JIB locations are the driver of its business activity in and outside California. This remedy is reasonable because it apportions income in relation to JIB's actual business activity in the State, as required by the Supreme Court in Container.

In the alternative, Taxpayer offers another simple and consistent remedy: the inclusion of franchised restaurant gross receipts in JIB's apportionment formula. As detailed above, franchised restaurant gross receipts are reported in JIB's point-of-sale

²⁹ Cal. Rev. & Tax. Code § 25137.

³⁰ In contrast, JIB's 2019 California apportionment percentage was 61 percent.



system when a customer purchases food. These franchise restaurant receipts are included in Taxpayer's financial statements, along with Taxpayer's company-owned restaurants receipts, to demonstrate the level of activity for all JIB restaurants. Further, Taxpayer's franchise income is based on the franchised restaurant gross receipts from the point-of-sale system and automatically debited from franchisee bank accounts. Taxpayer even has a security interest in those franchisee bank accounts.³¹ The franchised restaurant receipts represent the activities required to produce nearly 80 percent of JIB's operating income and should be fairly reflected.

VI. CONCLUSION

As shown, the standard formula erodes the relationship between how Taxpayer earns its income and how that income is apportioned. The use of either a restaurant count ratio or inclusion of franchised restaurant gross receipts in the apportionment formula restores the necessary relationship between the income and formula that apportions that income.

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³¹ Exhibit 4 — Franchise Disclosure Document, March 2022, Exhibit H-1, pg. 17-18.



Exhibit 1

Jack in the Box (JIB)

Exhibit 1 - Restaurant Count

	ENE 2011		
	FYE 2014 Company - Own	Franchise	Total
California	241	692	933
Out-of-State	190	1127	1317
Everywhere	431	1819	2250
Percentage of JIB Stores in CA	56%	38%	41%
	FYE 2015		
	Company - Own	Franchise	Total
California	243	695	938
Out-of-State	170	1141	1311
Everywhere	413	1836	2249
Percentage of JIB Stores in CA	59%	38%	42%
	FYE 2016		
- 112	Company - Own	Franchise	Total
California	243	696	939
Out-of-State	174	1142	1316
Everywhere	417	1838	2255
Percentage of JIB Stores in CA	58%	38%	42%
	FYE 2017		
0.116	Company - Own	Franchise	Total
California	170	769	939
Out-of-State	106	1206	1312
Everywhere	276 62 %	1975	2251
Percentage of JIB Stores in CA	02/0	39%	42%
	FYE 2018	Franchise	Total
California	Company - Own	827	936
Out-of-State	28	1273	1301
Everywhere	137	2100	2237
Percentage of JIB Stores in CA	80%	39%	42%
	FYE 2019		
	Company - Own	Franchise	Total
California	109	832	941
Out-of-State	28	1274	1302
Everywhere	137	2106	2243
Percentage of JIB Stores in CA	80%	40%	42%
	FYE 2020		
	Company - Own	Franchise	Total
California	108	835	943
Out-of-State	36	1262	1298
n 1			

2097

40%

2241

42%

144

75%

Everywhere

Percentage of JIB Stores in CA



Exhibit 2

JACK IN THE BOX INC. ATTN: JEREMY STRAUSS 9357 SPECTRUM CENTER BLVD. SAN DIEGO CA 92123-1444 Date: 11.30.2023

Case: 18780675077676323 Case Unit: 18780675077676326 In Reply, Refer to: 353:JN:L-22

Regarding: 25137 Variance Action Request

CCN: 0631563

Taxpayer's Name: Jack in the Box Inc. and Subsidiaries Taxable Years: 09/28/2014 - 10/01/2017

Jack in the Box, Inc. ("JIB" or "Taxpayer", hereafter) has requested an alternative apportionment formula, as provided under Revenue and Taxation Code section 25137 ("R&TC section 25137"), for the apportionment of income from its company-owned restaurants and royalties from franchised restaurants in fiscal year ending ("FYE") 09/28/2014 through 10/01/2017.

Based on my analysis of the relevant facts, I have concluded that JIB has not shown with clear and convincing evidence that the standard formula unfairly reflects the extent of its business activity in California and that the proposed alternative is reasonable. Therefore, I am recommending to our staff committee who reviews Section 25137 variance action requests (hereafter referred to as the "Section 25137 Review Committee") that your request for relief be denied. The Section 25137 Review Committee makes a recommendation to Legal management to allow, modify, or deny the variance action after a careful consideration of the facts and documents provided by you and me. Legal management makes the ultimate decision on the variance action request. Discussed hereafter are the facts I relied upon, my analysis and the application of the law to the facts, and other information that was provided to me in the letters dated 06/25/2019, 03/12/2020, 08/20/2020, and 09/22/2021.

Summary of Taxpayer's Variance Action Request

Taxpayer was represented by PricewaterhouseCoopers LLP and submitted a letter claim dated 06/25/2019 for FYE 09/2014 through 10/2017, requesting permission to use an alternative apportionment formula pursuant to R&TC section 25137. Specifically, Taxpayer believed that the standard apportionment formula does not fairly represent the extent of its business activities in California and requested relief as allowed by R&TC section 25137.

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Taxpayer asserted that the standard apportionment formula is distortive. They believed that fair representation of JIB's California business activity required apportionment according to a ratio of California company-owned stores and franchises over company-owned stores and franchises everywhere.

The claim for refund letter dated 06/25/2019 stated in part the following:

During the taxable years at issue, JIB generated two income streams reflecting similar activities carried on within and outside California. One income stream represents rents, royalties, and other service charges related to restaurant operations of franchisees conducted disproportionately outside California ("Franchise Revenue"), and a second income stream represents operational receipts related to restaurant operations directly owned by JIB and conducted disproportionately within California ("Restaurant Revenue"). Both of these revenue streams represent the very same kinds of underlying activity but the standard apportionment rules attribute distinctly more gross receipts to California from the operation of directly owned restaurants with the result that the standard apportionment formula assigns a disproportionate amount of income to California.

It is well-established that a fair apportionment formula "must actually reflect a reasonable sense of how income is generated.: (Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983).) Application of the standard formula has been regularly upheld by courts on the basis that the standard factors apportion income to the state based on the income-producing activity in the state. However, both the courts and UDITPA anticipated situations in which the standard apportionment formula would not fairly reflect the means by which the business generates income in the state. As a remedy to address these concerns and to provide a method by which states may tax each multistate business fairly, UDITPA provided for the use of alternative methods of apportionment, which is codified for California purposes in CRTC section 25137. Thus, when the standard formula does not fairly capture a taxpayer's business, CRTC section 25137 allows both taxpayers and tax collection agencies the option to use a reasonable alternative.

Here, including JIB's Franchise Revenue and out of state income in its income base but apportioning those to California based upon use of a receipts factor largely representative of its Restaurant Revenue, does not fairly reflect the market used to generate JIB's income. The mixing of JIB's lower margin California Restaurant Revenue with the higher margin Franchise Revenue from out of state restaurant operations is a distinct mismatch, which mismatch the California Supreme Court recognized in *Microsoft v. Franchise Tax Bd.,* 39 Cal. 4th 750 (2006), fails to fairly represent the measurement of activity that the sales factor was intended to capture.

Since JIB's sales factor does not fairly reflect the level of income generated in California, a reasonable alternative method of apportionment must be applied pursuant to CRTC section 25137. In order to address this mismatch in

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apportionment factors, the income generated from all restaurant operations (whether from receipt of Franchise Revenue or from Restaurant Revenue) should be apportioned based on the ratio of JIB and Qdoba restaurants in California, to the total number of restaurants everywhere. This alternative addresses the mismatch and distortion resulting from application of the standard apportionment formula and provides a fair representation of JIB's business activity in California.¹

Audit followed up on the claim letter with Information Document Request ("IDR") 010 requesting any additional facts or information to overcome the two challenges needed to use an alternative formula in evaluating the variance action request for FYE 09/2014 through 10/2017.

In response to IDR 10, Taxpayer provided the following background facts:

Jack in the Box brand restaurants are operated through two distinct structures: (1) restaurants that are company-owned and operated ("Company-Owned" stores) and (2) restaurants which are owned and operated by third party franchisees. ("Franchised" stores). During the years at issue, Jack in the Box branded restaurants included an average of 2,250 stores (both company-owned and franchised) throughout the United States and Guam.² Of these Jack in the Box restaurants, an average of only 17 percent were company-owned and operated, while an average of 83 percent were franchise-operated.

Taxpayer included a footnote which stated in part the following:

In 2003, JIB acquired then Denver based QDOBA Restaurant Corp. ("QDOBA"), expanding into the area of Mexican fast casual food. The discussion that follows focuses only on Jack in the Box branded stores (both company-owned stores and franchised stores). QDOBA operated almost exclusively outside of California with very little presence in California. Further, JIB sold QDOBA in March of 2018.

Taxpayer continued with a description of the revenue streams as follows:

Most Company-Owned stores are in California, while most Franchised stores are outside of California.

For Company-Owned stores, JIB's receipts are generated from the retail sale of prepared food. The operating profit margin from operating company-owned stores ranged from 18.55% to 21.24% during the years at issue. Roughly 75 percent of JIB's gross receipts are derived from Company-Owned restaurant operations.³

¹ Per written response to IDR 022 and Exhibit 1, JIB proposed to apply the alternative apportionment method to all gross receipts except gross receipts from Qdoba. The ratio is Jack in the Box branded total restaurant count in California (both owned and franchised stores) over Jack in the Box branded total stores everywhere (both owned and franchised).

² Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 2.

³ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 28; Annual Report 10-K (FYE 2016), page 23.

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JIB also derives revenue from stores operated by third party franchisees. Such revenues include royalties paid to JIB based on a percentage of the Franchised stores' gross sales. The profit margin on JIB's royalties from Franchised store operations ranged from 91.39% to 94.12% during the years at issue. As will be discussed in further detail below, the two different types of revenue streams from Company-Owned stores and from royalties from Franchised store operations come from very different business activities leading to wildly disparate profits margins.

Taxpayer stated the following comparison of JIB's Company-Owned stores operations to it franchising operations.

For Company-Owned stores, JIB's receipts are generated from the retail sales of food. JIB operates the restaurant and is directly responsible for the operations of the restaurant, including product quality, service, food safety, cleanliness, inventory, cash control and the conduct and appearance of employees.⁵ As such there are far more employees, fixed assets, production costs, time, capital requirements, etc. required for Company-Owned stores than for Franchise operations. Thus, JIB's income from Company-Owned stores includes relatively high costs when compared with Franchising Operations.

For JIB's Franchised stores, the franchisees, not JIB, are responsible for bearing the costs associated with running the store.⁶ As discussed, JIB's income from Franchised stores is based on a royalty paid to JIB based on a percentage of the Franchised stores' sales and rental income from stores rented to the franchisees.⁷ JIB franchise agreements generally provide for an initial franchise fee of \$50,000 per restaurant for a 20-year term, royalty payments, and marketing fees at 5 percent of gross sales.⁸ Royalty rates, can range from 1 percent to as high as 15 percent of gross sales.⁹

For these activities, JIB requires for less employees, fixed assets, production costs, time, capital requirements, etc. JIB's franchising activities primarily include ensuring franchisees are meeting JIB standards for JIB branded stores. Thus, Franchised store

⁴ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 4. In addition, in several cases JIB also leases or subleases the underlying land and the improvements (buildings) used by the franchisees for which it receives rental payments. See Jack in the Box Inc. Annual Report 10-K (FYE 2017), pages 4-5.

⁵ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 5.

⁶ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 15, 26.

⁷ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 4-5.

⁸ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 4-5.

⁹ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 4-5. JIB also offers development agreements to franchisees for construction of new restaurants and sells to the franchisee the restaurant equipment and the right to do business at a location for a specified term. Additionally, the land and buildings used by the Franchised stores are generally owned by JIB and leased or subleased to the franchisee at a negotiated rent. *Id.*

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activities generally include relatively minimal costs¹⁰ when compared to Company-Owned store operations.

Taxpayer asserted that the standard apportionment formula unfairly reflects JIB's activities in California.

Prior to UDITPA, federal case law established that the Constitution barred a state from taxing "value earned outside its borders." The Constitution requires "a rational relationship between the incomes attributed to the state and the intrastate values of the enterprise. Federal courts found these principals violated when an apportionment formula attributed income to the state that was 'out of all appropriate proportions to the business transacted in the State' or 'led to a grossly distorted result. In Only then was a taxpayer entitled to use an alternative apportionment formula.

When California adopted UDITPA, California adopted a far less extreme standard for invalidating the standard apportionment formula.¹⁴ More specifically, CRTC section 25137 only requires that the allocation and apportionment provisions "do not fairly represent the extent of the taxpayer's business activity" in California before allowing the use of a different apportionment method.

Taxpayer further explained that in this case, apportioning the income from the operation of JIB's company-owned stores and royalties from franchising activity together using the standard apportionment formula results in an unfair reflection of JIB's California activities because:

- 1.) Profit margins of operating JIBs company-owned stores are drastically lower than the profit margins from the royalties generated by franchised stores,
- 2.) JIB's franchised stores are mostly located outside of California,
- 3.) JIB's company-owned stores are mostly located within California,
- 4.) Majority of JIB's restaurants are franchised overall; and
- 5.) JIB's company-owned store operations and franchising activity are vastly different business activities for JIB.

Taxpayer concluded,

 $^{^{10}}$ See Jack in the Box Inc. Annual Report 10-K (FYE 2017), page 30-31; Annual Report 10-K (FYE 2016), page 24-26.

¹¹ ASARCO Inc. v. Idaho State Tax Comm'n, 458 U.S. 307, 307 (1982).

¹² Mobil Oil Corp. v. Comm'r of Taxes of Vermont, 445 U.S. 425, 437(1980).

¹³ Norfolk & W. Ry. Co. v. Missouri State Tax Comm'n, 390 U.S. 317, 326 (1968); Hans Rees' Sons v. State of N. Carolina ex rel. Maxwell, 283 U.S. 123, 135 (1931).

¹⁴ The party invoking section 25137 "need only satisfy the lesser statutory standard" by showing that the apportionment provided by the standard formula is not a fair representation of the taxpayer's business activity in California and that the proposed alternative is reasonable. *Microsoft Corp. v. Franchise Tax Bd.* ("Microsoft") 39 Cal. 4th 750, 772 n.16 (2006).

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Thus, mixing the two different aspects of JIB's business (royalties from franchised store operations and company-owned store operations) within the California sales factor results in an unfair reflection of JIB's California activities because a much larger amount of lower-margin receipts from company-owned California stores are unfairly attributing to California the higher margin profits derived from franchising revenues which are largely derived from out-of-state third-party franchisees.

Taxpayer stated the following about the use of quantitative and qualitative analysis to show distortion.

When interpreting the lower distortion standard under CRTC section 25137, the California Supreme Court has used a quantitative and qualitative analysis to determine whether distortion was present. The quantitative and qualitative analysis are useful in assessing the fairness of the standard apportionment formula. However, "[t]he ultimate goal is assessing whether the standard formula fairly represents the company's business activity in California. 16

Taxpayer relied on General Mills and Microsoft concepts of qualitative and quantitative distortion and stated in part the following:

General Mills, Inc. v. Franchise Tax Board ("General Mills"), is demonstrative of the analysis under the qualitative test. ¹⁷ In General Mills, the taxpayer was a consumer foods company that engaged in hedging activities. The taxpayer used hedging activity to smooth out price fluctuations in agricultural commodities that it used to manufacture its products. The question before the court was whether it was distortive to include gross receipts from the taxpayer's hedging activities in the taxpayer's sales factor. The court found such activity to be qualitatively different from the taxpayer's main line of business, the sales of finished consumer products, even though the hedging activity was a critical support function to the taxpayer's main line of business. ¹⁸ The court accepted several qualitatively distinguishing factors including: number of employees engaged in the activity, plant and equipment needed for the activity, storage space needed, transportation needed, production costs, scalability, time, capital requirements, profit motive, etc. ¹⁹

A key metric for the quantitative analysis is comparing profit margins.²⁰ General Mills is also demonstrative of the quantitative analysis of comparing profit margins. In General Mills, the court found that the differing profit margin between the taxpayer's hedging activities and its non-hedging activities was distortive.²¹ General Mills relied on language from Microsoft that stated that the apportionment factors were

¹⁵ Microsoft Corp. V. Franchise Tax Bd., Cal. 4th 750 (2006)

¹⁶ General Mills, Inc. v. Franchise Tax Bd., 208 Cal. App.4th 1290,1301 (2012).

¹⁷ General Mills, Inc. v. Franchise Tax Bd., 208 Cal. App. 4th 1290 (2012).

¹⁸ Id. at 1305.

¹⁹ *Id.* at 1304-05

²⁰ General Mills, Inc. v. Franchise Tax Bd., 208 Cal.App. 4th 1290, 1308 (2012)

²¹ Id. at 1311-12.

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designed to capture a corporation's income producing activities within the state under the assumption that a corporation's profit margins generated by those factors will not vary inordinately from state to state.²² "This approximation works well enough in the absence of huge variations in state-to-state margins."²³ When there are variations in state-to-state margins, "rote application of the standard formula does not fairly represent the extent of a taxpayer's activity in each state" and cannot properly estimate the amount of income attributable to every state in which the taxpayer has a presence.²⁴ The court's decision concluded that alternative remedies recognized by UDITPA are designed to ameliorate situations where businesses have operations with significantly different margins.

Taxpayer claimed that JIB's company-owned store operations are qualitatively different than JIB's royalties from franchised store operations.

