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

FORM 10-K

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

FOR THE FISCAL YEAR ENDED SEPTEMBER 29, 1996

COMMISSION FILE NUMBER 1-9390

FOODMAKER, INC.
(Exact name of registrant as specified in its charter)

Delaware	95-2698708
(State of incorporation)	(IRS Employer Identification No.)
9330 Balboa Avenue, San Diego, CA	92123
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (619) 571-2121

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

Title of each class	Name of each exchange on which registered
Common Stock, $.01 par value	New York Stock Exchange, Inc.

Securities registered pursuant to Section 12(g) of the Act: None

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

Yes X No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

The aggregate market value of the voting stock held by non-affiliates of the registrant as of December 13, 1996, computed by reference to the closing price reported in the New York Stock Exchange-Composite Transactions, was approximately $305.4 million.

Number of shares of common stock, $.01 par value, outstanding as of the close of business December 13, 1996 - 38,846,945.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement to be filed with the Securities and Exchange Commission in connection with the 1997 Annual Meeting of Stockholders are incorporated by reference into Part III hereof.

ITEM 1. BUSINESS

The Company

Foodmaker, Inc. (the "Company") owns, operates and franchises JACK IN THE BOX restaurants, a fast food chain located principally in the western and southwestern United States. Until January 27, 1994, the Company also owned Chi-Chi's, Inc. ("Chi-Chi's"), a chain of full-service, casual Mexican restaurants located primarily in the midwestern and midatlantic United States.

On January 27, 1994, Foodmaker, Apollo FRI Partners, L.P. ("Apollo") and Green Equity Investors, L.P., whose general partner is Leonard Green & Partners, acquired Restaurant Enterprises Group, Inc. ("REGI"), a company that owned, operated and franchised various restaurant chains including El Torito, Carrows and Coco's. Contemporaneously, REGI changed its name to Family Restaurants, Inc. ("FRI"). Concurrently, Foodmaker contributed its entire Chi-Chi's Mexican restaurant chain to FRI in exchange for a 39% equity interest in FRI and other consideration. Pursuant to an agreement dated November 20, 1995, Foodmaker transferred its entire equity interest in FRI to Apollo and entered into a mutual release with the other principal shareholders of FRI, as described in Note 2 to the consolidated financial statements.

JACK IN THE BOX

Overview. JACK IN THE BOX is a leading regional competitor in the fast-food segment of the restaurant industry with system-wide sales of $1,229.0 million in 1996. At September 29, 1996, there were 1,270 JACK IN THE BOX restaurants, of which 879 were operated by the Company and 391 were franchised.

Menu and marketing strategies for JACK IN THE BOX restaurants are principally directed toward adult fast-food customers. JACK IN THE BOX offers a wider menu selection than most of its major competitors featuring foods that are not commonly offered in the fast-food hamburger segment (such as the Chicken Teriyaki Bowl and Philly Cheesesteak), as well as more traditional fast-food products (such as hamburgers and french fries). The Company believes that a key competitive strength of JACK IN THE BOX is its ability to introduce new and distinctive, high quality menu items that appeal to the changing preferences of its adult guests.

JACK IN THE BOX was the first restaurant chain to develop and expand the concept of drive-thru only restaurants, and drive-thru sales currently account for more than 60% of the sales at Company-operated restaurants. Over the years the JACK IN THE BOX concept has evolved to include more inside seating in its restaurants. Most restaurants are located in freestanding buildings with seating capacities ranging from 24 to 85 persons and are open approximately 18 hours a day.

History. The first JACK IN THE BOX restaurant, which offered only drive-thru service, opened in 1950, and the JACK IN THE BOX chain expanded its operations to approximately 300 restaurants in 1968. After Ralston Purina Company purchased the Company in 1968, JACK IN THE BOX underwent a major expansion program in an effort to penetrate the eastern and midwestern markets, and the business grew to over 1,000 units by 1979. In 1979, the Company's management decided to concentrate its efforts and resources in the western and southwestern markets, which it believed offered the greatest growth and profit potential. Accordingly, the Company sold 232 restaurants in the eastern and midwestern markets and redeployed the sale proceeds in its western and southwestern markets where the Company had a well-established market position and better growth prospects.

Operating Strategy. JACK IN THE BOX's operating strategy is to: (i) increase per store average sales through the introduction and promotion of distinctive, high quality menu items; (ii) focus on improving sales and margins through increased emphasis on guest service, food quality and safety, and cost management; and (iii) increase the number of JACK IN THE BOX restaurants through the addition of Company-operated and franchise-developed restaurants in JACK IN THE BOX's existing and contiguous markets.

Food Strategy. JACK IN THE BOX's menu strategy is to provide a variety of distinctive, high quality products that represent good value and appeal to the changing preferences of its customers. The JACK IN THE BOX menu features a wide variety of approximately 45-50 fast-food menu items, including hamburgers, specialty sandwiches, salads, Mexican foods, finger foods, breakfast foods, side items and desserts.

Management believes that JACK IN THE BOX's ability to develop new and unique menu items has been a traditional strength of the Company. JACK IN THE BOX continuously develops and tests new items for its menu and seeks to improve existing products. New products are developed in a corporate test kitchen and then introduced in one or more of Foodmaker's test restaurants to ensure that product consistency, high quality standards and profitability can be maintained and to determine preliminary guest response. Operating and training systems have been developed that enable JACK IN THE BOX to respond quickly to implement menu changes while achieving quality and profit objectives. If a new item proves successful at the research and development level, it is generally tested in selected markets, both with and without marketing support, and if it proves successful, the item is incorporated into the standard JACK IN THE BOX menu. JACK IN THE BOX has introduced over 50 new products in the last ten years. In addition, JACK IN THE BOX pursues menu strategies involving product reintroductions, limited-time only product promotions and products which target the value segment of the business.

Hamburgers represent the largest segment of the fast-food industry; accordingly, JACK IN THE BOX continues to offer hamburgers as principal menu items. Hamburgers, including the Grilled Sourdough Burger and the Ultimate Cheeseburger, accounted for approximately one quarter of JACK IN THE BOX's fiscal 1996 sales. However, management believes that, as a result of its diverse menu, JACK IN THE BOX restaurants are less dependent on the commercial success of one or a few products than other fast-food chains, and that JACK IN THE BOX's menu appeals to a broad range of food preferences.

Growth Strategy. The Company's goal is to achieve targeted levels of media pressure in JACK IN THE BOX's existing major markets through the construction of new restaurants primarily by the Company and, to a lesser extent, by franchisees. The Company's current plan calls for opening approximately 400-450 new Company-operated restaurants (approximately one-third of the new development is expected to be on non-traditional sites) as well as approximately 20 new franchise-operated restaurants over the next five years. The Company has historically acquired and will continue to consider the acquisition of existing restaurants for conversion to JACK IN THE BOX restaurants.

The following table sets forth the growth in Company-operated and franchised JACK IN THE BOX restaurants since the beginning of fiscal year 1992:

	Fiscal year				
	1996	1995	1994	1993	1992
Company-operated restaurants:					
Opened.	26	21	54	10	51
Sold to franchisees	-	(6)	(4)	(11)	(18)
Closed.	(15)	(4)	(9)	(4)	(4)
Acquired from franchisees .	5	42	44	10	7

Ending number	879	863	810	725	720
Franchised restaurants:					
Opened.	10	12	8	13	21
Acquired from Company . . .	--	6	4	11	18
Closed.	(3)	(1)	(1)	(2)	(2)
Sold to Company	(5)	(42)	(44)	(10)	(7)
Ending number	391	389	414	447	435
System total.	1,270	1,252	1,224	1,172	1,155

The following table summarizes the locations of the JACK IN THE BOX restaurants at September 29, 1996:

	Number of restaurants			Number of restaurants	
	Company-operated	Franchised		Company-operated	Franchised
Arizona.	62	45	Texas.	270	56
California	377	241	Washington . .	69	--
Hawaii	27	2	China.	--	2
Idaho.	8	--	Egypt.	--	1
Illinois	12	--	Hong Kong. . .	--	7
Louisiana.	--	5	Indonesia. . .	--	1
Missouri	38	3	Mexico	--	10
Nevada	14	9	Philippines. .	--	4
New Mexico	--	2	Singapore. . .	--	1
Oregon	2	2	Total. . . .	879	391

Site selections for all new JACK IN THE BOX restaurants are made after an extensive review of demographic data and other information relating to population density, restaurant visibility and access, available parking, surrounding businesses and opportunities for market concentration. JACK IN THE BOX restaurants developed by franchisees are built to Company specifications on sites which have been approved by the Company.