Here, JIB's business activities necessary to generate revenue from Franchised stores are qualitatively different from JIB's activities that generate revenue from Company-Owned stores. For Company-Owned stores, JIB is directly responsible for all the costs of operating a restaurant including the equipment, employees running the store, supplies, etc. Additionally, JIB is directly responsible for all the operations of the restaurant, including product quality, service, food safety, cleanliness, inventory, cash control and the conduct and appearance of employees. JIB receives its revenue in the form of restaurant sales.

On the other hand, for Franchised stores, JIB is not directly responsible for any of the costs of running a restaurant and has far fewer employees, no equipment, does not purchase the supplies, etc. JIB's activities include far different activities such as auditing Franchise stores for quality, negotiating royalties and rents, and other administrative activities. JIB receives Franchised store revenue in the form of royalties, rental income, or selling the rights to operate a franchise restaurant in a specific location. Thus, the activities for Company-Owned stores' and Franchised stores operations are qualitatively different.

Taxpayer claimed that the revenue from JIB's company-owned store operations was quantitatively different from JIB's royalties from franchised store operations.

Here, the income attributable to California using the standard apportionment formula results in quantitative distortion because of disparate profit margins between in-state and out-of-state-activities. For the tax years at issue, roughly 225 out of 385 JIB's Company-owned stores were in California. These Company-owned stores only generated an average profit margin of 20 percent over the same period. By comparison, roughly 1,154 out of 1,867 of JIB's Franchised stores were located outside of California over the tax years at issue. JIB's profit margins on royalties from

²² *Id.* at 1311.

²³ Id.

²⁴ Id.

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Franchised stores averaged a much higher profit margin of 92 percent. Further, although the vast majority of Jack in the Box branded stores overall were Franchised stores, an average of 83 percent for the tax years at issue, Company-owned stores accounted for about 75 percent of gross receipts. Thus, JIB's heavy concentration of lower-margin Company-owned stores in California unfairly attributed income clearly earned out of state by JIB from royalties received from higher-margin royalties from predominately out of state Franchised store operations.

JIB's situation is analogous to the situation in *General Mills*. In *General Mills*, hedging receipts pulled an unfair amount of income to Minnesota because hedging activities, occurring in Minnesota, generated low-margins compared to the taxpayer's California activities. In JIB's situation, Company-owned store operations, primarily occurring in California, are unfairly pulling in out-of-state income because Company-owned stores have low profit-margins and high-receipts when compared to royalties from Franchised store operations. Franchised store operations on the other hand, are underrepresented in the sales factor because JIB only receives a royalty of 1 to 15 percent of gross sales, and thus, a large portion of the receipts (and by proxy business activity) necessary to generate the royalty do not go into the sales factor as they would for Company-owned stores. Therefore, the standard apportionment formula results in quantitative distortion.

Taxpayer further asserted that once it has demonstrated that application of the standard apportionment formula does not fairly represent its activities within California, Taxpayer must propose a reasonable alternative. CRTC section 25137 lists possible apportionment remedies for distortion as:

- (a) Separate accounting;
- (b) The exclusion of any one or more of the factors;
- (c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. (Emphasis added).

Taxpayer proposed as a reasonable alternative apportionment method, that JIB apportion its JIB income based on a ratio of Jack in the Box stores (both owned and franchised) within California to those outside of California. Taxpayer further concluded,

This is the most reasonable alternative because it would measure the underlying business activities for Jack in the Box that generate the profits - restaurant operations. Although the revenue streams are both qualitatively and quantitatively different, both revenue streams are derived from the same underlying restaurant activity. Using a restaurant ratio lessens the disparity between high sales, lower profit margin Company-owned stores and lower revenue, higher profit margin royalties from Franchised stores by essentially putting both underlying restaurant activities on equal footing.

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Taxpayer's proposed alternative formula was applied to the as reported apportionment. The apportionment percentages for FYE 09/2014 through 10/2017 per audit and per Taxpayer's proposed alternative are as follows:

Table 1 - Apportionment Percentage Change							
09/2014 09/2015 10/2016 10/2017							
Per Audit	43.44%	42.86%	43.49%	43.74%			
Per Taxpayer's Proposed Alternative ²⁵	32.22%	31.53%	30.81%	29.83%			
Decrease	11.22%	11.33%	12.68%	13.91%			
Relative Apportionment % Change	25.83%	26.43%	29.16%	31.80%			

Taxpayer claimed that the proposed apportionment formula is reasonable and should be used to apportion JIB and Jack in the Box Eastern Division L.P. ("JIBED") income for all the tax years at issue. Taxpayer proposed to apportion Qdoba's income based on the standard apportionment.

LAW

R&TC section 25120 - Definitions

R&TC section 25120 provides definitions for terms used in sections 25120 to 25139, inclusive. For taxable years beginning on or after January 1, 2011, R&TC section 25120(f) defines sales and gross receipts for purposes of R&TC section 25134 as:

- (1) "Sales" means all gross receipts of the taxpayer not allocated under Sections 25123 to 25127, inclusive.
- (2) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part. ...

R&TC section 25128.7 - Apportionment of Business Income

Notwithstanding section 38006, for taxable years beginning on or after January 1, 2013, all business income of an apportioning trade or business, other than an apportioning trade or business described in section 25128(b), shall be apportioned to this state by multiplying the business income by the sales factor.

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²⁵ Per written response to IDR 022.

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CCR section 25134(b) – Sales Factor: Denominator

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Regulation 25137(c)

R&TC section 25135-Sales of Tangible Personal Property

- (a) Sales of tangible personal property are in this state if:
 - (1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale.
 - (2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.
- (b) For taxpayer years beginning on or after January 1, 2011, for purposes of determining whether sales are in this state and included in the numerator of the sales factor, all sales of the combined reporting group properly assigned to this state under this section shall be included in the sales factor numerator for this state regardless of whether the member of the combined reporting group making the sales is subject to the taxes imposed under Chapter 2 (commencing with Section 23101) or Chapter 2 (commencing with Section 23501) of this part. All sales not assigned to this state pursuant to subdivision (a) shall not be included in the sales factor numerator for this state if a member of the combined reporting group of the taxpayer is taxable in the state of the purchaser.

<u>CCR section 25137-3-Special rules for the Allocation and Apportionment of Income of Franchisors.</u>

The term "business of franchising" means a trade or business which includes the granting of a license by the taxpayer (franchisor) or a trademark, trade name or service mark, to market or use a product or service under such trademark, trade name or service mark in accordance with methods and procedures prescribed by the taxpayer.

Generally, franchisees pay fees to franchisors for providing various services. The regulation provides that fees received for (1) national and regional advertising placed by the franchisor; (2) administrative or advisory services; or (3) site investigation, selection and acquisition of a place of business for a franchisee must be attributed to the state in which the franchisee's place of business is located. [If the taxpayer is not taxable in the state of the franchisee, the receipts are attributed to the state in which the principal office of the employee performing the services is located.] If the services are performed by an independent contractor rather than by an employee of the taxpayer, the receipts must be attributed to the state of the taxpayer's commercial domicile.

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Fees or royalties received for the use of the franchisor's trademark, trade name, or the right to market a product or service must be attributed to the state in which the franchisee's place of business is located. If the taxpayer is not taxable in such state, the receipts must be attributed to the state of the taxpayer's commercial domicile.

CCR section 25136-2 - Sales Factor

- (e) Sales from the sale, lease, rental, or licensing of real property are in this state if and to the extent the real property is located in this state.
- (f) Sales from the rental, lease, or licensing of tangible personal property are in this state if and to the extent the tangible personal property is located in this state.
- (g)(3) The sales factor provisions set forth in Regulation sections 25137 through 25137-14 are hereby incorporated by reference, with the following modifications for taxable years beginning on and after January 1, 2011:
 - (C) The provisions in Regulation section 25137-3 [Franchisors] that relate to the taxpayer being, or not being taxable in a state shall not be applicable.

R&TC section 25137 - Alternative Formula

If the allocation and apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Franchise Tax Board may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any one or more of the factors;
- (c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ANALYSIS

I. Standard Formula

Pursuant to R&TC section 25128.7, for taxable years beginning on or after 01/01/2013, all business income of an apportioning trade or business, other than those qualified businesses referenced in R&TC section 25128(b), is subject to single-sales factor apportionment.

Taxpayer's apportioning trade or business did not meet the qualified business activities described in R&TC section 25128(b); therefore, Taxpayer was required to apportion its trade or business income using the single-sales factor for FYE 09/2014 through 10/2017.

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On the original returns filed for FYE 09/2014 through 10/2017, Taxpayer correctly applied CCR section 25135, which provides that sales from tangible personal property are assigned based on where the property is delivered. In this case food and beverage products were delivered to the consumers at the location of the company-owned restaurant. The sales revenue included in the California apportionment numerator from company-owned stores matched the revenue from California stores.

On the original returns filed for FYE 09/2014 through 10/2017, Taxpayer correctly applied CCR section 25136-2, which provides that lease or rental of real and tangible personal property are assigned based on the location of the real and tangible personal property. The franchise rental income was correctly assigned using the rules under CCR section 25136-2.

On the original returns filed for FYE 09/2014 through 10/2017, Taxpayer correctly applied CCR section 25137-3, which provides that franchise royalties and fees are assigned based on the location of the franchise. The franchise royalties and fees were correctly assigned using the rules under CCR section 25137-3.

II. Application of Section 25137

To use an alternative formula, a taxpayer must overcome two challenges.²⁶ First, the taxpayer must show that the approximation provided by the standard formula is not a fair representation of the extent of the taxpayer's business activity in California. Second, the taxpayer must show that the proposed alternative is reasonable.²⁷

A. Unfair Representation of Business Activity in California

To overcome the first challenge and carry its burden of proof, the taxpayer must prove by clear and convincing evidence that the standard formula does not fairly represent the extent of its business activity in California.

Taxpayer relies on *General Mill's* concepts of qualitative and quantitative distortion. Taxpayer's reliance on the *General Mills* case for qualitative distortion is misplaced. In *General Mills*, the California Supreme Court determined that the inclusion of the full amount of gross receipts from its commodity hedging revenue in the sales factor was distortive under R&TC section 25137. The Court concluded that General Mill's hedging activity while integral to the main consumer food business was qualitatively different from General Mill's other sales that are made for profit. The principal focus of the hedging activity was to manage the company's risk and to serve primarily as a supportive function. The hedging activity did not serve as a profit center for the company. In this case, Taxpayer did not consider whether the royalties received from the franchises have a profit motive. Both sales from company-owned restaurants and royalties received from franchises have a direct profitmaking motive.

²⁶ CCR Section 25137(a)

²⁷ Microsoft Corporation v. Franchise Tax Bd. 39 Cal.4th 750, 765 (2006)

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Taxpayer's case is distinguishable from *General Mill's* in that sales from company-owned restaurants and royalties received from franchises serve as profit centers for the company. In *General Mills*, after establishing that commodity hedging revenue had no profit motive the next analysis focused on the differences between the two business operations. The Courts found many differences in addition to hedging revenue having no profit motive. There were differences in the number of employees engaged, plant and equipment needed, production costs, necessity of consumer demand, contribution of the activity to the company's profit and loss, and the significance to shareholders as reflected in the annual reports.

In this case, Taxpayer was a franchisor that was in an integrated relationship with its franchisees. JIB as the franchisor established the franchises operating business, business systems, and grants the franchisees the right to establish their own franchise location. The franchisees could not exist without the franchisor and its brand equity. The relationship between the franchisor and franchisees was further evident with regards to the development agreements, site selection and design, brand specifications, supply chain and distribution, and information systems. Restaurants developed by franchisees were built to brand specifications on sites JIB had approved. All of the company-operated restaurants and franchises have a long-term contract with a third-party distributor, who provide distribution services to Jack in the Box restaurants. Taxpayer had business intelligence systems that provide key metrics in the operation of company-operated and franchised restaurants.²⁸ Thus, both revenue streams were derived from the same underlying restaurant activity and the brand equity that JIB had created in the past 60 plus years. However, Taxpayer only compared the direct versus the indirect responsibility of the employees engaged, plant and equipment, and production costs from company-owned restaurants versus franchises to show differences. Taxpayer's analysis was misplaced as both revenue streams had a direct profit-making motive and contributed to the company's overall profit. Also, both revenue streams were derived from the same restaurant activity, and thus had a necessity for consumer demand. Finally, both revenue streams were significant to the shareholders as reflected in the annual reports. Therefore, the sales from company-owned stores and royalties received from franchises were qualitatively similar.

Quantitative distortion within the meaning of *General Mills* was not present in this case. In *General Mills*, the court found that on average the non-futures profit margin exceeded the futures profit margin by 81 times. For taxable years in which General Mill's futures trading showed a profit, the non-futures profit margin exceeded the futures profit margin by 153 times. In *Microsoft*, the Supreme Court paid particular attention to the difference in profit margin in the challenged activity as compared to the primary business of the company. In *General Mills*, the main line of business was manufacturing which had a high profit margin while the challenged activity hedging revenue had a low profit margin. Therefore, in *General Mills* the profit margin disparity analysis was going from the historical business high to a challenged revenue low profit margin.

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²⁸ JIB FYE 10/2017 Form 10-K, pages 3-6

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Here, JIB's main line of business company-owned store sales generated profit margin's lower than the royalties received from franchises. Thus, the profit margin analysis in this case was going from a historical main line of business that was lower to an even higher franchise royalties profit margin. Per Taxpayer in Table 2 company-owned stores profit margins ranged from 18.55%-21.24%. The profit margins for royalties from franchising operations ranged from 91.39%-94.12%.

Table 2 – Profit Margins (Net Income/Gross Receipts)-Per Taxpayer ²⁹					
	09/2014	09/2015	10/2016	10/2017	
Company-Owned Stores	18.55%	20.67%	21.24%	20.14%	
Royalties from Franchises (Challenged Activity)	92.14%	91.39%	92.09%	94.12%	
Profit Margi	ns (Net Income/	Gross Receipts)	- Per GM Case		
Non-Futures Trading	81 Times	153 Times			
Non-rutures mading	greater	greater			
Futures Trading (Challenged Activity)	Zero Profit	Some Profit			

Taxpayer argues that the large disparity in profit margin between company-owned store sales and royalties received from franchises led to quantitative distortion. In this case the royalties from franchises generated a greater profit margin than its historical line of business-company-owned store sales. Also, the difference in the profit margin was misleading as Taxpayer excluded rental income from the franchise profit margin computations. Franchise revenues mostly consisted of royalties and rental income. Franchisors would have lease agreement to rent the restaurant location along with the franchise agreement. This led to a larger profit margin difference between company-owned store sales and franchise revenues. In Table 3, the rental income was included in the franchising operations profit margin. The resulting profit margins from franchising operations ranged from 48%-52%.

Table 3 – Profit Margins (Net Income/Gross Receipts)-Including					
Rental Income in Franchising Operations					
	09/2014	09/2015	10/2016	10/2017	
Company-Owned Stores	18.55%	20.67%	21.24%	20.14%	
Franchising Operations	48.12%	49.91%	51.46%	52.72%	

Table 4 shows the percentage of total revenue as reported from company-owned restaurants and from franchising operations (royalties and rental income).

Table 4 – Percentage of Gross Receipts					
09/2014 09/2015 10/2016 10/2017					
Restaurant Revenue	\$1,149,677,120	\$1,187,531,503	\$1,236,758,210	\$1,162,568,275	

²⁹ Per written response to IDR 010 and IDR 022

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Percentage of Company-Owned Stores Gross Receipts	73.86%	74.31%	73.50%	72.99%
Rental Income	\$222,883,070	\$228,168,062	\$239,945,715	\$239,050,349
Royalty Income	154,208,001	164,686,487	168,933,894	169,684,948
Franchising Operations Income	\$377,091,071	\$392,854,549	\$408,879,609	\$408,735,297
Percentage of Franchising Gross Receipts	24.23%	24.58%	24.30%	25.66%

In this case both revenue streams had a profit motive and generated positive profit margin and income. Here unlike the *General Mills* case, neither revenue stream from companyowned restaurants nor franchising operations had a negative or extremely low profit margin while generating gross receipts. This was because both revenue streams had a direct profitmaking purpose and contributed to the company's overall profit. Therefore, the profit margin disparity did not show quantitative distortion within the meaning found in the *General Mill's* case.

It is not enough that the taxpayer comes up with a formula that it believes is "better" than the standard formula. A similar argument was made by the FTB, and rejected by the BOE, in the Appeal of Merrill, Lynch, Pierce, Fenner & Smith, Inc., 89 SBE-017 (June 2, 1989), where the Board stated:

The FTB has also attempted to justify application of section 25137 by contending that its method is "better" than the standard formula. We have consistently rejected this type of argument as unavailing; what must be shown is sufficient distortion that the appellant's business activity in the state is not fairly reflected.

The central question under R&TC section 25137 is whether the standard allocation and apportionment provisions fairly represents the extent of the taxpayer's business activity in this state. The company-owned restaurant sales and rental income were apportioned to California based on the restaurant location which represents the business activity in California. Furthermore, special procedures had already been established in the regulations for franchisors. The special formula for franchisors is contained in CCR section 25137-3. Per CCR section 25137-3 the royalties from franchises would be apportioned based on the location of the franchise. The special formula was correctly used to apportion the franchise revenues to California. In this case, the standard apportionment did not unfairly represent the extent of Taxpayer's business activity in California for both company-owned restaurants and franchises.

Taxpayers attempted means of showing distortion-by comparing two revenue streams with a direct profit motive and showing differences in profit margin, sales output and locations was incorrect and must be rejected. The sales from company-owned restaurants were apportioned per R&TC section 25135-by location of the restaurant. The rental income was

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apportioned per CCR section 25136-2-by location of the restaurant. The franchise revenues were apportioned per CCR section 25137-3-by the location of the franchise. Taxpayer argued that less royalty revenue which has a higher profit margin from franchises largely located out of state was reflected in the sales factor. However, the royalties received were based on a percentage of sales that was negotiated in the franchise agreement. The locations of stores were determined by management and driven by consumer demand and business activity. Therefore, this was not a case where the standard apportionment unfairly represents the extent of Taxpayer's business activity in this state.

Since Taxpayer has failed to show that the standard formula unfairly reflects the extent of its business activity in California, the variance action request for relief under R&TC section 25137 for FYE 09/2014 through 10/2017 should be denied. Should the Committee agree with this recommendation, there is no need to evaluate the proposed alternative. However, if it is determined that the standard formula does not fairly reflect the extent of Taxpayer's business activity in California, the reasonableness of the proposed alternative must be evaluated.

B. Reasonableness of the Proposed Alternative

If there is a finding of unfair reflection in the standard formula, the next step is to determine whether the proposed alternative is reasonable.

Taxpayer proposed an alternative apportionment formula for FYE 09/2014 through 10/2017, a sales factor using the total number of company-owned and franchised restaurants in California over company-owned and franchised restaurants everywhere to apportion JIB and JIBED's income. Taxpayer proposed to use a separate apportionment formula for Qdoba's income. Taxpayer proposed to apportion income for Qdoba using the standard apportionment.

Taxpayer's proposed apportionment for JIB and JIBED's income is not reasonable as the standard apportionment already captures the actual business activity from company-owned restaurants and franchises based on the locations in California.

JIB has failed to prove by clear and convincing evidence that standard apportionment in FYE 09/28/2014 through 10/01/2017 unfairly represents the extent of the taxpayer's California business activities during those years, and accordingly, I recommend that the variance action request for relief under Section 25137 be denied.

Please confirm your agreement or disagreement with the facts outlined above. If there are any additional facts or information that you would like the Section 25137 Review Committee to consider, please provide this information in writing by 01/02/2023. If you intend to provide a written response, please confirm that you will be providing such a submission within 7 days of the receipt of this letter.

If you have any further questions or concerns, feel free to contact me on the matter.

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Thank you,

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Cc: Jung Pyun, Chris Whitney, and Ronald Cox (via secure email)



Exhibit 3

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

	2019		2018
Company-owned restaurant sales	\$ 336,807	\$	448,058
Franchised restaurant sales (1)	3,167,920		3,018,067
System sales (1)	\$ 3,504,727	\$	3,466,125
		-	

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

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

		2019		2018
Net earnings - GAAP	S	94,437	\$	121,371
Earnings from discontinued operations, net of income taxes		(2,690)		(17,032)
Income taxes		24,025		81,728
Interest expense, net		84,967		45,547
Gains on the sale of company-operated restaurants		(1,366)		(46,164)
Impairment and other charges, net		12,455		18,418
Depreciation and amortization		55,181		59,422
Amortization of franchise tenant improvement allowances and other		1,983		862
Adjusted EBITDA - Non-GAAP	S	268,992	S	264,152

Company Restaurant Operations

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

	2019			2018			
Company restaurant sales	S	336,807		\$	448,058		
Company restaurant costs:							
Food and packaging		97,699	29.0%		128,947	28.8%	
Payroll and employee benefits		100,158	29.7%		129,089	28.8%	
Occupancy and other		50,613	15.0%		71,803	16.0%	
Total company restaurant costs	S	248,470	73.8%	S	329,839	73.6%	

Company restaurant sales decreased \$111.3 million in 2019 as compared with the prior year. In 2019, the decrease was primarily driven by a decrease in the average number of company restaurants resulting from the execution of our refranchising strategy and, to a lesser extent, a decrease in traffic, which was more than offset by menu price increases and favorable changes in product mix. The following table presents the approximate impact of these (decreases) increases on company restaurant sales (in millions):

		2019	vs. 2018
Decrease in the average number of restaurants		\$	(117.0)
AUV increase			5.7
Total decrease in company restaurant sales		2	(111.3)
*	20		
	30		



Exhibit 4

EXHIBIT H-1

FRANCHISE AGREEMENT

JACK IN THE BOX

FRANCHISE AGREEMENT

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Site	No.	

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered in	ıto in the
City of San Diego, State of California, as of theday of	, by and
between DIFFERENT RULES, LLC, a Delaware limited liability company, h	aving its
principal place of business at 9357 Spectrum Center Blvd, San Diego, Californ	ia 92123
("Company"); and , , and , a [jurisdiction] [type of entity],	with its
principal place of business at "Franchisee".	

RECITALS

Company is the owner of the name JACK IN THE BOX® and certain other service marks, trademarks, names, logos and commercial symbols that are authorized for use from time to time in connection with JACK IN THE BOX restaurants, including but not limited to "Jack in the Box®" (the "Marks").

Company has expended time, effort and money to develop a distinctive restaurant format and operating system utilizing specialized and unique techniques, knowledge, expertise, skill and proprietary information. The restaurant format and operating system includes but is not limited to: operating and management systems and standards; specifications and procedures for the purchase, preparation and sale of food, beverages and other products; and a distinctive building design, decor and color scheme (the "System").

The System includes, among other things, the following elements, all of which may be deleted, changed, improved or further developed by Company from time to time: (a) know-how, specifications, methods and procedures for the content, preparation, marketing and sale of food and beverages, which are described in operating manuals for JACK IN THE BOX restaurants and in other written materials; (b) plans and specifications for distinctive, standardized premises and interior and exterior formats, styles, designs, decors, fixtures, equipment, layouts and signs which are described in operating manuals for JACK IN THE BOX restaurants and in other written materials; and (c) a public image that each JACK IN THE BOX restaurant is a unit in an established quick-service restaurant system, and that all JACK IN THE BOX restaurants are operated with uniform high standards for product quality and service and aesthetic effect of the restaurant premises.

Company operates, and grants franchises to operate, restaurants known as JACK IN THE BOX restaurants using the System and the Marks.

Franchisee recognizes the uniqueness, confidentiality and value of the System, and the advantages and benefits which may be obtained by using the System and the Marks, and desires to use the System and the Marks which Company uses and makes available to its Franchisees, in the operation of a JACK IN THE BOX restaurant.

Franchisee acknowledges that Company has entered into, and will continue to enter into, agreements with other franchisees that may contain provisions, conditions and obligations that differ from those in this Agreement, and that the existence of those agreements does not affect the parties' duties to comply with this Agreement.

In consideration of the foregoing, the fees and other sums payable by Franchisee and of the mutual covenants contained in this Agreement, the parties agree as follows:

1. LICENSE: SCOPE, TERM, NON-RENEWAL

Company grants to Franchisee a limited license, subject to the terms and conditions hereof, for the term of this Agreement, to use the System and the Marks, and such other Marks as Company may authorize from time to time in the operation of a JACK IN THE BOX restaurant the "Franchised Restaurant" at , more fully described in Attachment A hereto ("the Premises"), and at that location only. During the term of this Agreement, the Premises shall be used exclusively for the operation and promotion of the Franchised Restaurant. This license is non-exclusive, is for the described location only, and does not in any way grant to or confer upon Franchisee any proprietary rights or goodwill rights to the Marks or to any country, province, state, area, market or territory. Company retains the right and is expressly permitted to engage in the wholesale and retail production, distribution, and sale of products, including food products of any kind (i) under the JACK IN THE BOX trademark or any other trademarks, ii) through companyoperated restaurants (which may be operated by us or our affiliates, parents or subsidiaries), franchised restaurants or any alternative marketing channels or methods of distribution, and (iii) both outside and within the trading area of Franchisee's restaurant. Company may develop, establish or acquire other franchise systems for the same, similar or different products, and may grant licenses thereto, without providing Franchisee any rights therein.

The term of this Agreement shall commence on ______, and shall expire _____, unless sooner terminated in accordance with the provisions of this Agreement. Franchisee accepts this license with the understanding that this Agreement is not renewable, and that Company makes no assurance of the granting of a new license at expiration.

2. FRANCHISE FEE

In consideration of the granting of this license, Franchisee shall pay to Company, on or before the execution of this Agreement, the sum of fifty thousand dollars (\$50,000); provided that any pro-rated development fees paid under any applicable development agreement shall be applied against this fee. This entire sum is fully earned by Company upon the execution and delivery of this Agreement. The fee described above ("Franchise Fee") is net of any tax, excluding income tax but including excise tax or other fee imposed upon Company due to the collection of the Franchise Fee.

3. APPROVAL OF LEASES

For any leases entered into on or after this date, if Franchisee leases the Premises from a third party, Franchisee must employ its best efforts to use Company's standard form lease or lease addendum. Regardless of whether Company's standard form is used, all third-party leases must include the following terms and conditions:

- 1. Franchisee may not use the Premises for the operation of any business other than a Jack in the Box restaurant;
- 2. The landlord consents to the Franchisee's use of such Marks and signage as Company may reasonably require;
- 3. Company has the right to enter the Premises to make any modification necessary to protect its Marks or to cure any default under the lease or this Agreement, including the right to enter upon expiration to de-identify the Premises if franchisee fails or refuses to do so;
- 4. Franchisee must use its best efforts to require that Franchisee's landlord copy Company on any notices to Franchisee that are related to Franchisee's performance under the lease, including, but not limited to, late rent notices, notices of default, and notices of termination; notwithstanding the foregoing, Franchisee agrees to copy Company on Franchisee's responses to such notices;
- 5. If Franchisee is in default under the lease or if this Agreement is terminated, Company will have the right to cure the default or assume the lease, and to sublease the Premises for all, or any part of, the term of the lease;
- 6. A Memorandum of Lease will be recorded in the appropriate recorder's office in the county in which the Franchised Restaurant is located; and
- 7. The lease shall require that the landlord deliver to Franchisee a non-disturbance agreement (i) from the current holder of any mortgage or deed of trust which is a lien on the Premises, or (ii) if the landlord is the tenant under the terms of any master lease, from the lessor under such master lease. Such non-disturbance agreement shall provide that so long as Franchisee is not in default beyond any applicable cure periods under its lease, the lender or master lessor, as the case may be, shall not disturb Franchisee's use and possession of the Premises upon the default by landlord under the mortgage/deed of trust or master lease, or upon termination of the master lease for any other reason.

You will not be permitted to open the Franchised Restaurant for business unless Company approves the lease in writing. You may not amend or modify the lease without Company's prior written approval. Company's approval of a lease does not constitute a representation, guaranty or warranty, express or implied, of the successful operation or

profitability of any restaurant operated at that location; nor does such approval constitute a legal review of the terms and conditions of the lease.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF FRANCHISEE

Franchisee represents, warrants and covenants as follows:

- A. Franchisee has received, read and understood Company's Franchise Disclosure Document, and Franchisee acknowledges that no person has made to Franchisee, and no other material delivered to Franchisee has contained, any statements or representations or warranties inconsistent or contradictory with Company's Franchise Disclosure Document.
- B. Franchisee has delivered to Company a Certification of Entity Structure, which constitutes a true, complete and accurate description of all of the individuals who have an ownership interest in the franchise or Franchisee, if Franchisee is a legally formed entity. There has been no change in said ownership structure since the certification was delivered to Company. The ownership structure described in the certification shall remain unchanged during the term of this Agreement, unless modified in accordance with the provisions of this Agreement. The provisions of this Agreement relating to changes in ownership or ownership structure shall apply to all such changes, including changes in relative shares of ownership of a Franchisee.
- C. Franchisee represents and warrants that all Owners (as defined in this Section 4.C.) have executed, simultaneously with Franchisee's execution of this Agreement, the form of Guaranty and Assumption of Franchisee's Obligations (Attachment B). "Owner" means each person or entity that has any indirect or direct equity interest in Franchisee.
- D. Company shall have no liability for any excise, property or other taxes levied by any governmental tax authority upon Franchisee. Franchisee shall make timely filings of all tax returns, and shall pay when due all taxes levied or assessed in connection with the possession, ownership or operation of the Franchised Restaurant and the Premises. Franchisee may contest the validity or the amount of the tax in accordance with applicable procedures of the jurisdiction, but Franchisee shall in no event permit a tax sale or seizure of the Franchised Restaurant, the Premises, or any equipment.
- E. Franchisee has had full opportunity to be thoroughly advised of the terms and conditions of this Agreement by counsel of its own choosing at least seven (7) days prior to its execution, and is entering into this Agreement after having made such independent investigation of Company's operations as it desired, and not in reliance upon any promise, representation, warranty, condition, agreement or understanding, written or oral, which is not contained in this Agreement, whether relating to the financial return which Franchisee might be expected to realize, or otherwise.

- F. Neither Company nor its representatives have made any promises, representations, warranties, agreements or understandings except as expressly contained in this Agreement or the Franchise Disclosure Document.
- G. The written information that Franchisee has submitted to Company in connection with the grant of this franchise, including, but not limited to, a Franchise Application Package, is true, correct and accurate.

5. STANDARDS OF OPERATION

Franchisee shall adhere to the System. Franchisee shall meet all the standards and specifications, and follow the procedures communicated in writing by Company to Franchisee.

A. The Manuals

The parties agree that Franchisee's adherence to Company's System standards and specifications is necessary to the image, operation and success of each JACK IN THE BOX restaurant and the System. The JACK IN THE BOX System standards, specifications, and procedures, as they may be renamed, amended, expanded and consolidated by Company from time to time collectively, "Manuals"), shall contain mandatory restaurant operating standards, specifications and procedures as prescribed from time to time by Company for the operation of a JACK IN THE BOX restaurant by a Franchisee, among other things. Some or all of the Manuals may be provided in an electronic format on an online system. Franchisee acknowledges receipt of the Manuals on loan for the term of this Agreement, and agrees to monitor the online system for Franchisee shall strictly adhere to these standards, updates to the Manuals. specifications and procedures, which Company may, in its sole discretion, change from time to time. (Wherever this agreement states that Company may take action in its "sole discretion," Company will use good faith in its exercise of such discretion.) Franchisee agrees to accept and comply with any changes, modifications, revisions and additions made by Company to the menu, service expectations, restaurant environment, customer offerings, product pricing, and other elements of the System standards, specifications, and procedures, which Company, in the good faith exercise of its judgment, believes to be necessary or desirable.

The material contained in the Manuals consists of confidential trade secrets of Company, and Company is the owner of the Manuals and of all proprietary rights in and to the material and information contained therein. Such material is to be used by Franchisee only in connection with the operation of the Franchised Restaurant and other licensed JACK IN THE BOX restaurants.

Franchisee must ensure that the restaurant is being operated in accordance with the terms of the Franchise Agreement, and in accordance with the standards as specified in the Manuals.

B. Restaurant Buildings and Premises

The Franchised Restaurant building and Premises shall be constructed and improved only as authorized and approved in writing by Company, and in conformity with all applicable laws and ordinances. The appearance of such building and the condition of the Premises shall not be altered thereafter except as may be approved in writing by Company. The building shall be decorated, furnished and equipped with furnishings and restaurant equipment that meet Company's specifications. Franchisee must periodically re-equip, upgrade, remodel, or make other improvements to the Franchised Restaurant and(or) the equipment, signs, interior and exterior décor or structural components, fixtures, furnishings, supplies and other products and materials required for the operation of the Franchised Restaurant as may be required by Company, in its sole discretion ("Reimage"); provided, however, that Company will not require a Reimage more often than once every seven years during the term of this Agreement (except as a condition in connection with any earlier rewrite, extension, or other renewal of the term of this Agreement). Such Reimage may require, without limitation, i) repainting, refinishing or replacing surfaces both interior and exterior), ii) landscaping modifications or upgrades, (iii) installation of new décor items (both interior and exterior), iv) replacing or adding fixtures, furniture, equipment, or signage, v) upgrading the building façade, vi) installing new flooring, and(or) (vii) redesigning the layout of the Franchised Restaurant." Franchisee shall undertake and complete such repairs, improvements and alterations as may be required by Company within a reasonable time as specified by Company. Franchisee shall maintain such building and Premises in conformity with all applicable laws and ordinances, including, without limitation, the federal Americans with Disabilities Act and any similar state law. Any modification to the building or Premises, whether required by land zoning or building laws or otherwise, shall be approved in advance by Company, and shall also be made at Franchisee's expense.

Except as may be provided in any lease between Company or its parents, affiliates, or subsidiaries) and Franchisee, in the event such building or Premises shall be damaged or destroyed by fire or other casualty, or be required to be repaired or reconstructed by any governmental authority, Franchisee shall repair or reconstruct such building or Premises in accordance with Franchisor's design standards in effect at the time of the repair or reconstruction, within a reasonable time in light of the circumstances. Franchisee shall, however, make every reasonable effort to restore the building or Premises to reflect the then-current image, design, specifications and the standards of JACK IN THE BOX restaurants.

If Franchisee leases the Premises from someone other than Company (or its parents, affiliates, or subsidiaries), Franchisee agrees that whenever it receives from its landlord any notice or other material document relating to Franchisee's performance under the lease for the Premises, including, but not limited to, late rent notices, notices of default, and notices of termination, or receives such a document from the landlord, Franchisee will promptly forward a copy of that document to Company in accordance with the notice provisions of this Agreement.

C. Signs

Franchisee shall display the Marks only in the manner authorized by Company. Franchisee shall maintain and display signs including menu panels, posters or similar items) (collectively, "Signs") as required by Company from time to time. Company requests for signage changes or upgrades may be made as part of a Reimage project, or as otherwise required from time to time to comply with Company requirements. Franchisee shall display or use Signs only at the Premises or as otherwise permitted by Company for directional or similar uses for the Franchised Restaurant or Franchisee's corporate offices. Franchisee shall not place additional signs, menu panels, posters or similar items on the Premises. Franchisee shall promptly discontinue the use of and destroy such items as are declared non-conforming or obsolete by Company, or, in the case of termination, as required according to the post-termination obligations set forth herein.