The Company currently uses several configurations in building new JACK IN THE BOX restaurants. The largest restaurants seat 90 customers and require a larger customer base to justify the required investment of approximately $1.3 million, including land. The smallest restaurants seat 44 customers, require less land, and cost approximately $35,000 less to build and equip than do the larger restaurants. Management believes that the flexibility provided by the alternative configurations enables the Company to match the restaurant configuration with specific demographic, economic and geographic characteristics of the site.

Restaurant Operations. Significant resources are devoted to ensure that all JACK IN THE BOX restaurants offer the highest quality food and service. Emphasis is placed on ensuring that quality ingredients are delivered to the restaurants, restaurant food production systems are continuously developed and improved, and all employees are dedicated to delivering consistently high quality food and service. Through its network of corporate quality assurance, facilities services and restaurant management personnel, including regional vice presidents, area managers and restaurant managers, the Company standardizes specifications for the preparation and service of its food, the maintenance and repair of its premises and the appearance and conduct of its employees. Operating specifications and procedures are documented in a series of manuals and video presentations. Most restaurants, including franchised units, receive approximately 6 full inspections and 26 limited reviews each year.

Each JACK IN THE BOX restaurant is operated by a Company-employed manager or franchisee who normally receives a minimum of eight weeks of management training. Foodmaker's management training program involves a combination of classroom instruction and on-the-job training in specially designated training restaurants. Restaurant managers and supervisory personnel train other restaurant employees in accordance with detailed procedures and guidelines prescribed by Foodmaker, utilizing training aids including video equipment available at each location. The restaurant managers are directly responsible for the operation of the restaurants, including product quality, food handling safety, cleanliness, service, inventory, cash control and the appearance and conduct of employees.

Restaurant managers are supervised by approximately 45 area managers, each of whom is responsible for an average of 20 restaurants. The area managers are under the supervision of 7 regional vice presidents who are supervised in turn by a vice president of operations. Under the Company's performance system, area and restaurant managers are eligible for quarterly bonuses based on a percentage of location operating profit and regional vice presidents are eligible for bonuses based on profit improvement and achievement of established goals and objectives.

JACK IN THE BOX's quality assurance program is designed to maintain high standards for the food and materials and food preparation procedures used by Company-operated and franchised restaurants. Foodmaker maintains product specifications and approves sources for obtaining such products. The Company has developed a comprehensive, restaurant-based Hazard Analysis & Critical Control Points ("HACCP") system for managing food safety and quality. HACCP combines employee training, testing by suppliers, and detailed attention to product quality at every stage of the food preparation cycle. Products are randomly inspected by the Company's quality assurance personnel as they arrive at Foodmaker's distribution centers to ensure that they conform to Foodmaker standards. These items then are distributed to individual restaurants through a network of Company-operated delivery trucks.

Foodmaker provides purchasing, warehouse and distribution services for both Company-operated and some franchised restaurants. In prior years, most JACK IN THE BOX franchisees utilized these services to the full extent available even though they were permitted to purchase products directly from any approved source. Recently, JACK IN THE BOX franchisees formed a purchasing cooperative and contracted with another supplier for distribution services. This transition occurred during fiscal 1996 and has resulted in a substantial decline in sales to franchisees. Some products, primarily dairy and bakery items, are delivered to both Company-operated and franchised restaurants directly by approved suppliers.

The primary commodities purchased by JACK IN THE BOX restaurants are beef, poultry and produce. The Company monitors the current and future prices and availability of the primary commodities purchased by the Company in order to minimize the impact of fluctuations in price and availability, and makes advance purchases of commodities when considered to be advantageous. However, the Company remains subject to price fluctuations in certain commodities. All essential food and beverage products are available, or upon short notice can be made available, from alternative qualified suppliers.

Foodmaker maintains centralized financial and accounting controls for Company-operated JACK IN THE BOX restaurants which it believes are important in analyzing profit margins. JACK IN THE BOX utilizes a specially designed computerized reporting and cash register system on a Company-wide basis which provides point-of-sale transaction data and accumulation of pertinent marketing information. Sales data are collected and analyzed on a weekly basis by management.

Franchising Program. JACK IN THE BOX's franchising strategy is directed toward franchisee development of restaurants in existing non-primary markets and selected primary markets. The Company offers development agreements for construction of one or more new restaurants over a defined period of time and in a defined geographic area. Multi-unit developers are required to prepay one-half of the franchise fees for restaurants to be opened in the future and may forfeit such fees and lose their rights to future developments if they do not maintain the required schedule of openings. At present, most franchisees operate no more than three restaurants. The Company's strategy is to grant franchises in a smaller metropolitan area to a single franchisee in order to achieve operating efficiencies and to grant franchises for a larger metropolitan area to several franchisees in order to maximize development of the area.

Another aspect of the franchising program has been the conversion of existing Company-operated restaurants to franchised restaurants. Although franchised units totaled 391 of JACK IN THE BOX's 1,270 restaurants at September 29, 1996, the ratio of franchised to Company-operated restaurants is still low relative to JACK IN THE BOX's major competitors. The Company views its non-franchised JACK IN THE BOX units as a potential resource which, on a selected basis, can be sold to a franchisee to generate additional immediate cash flow and earnings while still maintaining future cash flows and earnings through franchise rents and royalties.

JACK IN THE BOX's current franchise agreement provides for an initial franchise fee of $50,000 (formerly $25,000) per restaurant. This agreement generally provides for royalties of 5% (formerly 4%) of gross sales, a marketing fee of 5% of gross sales (although some existing agreements provide for a 4% rate) and a 20-year term. In connection with the conversion of a Company-operated restaurant, the restaurant equipment and the right to do business at that location, known as "Trading Area Rights," are sold to the franchisee, in most cases for cash. The aggregate price is equal to the negotiated fair market value of the restaurant as a going concern, which depends on

various factors including the history of the facility, its location and its cash flow potential. In addition, the land and building are leased or subleased to the franchisee at a negotiated rent, generally equal to the greater of a minimum base rent or a percentage of gross sales (typically 8 1/2%). The franchisee is required to pay property taxes, insurance and maintenance costs.

Advertising and Promotion. JACK IN THE BOX engages in substantial marketing programs and activities. Advertising costs are paid from a fund created by the marketing fees paid by franchisees together with an amount contributed each year by the Company equal to at least 5% of the gross sales of its Company-operated restaurants. JACK IN THE BOX's use of advertising media is limited to regional and local campaigns both on spot television and radio and in print media. JACK IN THE BOX does not advertise nationally. JACK IN THE BOX spent approximately $60 million on advertising and promotions in fiscal 1996, including franchisee contributions. JACK IN THE BOX's current advertising campaign promotes new and established JACK IN THE BOX products on an individual basis in a series of creative 30 second television and radio spot advertisements. The Company also allocated $1.7 million in 1996 for local marketing purposes. Franchisees are encouraged to, and generally do, spend funds in addition to those expended by the Company for local marketing programs.

Employees. At September 29, 1996, JACK IN THE BOX had approximately 24,800 employees, of whom 23,130 were restaurant employees, 420 were corporate personnel, 300 were distribution employees and 950 were field management and administrative personnel. Employees are paid on an hourly basis, except restaurant managers, corporate and field management, and administrative personnel. A majority of JACK IN THE BOX's restaurant employees are employed on a part-time, hourly basis to provide services necessary during peak periods of restaurant operations. JACK IN THE BOX has not experienced any significant work stoppages and believes its labor relations are good.

JACK IN THE BOX competes in the job market for qualified employees and believes its wage rates are comparable to those of its competitors.

Trademarks and Service Marks

The JACK IN THE BOX name is of material importance to the Company and is a registered trademark and service mark in the United States and in certain foreign countries. In addition, the Company has registered numerous service marks and trademarks for use in its business, including the JACK IN THE BOX logo, Breakfast Jack and Jumbo Jack names and Crescent Breakfast name and design.

Competition and Markets

In general, the restaurant business is highly competitive and is affected by competitive changes in a geographic area, changes in the public's eating habits and preferences and local and national economic conditions affecting consumer spending habits, population trends and traffic patterns. Key competitive factors in the industry are the quality and value of the food products offered, quality and speed of service, advertising, name identification, restaurant location and attractiveness of facilities.

Each JACK IN THE BOX restaurant competes directly and indirectly with a large number of national and regional chain operators as well as with locally-owned fast-food restaurants and coffee shops. In selling franchises, JACK IN THE BOX competes with many other restaurant franchisors, and some of its competitors have substantially greater financial resources and higher total sales volume.

Regulation

Each Company-operated and franchised restaurant is subject to regulation by federal agencies and to licensing and regulation by state and local health, sanitation, safety, fire and other departments. Difficulties or failures in obtaining any required licensing or approval could result in delays or cancellations in the opening of new restaurants.