D. Equipment

Franchisee shall use only equipment approved by Company in the Franchised Restaurant. Company requests for equipment changes or upgrades may be made as part of a Reimage project, or as otherwise required from time to time to comply with Company requirements. Franchisee shall maintain such equipment in a condition that meets standards set forth in the Manuals or otherwise prescribed by Company, and shall replace equipment as necessary. Replacement equipment shall conform to the standards for equipment which is being installed in new JACK IN THE BOX restaurants at the time of replacement except as may be approved in writing in advance by Company. If Company should determine that additional or replacement equipment is needed in order to test new menu items or due to a change in approved menu items or in approved methods of preparation and service, Franchisee shall promptly obtain and install such new equipment within the reasonable time specified by Company. Upon notification that any equipment, furnishings or supplies do not meet Company specifications or standards, Franchisee shall immediately cease and desist from using same.

E. Computer System

At Franchisor's request, Franchisee shall purchase or lease, and thereafter maintain, such computer hardware and software, dedicated high speed communications equipment and services, dedicated telephone and power lines, modem(s), printer(s), firewalls, mobile app-related equipment, and other computer-related accessories or peripheral equipment as Franchisor specifies for the purpose of, among other functions, recording sales and other record keeping and central functions. Franchisee shall provide such assistance as may be required to connect its computer system with a computer system used by Franchisor. Franchisor shall have the right, on an occasional or regular basis, to retrieve such data and information from Franchisee's computer system as Franchisor, in its sole and exclusive discretion, deems necessary or desirable. In view of the interconnection of computer systems and the necessity that such systems be compatible with each other, Franchisee expressly agrees that it will strictly comply with

Franchisor's standards and specifications for all items associated with Franchisee's computer system, and will otherwise operate its computer system in accordance with Franchisor's standards and specifications.

To ensure full operational efficiency and optimum communication capability between and among computer systems installed by Franchisee, Franchisor, and other Franchisees, Franchisee agrees, at its expense, to keep its computer system in good maintenance and repair, and, at its expense (and following Franchisor's determination that it will be economical or otherwise beneficial to the System) to promptly install such additions, changes, modifications, substitutions and/or replacement to Franchisee's computer hardware, software, communications equipment and services, telephone and power lines, and other computer-related facilities, as Franchisor directs.

Franchisee shall comply with Company's mobile app, social media, and other technology-related standards and procedures, as they are established and modified by Company in its sole discretion from time to time.

F. Ingredients, Materials and Supplies

Franchisee shall purchase from such sources as shall be approved by Company (of which Company or a subsidiary, parent, or other related entity ("Affiliate") may be one such source) all food, ingredients, materials and supplies necessary for the operation of the Franchised Restaurant, as shall be specified in the Manuals or otherwise prescribed by Company in writing. Such items shall include, but are not limited to, all food, supplies, beverage ingredients, paper goods, utensils, packaging, cleaning supplies and uniforms. Should Franchisee desire Company to approve any alternative or additional sources of such ingredients, materials or supplies, Franchisee shall submit to Company a written request for the approval and such information and samples as Company requests. Company shall evaluate such alternative or additional source in accordance with its standards, and shall notify Franchisee within a reasonable time of its receipt of such information and samples, of its approval or disapproval of such source; and if Company does not approve, of the reasons therefor. All costs and expenses associated with Company approving, reevaluating and working with such additional suppliers will be charged to the supplier or to Franchisee. Company may impose limits on the number of suppliers that it will approve for any given item.

G. Menu, Service, Health and Cleanliness

Franchisee shall offer for sale all food and beverage products and the carry-out and on-premises dining services that Company from time to time authorizes, and Franchisee shall not offer or sell any other products or services. Menu items shall be set forth in the Manuals, or otherwise authorized and approved by Company in writing. Franchisee shall adhere to all specifications relating to the ingredients, method of preparation and service, weight, dimensions and other characteristics of product served, and standards of health, cleanliness and sanitation that are contained in the Manuals, or are otherwise prescribed by Company. All food, drink and other menu items shall be sold

in packaging approved by Company. Upon notification that any food, beverages, supplies or packaging does not meet Company specifications or standards, Franchisee shall immediately cease and desist from using same.

Franchisee may determine what prices to charge customers for products and services sold at the Franchised Restaurant, except that Company may require that Franchisee use an "all inclusive" pricing structure or tiered pricing structure, and/or other pricing system, and Company may set maximum prices on products and services to the extent permitted by law. If Company imposes a maximum price on a particular item, Franchisee may charge any price on the item, consistent with the Company pricing structure, up to and including the maximum price. Company may also require that certain products or services that are supplementary to the main products and services provided at Franchised Restaurants (such as condiments) be provided to customers free of charge.

If an audit conducted by Company or its authorized representative shows that the Franchised Restaurant is not in substantial compliance with any System standard relating to food safety, Franchisee shall reimburse Company for the reasonable cost of a re-audit. Additionally, if Company reasonably determines that a threat or danger to public health or safety is likely to result from the construction, maintenance or operation of the Franchised Restaurant, Company may, in its sole discretion, exercise its rights under Section 18.B. ("Termination") or any lesser right, such as directing a temporary closure of the Franchised Restaurant until the situation can be corrected.

H. Hours of Operation

The Franchised Restaurant shall be open for business for a minimum of sixteen (16) hours per day, seven (7) days a week, fifty-two (52) weeks a year, unless otherwise authorized or directed by Company in writing. The precise hours of operation may be determined by Franchisee, subject to applicable government regulation and Company's approval.

I. Machines and Similar Devices

No coin-operated, card-operated or similar machines, cash, credit or debit machines, pay telephones, or games or devices of any nature, shall be installed at the Franchised Restaurant or on the Premises without the prior written consent of Company.

J. Personnel of the Franchised Restaurant

At all times, the Franchised Restaurant must be under the control of an individual who has been designated by Franchisee as, and approved by Company in writing to be, the operator of the Franchised Restaurant "Operator"). The Operator or, if applicable, a Designated Market Operator, as described below) shall use best and continuing efforts to promote and develop the business at the Franchised Restaurant. The Operator shall have and shall maintain a percentage ownership interest in any partnership, corporation, or other legally formed entity to which the franchise is assigned in accordance with the

terms of this Agreement; the amount of the required ownership interest is subject to the prior written approval of Company. Alternatively, and only with the prior written approval of Company, the Operator may be employed by Franchisee under a contract through which Operator will acquire that ownership interest within five years of the date of employment, and shall maintain that ownership interest while acting as Operator.

In some circumstances, Company may, subject to the satisfaction of certain criteria and Company approval, permit Franchisee to name a designated market operator to operate the Franchised Restaurant "Designated Market Operator" or "DMO"). The Designated Market Operator is not required to be an owner of Franchisee.

Franchisee understands and agrees that by designating an individual as Operator (or, if applicable, a Designated Market Operator), Franchisee is agreeing that the Operator or DMO has the authority to represent Franchisee in all dealings with Company, enter into agreements and modifications of agreements with Company and its affiliates on behalf of Franchisee, and receive notices on behalf of Franchisee.

Franchisee must have at least one (1) Certified Franchise Restaurant Manager at each restaurant, and must ensure that the restaurant is always under the supervision of either the Certified Franchised Restaurant Manager or a trained team leader. Additionally, Franchisee shall staff the Franchised Restaurant at all times during the term of this Agreement with a sufficient number of employees to maximize the sales at the Franchised Restaurant. All employees must meet the basic food safety and other training requirements that may be specified by Company from time to time.

If Franchisee owns more than fifteen (15) JACK IN THE BOX franchises, Company may require Franchisee to employ one or more individuals to supervise Franchisee's Certified Franchised Restaurant Managers, train other employees, or otherwise assist with managerial duties. All managerial employees above the restaurant manager level must also have successfully completed the training courses required by Company.

Operator or DMO shall hire all employees of the Franchised Restaurant, but Franchisee shall be fully responsible for the terms of their employment.

While on the Premises, Franchisee, Operator (or, if applicable, a Designated Market Operator) and all employees must meet Company's Standards relating to grooming, and wear the uniforms approved or mandated by Company. Company is not responsible for providing uniforms for Franchisee's employees.

K. Compliance with Laws

Franchisee agrees at all times during the term of this Agreement, at its own expense, to conform to and comply with all federal, state and local laws, ordinances and regulations now in force or that are hereafter enacted affecting the operation of the Franchised Restaurant business, including, without limitation, wage and hour laws, labor laws, the Americans with Disabilities Act, OSHA, the Sherman Act, the Federal Trade

Commission Act, the Clayton Act, and the USA PATRIOT Act; any security standards (such as the Payment Card Industry Data Security Standard) imposed by the credit card or similar industries; and any similar federal, state, and local laws. Specifically, Franchisee shall not enter into any agreement or understanding with any competitor, including other Jack in the Box® franchisees, that would result in a restraint of trade in violation of federal, state, or local laws. Franchisee hereby indemnifies Company, its Affiliates, employees, officers, directors and agents against, and agrees to save them harmless from, all claims, demands, losses, liabilities, obligations, costs or expenses (including attorneys' fees and court costs) which result from or arise in connection with any alleged violation of any law, ordinance or regulation, whether occasioned by the neglect, omission or willful act of Franchisee or any other person on the Premises.

Franchisee shall notify Company in writing within five 5) days of the commencement of any action, suit or proceeding, and of the issuance of any order, writ or injunction, award or decree of any court, agency or other governmental instrumentality which may adversely affect the operation or financial condition of Franchisee or any Franchised Restaurant, including, but not limited to, a notice of a possible violation of state or federal Labor Laws, or of any law, ordinance or regulation relating to health or safety.

L. Advertising and Promotional Materials

Franchisee agrees to comply with the advertising Standards established from time to time by Company. All advertising by Franchisee shall be completely factual, in good taste in the judgment of Company, and shall conform to the highest standards of ethical advertising. Franchisee shall use, sell or distribute (by means including but not limited to television, radio, the internet, newspapers, magazines, flyers, posters, billboards, mailing circulars, coupons or gift certificates) only those advertising or promotional materials or items which are authorized by Company in writing prior to use.

M. Display and Use of the Marks

No display or use of the Marks shall be made in any medium (including but not limited to television, radio, the internet, social media, newspapers, magazines, flyers, posters, billboards, mailing circulars, business cards, stationery, coupons or gift certificates) without the prior written permission of Company. All materials on which the Marks appear shall include such notice of registration or license legend or such other notice as Company shall specify. Franchisee agrees to immediately remove or discontinue the use of any objectionable material upon receiving notice from Company to do so.

In the adoption of a corporate or partnership name, Franchisee shall not use any of the Marks, any variations or abbreviations thereof, or any words deemed by Company to be confusingly similar to the Marks.

Franchisee is not permitted to establish websites, social media venues, or domain names that incorporate the JACK IN THE BOX marks, name, initials or indicia. Franchisee is not permitted to establish websites, social media venues, or domain names linking to the JACK IN THE BOX site without the prior written permission of Company.

N. Access to Premises

Company or its authorized representative shall have the unrestricted right at any time, without prior notification, to enter the Franchised Restaurant and Premises to (a) observe, inspect, photograph, and videotape the Franchised Restaurant and its operation and the Premises during such periods as Company may deem necessary, b) test any and all food products, food ingredients, equipment, beverages and supplies, (c) interview personnel at the Franchised Restaurant, (d) interview customers and prospective customers of the Franchised Restaurant, (e) conduct various surveys, or (f) inspect, photocopy, review or audit any books, records and documents relating to the operation of the Franchised Restaurant or other JACK IN THE BOX restaurants. Such entries and activities may be conducted without prior notice. Franchisee agrees to cooperate fully with Company in connection with any such entries and activities.

O. Participation in Tests

Franchisee is required to participate in tests of new products, equipment, services and procedures at the Franchised Restaurant, including but not limited to testing of significant cooking and operating systems and platforms. Company may require Franchisee to use specific product pricing during the test period. Company will reimburse Franchisee for certain documented out-of-pocket costs necessarily incurred by Franchisee as part of the test; however, if the new product, equipment, service or promotion becomes a required component of the System, the Franchisee will be responsible for paying a reasonable cost for the required component. Franchisee is responsible for any soft costs associated with testing, such as wages payable during training.

P. Delivery and Catering

Franchisee may be required to offer delivery and catering services for all food and beverage products from the Franchised Restaurant in accordance with Company's delivery and catering standards and procedures, as they are established and modified by Company in its sole discretion from time to time. Franchisee shall offer and sell such products only from the Franchised Restaurant, only in accordance with the requirements of this Agreement, the procedures and standards set forth in the Manuals, and all applicable laws. Franchisee may only offer delivery and catering services to customers located within the boundaries designated by Company, in its sole discretion, and such services may be limited to certain approved vendors. As used in this Agreement, the term "delivery customers" means customers that purchase food and beverage products for delivery to and consumption in) their home, office, or other off-premises locations. Franchisee shall not engage in any other type of sale of, or offer to sell, or distribution of

those food and beverage products sold by the Franchised Restaurant pursuant to this agreement, including but not limited to, selling, distributing, or otherwise providing, any such products at wholesale, or for resale or distribution by any third party, or through satellite locations, sales or mail order catalogs, temporary locations, carts or kiosks, the Internet, or through any other electronic or print media.

Q. Proposed System Modifications

Franchisee may submit proposals for new or improved elements of the System, including products, equipment, uniforms, the design of buildings and other restaurant facilities, service format and advertising. Such proposals shall be considered by Company when adopting, modifying or allowing deviations from standards, specifications and procedures for the System; provided however, that Company shall retain the sole and absolute discretion to accept or reject any such proposals.

If any System modification proposal by Franchisee is adopted by Company and becomes part of the System, Franchisee acknowledges that Company is the sole owner of such proposed new product or modification to the System, that any such product or System modification shall be deemed a work made for hire or to the extent the work may not be deemed a "work made for hire" under applicable law, Franchisee hereby irrevocably assigns to Company, for no additional consideration, all right, title and interest in and to any patents, trademarks, copyrights, trade secrets and any other proprietary rights), and that there are no restrictions on use, and no compensation shall be due to Franchisee. Franchisee agrees to cooperate fully in obtaining any patents, trademarks or copyrights.

R. Summary of Expenditures

As and when required by Company, Franchisee shall provide to Company a summary of the expenditures incurred by Franchisee, on the format required by Company, in connection the acquisition, development and opening of the Franchised Restaurant.

S. Technology Fee

Franchisee shall pay to Company the technology fee ("Technology Fee") Company specifies from time to time. The current amounts for the Technology Fee are stated in Exhibit A to the Master Technology Agreement, subject to Company's right to increase the amounts at any time pursuant to the Master Technology Agreement. The Technology Fee must be paid to Company as and when required by Company. This fee may cover, among other things, any technology services or related products including support or security services, menu management, software or hardware) provided by Company or paid for by Company) and could include access to an intranet, website hosting, and access to cloud-based data and storage communication system.

6. SERVICES AVAILABLE TO FRANCHISEE

- A. Company shall provide reasonable advice and consultation to Franchisee from time to time in connection with the operation of the Franchised Restaurant.
- B. If not previously loaned, Company shall loan Franchisee, concurrently with the execution of this Agreement and for the term of this Agreement, the most current editions of the Manuals, as well as other written standards and approved sources for the System; all such Manuals and other information shall be returned to Company promptly upon the expiration or earlier termination of this Agreement.
- Company shall regularly develop and execute marketing programs and activities relating to JACK IN THE BOX restaurants and direct, prepare and/or place advertising, promotions and/or communications to build the brand. The marketing programs and activities may include, but are not limited to: preparing and conducting digital, social, television, radio, magazine, and newspaper advertising campaigns; purchasing radio, television, digital, social, magazine, newspaper and other media for the distribution of advertising campaigns; advertising through direct mail and outdoor billboards; preparing and conducting marketing/brand surveys and research, which may include awareness and usage surveys, focus groups, marketing surveys and consumer feedback surveys; public relations activities; research, development and testing of products, packaging, and concepts; brand positioning and marketing activation; preparing and executing e-mail and internet-based marketing programs; employing advertising, public relations, and branding agencies and other professional consultants; and providing point-of-purchase, collateral and other marketing materials to the restaurants operated under the System. Company shall create in connection therewith a fund to be used for the expenses of such programs and activities the "Marketing Fund"). The Marketing Fund shall consist of the sum of: (i) the Marketing Fees paid by Franchisee and other franchisees of traditional JACK IN THE BOX restaurants operated in the United States under Section 8.B hereof; (ii) the amount contributed by Company; and (iii) certain other amounts that may be obtained from third parties and contributed or allocated by Company to the Marketing Fund. Company will contribute to the Marketing Fund at least the same percentage of its Gross Sales as the percentage being contributed by the majority of traditional JACK IN THE BOX franchises operating in the United States.

The Marketing Fund shall be accounted for separately from the other funds of Company, and expended on marketing programs and activities related to JACK IN THE BOX restaurants. Information relating to the Marketing Fund, including information relating to Marketing Fund expenditures, budgets, and reports, shall be made available for review by Franchisee members of the Brand Building Council or designees of the National Jack in the Box Franchise Association (the "NFA") at their request, but no more than twice per year. Moreover, only if requested by the NFA, not more than annually, and at the expense of the Marketing Fund, independent auditors selected by Company will review the Marketing Fund and will communicate the results of that review to franchisees. Notwithstanding the foregoing, the manner by and the purposes for which the Marketing Fund shall be expended, including (without limitation) such matters as the selection and

timing of marketing expenditures, campaign strategies, and allocation of funds among seasons and geographic areas, shall be at the sole and absolute discretion of Company, as Company shall from time to time determine.