The Company is also subject to federal and a substantial number of state laws regulating the offer and sale of franchises. Such laws impose registration and disclosure requirements on franchisors in the offer and sale of franchises and may also apply substantive standards, including limitations on the ability of franchisors to terminate franchisees and alter franchise arrangements, to the relationship between franchisor and franchisee. The Company believes it is operating in substantial compliance with applicable laws and regulations governing its operations.

The Company is subject to the Fair Labor Standards Act and various state laws governing such matters as minimum wages, overtime and other working conditions. A significant number of the Company's food service personnel are paid at rates related to the federal and state minimum wage, and accordingly, increases in the minimum wage increase the Company's labor costs.

In addition, various proposals which would require employers to provide health insurance for all of their employees are being considered from time-to-time in Congress and various states. The imposition of any requirement that the Company provide health insurance to all employees would have a material adverse impact on the consolidated operations and financial condition of the Company and the restaurant industry.

The Company is subject to certain guidelines under the Americans with Disabilities Act of 1990 and various state codes and regulations which require restaurants to provide full and equal access to persons with physical disabilities. To comply with such laws and regulations, the cost of remodeling and developing restaurants has increased, principally due to the need to provide certain older restaurants with ramps, wider doors, enlarged restrooms and other conveniences.

The Company is also subject to various federal, state and local laws regulating the discharge of materials into the environment. The cost of developing restaurants has increased as a result of the Company's compliance with such laws. Such costs relate primarily to the necessity of obtaining more land, landscaping and below surface storm drainage and the cost of more expensive equipment necessary to decrease the amount of effluent emitted into the air and ground.

Cautionary Statements Regarding Forward-Looking Statements

The Company wishes to caution readers that the forward-looking statements involve known and unknown risks and uncertainties which may cause the actual results, performance or achievements of the Company to be materially different from any future results, performance or achievements expressed or implied by any forward-looking statements made by or on behalf of the Company. In connection with the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, the Company is filing the following cautionary statements identifying important factors that in some cases have affected, and in the future could cause, the Company's actual results to differ materially from those expressed in any such forward-looking statements.

In addition to factors discussed in this Form 10-K, among the other factors that could cause the Company's results to differ materially are: the effectiveness and cost of advertising and promotional efforts; the degree of success of the Company's new and unique product offerings; weather conditions; difficulties in obtaining ingredients and variations in ingredient costs; the Company's ability to control operating, general and administrative costs and to raise prices sufficiently to offset cost increases; the Company's ability to recognize value from any current or future co-branding efforts; competitive products and pricing and promotions; the impact of any wide-spread negative publicity; the impact on consumer eating habits of new scientific information regarding diet, nutrition and health; competition for labor; general economic conditions; changes in consumer tastes and in travel and dining-out habits; the impact on operations and the costs to comply with laws and regulations and other activities of governing entities;

the costs and other effects of legal claims by franchisees, customers, vendors and others, including settlement of those claims; and the effectiveness of management strategies and decisions.

There can be no assurance that the Company or its franchisees, domestic and international, will achieve growth objectives or that new restaurants will be profitable. The opening and profitability of restaurants are subject to various risk factors including the identification, availability and lease or purchase terms of suitable sites, both traditional and non-traditional; the ability of the Company and its franchisees to finance new restaurant development;the ability to meet construction schedules, permitting and regulatory compliance; and the sales and cost performance of the individual new restaurants.

The growth of JACK IN THE BOX restaurants outside the United States is subject to a number of additional factors. The Company has limited experience with international franchise development. The growth and profitability of international restaurants are subject to the financial, development and operational capabilities of franchisees, the franchisees' ability to develop a support structure and adequately support subfranchisees, the franchisees' adherence to the Company's operational standards, as well as currency regulations and fluctuations.

Because the Company's business is regional, with approximately 75% of its company-operated and franchised restaurants located in the states of California and Texas, the economic conditions and weather conditions affecting those states may have a material impact upon the Company's results. The Company has a substantial number of minimum wage employees and employees who are paid at wage rates slightly above the minimum wage. As federal and/or state minimum wage rates increase, the Company may need to increase not only the wages of its minimum wage employees but also the wages paid to the employees at wage rates which are above minimum wage. If competitive pressures or other factors prevent the Company from offsetting the increased costs by increases in prices, the Company's profitability may decline.

The Company has been required under SFAS 109, because of operating losses incurred over the past several years, to establish valuation allowances against deferred tax assets recorded for net operating losses, tax credit carryforwards and various other items. Until there is sufficient available evidence that the Company will be able to realize such deferred tax assets through future taxable earnings, the Company's tax provision will be highly sensitive to the expected annual level of earnings, the impact of the alternative minimum tax under the Internal Revenue Code and the limited current recognition of the deferred tax assets. As a result of changing expectations, the relationship of the Company's income tax provision to pre-tax earnings will vary more significantly from quarter to quarter and year to year than companies that have been continuously profitable. However, the Company's effective tax rates are likely to increase in the future.

The Company is highly leveraged. Its substantial indebtedness may limit the Company's ability to respond to changing business and economic conditions. The contracts under which the Company acquired its debt impose significant operating and financial restrictions which limit the Company's ability to borrow money, sell assets or make capital expenditures or investments without the approval of certain lenders. In addition to cash flows generated by operations, other financing alternatives may be required in order to repay the Company's substantial debt as it comes due. There can be no assurance that the Company will be able to refinance its debt or obtain additional financing or that any such financing will be on terms favorable to the Company.

ITEM 2. PROPERTIES

At September 29, 1996, Foodmaker owned 538 JACK IN THE BOX restaurant buildings, including 326 located on land covered by ground leases. In addition, it leased 620 restaurants where both the land and building are leased. Some of these restaurants are operated by franchisees. The remaining lease terms of ground leases range from approximately one year to 49 years, including renewal option periods. The remaining lease terms of Foodmaker's other leases range from approximately one year to 40 years, including renewal option periods. In addition, at September 29, 1996, franchisees directly owned or leased 112 restaurants.

	Company-operated restaurants	Franchise-operated restaurants	Total restaurants
Company-owned restaurant buildings:			
On Company-owned land	141	71	212
On ground-leased land	277	49	326
Subtotal	418	120	538
Company-leased restaurant buildings on leased land	461	159	620
Franchise directly-owned or directly-leased restaurant buildings.	--	112	112
Total restaurant buildings.	879	391	1,270

The Company's leases generally provide for the payment of fixed rentals (with cost-of-living index adjustments) plus real estate taxes, insurance and other expenses; in addition, many of the leases provide for contingent rentals of between 2% and 10% of the restaurant's gross sales. The Company has generally been able to renew its restaurant leases as they expire at then current market rates. At September 29, 1996, the leases had initial terms expiring as follows:

Years initial lease term expires	Number of restaurants: Ground leases	Number of restaurants: Land and building leases
1997-2001	114	124
2002-2006	112	181
2007-2011	63	241
2012 and later	37	74
	326	620

In addition, the Company owns its principal executive offices in San Diego, California, consisting of approximately 150,000 square feet.

The Company owns one warehouse and leases an additional seven with remaining terms ranging from one year to 21 years, including renewal option periods.

Substantially all the Company's real and personal property are pledged as collateral for various components of the Company's long-term debt.

ITEM 3. LEGAL PROCEEDINGS

Various claims and legal proceedings are pending against the Company in a federal court and in state courts in the state of Washington, seeking monetary damages for personal injuries relating to the outbreak of food-borne illness (the "Outbreak") attributed to hamburgers served at JACK IN THE BOX restaurants. The Company, in consultation with its insurance carriers and attorneys, does not anticipate that the total liability on all such lawsuits and claims will exceed the coverage available under its applicable insurance policies.

The Company is engaged in litigation with the Vons Companies, Inc. ("Vons") and other suppliers seeking reimbursement for all damages, costs and expenses incurred in connection with the Outbreak. The initial litigation was filed by the Company on February 4, 1993. Vons has filed cross-complaints against the Company and others alleging certain contractual, indemnification and tort liabilities; seeking damages in unspecified amounts and a declaration of the rights and obligations of the parties. The claims of the parties arise out of two separate lawsuits which have been consolidated and are now set for trial in the Los Angeles Superior Court, Los Angeles, California in July 1997.

On April 6, 1996 an action was filed by one of the Company's international franchisees, Wolsey, Ltd., in the United States District Court in San Diego, California against the Company and its directors, its international franchising subsidiary, and certain officers of the Company and others. The complaint alleges certain contractual, tort and law violations related to the franchisees' development rights in the Far East and seeks damages in excess of $25 million, injunctive relief, attorneys fees and costs. The Company has successfully dismissed portions of the complaint, including the single claim alleging wrongdoing by the Company's outside directors. Management believes the remaining allegations are without foundation and intends to vigorously defend the action.

On November 5, 1996 an action was filed by the "National JIB Franchisee Association, Inc." (the "Association") and several of the Company's franchisees in the Superior Court of California, County of San Diego in San Diego, California, against the Company and others. The lawsuit alleges that certain Company policies are unfair business practices and violate sections of the California Corporations Code regarding material modifications of franchise agreements and interfere with franchisees' right of association. It seeks injunctive relief, a declaration of the rights and duties of the parties, unspecified damages and recission of alleged material modifications of plaintiffs' franchise agreements. The complaint also alleges fraud, breach of a fiduciary duty and breach of a third party beneficiary contract in connection with certain payments that the Company received from suppliers and seeks unspecified damages, interest, punitive damages and an accounting. Management believes that its policies are lawful and that it has satisfied any obligation to its franchisees in regard to such supplier payments.

On December 10, 1996, a suit was filed by the Company's Mexican licensee, Foodmex, Inc., in the United States District Court in San Diego, California against the Company and its international franchising subsidiary. Foodmex formerly operated several JACK IN THE BOX franchise restaurants in Mexico, but its licenses were terminated by the Company for, among other reasons, chronic insolvency and failure to meet operational standards. Foodmex's suit alleges wrongful termination of its master license, breach of contract and unfair competition and seeks an injunction to prohibit termination of its license as well as unspecified monetary damages. The Company believes its termination of the Foodmex license was proper, and that there is no merit to the Foodmex claims. The Company intends to vigorously defend the action.

On February 2, 1995, an action by Christina Jorgensen was filed against the Company in the U.S. District Court in San Francisco, California alleging that restrooms at a JACK IN THE BOX restaurant failed to comply with laws regarding disabled persons and seeking damages in unspecified amounts, punitive damages, injunctive relief, attorneys fees and prejudment interest. In an amended complaint damages are also sought on behalf of all physically disabled persons who have been denied access to restrooms at the restaurant. A motion has been filed, but has not been heard, to permit the lawsuit to proceed as a class action and to include all Company-operated restaurants.

The amount of liability from the claims and actions described above cannot be determined with certainty, but in the opinion of management, based in part upon advice from legal counsel, the ultimate liability from all pending

legal proceedings, asserted legal claims and known potential legal claims which are probable of assertion should not materially affect the consolidated financial position of the Company.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter ended September 29, 1996.

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The following table sets forth the high and low closing sales prices for the common stock during the quarters indicated, as reported on the New York Stock Exchange-Composite Transactions:

	16 weeks ended	12 weeks ended		
	Jan. 22, 1995	Apr. 16, 1995	July 9, 1995	Oct. 1, 1995
High	5 5/8	4 3/8	5 5/8	6 7/8
Low.	3 7/8	3 3/8	3 7/8	5 1/4

	16 weeks ended	12 weeks ended		
	Jan. 21, 1996	Apr. 14, 1996	July 7, 1996	Sept. 29, 1996

High	6 1/8	7 3/4	8 7/8	10 1/8
Low.	5	5 7/8	6 7/8	6 3/4

Foodmaker has not paid any cash or other dividends (other than the issuance of the Rights) during its last two fiscal years and does not anticipate paying dividends in the foreseeable future. The Company's credit agreements prohibit and its public debt instruments restrict the Company's right to declare or pay dividends or make other distributions with respect to shares of its capital stock.

As of September 29, 1996, there were approximately 800 holders of record.

ITEM 6. SELECTED FINANCIAL DATA

The selected data presented in the following table summarizes certain consolidated financial information concerning the Company and is derived from financial statements which have been audited by KPMG Peat Marwick LLP, independent certified public accountants. Chi-Chi's results of operations are included through January 27, 1994, the date of Chi-Chi's sale. The capital structure changed as the result of the 1992 recapitalization of the Company. The Company's fiscal year is 52 or 53 weeks, ending the Sunday closest to September 30.

Statement of Operations Data:	52 weeks ended 9/26/95	52 weeks ended 10/1/95	52 weeks ended 10/2/94	53 weeks ended 10/3/93	52 weeks ended 9/27/92
Revenues:					
Restaurant sales.	$ 892,029	$ 804,084	$ 843,038	$1,088,269	$1,061,904
Distribution sales.	132,421	179,689	171,711	108,546	104,041
Franchise rents and royalties . . .	34,048	32,530	33,740	35,232	38,803
Other revenues.	4,324	2,413	4,837	8,680	14,585
Total revenues.	1,062,822	1,018,716	1,053,326	1,240,727	1,219,333
Costs of revenues (1)	919,211	903,479	950,952	1,147,157	1,018,330
Equity in loss of FRI (2)	--	57,188	2,108	--	--
Selling, general and administrative expenses (3)	72,134	78,044	78,323	102,183	89,834
Interest expense.	46,126	48,463	55,201	57,586	72,455
Earnings (loss) before income taxes (benefit), extraordinary item, and cumulative effect of changes in accounting principles.	25,351	(68,458)	(33,258)	(66,199)	38,714
Income taxes (benefit).	5,300	500	3,010	(22,071)	16,818
Earnings (loss) before extraordinary item and cumulative effect of changes in accounting principles . .	20,051	(68,958)	(36,268)	(44,128)	21,896
Extraordinary item - loss on early extinguishment of debt, net of income taxes	--	--	(3,302)	--	(63,651)
Cumulative effect on prior years of adopting SFAS 106 and SFAS 109 . . .	--	--	--	(53,980)	--
Net earnings (loss)	$ 20,051	$ (68,958)	$ (39,570)	$ (98,108)	$ (41,755)
Earnings (loss) per share before extraordinary item and cumulative effect of changes in accounting principles	$ .51	$ (1.77)	$ (.94)	$ (1.15)	$ .67
Earnings (loss) per share	$ .51	$ (1.77)	$ (1.03)	$ (2.55)	$ (1.28)
Balance Sheet Data (at end of period):					
Current assets.	$ 96,476	$ 97,889	$ 107,486	$ 93,534	$ 106,311
Current liabilities	147,063	132,017	140,238	202,194	153,851
Total assets.	653,638	662,674	740,285	897,280	915,487
Long-term debt.	396,340	440,219	447,822	500,460	501,083
Stockholders' equity.	51,384	31,253	100,051	139,132	246,933

<FN>

<F1> Reflects a provision of $44.5 million for the year ended October 3, 1993 to cover franchisee settlements and associated costs related to the Outbreak of food-borne illness.

<F2> Reflects the complete write-off of the Company's $57.2 million investment in Family Restaurants, Inc. for the year ended October 1, 1995.

<F3> Includes the recognition of an $8 million stockholders' lawsuit settlement for the year ended October 1, 1995.

</FN>

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Results of Operations

All comparisons under this heading between 1996, 1995 and 1994 refer to the 52-week periods ended September 29, 1996, October 1, 1995 and October 2, 1994, respectively, unless otherwise indicated. On January 27, 1994, the Company contributed its entire Chi-Chi's Mexican restaurant chain to FRI in exchange for a 39% equity interest in FRI and other consideration, including cash, debt assumption and a warrant to acquire additional shares as described in Note 2 to the consolidated financial statements. The 1996 and 1995 consolidated statements of operations, therefore, do not include Chi-Chi's results of operations and 1994 only includes Chi-Chi's for the first fiscal quarter, while it was a subsidiary of the Company.

Revenues

JACK IN THE BOX Company-operated restaurant sales were $892.0 million, $804.1 million and $719.8 million in 1996, 1995 and 1994, respectively. The sales improvements from the prior year of $87.9 million, or 10.9%, in 1996 and $84.3 million, or 11.7%, in 1995 reflect increases in both per store average sales and in the average number of restaurants. Per store average ("PSA") sales for comparable restaurants increased compared to the prior year 7.2% in 1996 and 3.5% in 1995. Sales improved under the Company's two-tier marketing strategy offering customers premium sandwiches and hamburgers as well as value-priced product alternatives and which features a compelling advertising campaign. The average number of Company-operated restaurants were 868, 839 and 761 in 1996, 1995 and 1994, respectively. Chi-Chi's restaurant sales were $123.2 million in the first quarter of 1994.