- D. Company shall provide advice on merchandising and local store marketing (including local coupon programs) that it deems helpful to Franchisee.
- E. Company shall, during the term of this Agreement, inform Franchisee of any new products, developments, techniques and improvements to the System. Company shall provide necessary training materials for the training of Franchisee's employees, at Franchisee's expense.
- F. Company may delegate the performance of any or all of its obligations under this Agreement to our designees, which may include our affiliates, agents or independent contractors.

7. TRAINING

Prior to the opening of the Franchised Restaurant, the Operator (or, if applicable, a Designated Market Operator), and an individual restaurant manager designated for the Franchised Restaurant shall have completed Company's Certified Franchise Restaurant Manager Training Program in San Diego, California, or such other location as may be designated by Company. After successful completion of such training program, the Manager shall be deemed a "Certified Franchise Restaurant Manager." During the term of the franchise, the Operator or, if applicable, a Designated Market Operator), and each Certified Franchise Restaurant Manager shall undertake and complete such further training programs from time to time as may be directed by Company. The designation "Certified" Franchise Restaurant Manager shall not be applied to any individual who has not successfully completed such continuing education programs as Company may require from time to time. If such further training is required, the Franchisee shall pay all traveling, living, compensation and other expenses as may be incurred for himself or the Operator or, if applicable, a Designated Market Operator)) and the individual restaurant manager.

Franchisee shall conduct additional training for Franchisee's employees as necessary to ensure that all Company Standards are consistently satisfied.

8. ROYALTY AND MARKETING FEE

A. Royalties

1. Royalty

For the right to use the Marks and the System in accordance with this Agreement, Franchisee agrees to pay to Company a monthly royalty fee, calculated as percent % of Franchisee's monthly Gross Sales. In the event of a closure

of the Franchised Restaurant exceeding fourteen (14) days in any month due to: (i) damage or destruction of the Premises or other casualty loss, or ii any other closure of the Franchised Restaurant that has not been expressly authorized by Company, the royalty shall be percent % of the monthly Gross Sales that the Franchised Restaurant averaged over the prior twelve (12) complete months of continuous operation; if the Franchise Restaurant was not in operation at least twelve (12) complete months, the royalty will be percent % of the average Gross Sales over the total complete months that the Franchise Restaurant was in continuous operation. The royalty described above ("Royalty") is net of any tax, excluding income tax but including excise tax, or other fee imposed upon Company due to the collection of the Royalty, and shall be paid monthly by the fifteenth (15th) day of each month for the preceding month. Each payment shall be made payable to Company or Company's designee.

2. Royalty for Games and Devices

For Gross Sales resulting from the operation or conduct of games or coin or token-operated devices such as pay telephones; cash, credit or debit machines (including automated teller machines); newspaper stands; and any type of vending machines, including, without limitation, electronic devices of all types (collectively, "Games and Devices"), Franchisee agrees to pay to Company, during the term of this Agreement, a royalty of forty percent 40%) of Gross Sales from Games and Devices (the "Royalty for Games and Devices"). The Royalty for Games and Devices is net of any tax, including excise tax, or other fee imposed upon Company due to the collection of the Royalty for Games and Devices, and shall be paid monthly on the tenth (10th) day following receipt by Franchisee of the said Gross Sales. Each payment shall be made payable to Company or Company's designee.

B. Marketing Fee

Franchisee must pay to Company a monthly marketing fee (net of any tax or other fee imposed thereon) based on a percentage of Franchisee's Gross Sales (the "Marketing Fee"). As of the date of this Agreement, the Marketing Fee is five percent (5%) of Gross Sales. Company has the right to increase or decrease the Marketing Fee percentage. It may only increase the Marketing Fee percentage upon majority vote, described as follows: Franchise Operators and Company will have one vote for each JACK IN THE BOX restaurant that they operate and that pays the then-standard Marketing Fee; however, Company's voting rights will never fall below twenty percent 20%) of the total number of possible votes, regardless of the number of restaurants it operates. In no event will the Marketing Fee percentage be increased in any twenty-four 24) month period by more than .5% of Gross Sales. The Marketing Fee shall be due and payable by the fifteenth 15th) day of each month for the preceding month. Each payment shall be made payable to Company or Company's designee.

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C. Gross Sales Defined

The term "Gross Sales" means all revenue from the sale of all products and services, including delivery and catering services, as well as from vending machines and similar sources of revenue, and all other income of every kind and nature related to the Franchised Restaurant, including proceeds from stored value gift cards and gift certificates when redeemed but not when purchased, business interruption insurance, and revenue from off-site events, whether for cash or credit and, in the case of credit, regardless of collection. The term Gross Sales does not include the following: (1) any bona fide, documented federal, state or municipal sales taxes collected by you from customers and paid by you to the appropriate taxing authority; (2) the sale of food or merchandise for which refunds have been made in good faith to customers; 3) the sale of furnishing, fixtures, equipment and supplies used in the Franchised Restaurant; (4) the discounted value of payments made by coupon, or other promotional discounts, approved by us; 5) Gross Sales from Games and Devices; 6) the amounts of employee meal discounts; 7) any other items that Company may expressly permit in writing to be excluded from Gross Sales, such as certain sales benefiting charity.

D. Interest

Any Royalty payment or Marketing Fee not paid when due shall accrue interest from the date such amount was due, until paid, at the then-current rate established by Company for Franchisees, or the maximum rate permitted by law, whichever is less.

E. Method of Payment and Application of Payments

All payments shall be made to Company through a pre-authorized payment system (which authorizes Company to debit and credit Franchisee's bank accounts in accordance with the terms of this Agreement and other agreements between the parties) or other payment method specified in writing by Company. Upon request, Franchisee shall provide such authorizations and information necessary to institute the pre-authorized payment system or other payment system. Franchisee must ensure that funds are available in Franchisee's bank accounts to cover the debits. Notwithstanding any designation by Franchisee, Company shall have sole discretion to apply any payments by Franchisee to any current or past due indebtedness of Franchisee for royalty, marketing fees, purchases from, or any other indebtedness to, Company or its Affiliates. To the extent permitted by law, Franchisee hereby waives the rights, statutory or otherwise and whether now or hereafter in existence, to suspend the payment of Royalties, Marketing Fees, or any other amounts due under this Agreement, for any reason, or to offset against such amounts, any monies allegedly due from, or any alleged obligations of, Company.

F. Security Interest

To secure prompt and complete payment of the "Obligations," as hereinafter defined, Franchisee hereby grants to Company a security interest in and to all of

Franchisee's assets of any kind or nature used or useful in connection with the ownership and operation of the Franchised Restaurant, including, without limitation, the following (the "Collateral"):

- 1. all equipment, furnishings, fixtures, merchandise, inventory, goods and other tangible personal property;
- 2. all accounts, accounts receivable, other receivables, contract rights, leases, software, chattel paper and general intangibles;
- 3. all instruments, documents of title, policies and certificates of insurance, securities, bank deposits, bank accounts and cash;
 - 4. all books, records and documents relating to any Collateral;
- 5. all permits, licenses and franchises for the operation and ownership of the Franchised Restaurant, and all rights incident or appurtenant to such licenses, authorizations and permits; and
- 6. all accessions, additions and improvements to, and all replacements, substitutions and parts for, and all proceeds and products of, the Collateral, including proceeds of insurance.

The Obligations secured by the security interest in and to the Collateral include: all amounts owed by Franchisee to Company from time to time under this Agreement (including Royalties, Marketing Fees and interest); all amounts owed by Franchisee to Company from time to time under any other agreement between Company and Franchisee; all costs and expenses incurred by Company in order to enforce this Agreement and to collect the amounts due hereunder; and any advances made by Company to Franchisee.

Franchisee shall, at its sole cost and expense, execute and deliver to Company such other and further documents, instruments and agreements as reasonably requested by Company to create, maintain, perfect, or assure the priority of, the security interest granted hereby. Company is hereby appointed as agent and attorney-in-fact of Franchisee, which appointment is coupled with an interest, and shall be irrevocable so long as any of the Obligations remain outstanding, to execute and deliver such documents, endorsements and instruments, and to take all such other actions (to the maximum extent permitted by law) in the name and on behalf of Franchisee as Company may deem necessary or advisable to create, maintain, perfect, assure the priority of, or foreclose, its security interest in and lien on the Collateral.

9. ACCOUNTING PROCEDURES, TAXES AND RIGHT OF AUDIT

A. Records That Must Be Maintained

Franchisee agrees to keep complete records of the franchised business and for any Affiliate of Franchisee that has transactions with the franchised business (collectively, "businesses") for so long as required by state or federal law, but in no event less than three years. Although Company reserves the right to change its record-keeping requirements with reasonable notice to Franchisee, the records it currently requires Franchisee to keep are:

- 1. Weekly cash and sales reports;
- 2. General ledger defined as a ledger that contains a collection of all the assets, liabilities, owner's equity, Gross Sales and expense accounts);
 - 3. Cash disbursements journal (check register);
 - 4. Monthly bank statements and related canceled checks;
- 5. All tax returns (monthly and quarterly sales tax returns as well as corresponding Federal and State income tax returns, be it personal, partnership or other, on which the Franchised Restaurant's results have been declared);
 - 6. Suppliers' invoices (both paid and unpaid);
- 7. Dated cash register sales information consisting of the following: daily sales reports/tapes, weekly sales reports/tapes, and weekly cumulative sales reports/tapes, as appropriate given the cash register system in use;
 - 8. Quarterly Balance Sheets;
 - 9. Quarterly Profit and Loss Statements;
 - 10. Petty cash receipts;
- 11. Personnel and payroll records and documents required by federal, state or local laws for all of Franchisee's employees;
- 12. Copies of all state sales tax returns relating to sales at the Franchised Restaurant;
- 13. Records showing that Franchisee and Franchisee's employees are trained in accordance with Company's training requirements, as specified in the Manuals; and

14. Documents evidencing the formation and ownership structure of any legal entity to which this Agreement has been assigned, including articles of incorporation, bylaws, stock certificates, operating agreements, partnership agreements, and any similar documents relating to the entity.

B. Accounting Documents to be Periodically Submitted to Company

In addition to maintaining the above-referenced documents, Franchisee agrees to provide Company with the following documents in the time frames specified:

- 1. Quarterly and fiscal year to date profit and loss statements for the business, in the format prescribed by Company. These must be provided to Company within twenty-seven (27) days after the end of each quarter.
- 2. Quarterly balance sheets for the business in accordance with the fiscal year of the Franchisee. These must be submitted within twenty-seven (27) days of the end of each quarter, including the fourth quarter, of Franchisee's fiscal year.
- 3. Complete annual financial statements, which (if required by Company) shall be audited by a Certified Public Accountant acceptable to Company, together with a full identification of all persons with any ownership interest in the Franchisee and Franchised Restaurant, and the nature and extent of such interest. These must be submitted to Company within ninety (90) days after the close of each fiscal year of Franchisee. If Franchisee adjusts the annual financial statements after submitting them to Company, then Franchisee agrees to supply Company with such adjustments within thirty (30) days after making the adjustment.
- 4. If Company is unable to access, or for any reason does not obtain, Franchisee's weekly sales by restaurant through electronic polling of Franchisee's computer system, then Franchisee must submit its weekly sales figures to Company each Monday morning by telephone or facsimile, or at such time, or by such other means, as Company reasonably requests.
- 5. Such other accounting and financial records as Company may reasonably request from time to time.

The items listed in paragraphs 1, 2 and 3 above must be prepared in accordance with accounting principles generally accepted in the United States of America, which are consistently applied.

C. Taxes

Franchisee will pay to Company all sales or use taxes, goods and services taxes, personal property taxes, gross receipt taxes, excise taxes, value added taxes and similar taxes imposed upon or required to be collected by Company, on account of goods or services furnished to Franchisee through sale, lease or otherwise, or on account of

collection by Company of, including but not limited to, the Franchise Fee, Royalty, or Royalty for Games and Devices. Franchisee will pay such taxes upon demand and in the manner designated by Company.

D. Audits

Company has the right at any time during business hours, without prior notification, to inspect and audit, or cause to be inspected and audited, at its own expense, the business records, including, but not limited to, the records listed in subsections A and B above. The inspection or audit will be conducted at the location where the business records are customarily maintained.

If the inspection or audit discloses an understatement of Gross Sales or Gross Sales from Games and Devices, Franchisee shall pay to Company within fifteen (15) days after receipt of the inspection or audit report, the Royalties and Marketing Fees and rent, if the Premises are leased from Company) due on the amount of such understatement.

If the inspection or audit is made necessary by the failure of Franchisee to furnish reports, supporting records, financial statements, or other information as required by this Agreement; or to furnish such reports, information and statements on a timely basis; or if an understatement of Gross Sales or Gross Sales from Games and Devices for the period of any audit is determined by any such inspection or audit to be greater than one percent (1%), Franchisee must promptly reimburse Company for all reasonable costs of such inspection or audit, including without limitation, the charges of attorneys and any independent accountants, and the travel expenses, room and board and per diem charges for employees of Company. The foregoing remedies are not exclusive, but in addition to all other remedies and rights of Company under this Agreement or applicable law.

E. Release of Financial and Other Information

Franchisee hereby gives permission to Company to release to Franchisee's Owners, landlords and lenders, or prospective landlords or lenders, any financial and operational information relating to Franchisee and/or the Franchised Restaurant.

10. CONFIDENTIAL INFORMATION

- A. Franchisee understands and acknowledges that Company has invested, and continues to invest, considerable sums of money in developing the System. Because of the competitive nature of the restaurant business, and to protect the legitimate interest of Company and other JACK IN THE BOX franchisees, it is necessary to protect certain information about the System as confidential.
- B. For purposes of this provision, "Confidential Information" includes: product recipes and tests, ingredients used in Company's products, product preparation procedures, customer service measures and techniques, franchise support procedures,

supplier relationship and distribution system information, new product development information, product testing procedures and information, the Manuals, growth plans or strategies, real estate development plans or strategies, restaurant design plans, proposed restaurant sites, equipment designs, computer systems, business and development plans and strategies, training programs, access to and information contained on the JACK IN THE BOX restaurant intranet and other non-public JACK IN THE BOX websites including but not limited to training materials and reference manuals), consumer research results, marketing and advertising strategies and materials, financial performance (including but not limited to sales and earnings), and all other information designated by Company as confidential.

- C. Confidential Information does not include: (a) information, concepts methods, procedures or techniques that are, or become generally known in the quick-service and quick-casual restaurant industries in the United States, other than through disclosure by Franchisee, whether deliberate or inadvertent; (b) the disclosure of Confidential Information in judicial or administrative proceedings to the extent that Franchisee is legally compelled to disclose such information, provided that Franchisee has afforded Company with the opportunity to obtain an appropriate protective order or other assurance that the information will treated as confidential; or (c) information that Franchisee can demonstrate came to its attention prior to disclosure thereof by Company.
- D. Franchisee will be provided with Confidential Information in connection with its operation of the Franchised Restaurant. Franchisee agrees that both during the term of this Agreement and thereafter, Franchisee (a) will use the Confidential Information only in the operation of the Franchised Restaurant, and not in any connection with any other business; b) will not make copies of any Confidential Information without the express written consent of Company; (c) will not communicate, divulge or disclose the Confidential Information to any person or entity who does not need access to it to operate the Franchised Restaurant; and (d) will not use the Confidential Information, or allow it to be used, for the benefit of any third party.
- E. Franchisee acknowledges and agrees that all Confidential Information, including all customer data, customer contact lists, sales, transaction and restaurant operating data provided that Confidential Information expressly excludes payment card information associated with in-restaurant customer transactions made in the Franchised Restaurant), is and will remain the sole and exclusive proprietary property of Company. Company may use that data in any manner that it deems appropriate, including, without limitation, providing general or consolidated financial or operating reports to existing and prospective franchisees and other third parties. Company hereby licenses use of such data back to Franchisee for the term of this Agreement and only for use in connection with the operation of the Franchised Restaurant. Franchisee may not use the data for any purpose other than operating the Franchised Restaurant, or sell or transfer any of the above data except to a buyer as part of an approved Transfer. Franchisee shall comply with any standards and policies that Company may issue relating to data used in the operation of the Franchised Restaurant. Franchisee shall immediately notify Company of any possible or actual data breach.

- F. Company may require Franchisee to obtain from all partners, Owners, directors, officers and management personnel, as a condition of their employment or otherwise, covenants that they will maintain the confidentiality of all Confidential Information that they receive in connection with their employment at the Franchised Restaurant. Such covenants will be in a form satisfactory to Company, including, without limitation, specific identification of Company as a third-party beneficiary of such covenants, with the independent right to enforce them. Franchisee may be required to provide Company with copies of all such covenants.
- G. Company requires that all Owners sign a commercially reasonable Confidentiality and Non-Competition Agreement.
- H. Franchisee understands and acknowledges that any failure to comply with the requirements of this Section will result in substantial injury and damage to Company for which there is no adequate remedy at law. For these reasons, if Franchisee violates or threatens to violate any term of this provision, Company will be entitled, in addition to any other remedies and damages available, to seek injunctive or other equitable relief to restrain the violation of this provision by Franchisee and its agents or employees. Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by Company in obtaining specific performance of, or an injunction against violation of, the requirements of this Section in addition to any other claims to which Company may be entitled.

11. OWNERSHIP OF INTELLECTUAL PROPERTY

Franchisee agrees hereby that all right, title and interest to the System and the Marks are and shall remain vested solely in Company, and that any use thereof by Franchisee shall inure to the benefit of Company. Franchisee hereby disclaims any right or interest in the System, the Marks or in the goodwill derived therefrom, and Franchisee agrees not to contest, directly or indirectly, the validity of Company's Marks or Company's ownership, title, right or interest in the Marks and/or the System and/or Company's sole right to register, use or license others to use the same. Franchisee agrees that all information loaned, or otherwise made available to him, and all disclosures made to him and not to the general public, by or at the direction of Company at any time before or during the term of this Agreement, including, but not limited to, the Manuals, specifications, and any modifications or amendments thereto, in their entirety are trade secrets of Company for purposes of this Agreement, and shall be kept confidential and used by him only in the operation of the Franchised Restaurant and any other franchised JACK IN THE BOX restaurants franchised to Franchisee.