Distribution sales of food and supplies were $132.4 million, $179.7 million and $171.7 million in 1996, 1995 and 1994, respectively. Distribution sales to franchise-operated restaurants decreased $31.3 million to $67.3 million in 1996 from $98.6 million in 1995 as JACK IN THE BOX franchisees transitioned to their recently-formed purchasing cooperative which contracts with another supplier for distribution services. Most franchisees have elected to participate in the cooperative, which has and will result in a substantial decline in distribution sales. The loss of these extremely low profit margin sales is not expected to have a material effect on the profits of the Company. Distribution sales to FRI and others have also declined $16.0 million to $65.1 million in 1996 from $81.1 million in 1995. The $8.0 million sales improvement in 1995 as compared to 1994 is primarily due to recording sales to Chi-Chi's restaurants in the first quarter of 1995 and excluding them as intercompany sales in the same quarter of 1994 since Chi-Chi's was a subsidiary of the Company at that time.

JACK IN THE BOX franchise rents and royalties were $34.0 million, $32.5 million and $33.6 million in 1996, 1995 and 1994, respectively, at just slightly more than 10% of sales of franchise-operated restaurants in each of those years. Franchise restaurant sales increased approximately 5% to $337.0 million in 1996 from $319.6 million in 1995, principally due to PSA sales increases at domestic franchise-operated restaurants, which were also helped by the marketing initiatives that contributed to sales improvements at Company-operated restaurants. Franchise restaurant sales declined approximately 3% in 1995 from $330.1 million in 1994, as PSA sales increases in 1995 were insufficient to offset a 6.5% decrease in the average number of franchise-operated restaurants due to the Company's acquisition from franchisees of 42 restaurants in 1995 and 44 restaurants in 1994. Chi-Chi's franchise rents and royalties were $.1 million in the first quarter of 1994.

JACK IN THE BOX other revenues, which include interest income on investments and notes, as well as franchise development fees, were $4.3 million, $2.4 million and $4.3 million in 1996, 1995 and 1994, respectively. Other revenues were greater in 1996 and 1994 principally due to interest earned on higher levels of invested cash in those years. Chi-Chi's other revenues were $.5 million in the first quarter of 1994.

Costs and Expenses

JACK IN THE BOX restaurant costs of sales, which include food and packaging costs, were $291.0 million, $258.6 million and $234.3 million in 1996, 1995 and 1994, respectively. As a percent of restaurant sales, cost of sales were

32.6% in 1996, 32.2% in 1995 and 32.6% in 1994. Restaurant costs of sales percentages increased in 1996 compared to 1995 principally due to higher packaging costs and declined in 1995 compared to 1994 principally due to favorable ingredient costs. Chi-Chi's restaurant costs of sales were $32.7 million in the first quarter of 1994.

JACK IN THE BOX restaurant operating costs were $478.0 million, $447.2 million and $414.6 million in 1996, 1995 and 1994, respectively. As a percent of restaurant sales, operating costs were 53.6% in 1996, 55.6% in 1995 and 57.6% in 1994, declining each year principally due to labor efficiencies and lower percentages of occupancy and other operating expenses. While occupancy and other operating expenses increase with the addition of each new restaurant, such expenses for existing restaurants have increased at a slower rate than the increase in PSA restaurant sales. Chi-Chi's restaurant operating costs were $80.7 million in the first quarter of 1994.

Costs of distribution sales were $130.2 million in 1996, $175.7 million in 1995 and $165.8 million in 1994, reflecting the changes in distribution sales. Costs of distribution sales have increased as a percent of distribution sales to 98.4% in 1996 from 97.8% in 1995 and 96.6% in 1994. Decreases in distribution margins are due primarily to the effect of the loss of franchise business and declining sales to Chi-Chi's.

JACK IN THE BOX franchised restaurant costs, which consist principally of rents and depreciation on properties leased to franchisees and other miscellaneous costs, were $20.0 million, $21.9 million and $22.7 million in 1996, 1995 and 1994, respectively. The decline in such costs reflects a decrease in the average number of franchise-operated restaurants to 388 in 1996 from 395 in 1995 and 423 in 1994. Chi-Chi's franchised restaurant costs were $.1 million in the first quarter of 1994.

JACK IN THE BOX selling, general and administrative expenses were $72.1 million, $78.0 million and $69.2 million in 1996, 1995 and 1994, respectively. Advertising and promotion costs have declined progressively as a percent of restaurant sales to 5.3% in 1996 from 5.6% in 1995 and 6.0% in 1994, as the Company reduced its extra contributions to the marketing fund and its use of local promotions. In 1996 the Company received from suppliers cooperative advertising funds of $4.8 million, or 0.5% of revenues, which formerly had been contributed directly to the marketing fund. In 1995 general, administrative and other costs include an $8.0 million litigation settlement with stockholders and a $1.9 million gain on the curtailment of postretirement benefits, a net increase to such expenses of $6.1 million, or 0.6% of revenues. Excluding the above items, general, administrative and other costs as a percent of revenues were approximately 2.8% of revenues in each year. Chi-Chi's selling, general and administrative expenses were $9.1 million in the first quarter of 1994.

Interest expense was $46.1 million, $48.5 million and $55.2 million in 1996, 1995 and 1994, respectively. Interest expense decreased from the prior year by $2.4 million in 1996 and $6.7 million in 1995, principally due to a reduction in total debt outstanding and lower other financing costs. Total debt at September 29, 1996 was $398.2 million compared to $533.6 million at the beginning of fiscal year 1994. Interest expense in 1996 reflects interest savings associated with the early retirement of $42.8 million of the Company's 14 1/4% senior subordinated notes, due in May 1998. With the sale of Chi-Chi's in 1994, the Company eliminated Chi-Chi's debt and used proceeds from the sale to repay the bank credit line, the 13 1/2% senior notes and the 12 3/4% senior notes.

The 1996 tax provision reflects the effective annual tax rate of 21% of pretax earnings. The low effective annual income tax rate results from the Company's ability to realize previously unrecognized tax benefits. Although the Company incurred a loss in 1995, income taxes of $.5 million were provided due to required minimum taxes and the Company's inability to recognize the benefit from the carryover of losses to future years under Statement of Financial Accounting Standards ("SFAS") 109, Accounting for Income Taxes. Considering the sale of Chi-Chi's combined with the Company's losses, the rules under SFAS 109 required the Company to provide in 1994 a non-cash valuation allowance of approximately $14.0 million for previously recognized tax benefits, resulting in income tax expense of $3.0 million in 1994, rather than a tax benefit related to the pretax loss.

In 1994 the Company incurred an extraordinary loss of $5.1 million, less income tax benefits of $1.8 million, on the early extinguishment of senior notes and the debt outstanding under its then existing bank credit facility, which was then terminated.

Liquidity and Capital Resources

Cash and cash equivalents increased $6.1 million to $42.0 million at September 29, 1996 from $35.9 million at the beginning of the fiscal year. The cash increase reflects cash flow from operations of $84.1 million in 1996, principal payments on debt of $44.7 million and capital expenditures of $33.2 million.

The Company's working capital deficit increased $16.5 million to $50.6 million at September 29, 1996 from $34.1 million at the end of 1995, principally due to increases in insurance, advertising and payroll liabilities and a decline in accounts receivable as franchisees transitioned to another distributor and repaid other obligations to the Company. The Company, and the restaurant industry in general, maintain relatively low levels of receivables and inventories and vendors grant trade credit for purchases such as food and supplies. The Company also continually invests in its business through the addition of new units and refurbishment of existing units, which are reflected as long-term assets and not as part of working capital.

Total debt outstanding declined $43.9 million to $398.2 million at September 29, 1996 from $442.1 million at October 1, 1995. On May 15, 1996, the Company used $43.5 million of available cash to prepay the 14 q% senior subordinated notes due in May 1998.

The Company's revolving bank credit agreement, which was amended and restated March 15, 1996, expires December 31, 1998 and provides for a credit facility of up to $60 million, including letters of credit of up to $25 million. At September 29, 1996, the Company had no borrowings and approximately $50.9 million of unused credit under the agreement. The Company is subject to a number of covenants under its various credit agreements including limitations on additional borrowings, capital expenditures, lease commitments and dividend payments, and requirements to maintain certain financial ratios, cash flows and net worth. Substantially all of the Company's real estate and machinery and equipment is pledged to its lenders under the credit agreement and other secured notes.

The Company's primary sources of liquidity are expected to be cash flows from operations, the revolving bank credit facility, and the sale and leaseback of restaurant properties. An additional potential source of liquidity is the conversion of Company-operated restaurants to franchised restaurants. The Company requires capital principally to grow the business through new restaurant construction, as well as to maintain, improve and refurbish existing restaurants, and for general operating purposes.

Based upon current levels of operations and anticipated growth, the Company expects that sufficient cash flows will be generated from operations so that, combined with other financing alternatives available, including utilization of cash on hand, the bank credit facility and the sale and leaseback of restaurants, the Company will be able to meet all of its debt service, capital expenditure and working capital requirements.