If it becomes advisable at any time, in Company's sole discretion, to modify or discontinue use of any Marks or part of the System and/or to use one or more additional or substitute Marks or aspects of the System, Franchisee shall immediately modify or discontinue the use of such Mark or aspect of the System, or use the additional or substitute Mark or aspect of the System.

Franchisee shall not, directly or indirectly, at any time during the term of this Agreement or thereafter, do, or cause or permit to be done, any act in any way impairing or tending to impair Company's right, title or interest in the Marks or System. Except as provided herein, Company shall not be required to participate in the defense of and/or to indemnify Franchisee for damages or expenses incurred by Franchisee if he becomes a party to any administrative or judicial proceeding involving the Marks or the System. Franchisee shall not institute any legal action or any other kind of proceeding based upon the Marks, without Company's prior written approval.

Franchisee shall immediately notify Company of any infringements or imitations of the Marks or the System, or of any challenges to Franchisee's use of any of the Marks or the System, and Company shall have the sole discretion to take such action, if any, it deems appropriate. Company may control any administrative proceedings or litigation affecting the Marks or the System. Franchisee shall cooperate in the prosecution or defense of any such action, and shall be named as a party in any such action if so desired by Company. Company shall bear the legal expenses incident to Franchisee's participation in such action, except for the cost of Franchisee's personal legal counsel if Franchisee elects to be represented by counsel of his own choosing.

Company makes no express or implied warranty with respect to the validity of any Company Marks. Franchisee acknowledges Franchisee's understanding and agreement that Franchisee will be conducting business utilizing some Company Marks that have not been registered and that registration may not be granted for the unregistered Marks, and that some Company Marks may be subject to use by third parties unauthorized by Company.

12. INSURANCE

During the term of this Agreement, Franchisee shall obtain and maintain in full force and effect, at his own expense, such insurance coverages as may be required of Franchisees by Company. Such requirements shall be specified in the Manuals, or may be specified in any Lease Agreement between Company and Franchisee, or otherwise provided to Franchisee in writing by Company. Prior to the opening of the Franchised Restaurant and thereafter, throughout the term of this Agreement, Franchisee shall furnish Company with evidence satisfactory to Company of such insurance coverages in effect in the form of Certificates of Insurance and any insurance policy endorsements required by Company, and a copy of the Franchisee's insurance policy(ies), if requested by Company. Renewal Certificates of Insurance shall be delivered to Company no later than thirty (30) days prior to the expiration date of all policies. All deductible amounts on all insurance policies required hereunder shall be disclosed in writing to and shall be subject to approval by Company, and noted on the applicable Certificate of Insurance. The insurance requirements including but not limited to coverages and policy limits, may be increased or modified from time to time by Company at its sole discretion. Requirements as of the date hereof are:

- A. Commercial General Liability insurance, including Products Liability coverage, and Broad Form Contractual Liability coverage, written on a "per occurrence" policy form in an amount of not less than \$5,000,000 combined single limit per occurrence and aggregate. Such insurance must not contain an exclusion for occurrences arising from food-borne illness, and must insure the contractual liability of Franchisee under Section 13 of this Agreement.
- B. Business Automobile Liability insurance including owned, leased, non-owned and hired automobile coverage, with a limit of not less than \$1,000,000 per accident.
- C. Workers' Compensation insurance as required by law, and Employer's Liability insurance with a limit not less than \$1,000,000 per occurrence, and such other insurance as may be required by the state or locality in which the Franchised Restaurant is operated.
- D. "All Risk" property insurance covering: a) the building (including tenant improvements, furniture, fixtures, equipment, inventory and other tangible property of the Franchised Restaurant), including plate glass coverage, on a full one hundred percent (100%) repair or replacement value basis; (b) Business Interruption/ Business Income insurance (at least one (1) year of actual loss sustained), including Extra Expense insurance, so as to re-establish normal business operations; and (c) loss of rents insurance covering a minimum of twelve (12) months' fixed minimum rent.
- E. Builders' All Risk insurance for the full replacement cost of all real and personal property involved in the construction when Franchisee is building, renovating, refurbishing or remodeling the Franchised Restaurant.

All insurance policies required hereunder of the Franchisee: a) shall be primary and non-contributory; b) shall be issued by an insurance company(ies) with a rating of not less than "A-VIII" in the current A.M. Best Insurance Rating Guide or approved by Company; (c) shall name Company and its Affiliates, and any other parties as Company may request, including, without limitation, Jack in the Box Inc., in its capacity as the Manager on behalf of Company, as "additional insureds," and shall contain an "Additional Insured-Designated Person or Organization" endorsement or its equivalent), except workers' compensation insurance only, without any qualifying language; d) shall provide that the insurance cannot be canceled, materially changed, or non-renewed, except upon thirty 30) days' advance written notice to Company; and e) shall contain a waiver of subrogation rights of the insurer(s) against Company, which waiver shall be effective regardless of whether any loss is caused by the act, omission or negligence of Company, and shall contain a "Waiver of Transfer of Rights of Recovery Against Others" endorsement (or its equivalent).

13. INDEMNIFICATION

Franchisee is responsible for all losses, damages, and liabilities whether contractual, statutory or otherwise) to third persons arising out of or in connection with the possession, ownership or operation of the Franchised Restaurant, and for all claims or demands for damages to property, or for injury, illness or death of persons directly or indirectly resulting therefrom; and Franchisee shall defend, indemnify and hold harmless Company, its Affiliates, employees, officers, directors and agents from all such claims, demands, losses, obligations, costs, attorneys' fees, expenses, liabilities, debts or damages directly or indirectly resulting therefrom, unless resulting from the gross negligence or willful misconduct of the indemnified parties.

If such claims are asserted against an indemnified party, Company shall notify Franchisee, and Franchisee will assume the defense of such claims. If Franchisee fails to assume the defense, then Company may defend in such manner as it deems appropriate. Franchisee shall reimburse the indemnified party for all costs, including attorneys' fees, and the reasonable value of time spent by corporate counsel, incurred by the indemnified party in effecting such defense, in addition to any sum that the indemnified party may incur by reason of any settlement or judgment. The indemnified party's right to defense and indemnification hereunder shall exist, notwithstanding that its joint or concurrent liability may be imposed on it by law.

14. ASSIGNMENT OF THE FRANCHISE

A. This Agreement is personal to Franchisee (or if Franchisee is a legally formed entity, the Owners of Franchisee). Neither Franchisee nor any Owner shall sell, assign, pledge, mortgage, hypothecate, give as security or in any manner encumber or otherwise transfer (hereinafter, "Transfer") this Agreement or any direct or indirect right or interest in the franchise granted, or any direct or indirect interest in Franchisee, nor permit any such Transfer to occur directly or indirectly, whether by agreement or operation of law, without the prior written consent of Company. Without limiting the generality of the foregoing, this provision applies to any Transfer between Owners.

Absent Company's express written release of liability, Franchisee (and, if Franchisee is a legally formed entity, its Owners) shall remain liable for all obligations under this Agreement.

- B. Any purported Transfer contrary to the provisions of this Agreement shall be void and of no force or effect.
- C. Subject to the prior written consent of Company, Franchisee may assign this Agreement to a partnership, corporation or other legally formed entity other than a trust that is not then or thereafter to be engaged in any business other than operation of the Franchised Restaurant, and in which Owners of Franchisee shall own one hundred percent 100%) of the outstanding ownership interest in the same proportions as their respective interests in Franchisee prior to such assignment. Any such assignment shall

not relieve any Owner of personal liability for performance of all obligations under this Agreement. No subsequent transfer in such assignee shall be made without Company's prior written approval. Franchisee, or the Operator, if Franchisee is not an individual, shall, throughout the term of this Agreement, own the percentage ownership interest in Franchisee specified by Company in writing.

The Articles of Incorporation, By-Laws, and other similar documents of Franchisee, copies of which shall be provided to Company upon Company's request, shall at all times reflect the restrictions contained in this Agreement, unless otherwise directed by Company. All stock certificates or other evidence of ownership shall bear on their face the following legend restricting transfer:

"Ownership of this certificate and the shares evidenced thereby may be sold, assigned, transferred, pledged, hypothecated or otherwise alienated only under and subject to one or more JACK IN THE BOX restaurant Franchise Agreements, copies of which may be obtained from Different Rules, LLC, 9357 Spectrum Center Blvd, San Diego, California 92123."

- D. At no time shall Franchisee be owned by more than eight 8) persons. For the purpose of determining the number of persons owning a direct or indirect interest in Franchisee, each individual Owner of a partnership or corporation with a direct or indirect interest in Franchisee, and each trustee of any trust owning a direct or indirect interest, shall be considered an Owner of Franchisee.
- E. Any Transfer, including (but not limited to) assignments among Owners of Franchisee, shall require, among other items: (i) delivery of an updated Certification of Entity Structure Form; ii) delivery of complete financial statements of the proposed transferee and other information satisfactory to Company; iii) the payment by Franchisee of up to, but not exceeding, two thousand five hundred dollars (\$2,500) per site to Company other than in an assignment by the Owners to a corporation, which is one hundred percent 100%) owned by the Owners); iv) the execution by each Owner of a general release (in form satisfactory to Company) in favor of Company, covering (without limitation) all transactions or occurrences of any kind prior to the proposed assignment, whether arising out of the franchise relationship or otherwise, between Franchisee and Company; (v) the payment of all amounts owed to Company by Franchisee; (vi) the execution of a personal guarantee by each transferee, if the transferring Owner had executed the same; and (vii) such other conditions as Company may require.
- F. There are no restrictions on Company's ability to assign this Agreement, and any such transfer or assignment shall inure to benefit any transferee or assignee or other legal successor to the interest of Company.

15. DEATH OR PERMANENT INCAPACITY OF FRANCHISEE

In the event of the death or incapacity of Franchisee or an Owner, the interest of such Owner or Franchisee may be transferred to the Owner or Franchisee's heirs or personal representative if:

- A. Such person is deemed in Company's sole discretion to fulfill its requirements relating to financial condition, character, and managerial qualifications and commitment for Franchisees, as in effect at the time of transfer; and to meet any other requirements that Company shall then be generally applying; and
- B. Such person agrees in writing to assume full and unconditional liability for and to perform all the terms and conditions of this Agreement to the same extent as the original Franchisee.

If such person is not so approved, the Franchisee's personal representative shall use its best efforts to sell the Franchised Restaurant or the interest therein) to a person acceptable to Company within twelve (12) months, subject to the Right of First Refusal set forth in the following Section. During such period, Company shall have the option but not the obligation to operate and/or manage the Franchised Restaurant on Franchisee's (or his estate's) behalf until the interest is transferred to a person acceptable to Company. Company shall make a complete accounting, and shall forward the net income from the operation to Franchisee or his estate, less Company's expenses and a reasonable management fee, if it elects to operate and/or manage the restaurant. If the interest of the Franchisee or such Owner is not conveyed to a party acceptable to Company within a twelve 12) month period from the date of death or incapacity of such person, Company shall have the option but not the obligation to purchase such person's interest at fair market value, by giving notice of Company's intent to purchase within thirty 30) days of the end of such twelve (12) month period.

If, at the end of that time period, the interest of a deceased or incapacitated Franchisee or Owner has not been conveyed to a party acceptable to Company, and Company has not exercised its option to purchase such person's interest at fair market value, Company may immediately terminate this Agreement, which termination shall be effective upon receipt of notice thereof by Franchisee's or Owner's personal representative.

As used herein, "incapacity" means suffering from a physical or mental impairment, or a combination of both, rendering such Franchisee, partner or stockholder unable to substantially perform all of his duties in connection with the Franchised Restaurant, which is verifiable by medical findings, and appears reasonably certain to continue for at least one (1) year without substantial improvement.

16. RIGHT OF FIRST REFUSAL

Franchisee or any Owner shall give Company forty-five (45) days' written notice of any proposed sale of any interest in this Agreement, Franchisee, or the franchise (including, without limitation, any securities of Franchisee or the assets of the Franchisee), setting forth the name and address of the prospective purchaser, the price and terms of the offer, an application for Company's approval of the purchase in form acceptable to Company completed by the prospective purchaser), a copy of the fully executed sales contract expressly stating that the transfer is contingent upon Company approval and waiver of its right of first refusal), and such other information as Company may request. Company shall, upon receipt of all required information, then have the option to purchase the interest at the price and upon the terms of such offer. Company shall notify Franchisee within thirty 30) days after receipt of all such information (and from the furnishing of any additional information it may request) of its intent to exercise the option. If the proposed transaction includes assets of Franchisee not related to the operation of the Franchised Restaurant, Company may at its discretion exercise its option only with respect to the interest of the Franchised Restaurant. In such event, an equitable purchase price shall be allocated to each asset included in the proposed transaction. In exercising its rights under this section, Company shall be entitled to all customary representations and warranties from the Seller that assets are free and clear or if not, accurate and complete disclosure) as to: (1) ownership, condition and title; 2) liens and encumbrances; (3) environmental and hazardous substances; and 4) validity of contracts inuring to the buyer or affecting the assets, whether contingent or otherwise. If a transfer is proposed to be made by gift, Company will designate, at its expense, an independent appraiser to determine the fair market value of the interest proposed to be transferred. Company may purchase the interest at the price determined by the appraiser.

This right of first refusal shall apply to any transaction in which any part of the legal or beneficial ownership of the license granted by this Agreement will be vested in other than Franchisee. The election by Company not to exercise its option to meet any offer shall not affect its right as to any subsequent offer. Any sale effected without first giving Company the right of first refusal shall be void and of no force and effect.

Notwithstanding the above, Company's right of first refusal is not applicable to a sale of furnishings or equipment of the Franchised Restaurant in connection with the replacement of such furnishings or equipment, or the disposal of excess furnishings or equipment, in the ordinary course of business.

If Company does not exercise its option, the proposed sale may nonetheless be concluded only with Company's written consent to the transfer. Such consent shall not be unreasonably withheld upon compliance with the conditions imposed by Company on such transfer, including, but not limited to, the following:

A. All obligations of Franchisee to Company, whether arising under this Agreement or otherwise, shall be fully satisfied at or prior to such transfer.

- B. The prospective purchaser shall be approved as a Franchisee under Company's standards then in effect, including requirements relating to financial condition, character, managerial qualifications and commitment, and other conditions as Company may then be applying. It is understood that the prospective purchaser must meet with representatives of Company in San Diego, California, or such other location as Company may designate.
- C. The prospective purchaser shall have completed Company's required training program for new franchisees to Company's satisfaction.
- D. Company must be satisfied that the terms and conditions of the transaction will not negatively affect the possibility of success of the business in light of the conditions under which it is purchased; however, Company's review of the terms and conditions of the proposed transaction do not constitute a guaranty or warranty of the success or profitability of the Franchised Restaurant.
- E. Execution by Franchisee seller of a general release in favor of Company in a form satisfactory to Company.
- F. Company shall be paid a fee of up to, but not exceeding, two thousand five hundred dollars (\$2,500) per site for its costs in connection with the transfer.

17. COMPLIANCE WITH OTHER AGREEMENTS

Franchisee shall comply with and perform all covenants contained in any other agreement, instrument, or other document between Company or its Affiliates, or any of them, and Franchisee or its Affiliates or Owners, or any of them. This includes, without limitation, any franchise agreement; lease agreement; note; any written or oral agreement; any account for the purchase of product or services between Company and Franchisee, whether or not pertaining to the Franchised Restaurant; and any Development Agreement signed between Franchisor and Franchisee. A default, in whole or in part, under any of the aforementioned agreements or notes, shall constitute a default under this Agreement.

18. TERMINATION

Company may terminate this Agreement and the license granted herein, or may exercise any lesser-included right, such as requiring a temporary closure of the Franchised Restaurant, upon any of the following grounds if Franchisee fails to correct the condition within the period specified, without prejudice to any other rights or remedies provided by law or under this Agreement:

A. Franchisee will be deemed to be in default under this Agreement, and all rights granted herein will immediately terminate automatically and without notice to Franchisee if any of the following events occur:

- 1. Franchisee makes a general assignment for the benefit of creditors.
- 2. Franchisee commences a voluntary petition under bankruptcy, insolvency or any similar law; or an involuntary case under bankruptcy or insolvency or similar law is filed against Franchisee and is either unopposed by Franchisee or is not dismissed within thirty 30) days of filing; or an order or decree for relief under bankruptcy, insolvency or similar laws is entered regarding Franchisee. Franchisee expressly waives all rights under the provisions of the bankruptcy or other applicable laws and rules, and consents to the immediate termination of this Agreement as provided herein. Franchisee agrees not to seek an order from any court, tribunal or agency in any jurisdiction relating to bankruptcy, insolvency, reorganization or any similar proceedings that would have the effect of staying or enjoining this provision.
- 3. A bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets or real or personal property is filed by, consented to or not opposed by Franchisee.
- 4. Franchisee becomes insolvent in that a) Franchisee generally fails, or is generally unable, to pay its obligations as they become due in the regular course of business, or (b) the value of Franchisee's assets is less than the value of its liabilities.
- 5. If Franchisee is a corporation, partnership or other legal entity and Franchisee is dissolved.
- 6. Execution is levied against the franchise, the Franchised Restaurant or property or the Premises.
- 7. A suit to foreclose any lien or mortgage against the Premises or equipment is instituted and not dismissed within thirty (30) days.
- 8. Franchisee at any time ceases to operate the Franchised Restaurant for a period of five (5) days other than due to a force majeure or as otherwise authorized by the Company in writing, or otherwise abandons the Franchised Restaurant.
- 9. Franchisee fails for any reason to commence operation of the Franchised Restaurant within one-hundred and twenty (120) days of the date of this Agreement.
- B. Franchisee will be deemed to be in default, and Company may, at its option, terminate this Agreement and all rights granted under this Agreement upon any of the following grounds. Termination will become effective immediately upon notice to Franchisee.
- 1. Company reasonably determines that a threat or danger to public health or safety is likely to result from the construction, maintenance or operation of the Franchised Restaurant.