On August 7, 1992, the Board of Directors of the Company authorized the purchase of up to 2 million shares of the Company's outstanding common stock in the open market, for an aggregate amount not to exceed $20 million. At September 29, 1996, the Company had acquired 1,412,654 shares for an aggregate cost of $14.5 million, none of which were acquired in 1996.

Seasonality

The Company's restaurant sales and profitability are subject to seasonal fluctuations and are traditionally higher during the spring and summer months because of factors such as increased travel and improved weather conditions which affect the public's dining habits.

New Accounting Standards

In March 1995, the Financial Accounting Standards Board issued SFAS 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of, effective for fiscal years beginning after December 15, 1995. SFAS 121 requires impairment losses to be recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted cash flows estimated to be generated by those assets are less than the assets' carrying amount. SFAS 121 also addresses the accounting for long-lived assets that are expected to be disposed of. The Company does not believe, based on current circumstances, the effect of adoption of SFAS 121 will be material.

In October 1995, the Financial Accounting Standards Board issued SFAS 123, Accounting for Stock-Based Compensation, effective for fiscal years beginning after December 15, 1995. SFAS 123 establishes the fair value based method of accounting for stock-based compensation arrangements, under which compensation cost is determined using the fair value of the stock option at the grant date and the number of options vested, and is recognized over the periods in which the related services are rendered. The Company plans to retain its current intrinsic value based method, as allowed by SFAS 123, and will be required to disclose the pro forma effect of adopting the fair value based method.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The consolidated financial statements and related financial information required to be filed are indexed on page F-1 and are incorporated herein.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The following table provides certain information about each of the Company's current directors and executive officers as of January 1, 1997:

Name	Age	Position with the Company(6)
Robert J. Nugent(1)	55	President, Chief Executive Officer and Director
Charles W. Duddles	56	Executive Vice President, Chief Financial Officer, Chief Administrative Officer and Director
Kenneth R. Williams	54	Executive Vice President, Marketing and Operations
Lawrence E. Schauf	51	Executive Vice President, Corporate Counsel and Corporate Secretary
William E. Rulon	64	Senior Vice President
Donald C. Blough	48	Vice President, Management Information Systems
Bruce N. Bowers	50	Vice President, Purchasing and Distribution
Carlo E. Cetti	52	Vice President, Human Resources and Strategic Planning
Bradford R. Haley	38	Vice President, Marketing Communications
William F. Motts	53	Vice President, Restaurant Development
Paul L. Schultz	42	Vice President, Operations
David M. Theno, Ph.D.	46	Vice President, Quality Assurance, Research and Development and Product Safety
Linda A. Vaughan	38	Vice President, New Products and Promotions
Darwin J. Weeks	50	Vice President, Controller and Chief Accounting Officer
Jack W. Goodall(1)(3)	58	Chairman of the Board
Michael E. Alpert	54	Director
Paul T. Carter(2)	74	Director
Edward Gibbons(1)(2)(3)(4)(5)	60	Director
Leonard I. Green(2)(3)(4)(5)	63	Director
L. Robert Payne(2)(5)	63	Director
Christopher V. Walker	50	Director

(1) Member of the Executive Committee.
(2) Member of the Audit Committee.
(3) Member of the Compensation Committee.
(4) Member of the Stock Option Committee.
(5) Member of the Investment Committee.
(6) Directors and officers are elected annually. Each director and officer holds his office until his successor has been elected and qualified or until he resigns or is removed.

Mr. Nugent has been President and Chief Executive Officer of the Company since April 1996. He was Executive Vice President of the Company from February 1985 to April 1996 and President and Chief Operating Officer of the JACK IN THE BOX Division of the Company from May 1988 to April 1996. He has been a director since February 1988.

Mr. Duddles has been Executive Vice President and Chief Administrative Officer of the Company since May 1988. He has been Chief Financial Officer of the Company since October 1985 and was Senior Vice President from October 1985 to May 1988. He was previously Vice President and Controller of the Company from August 1979 to July 1981 and Senior Vice President, Finance and

Administration from August 1981 to October 1985. He has been a director since February 1988.

Mr. Williams has been Executive Vice President of the Company since May 1996. He was Senior Vice President of the Company from January 1993 to May 1996 and Executive Vice President of Marketing and Operations, JACK IN THE BOX Division from November 1994 to May 1996. He was Executive Vice President of Operations, JACK IN THE BOX Division from May 1988 until November 1994. He was temporarily President and Chief Executive Officer of Chi-Chi's from June 1992 to January 1993. He was previously Vice President of the Company and Vice President, Operations-Division I from January 1985 to May 1988.

Mr. Schauf has been Executive Vice President, Corporate Counsel and Corporate Secretary of the Company since August 1996. Prior to joining Foodmaker he was Senior Vice President, General Counsel and Secretary of Wendy's International, Inc. from February 1991 to August 1996. He was previously Vice President, General Counsel and Secretary of Wendy's International, Inc. from September 1987 to February 1991.

Mr. Rulon has been Senior Vice President of the Company since October 1985. He was Secretary of the Company from October 1985 to August 1996 and was previously Secretary and Treasurer of the Company from March 1976 to July 1981 and Senior Vice President, Secretary and Treasurer from July 1981 to October 1985. Mr. Rulon is also a trustee of Income Managers Trust, Neuberger & Berman Income Funds and Neuberger & Berman Income Trust.

Mr. Blough has been Vice President, Management Information Systems of the Company since August 1993 and was previously Division Vice President, Systems Development from June 1990 to August 1993 and Director of Systems Development and POS Support from December 1984 to June 1990.

Mr. Bowers has been Vice President, Purchasing and Distribution of the Company, since April 1982 and previously held various other positions with the Company relating to manufacturing, purchasing and distribution from September 1975 to April 1982.

Mr. Cetti has been Vice President, Human Resources and Strategic Planning of the Company since March 1994. He was previously Vice President, Training and Risk Management, from December 1992 to March 1994, Division Vice President, Training and Risk Control from October 1991 to December 1992 and Director of Management and Franchise Training from April 1981 to October 1991.

Mr. Haley has been Vice President of the Company and Vice President of Marketing Communications of JACK IN THE BOX Division since February 1995. He was previously Division Vice President, Marketing Communications from October 1992 until February 1995. Prior to joining Foodmaker, he was a marketing consultant, principally on the development of new retail food products, from November 1991 to October 1992.

Mr. Motts has been Vice President of the Company and Vice President of Restaurant Development of JACK IN THE BOX Division since September 1988. He was Division Vice President, Restaurant Construction from August 1984 through August 1988 and was Director, Restaurant Construction from April 1983 to August 1984.

Mr. Schultz has been Vice President of the Company since May 1988 and Vice President of Operations, JACK IN THE BOX Division since November 1994. He was Vice President of Domestic Franchising, JACK IN THE BOX Division from October 1993 until November 1994. He was previously Vice President of JACK IN THE BOX

Operations-Division I from May 1988 to October 1993, temporarily Vice President of JACK IN THE BOX Operations and Domestic Franchising from June 1992 to January 1993, Regional Manager of Los Angeles from August 1985 to May 1988.

Dr. Theno has been Vice President, Quality Assurance, Research and Development and Product Safety of the Company since April 1994. He was Vice President, Quality Assurance and Product Safety from March 1993 to April 1994. Prior to joining Foodmaker, he was previously Managing Director and Chief Executive Officer of Theno & Associates, Inc., an agribusiness consulting firm, from January 1990 to March 1993 and Director of Technical Services for Foster Farms from March 1982 to December 1989.

Ms. Vaughan has been Vice President, New Product and Promotions of the Company since February 1996. She was Division Vice President, New Products and Promotions from November 1994 until February 1996. Previously, she was Manager, Product Marketing from October 1993 until November 1994 and Manager Franchise Analysis from November 1992 to October 1993. She was Senior Financial Analyst, Franchise Analysis, from October 1991 until November 1992.

Mr. Weeks has been Vice President, Controller and Chief Accounting Officer of the Company since August 1995 and was previously Division Vice President and Assistant Controller for the Company from April 1982 through July 1995.

Mr. Goodall has been Chairman of the Board since October 1985. For more than five years prior to his retirement in April 1996, he was President and Chief Executive Officer of the Company. Mr. Goodall is a director of Van Camp Seafood Company, Inc., Thrifty Payless, Inc. and Ralcorp Holdings, Inc.

Mr. Alpert has been a director of the Company since August 1992. Mr. Alpert was a partner in the San Diego Office of the law firm of Gibson, Dunn & Crutcher for more than 5 years prior to his retirement on August 1, 1992. He is currently Advisory Counsel to Gibson, Dunn & Crutcher. Gibson, Dunn & Crutcher provides legal services from time to time to the Company.