- 2. Franchisee, Operator, Designated Market Operator, or any stockholder, member, partner, owner, director or officer of Franchisee, engages in conduct, or is arrested for, admits to, is convicted of, or pleads guilty or no contest to, any crime or offense that is reasonably likely to have a serious adverse effect on the System, the franchisees operating under the System, the Proprietary Marks, the goodwill associated therewith, or Company's interest therein.
- 3. Franchisee fails for a period of ten (10) days to make any of the payments required under this Agreement.
- 4. A final judgment remains unsatisfied or of record for thirty (30) days or longer (unless an appeal bond has been filed).
- 5. Franchisee discloses, makes any unauthorized duplicates of, or otherwise improperly divulges or uses the contents of the Manual or other confidential information provided to Franchisee by Company contrary to the terms of Sections 5A or 10 of this Agreement.
- 6. Franchisee creates, maintains, or submits to Company, any governmental agency or any financial institution, any books, records, reports or other information relating to the Franchised Restaurant that contains any materially false, inaccurate, incomplete or misleading statements, or omits any fact necessary in order to make the statements made not materially misleading.
- 7. Franchisee fails on three (3) or more separate occasions within any twenty-four (24) month period to comply with this Agreement, or to execute Company's standards as outlined in the Manuals as measured by Company's restaurant inspections, whether or not such failures are corrected after notice of default is given, or Franchisee fails on two (2) or more separate occasions within any twelve- (12) month period to comply with the same requirement under this Agreement, whether or not such failure to comply is corrected after notice of default is given.
- 8. Franchisee has made material misrepresentations or omissions in Franchisee's franchise application or this Agreement.
- 9. Franchisee makes any unauthorized use of the Marks, or fails to strictly comply with the terms set forth in Sections 1 or 11 of this Agreement.
- C. Franchisee will be deemed to be in default and Company may, at its option, terminate this Agreement and all rights granted under this Agreement upon any of the following grounds. If the condition is susceptible of being cured, Franchisee must correct the condition within the period specified below, or termination will be effective at the conclusion of the cure period.

- 1. Franchisee fails to maintain and operate the Franchised Restaurant in accordance with the standards and specifications, including, but not limited to, selling any product that Franchisee knows or should know does not conform to Company's specifications, failing to sell any product required by Company, or selling any product that is not approved by Company. Franchisee will have five 5) days to correct such condition.
- 2. Franchisee loses the right to possess the Premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Restaurant is located. Franchisee will have five (5) days to correct such condition.
- 3. Franchisee or any Owner of Franchisee purports to transfer any rights or obligations under this Agreement or any interest in Franchisee in violation of the terms of Section 14 of this Agreement. Franchisee will have five 5) days to correct such condition.
- 4. Franchisee fails to comply with the in-term covenants in Section 19 of this Agreement or fails to obtain execution of the covenants required under that Section. Franchisee will have five (5) days to correct such condition.
- 5. Franchisee denies Company's right to inspect, examine or audit the Franchised Restaurant or the Franchisee's books. Franchisee will have five 5) days to cure such condition.
- 6. Franchisee fails to submit any financial statement or report when required, or his submission is incorrect or incomplete. Franchisee will have thirty (30) days to correct such condition.
- 7. Franchisee fails to pay any federal or state income, sales or other taxes due on the Restaurant's operations, unless Franchisee is in good faith contesting liability for such taxes. Franchisee will have five (5) days to correct such condition.
- 8. Franchisee violates any federal labor laws. Franchisee shall have fourteen (14) days to cure such condition.
- 9. Franchisee fails to keep the business open and in normal operation for such hours and days as Company may from time to time specify in the Manual or as Company may otherwise specify or approve in writing. Franchisee will have five 5) days to correct such condition.
- 10. Franchisee fails to make regular payments to Company or any vendor for any monies due and owing. Franchisee will have thirty 30) days to correct such condition.
- 11. Franchisee fails to begin the repair or restoration of the Franchised Restaurant within ninety (90) days after damage or destruction, and to diligently pursue such repair or restoration to completion within a reasonable time thereafter, or fails to

insure the Franchised Restaurant as provided in Section 12. Franchisee will have thirty (30) days to correct such condition.

- 12. Franchisee fails to maintain the Franchise Restaurant and Premises in good condition and repair or fails to make all improvements determined by Company to be reasonable necessary to reflect the current System standards. Franchisee will have thirty (30) days to correct such condition.
- 13. Franchisee fails to comply with any other provision of this Agreement or defaults under any other franchise agreement, development agreement, lease agreement, note, or any agreement or account for the purchase of product or services between Company and Franchisee, whether or not pertaining to the premises. Franchisee will have thirty (30) days to correct such condition.
- D. If any applicable law or rule requires greater prior notice of termination, the prior notice required by such law or rule will be substituted for the notice requirements specified above.
- E. Company's failure to terminate this Agreement upon the occurrence of one or more of the above events shall not constitute a waiver, or otherwise affect the right of Company to terminate this license because of any other occurrence of one or more of the aforesaid events.
- F. Upon termination or expiration of this Agreement, Franchisee's right to use the Marks and the System shall terminate. Franchisee shall not thereafter identify himself as a JACK IN THE BOX Franchisee, nor use any of the Marks or any mark confusingly similar thereto, nor use or disclose to others any of Company's trade secrets, operating procedures, or promotional materials. Upon termination or expiration of this franchise, Franchisee will immediately return to Company all Manuals, together with all other material containing trade secrets, restaurant operating instructions or business practices of Company.
- G. Franchisee grants to Company, upon termination or expiration of this Agreement, the option to purchase all usable inventory of food supplies, paper goods, containers, printed menus and other materials bearing Company's trade names or Marks at Franchisee's cost; and to purchase the restaurant equipment, furniture, fixtures and signs at fair market value.
- H. Franchisee shall, immediately upon termination or expiration of this Agreement, make such removals or changes in signs and the building as Company shall request, to distinguish the Premises from its former appearance and from any other JACK IN THE BOX restaurant. In the event Franchisee fails to make such changes, Franchisee hereby consents to Company entering the Premises to make non-structural changes at Franchisee's expense.

I. In the event of termination for any default of Franchisee, any damage suffered by Company shall be a lien in favor of Company against the personal property, machinery, fixtures and equipment owned by Franchisee on the Premises at the time of such default. Said lien shall be in addition to any other rights or remedies of Company that exist under statute, regulation or common law.

19. RESTRICTIONS ON OTHER BUSINESS INTERESTS

- A. Franchisee shall be responsible for notifying Company in writing of any intention of Franchisee, an Owner or an Operator to participate or engage, directly or indirectly, in any business activity other than JACK IN THE BOX restaurant business activities, at least ninety 90) days before a) that person becomes a party to any agreement or understanding relating to such activity, or (b) such activity commences, whichever is earlier. Franchisee shall be responsible for providing Company with such information about the activity as Company may reasonably request from time to time, including but not limited to information about products that may be sold as part of that business activity. In the event of a dispute regarding whether Franchisee's, an Owner's or an Operator's participation in a business activity would violate the terms of this Agreement, Franchisee and Company agree to mediate said dispute in accordance with the terms of Section 20C of this Agreement; however, in no event will Company be required to mediate such a dispute if Franchisee has not timely notified Company of the planned participation in the business activity.
- B. Franchisee acknowledges that, pursuant to this Agreement, Franchisee, Owners and Operator will receive confidential and trade secret information, including but not limited to promotional, operational, training, sales and marketing methods, techniques, plans and concepts of Company and the System. Franchisee further acknowledges its obligation to develop the franchised business and to promote the interests of the System. Accordingly, Franchisee agrees as follows:
- 1. Except as otherwise approved by Company in writing, during the term of this Agreement, Franchisee, Owners, and Operator shall not, either directly or indirectly, for themselves, or through, on behalf of, or in conjunction with, any person, firm, partnership, corporation or other entity, own, maintain, operate, be employed by, engage in, advise, help, make loans to, or have any direct or indirect interest in, any restaurant business:
- (i) whose format is similar to the format employed by the JACK IN THE BOX System at that time (currently, the JACK IN THE BOX System operates in a quick-service format, but Company may change that format at any time), and
- ii 20% or more of the sales of which are (or are likely to be) comprised of the kinds of products that are designated by Company as Core Menu Items of JACK IN THE BOX® restaurants at that time. Currently, hamburgers, certain specialty sandwiches and tacos are designated as Core Menu Items of JACK IN THE BOX

restaurants, but Company may designate different or additional products as Core Menu Items at any time.)

- 2. Except as otherwise approved by Company in writing, the restrictions set forth in Subsection B.(1) of this Section shall also apply to Franchisee upon the earlier of a) the expiration or termination of this Agreement, or b) the assignment of this Agreement by Franchisee, and apply to each Owner and Operator upon the earlier of (a) the expiration or termination of this Agreement, (b) the assignment of this Agreement by Franchisee or c) when such person ceases to be associated with Franchisee and the Franchised Restaurant; provided, however, that upon those events:
- (i) the restrictions shall apply for a continuous uninterrupted period of one year thereafter; and
- (ii) the restrictions shall only apply to the following restaurant businesses:
 - any restaurant business that is located within two (2) miles of any then-existing JACK IN THE BOX restaurant;
 - any restaurant business that is located at the Franchise Restaurant Premises;
 - any restaurant business that is located within two (2) miles of the Premises, whether or not a JACK IN THE BOX restaurant is then being operated on those Premises.

Franchisee acknowledges that, while Company has no obligation to expand the JACK IN THE BOX System, the number of JACK IN THE BOX restaurants and the locations of those restaurants may change over time.

- 3. The obligations of Franchisee, each Owner and Operator under Subsection B.(2) of this Section commence immediately upon expiration or termination of this Agreement, assignment of this Agreement by Franchisee, or upon the cessation of association of any Owner or Operator, whichever applies. If, at any time during the one-year period referred to in Subsection B.(2), Franchisee, the Owner or the Operator as the case may be) fails to comply with its obligations under Subsection B.(2) of this Section, that period of noncompliance shall not be included in the one-year period described in Subsection B.(2)(i).
- 4. If any part of the restrictions in this Section is found to be unreasonable in time or distance by a court or other tribunal having valid jurisdiction, each month of time or mile of distance shall be deemed a separate unit so that the time or distance may be reduced by appropriate order of the court or other tribunal to that deemed reasonable.
- 5. Franchisee, Owners and Operator may, during the term of this Agreement, own all or a portion of a business other than a JACK IN THE BOX restaurant on the condition that all provisions of this Agreement are met, and:

- (i) Franchisee, Owners or Operator do not use or allow others to use any part of the JACK IN THE BOX System in such business;
- (ii) such business is not advertised on or from the Franchised Restaurant Premises, and the business does not share and is not combined in any advertisement with the Franchised Restaurant; and
- (iii) no business is directed or diverted at any time for any reason by Franchisee or Operator from the Franchised Restaurant to any such business.
- 6. Company shall have the right, in its sole discretion and without Franchisee's consent, to reduce the scope of any covenant in this Section. Any covenant as so reduced shall be fully enforceable. The reduction shall be effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee shall comply immediately with the covenant as so reduced.
- C. Subsections B.(1) through B.(3) of this Section shall not apply to ownership by Franchisee, Owners, Operator or their spouses of less than a five percent 5%) beneficial interest in the outstanding equity securities of any corporation that is registered under the Securities Exchange Act of 1934, unless that individual also serves as a director or officer of, or in a management capacity in, such corporation.
- D. Franchisee expressly agrees that any claim it may have against Company, whether or not arising from this Agreement, shall not constitute a defense to Company's enforcement of the covenants in this Section.
- E. Franchisee acknowledges that its failure to comply with the requirements of this Section will cause Company irreparable injury, and Franchisee hereby accordingly agrees that, in addition to all other legal or equitable rights and remedies that Company may have under this Agreement or otherwise, Company shall be entitled to seek the entry of an order by any court of competent jurisdiction for specific performance of, or for an injunction against violation of, the requirements of this Section.
- F. Franchisee expressly acknowledges that it possesses business skills and abilities of a general nature, and can exploit such skills and abilities in settings other than the restaurant or food service industries, and that enforcement of the covenants in this Section will not prevent Franchisee from engaging in an entire line of business, using his business skills and abilities, or earning a living.
- G. Notwithstanding any other provision of this Agreement, this Section shall be governed by, construed in accordance with, and enforced under the laws of the State of California; provided, however, that if this Section is deemed unenforceable under California law, then it shall be governed by, construed in accordance with, and enforced under the laws of the State in which the Franchised Restaurant is located.

H. Franchisee shall obtain and furnish to Company an undertaking, to the same effect as the undertaking in this Section, from Franchisee's Operator if Franchisee is not the Operator) and from such of the Owners, spouses of Owners and restaurant managers as Company may designate. The undertakings shall be in writing in a form approved by Company. Company may require Franchisee to furnish the undertakings at any time during the term of this Agreement.

20. MISCELLANEOUS: GENERAL CONDITIONS

A. Interpretation/Entire Agreement

This Agreement and all attachments to this Agreement constitute the entire agreement between the parties relating to the subject matter hereof, and supersede any and all prior negotiations, understandings, representations, and agreements regarding that subject matter. Nothing in this or in any related agreement, however, is intended to disclaim the representations we made in the franchise disclosure document that we furnished to you.

You acknowledge that you are entering into this Agreement as a result of your own independent investigation of our franchised business, and not as a result of any representations about us made by our shareholders, officers, directors, employees, agents, representatives, independent contractors, or franchisees that are contrary to the terms set forth in this Agreement, or in any disclosure document, prospectus, or other similar document required or permitted to be given to you pursuant to applicable law.

Paragraph captions are used only for convenience, and are in no way to be construed as part of this Agreement, or as a definition limitation or construction of the contents or scope of the paragraph. Words of any gender used in this Agreement shall include every other gender, and words in the singular or plural shall include the other, where the context requires.

B. Non-Waiver

Company and Franchisee shall not be deemed to have waived or impaired any right, power or option reserved by this Agreement (including, without limitation, the right to demand compliance with every term, condition and covenant herein, or to declare any breach thereof to be a default and to terminate this Agreement prior to the expiration of its term) by virtue of: any custom or practice of the parties at variance with the terms hereof; any failure, refusal or neglect of Company or Franchisee to exercise any right under this Agreement or to insist upon compliance by the other with its obligations hereunder, including, without limitation, compliance by Franchisee with any specification, standard or operating procedure; any waiver, forbearance, delay, failure or omission by Company to exercise any right or option, whether of the same, similar or different natures, with respect to one or more other Franchisees or licensees of JACK IN THE BOX restaurants; or the acceptance by Company of any payments from Franchisee after any

breach of this Agreement. The rights or remedies set forth in this Agreement are in addition to any other rights or remedies, which may be granted by law.

C. Non-Binding Mediation

- Except as provided in Section C.(5), controversies, disputes and claims between Company, its Affiliates, and their shareholders, officers, directors, employees and agents, or any of them, on the one hand, and Franchisee, its Owners, partners, trustees, shareholders, officers, directors and agents, or any of them, on the other hand, arising out of or related to this Agreement, the Franchised Restaurant or the franchised business shall be subject to non-binding mediation pursuant to the terms of this Section C. Except as specified in Section C.(5), no litigation may be commenced between such parties prior to the mediation termination date, as defined in Section C.(4), on any claim which is subject to non-binding mediation hereunder, whether or not the mediation has been commenced. The commencement or pendency of litigation will not stay non-binding mediation required hereunder, and non-binding mediation required hereunder will not stay any litigation commenced in conformity with Section C.(5). Mediation under this Section C. is not intended to alter or suspend the rights or obligations of the parties under this Agreement or to determine the validity or effect of any provision of this Agreement, but is intended to provide the parties with an opportunity to amicably and expeditiously resolve disputes in a cost-effective manner on mutually acceptable terms and conditions.
- 2. The non-binding mediation provided for hereunder shall be commenced by the party demanding mediation the "complainant") by giving written notice of the demand for mediation (the "demand") to the party with whom mediation is sought the "respondent"). The demand shall specify with reasonable particularity the matter or matters on which non-binding mediation is being sought. A copy of the demand shall be given by the complainant simultaneously to Company, if Company is not a complainant or a respondent.
- 3. Non-binding mediation hereunder shall be conducted in San Diego, California, by a mediator or mediation program designated by Company in writing (the "designation"), or by such mediator as complainant and respondent may otherwise agree to. Company shall send the designation to complainant and respondent within a reasonable time after its receipt of the demand.
- 4. Non-binding mediation hereunder shall be concluded within sixty (60) days of the giving of the demand, or such longer period as may be mutually agreed to in writing by the parties to the mediation (the "mediation termination date"). All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatsoever. Complainant and respondent shall each bear its own costs of mediation, and each shall bear one-half the cost of the mediator and mediation service.

5. If Franchisee is more than forty-five (45) days past due in any of its payments to Company, or is past due in an amount greater than the prior month s Royalty, whether under this Agreement or any other Agreement or account with Company, then Company shall not be required to seek or to participate in mediation of any matter or dispute under this Section C. although Company reserves the right to require mediation), and Company shall be free to commence or to pursue litigation at any time. Company shall not be required to seek or to participate in mediation of any matter or dispute relating to the indemnification or insurance provisions of this Agreement (although Company reserves the right to require mediation). Nothing in this Section C. shall prevent any party from instituting or pursuing litigation at any time to preserve the status quo, protect the Proprietary Marks, protect the health or safety of the public, or avoid irreparable harm.