Mr. Carter has been a director of the Company since June 1991. Mr. Carter has been an insurance consultant for the Government Division of Corroon & Black Corporation since February 1987. From February 1987 until December 1990, he was also a consultant to the San Diego Unified School District on insurance matters. He retired in February 1987 as Chairman and Chief Executive Officer of Corroon & Black Corporation, Southwestern Region and as Director and Senior Vice President of Corroon & Black Corporation, New York.

Mr. Gibbons has been a director of the Company since October 1985 and has been a general partner of Gibbons, Goodwin, van Amerongen ("GGvA"), successor to Gibbons, Green, van Amerongen ("Gibbons Green"), an investment banking firm specializing in management buyouts, for more than five years preceding the date hereof. Mr. Gibbons is also a director of Robert Half International, Inc.

Mr. Green has been a director of the Company since October 1985 and has been a general partner of Leonard Green & Partners, an investment firm, since June 1989. For more than five years preceding that date, he was a partner of Gibbons Green. Mr. Green is also a director of Big 5 Corporation, Carr-Gottstein Foods Co., Communications & Power Industries, Inc. and Horace Mann Educators Corporation.

Mr. Payne has been a director of the Company since August 1986. He has been President and Chief Executive Officer of Multi-Ventures, Inc. since February 1976 and was Chairman of the Board of Grossmont Bank, a wholly-owned subsidiary of Bancomer, S.A., from February 1974 until October 1995. Multi-Ventures, Inc. is a real estate development and investment company that is also the managing partner of the San Diego Mission Valley Hilton and the Hanalei Hotel. He was a principal in the Company prior to its acquisition by its former parent Ralston Purina Company in 1968.

Mr. Walker has been a director of the Company since February 1988. Mr. Walker has been a Managing Director of Trust Company of the West since April 1995. He was a general partner of Leonard Green & Partners, an investment firm from September 1989 until March 1995. He was associated with Gibbons Green from November 1985 and was a partner thereof from January 1989 until September 1989.

That portion of Foodmaker's definitive Proxy Statement appearing under the captions "Information About the Board of Directors and Committees of the Board" and "Nonconforming Securities and Exchange Commission Filings" to be filed with the Commission pursuant to Regulation 14A within 120 days after September 29, 1996 and to be used in connection with its 1997 Annual Meeting of Stockholders is hereby incorporated by reference.

ITEM 11. EXECUTIVE COMPENSATION

That portion of Foodmaker's definitive Proxy Statement appearing under the caption "Executive Compensation" to be filed with the Commission pursuant to Regulation 14A within 120 days after September 29, 1996 and to be used in connection with its 1997 Annual Meeting of Stockholders is hereby incorporated by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

That portion of Foodmaker's definitive Proxy Statement appearing under the caption "Security Ownership of Certain Beneficial Owners and Management" to be filed with the Commission pursuant to Regulation 14A within 120 days after September 29, 1996 and to be used in connection with its 1997 Annual Meeting of Stockholders is hereby incorporated by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

That portion of Foodmaker's definitive Proxy Statement appearing under the caption "Certain Transactions" to be filed with the Commission pursuant to Regulation 14A within 120 days after September 29, 1996 and to be used in connection with its 1997 Annual Meeting of Stockholders is hereby incorporated by reference.

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

ITEM 14(a)(1) Financial Statements. See the index to consolidated financial statements on page F-1 of this report.

ITEM 14(a)(2) Financial Statement Schedules. Not applicable.

ITEM 14(a)(3) Exhibits.

Number	Description
3.1	Restated Certificate of Incorporation
3.2	Restated Bylaws(8)
4.2	Indenture for the 9 1/4% Senior Notes due 1999(4)
4.3	Indenture for the 9 3/4% Senior Subordinated Notes due 2002(4)
	(Instruments with respect to the registrant's long-term debt not in excess of 10% of the total assets of the registrant and its subsidiaries on a consolidated basis have been omitted. The registrant agrees to furnish supplementally a copy of any such instrument to the Commission upon request.)
10.1	Amended and Restated Revolving Credit Agreement dated as of March 15, 1996, as amended as of April 5, 1996 by the Agreement to Add Banks, among Foodmaker, Inc. and the Banks named therein(7)

10.1.1	First Amendment dated as of November 26, 1996 to the Amended and Restated Revolving Credit Agreement dated as of March 15, 1996, as amended as of April 5, 1996 by the Agreement to Add Banks, among Foodmaker, Inc. and the Banks named therein
10.2	Purchase Agreements dated as of January 22, 1987 between Foodmaker, Inc. and FFCA/IIP 1985 Property Company and FFCA/IIP 1986 Property Company(1)
10.3	Land Purchase Agreements dated as of February 18, 1987, by and between Foodmaker, Inc. and FFCA/IPI 1984 Property Company and FFCA/IPI 1985 Property Company and Letter Agreement relating thereto(1)
10.4	1992 Employee Stock Incentive Plan(3)
10.5	Capital Accumulation Plan for Executives(2)
10.6	Supplemental Executive Retirement Plan(2)
10.7	Performance Bonus Plan(5)
10.8	Deferred Compensation Plan for Non-Management Directors(6)
10.9	Non-Employee Director Stock Option Plan(6)
10.10	Form of Compensation and Benefits Assurance Agreement for Executives
23.1	Consent of KPMG Peat Marwick LLP
27	Financial Data Schedule (included only with electronic filing)

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(1) Previously filed and incorporated herein by reference from registrant's Registration Statement on Form S-1 (No. 33-10763) filed February 24, 1987.

(2) Previously filed and incorporated herein by reference from registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 1990.

(3) Previously filed and incorporated herein by reference from registrant's Quarterly Report on Form 10-Q for the quarter ended January 19, 1992.

(4) Previously filed and incorporated herein by reference from registrant's Quarterly Report on Form 10-Q for the quarter ended April 12, 1992.

(5) Previously filed and incorporated herein by reference from registrant's Annual Report on form 10-K for the fiscal year ended September 27, 1992.

(6) Previously filed and incorporated herein by reference from registrant's Definitive Proxy Statement dated January 17, 1995 for the Annual Meeting of Stockholders on February 17, 1995.

(7) Previously filed and incorporated herein by reference from registrant's Quarterly Report on Form 10-Q for the quarter ended April 14, 1996.

(8) Previously filed and incorporated herein by reference from registrant's Current Report on Form 8-K as of July 26, 1996.

ITEM 14(b) During the fourth quarter ended September 29, 1996, the Company filed with the Securities and Exchange Commission a report on Form 8-K under item 5 thereof, the amendment of the Bylaws of the Company and the adoption of a Stockholder Rights Plan.

ITEM 14(c) All required exhibits are filed herein or incorporated by reference as described in Item 14(a)(3).

ITEM 14(d) All supplemental schedules are omitted as inapplicable or because the required information is included in the consolidated financial statements or notes thereto.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FOODMAKER, INC.

By: CHARLES W. DUDDLES

Charles W. Duddles
Executive Vice President,
Chief Financial Officer, Chief
Administrative Officer and Director
Date: December 23, 1996

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
JACK W. GOODALL - ---------------------- Jack W. Goodall	Chairman of the Board	December 23, 1996
ROBERT J. NUGENT - ---------------------- Robert J. Nugent	President, Chief Executive Officer and Director (Principal Executive Officer)	December 23, 1996
CHARLES W. DUDDLES - ---------------------- Charles W. Duddles	Executive Vice President, Chief Financial Officer, Chief Administrative Officer and Director (Principal Financial Officer)	December 23, 1996
DARWIN J. WEEKS - ---------------------- Darwin J. Weeks	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)	December 23, 1996
MICHAEL E. ALPERT - ---------------------- Michael E. Alpert	Director	December 23, 1996
PAUL T. CARTER - ---------------------- Paul T. Carter	Director	December 23, 1996

EDWARD GIBBONS - ---------------------- Edward Gibbons	Director	December 23, 1996
- ---------------------- Leonard I. Green	Director	December , 1996
L. ROBERT PAYNE - ---------------------- L. Robert Payne	Director	December 23, 1996
- ---------------------- Christopher V. Walker	Director	December , 1996

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Foodmaker, Inc. and Subsidiaries Consolidated Financial Statements for the

52-week periods ended September 29, 1996, October 1, 1995 and October 2, 1994.