D. Governing Law, Jurisdiction and Venue

- 1. This Agreement shall become valid when executed and accepted by Company at San Diego, California. The laws of California shall apply to any claim or controversy regarding the making, entering into, performance, or interpretation of this Agreement, without giving effect to any conflict-of-law rules of such jurisdiction. If, however, any provision of this Agreement would not be enforceable under the laws of California, Franchisee is located outside of California, and such provision would be enforceable under the laws of the state in which Franchisee is located, then such provision shall be interpreted and construed under the laws of that state.
- 2. Franchisee shall file any suit against Company or its officers, directors, agents, employees or shareholders, arising out of this Agreement or otherwise, only in the federal or state court in the judicial district where Company's principal offices are located at the time suit is filed. Company may file any suit against Franchisee, arising out of this Agreement or otherwise, in any federal or state court in the judicial district where Company's principal offices are located at the time suit is filed, or where Franchisee resides, or where the Franchised Restaurant is or was located, or where the claim arose; and Franchisee hereby consents to and waives all questions of personal jurisdiction and venue for the purpose of carrying out this provision.
- 3. Company and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by Company against Franchisee, or by Franchisee against Company and/or its Affiliates or subsidiaries, and their shareholders, officers, directors, employees and agents, whether or not there are other parties in such action, to the extent permitted by law.
- 4. Any and all claims and actions arising out of, or relating to, this Agreement, the relationship of Company and Franchisee, or Franchisee's operation of the Franchised Restaurant, shall be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such shorter term as is established by law, or such claim or action shall be barred.

- 5. If Franchisee breaches this Agreement, Company shall be entitled to seek injunctive relief, in addition to such other relief to which it may be entitled in law or equity.
- 6. Company and Franchisee hereby waive to the fullest extent permitted by law any right to, or claim of, any punitive or exemplary damages against the other, and agree that in the event of a dispute between them, each shall be limited to the recovery of actual damages sustained by it.

E. Severability

If any material provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, Company and Franchisee shall negotiate to amend this Agreement to provide substantially the same obligations and benefits for each as originally provided. If the parties are unable to agree on such an amendment, either may terminate this Agreement upon written notice to the other.

F. Notices

- 1. All notices to Company shall be in writing, and shall be effective if hand delivered or sent by certified air mail, postage fully prepaid, national overnight carrier that provides a receipt, or by facsimile addressed to Different Rules, LLC at its offices at 9357 Spectrum Center Blvd, San Diego, California 92123, Attention: Corporate Secretary, or at such other address as Company shall from time to time designate in writing.
- 2. All notices to Franchisee, including a Notice of Termination, shall be in writing, and shall be effective if hand delivered or sent by certified mail, return receipt requested, postage fully prepaid, by overnight mail, or by facsimile or comparable electronic system, addressed to Franchisee or Operator at the Franchised Restaurant, the Premises or Franchisee's or Operator's last designated-in-writing mailing address.
- 3. Notices shall be deemed delivered and received on the earlier of (i) actual receipt; (ii) the fifth 5th) business day after being deposited in the U.S. Mail; iii) the second (2nd) business day after being deposited with an overnight mail service; or (iv) the first 1st) business day after being sent by facsimile or comparable electronic system.

G. Franchisee Structure and Liability of Owners

Each Owner of Franchisee is individually bound by this Agreement. At no time shall Franchisee be owned by more than eight 8) persons, as defined in Section 14.D. Each Owner shall be jointly and severally liable to Company for any failure of Franchisee to perform any obligation under this Agreement.

H. Signatures and Modification

This Agreement is not effective unless signed by Company. This Agreement may be signed in counterparts, which, taken together, shall constitute one original document. This Agreement may be modified or amended only in writing, signed by both parties.

I. Continuing Obligations

All obligations of Company and Franchisee which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied or by their nature expire.

J. Cumulative Remedies

The rights of Company and Franchisee hereunder are cumulative, and no exercise or enforcement by Company or Franchisee of any right or remedy hereunder shall preclude the exercise or enforcement by Company or Franchisee of any other right or remedy hereunder to which Company or Franchisee is entitled by law.

K. Attorneys' Fees

In any litigation arising out of or relating to this Agreement, the prevailing party shall be paid by the other party all costs, including reasonable accounting and attorneys' fees, incurred as a result of the legal action.

L. Relationship of the Parties

Franchisee is an independent contractor, and shall not be deemed an agent, partner, joint venturer or employee of Company. Franchisee shall have no right to bind or obligate Company in any way, and shall in no way represent any right to do so. Company shall have no control over the terms and conditions of employment of Franchisee's employees. Franchisee shall indicate his independent ownership of the Franchised Restaurant in all public records and on stationery, business forms and checks. Franchisee shall exhibit at the Franchised Restaurant, in such places and in such form as may be designated by Company, a notification that the Franchised Restaurant is independently operated. No fiduciary relationship between the parties exists.

[SIGNATURES ON FOLLOWING PAGE]

DIFFERENT RULES, LLC a Delaware limited liability company	Entity Name, a LLC/CORP	
By: Name: Michael J. Snider Title: Assistant Secretary Date:	By: Name: Title: Date:	
	By: Name: Title:	

ATTACHMENT A

FRANCHISE RESTAURANT DESCRIPTION

ATTACHMENT B

GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

("Guaranty") is given this _____ day of _____, 20__, by the

THIS GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

9		
FRANCHISEE:	, a	limited liability company/corporation
Date of Franchise	Agreement:	, 20
mentioned Jack in LLC ("Company"), of this guaranty (r"Guarantors") here its successors and the Agreement, the undertaking, agree personally bound be the Agreement, be limitation, the obligation.	the Box® Freach of the referred to by personal assigns, for assigns, for assigns at Franchis ment and copy, and personation to pay	and as an inducement to, the execution of the above- ranchise Agreement (the "Agreement") by Different Rules, undersigned and any other parties who sign counterparts herein individually as a "Guarantor" and collectively as ly and unconditionally: a) guarantees to Company, and if the term of the Agreement and thereafter as provided in see shall punctually pay and perform each and every ovenant set forth in the Agreement; and (b) agrees to be onally liable for the breach of, each and every provision in any obligations and other obligations, including without costs and legal fees as provided in the Agreement and the form taking specific actions or to engage or refrain from
engaging in specific	c activities, i	ncluding without limitation the provisions of the Agreement

Each Guarantor waives:

relating to competitive activities.

undersigned.

- 1. acceptance and notice of acceptance by Company of the foregoing undertakings; and
- 2. notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; and
- 3. protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; and
- 4. any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability; and
- 5. all rights to payments and claims for reimbursement or subrogation which he may have against Franchisee arising as a result of his execution of and

performance under this guaranty by the undersigned (including by way of counterparts); and

6. any and all other notices and legal or equitable defenses to which he may be entitled.

Each Guarantor consents and agrees that:

- 1. his direct and immediate liability under this guaranty shall be joint and several not only with Franchisee, but also among the Guarantors; and
- 2. he shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; and
- 3. such liability shall not be contingent or conditioned upon pursuit by Company of any remedies against Franchisee or any other person; and
- 4. such liability shall not be diminished, relieved or otherwise affected by any subsequent rider or amendment to the Agreement or by any extension of time, credit or other indulgence which Company may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable throughout the term of the Agreement and for so long thereafter as there are any monies or obligations owing by Franchisee to Company under the Agreement; and
- 5. the written acknowledgment of Franchisee, accepted in writing by Company, or the judgment of any court or arbitration panel of competent jurisdiction establishing the amount due from Franchisee shall be conclusive and binding on the undersigned as guarantors.

If Company is required to enforce this Guaranty in a judicial or arbitration proceeding, and prevails in such proceeding, it shall be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants', arbitrators' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding.

If Company is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the Guarantors shall reimburse Company for any of the above-listed costs and expenses incurred by it. This Guaranty may be signed in one or more counterparts, all of which when taken together constitute one original document.

IN WITNESS WHEREOF, each Guarantor has hereunto affixed his signature on the same day and year as the Agreement was signed.

GUARANTOR(S)

By: Name: Date:	
By: Name: Date:	

ATTACHMENT C

CONFIDENTIALITY AND NON-COMPETITION AGREEMENT (For Shareholders, Partners, Members)

[THIS PAGE INTENTIONALLY LEFT BLANK]

ATTACHMENT D

AMENDMENT TO FRANCHISE AGREEMENT FOR INCENTIVE PROGRAM

Site No.

AMENDMENT TO FRANCHISE AGREEMENT AND GENERAL RELEASE

This Amendment to Franchise Agreement ("Amendment") is made and entered
into as of, 20, by and between DIFFERENT RULES, LLC, a Delaware
limited liability company ("Company"), and ENTITY NAME], a [STATE] [corporation OF
limited liability company] collectively, "Franchisee"), in order to amend the Franchise
Agreement, dated, ("Agreement"), relating to JIB No, located a
Except as expressly provided in this Amendment, al
terms used in this Amendment have the meanings established for those terms in the Agreement.
Company has created a Development Incentive program to encourage expansion of the Jack in the Box® franchised system. Company is willing to offer the Development Incentive under the terms and conditions set forth in this Amendment to franchisees who have committed to open a minimum of 3 three) new restaurants pursuant to a development agreement dated ("Development Agreement").
Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:
CHOOSE ONE OF THE FOLLOWING INCENTIVE PLAN OPTIONS:

[OPTION A]

- 1. Section 8.A.1 of the Agreement is hereby amended to provide that:
 - a. For Gross Sales at the Franchised Restaurant for the period beginning [DATE OF FRANCHISE AGREEMENT], and continuing until [YEAR 2], the Royalty payable under the Agreement shall be equal to 1% of Gross Sales;
 - b. For Gross Sales at the Franchised Restaurant for the period beginning [YEAR 2], and continuing until [YEAR 3], the Royalty payable under the Agreement shall be equal to 2% of Gross Sales;
 - c. For Gross Sales at the Franchised Restaurant for the period beginning [YEAR 3], and continuing until [YEAR 4], the Royalty payable under the Agreement shall be equal to 3% of Gross Sales;

- d. For Gross Sales at the Franchised Restaurant for the period beginning [YEAR 4], and continuing until [YEAR 5], the Royalty payable under the Agreement shall be equal to 4% of Gross Sales; and
- e. For Gross Sales at the Franchised Restaurant for the period beginning [YEAR 5], and continuing until [YEAR 20], the Royalty payable under the Agreement shall be equal to 5% of Gross Sales.

If prior to the end of YEAR 5, the Development Agreement is terminated due to non-compliance, Franchisee agrees that the Royalty payable under this Agreement shall revert automatically and without notice, to the standard Royalty which is 5% of Gross Sales.

[OPTION B]

- 1. The Franchise Agreement is amended to add the following new section after section 8.A.1:
 - 8.A.1.a. Notwithstanding anything in Section 8.A.1. to the contrary, Franchisee has received an interest-free loan from Company or one of its affiliates in the amount of \$150,000.00, pursuant to the terms of the Promissory Note as shown in Attachment C of Franchisee's Development Agreement date______, 20___ ("Note"); and Franchisee has agreed, among other things, that: (i) the principal amount due under the Note will be repaid through a credit equal to 100% of the Royalties that would otherwise have been due and payable based upon Gross Sales at the Developed Restaurant until such time as the Note is paid in full; and (ii) the entire remaining principal balance of the Note shall be due and payable upon the sale or closure of the Developed Restaurant.]
- 2. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Franchisee hereby releases and forever discharges Company, its officers, directors, agents, employees, subsidiaries and affiliates from and against any and all liabilities, actions, causes of action, judgments, suits, controversies, claims, demands, damages, costs and expenses whatsoever, in law or in equity ("Claims") arising out of any matters prior to the date of execution hereof, which have ever existed, may now exist or may hereafter arise, known or unknown, foreseen or unforeseen, to the full extent permitted by applicable law. Without limiting the generality of the foregoing, it is expressly understood and agreed that this Release includes Claims Franchisee may have individually or as the member of any class (i) under any federal or state franchise, antitrust, trade regulation or similar law, or (ii) under any state or federal security, blue sky or similar law, or iii) in connection with allowances, discounts or compensation of any type received by Company from vendors.

<u>Further, the undersigned do hereby expressly waive all right, protection, privilege and benefit under Section 1542 of the Civil Code of the State of California, which provides:</u>

- "1542 A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."
- 3. The undersigned hereby certify that they have read all provisions of the foregoing release and the quoted California Civil Code Section, that they are represented by Counsel and have been advised or been afforded the opportunity to be advised of the effect of the provisions of such release and their waiver of all rights under the quoted California Civil Code Section, that they have made such investigation and inquiry as they and Counsel have deemed appropriate, and that they understand said provisions and effect, and have executed this Amendment freely and without duress.
- 4. Except as expressly modified or amended pursuant to the provisions of this Amendment, the Agreement shall remain unmodified and in full force and effect. In the event of any conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment prevail.
- 5. This Amendment may be signed in one or more counterparts, all of which when taken together constitute one original document.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed as of the day and year shown opposite their signatures below.

DIFFERENT RULES, LLC,	ENTITY,
A Delaware corporation	a limited liability co./corp.
By:	Ву:
Name:	Name:
Title:	Title:
Date:	Date:
	Ву:
	Name:
	Title:
	Date:



Exhibit 5

Jack in the Box Inc. Exhibit 5*

FYE September 29, 2019

	FY2019
Revenue from Company Restaurants	336,807,000
Expenses from Company Restaurants	248,470,000
Operating Income from Company Restaurants	88,337,000
Less Depreciation on Company-Operated Locations	11,037,000
Less Company Marketing Fund Contributions	18,840,000
Operating Income from Company Restaurants - w/ Depr & Mkt	58,460,000
Revenue from Franchise Restaurants	613,300,000
Expenses from Franchise Restaurants	356,787,000
Operating Income from Franchise Restaurants	256,513,000
Less Depreciation on Fixed Assets Leased to Franchisees	33,391,000
Operating Income from Franchised Restaurants - w/ Depr	223,122,000
Franchise Operating Profit	223,122,000
Company-Owned Operating Profit	58,460,000
Systemwide Operating Profit	281,582,000
Franchise Operating Profit	223,122,000
Systemwide Operating Profit	281,582,000
Franchise Contribution to Operating Profit	79%

 $[\]ensuremath{^{*}}$ All figures from the 10K except depreciation and marketing expenses.



Exhibit 6



LEGAL DIVISION MS A260 PO Box 1720 Rancho Cordova CA 95741-1720 tel: 916.845.5089 fax: 916.843.0219

October 09, 2024

ftb.ca.gov

Jon Sperring
PricewaterhouseCoopers
400 Capital Mall, Suite 600
Sacramento, CA 95814

Regarding: Jack in the Box Inc. & Subsidiaries Taxable Years: 09/28/2014 - 09/27/2020

Variance Action Determination Letter

SENT VIA SECURE EMAIL

Dear Mr. Sperring,

Thank you for attending the Franchise Tax Board's (FTB) Section 25137 Review Committee Meeting for Jack in the Box Inc. & Subsidiaries ("Taxpayer") on July 24, 2024. Your insight and PowerPoint slides were helpful as the Section 25137 Review Committee ("Committee") considered Taxpayer's request to invoke alternative apportionment in accordance with Revenue & Taxation Code (R&TC) section 25137. After a thorough discussion, the Committee recommended to deny Taxpayer's variance request, and I agree with the Committee's recommendation. This letter summarizes the basis for the determination.

Pursuant to R&TC section 25137, if the standard allocation and apportionment does not fairly represent the extent of a taxpayer's business activity in this state, the taxpayer may petition for or the FTB may require, any reasonable alternative method to effectuate an equitable allocation and apportionment of the taxpayer's income.

TAXPAYER'S VARIANCE REQUEST

Taxpayer asserts that the application of the standard apportionment formula to Taxpayer's facts is distortive because it results in an apportionment formula that does not fairly reflect Taxpayer's business activities in California. In the alternative, Taxpayer seeks to deviate from the standard apportionment formula. For more detail, please refer to the Staff Summary and Recommendation for 09/28/2014 through 10/01/2017 and the Staff Summary and Recommendation for taxable years 09/30/2018 through 09/27/2020, each dated November 15, 2023, and incorporated herein with this reference.

A taxpayer or the FTB must prove by clear and convincing evidence that the standard formula does not fairly represent the extent of its business activity in California. The California Supreme Court in *Microsoft Corporation v. Franchise Tax Board* (2006) 39 Cal. 4th 750, 765, analyzed R&TC section 25137 and held that "the statutory touchstone"

remains an inquiry into whether the formula 'fairly represent[s]' a unitary business's activities in a given state, and when it does not, the relief provision may apply." Here, Taxpayer has not overcome this challenge.

If Taxpayer disputes the Department's determination, it may petition the three-member Franchise Tax Board, as provided by California Code of Regulations section 25137, subdivision (d), which provides:

In cases deemed appropriate by the Franchise Tax Board, itself, it may elect to hear and decide petitions filed pursuant to Section 25137 instead of having this function performed by the Franchise Tax Board staff. Consideration of said petitions by the Franchise Tax Board, itself, shall be in open session at a regularly scheduled meeting.

Please contact me within 60 days if you would like to request a review by the three-member Franchise Tax Board.

CONCLUSION

For the aforementioned reasons, Taxpayer's request for alternative apportionment is denied.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Delinda R. Tamagni

Assistant Chief Counsel

Delinda P. Tamagni