INDEPENDENT AUDITORS' REPORT

The Board of Directors
Foodmaker, Inc.:

We have audited the accompanying consolidated balance sheets of Foodmaker, Inc. and subsidiaries as of September 29, 1996 and October 1, 1995, and the related consolidated statements of operations, cash flows and stockholders' equity for the fifty-two weeks ended September 29, 1996, October 1, 1995 and October 2, 1994. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Foodmaker, Inc. and subsidiaries as of September 29, 1996 and October 1, 1995, and the results of their operations and their cash flows for the fifty-two weeks ended September 29, 1996, October 1, 1995 and October 2, 1994 in conformity with generally accepted accounting principles.

KPMG PEAT MARWICK LLP

San Diego, California
November 5, 1996, except for the fifth paragraph
of Note 12, which is as of December 10, 1996

FOODMAKER, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except per share data)

ASSETS

	September 29, 1996	October 1, 1995
Current assets:		
Cash and cash equivalents	$ 41,983	$ 35,865
Accounts receivable, net	12,482	25,272
Inventories	20,850	22,385
Prepaid expenses	21,161	14,367
Total current assets	96,476	97,889
Property:		
Land	90,890	90,594
Buildings	293,690	287,265
Restaurant and other equipment	213,159	201,240
Construction in progress	13,017	10,543
	610,756	589,642
Less accumulated depreciation and amortization	177,817	155,931
	432,939	433,711
Other assets, net	124,223	131,074
	$653,638	$662,674

LIABILITIES AND STOCKHOLDERS' EQUITY

	September 29, 1996	October 1, 1995
Current liabilities:		
Current maturities of long-term debt	$ 1,812	$ 1,836
Accounts payable	29,293	32,015
Accrued liabilities	115,958	98,166
Total current liabilities	147,063	132,017
Long-term debt, net of current maturities	396,340	440,219
Other long-term liabilities	51,561	49,599
Deferred income taxes	7,290	9,586
Stockholders' equity:		
Preferred stock	--	--
Common stock, $.01 par value, 75,000,000 authorized, 40,253,179 and 40,214,849 issued, respectively	403	402
Capital in excess of par value	281,075	280,996
Accumulated deficit	(215,631)	(235,682)
Treasury stock, at cost, 1,412,654 shares	(14,463)	(14,463)

Total stockholders' equity	51,384	31,253
	$653,638	$662,674

See accompanying notes to consolidated financial statements.

FOODMAKER, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)

	September 29, 1996	October 1, 1995	October 2, 1994
Revenues:			
Restaurant sales	$ 892,029	$ 804,084	$ 843,038
Distribution sales	132,421	179,689	171,711
Franchise rents and royalties.	34,048	32,530	33,740
Other.	4,324	2,413	4,837
	1,062,822	1,018,716	1,053,326
Costs and expenses:			
Costs of revenues:			
Restaurant costs of sales.	290,955	258,627	267,001
Restaurant operating costs	477,976	447,235	495,340
Costs of distribution sales.	130,241	175,688	165,789
Franchised restaurants costs	20,039	21,929	22,822
Selling, general and administrative. . .	72,134	78,044	78,323
Equity in loss of FRI.	--	57,188	2,108
Interest expense	46,126	48,463	55,201
	1,037,471	1,087,174	1,086,584
Earnings (loss) before income taxes and extraordinary item	25,351	(68,458)	(33,258)
Income taxes	5,300	500	3,010
Earnings (loss) before extraordinary item.	20,051	(68,958)	(36,268)
Extraordinary item - loss on early extinguishment of debt, net of taxes . .	--	--	(3,302)
Net earnings (loss).	$ 20,051	$ (68,958)	$ (39,570)
Earnings (loss) per share - primary and fully diluted:			
Earnings (loss) before extraordinary item	$ .51	$ (1.77)	$ (.94)
Extraordinary item	--	--	(.09)
Net earnings (loss) per share.	$ .51	$ (1.77)	$ (1.03)
Weighted average shares outstanding. . . .	39,301	38,915	38,531

See accompanying notes to consolidated financial statements.

FOODMAKER, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands, except per share data)

	September 29, 1996	October 1, 1995	October 2, 1994
Cash flows from operating activities:			
Net earnings (loss) excluding extraordinary item	$ 20,051	$ (68,958)	$ (36,268)
Non-cash items included in operations:			
Depreciation and amortization.	36,491	35,837	39,925
Deferred finance cost amortization . .	2,499	2,467	2,685
Deferred income taxes.	(2,296)	4,524	4,535
Equity in loss of FRI.	--	57,188	2,108
Decrease (increase) in receivables . . .	12,790	5,895	(3,373)
Decrease in inventories.	1,535	2,934	194
Increase in prepaid expenses	(7,421)	(985)	(196)
Increase (decrease) in accounts payable.	(2,722)	(4,900)	16,375
Increase (decrease) in other accrued liabilities.	23,206	(458)	3,417
Cash flows provided by operating activities	84,133	33,544	29,402
Cash flows from investing activities:			
Additions to property and equipment. . .	(33,232)	(27,033)	(92,037)
Disposition of property and equipment. .	4,597	4,416	3,374
Increase in trading area rights.	(1,086)	(9,745)	(9,915)
Investment in FRI, net	--	--	(59,296)
Disposition of Chi-Chi's	--	--	214,551
Other.	(1,012)	6,538	(2,641)
Cash flows provided (used) by investing activities	(30,733)	(25,824)	54,036
Cash flows from financing activities:			
Proceeds from issuance of long-term debt	400	900	82,519
Principal payments on long-term debt, including current maturities	(44,677)	(8,385)	(113,033)
Borrowings under revolving bank loans. .	--	29,000	5,000
Principal repayments under revolving bank loans	--	(29,000)	(35,000)
Extraordinary loss on retirement of debt, net of taxes	--	--	(3,302)
Increase (decrease) in accrued interest.	(3,085)	(495)	1,678
Proceeds from issuance of common stock .	80	160	489
Proceeds from sale and leaseback transactions	--	--	9,695
Cash flows used in financing activities	(47,282)	(7,820)	(51,954)
Net increase (decrease) in cash and cash equivalents.	$ 6,118	$ (100)	$ 31,484
Supplemental disclosure of cash flow information:			
Cash paid during the year for:			
Interest, net of amounts capitalized.	$ 46,712	$ 46,491	$ 51,242
Income tax payments (refunds), net. .	5,973	(6,403)	(275)

See accompanying notes to consolidated financial statements.

FOODMAKER, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Dollars in thousands, except per share data)

	Common stock Number of Shares	Common stock Amount	Capital in excess of par value	Accumulated deficit	Treasury stock	Total
Balance at October 3, 1993 . . .	39,646,904	$ 396	$280,353	$(127,154)	$(14,463)	$139,132
Exercise of stock options and warrants	433,950	5	484	--	--	489
Net loss of the Company.	--	--	--	(39,570)	--	(39,570)
Balance at October 2, 1994 . . .	40,080,854	401	280,837	(166,724)	(14,463)	100,051
Exercise of stock options and warrants	133,995	1	159	--	--	160
Net loss of the Company.	--	--	--	(68,958)	--	(68,958)
Balance at October 1, 1995 . . .	40,214,849	402	280,996	(235,682)	(14,463)	31,253
Exercise of stock options and warrants	38,330	1	79	--	--	80
Net earnings of the Company. . .	--	--	--	20,051	--	20,051
Balance at September 29, 1996. .	40,253,179	$ 403	$281,075	$(215,631)	$(14,463)	$ 51,384

See accompanying notes to consolidated financial statements.

FOODMAKER, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Dollars in thousands, except per share data)

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of operations - Foodmaker, Inc. (the "Company" or "Foodmaker") operates and franchises JACK IN THE BOX quick-serve restaurants with operations principally in the western and southwestern United States. Until January 27, 1994, the Company also owned Chi-Chi's, Inc. ("Chi-Chi's"), a chain of full-service, casual Mexican restaurants located primarily in the midwestern and midatlantic United States.

Basis of presentation and fiscal year - The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany transactions are eliminated. Certain prior year amounts in the consolidated financial statements have been reclassified to conform with the 1996 presentation. The Company's fiscal year is 52 or 53 weeks ending the Sunday closest to September 30.

Fair value of financial instruments - The Company invests cash in excess of operating requirements in short term, highly liquid investments with original maturities of three months or less, which are considered as cash equivalents. The fair value of these financial instruments approximate the carrying amounts due to their short duration. The fair values of each of the Company's long-term debt instruments are based on quoted market values, where available, or on the amount of future cash flows associated with each instrument discounted using the Company's current borrowing rate for similar debt instruments of comparable maturity. The fair values of the Company's long-term debt approximate carrying values.

Inventories are valued at the lower of cost (first-in, first-out method) or market.

Preopening costs are those typically associated with the opening of a new restaurant and consist primarily of employee training and food costs incurred before a restaurant opens. Preopening costs, included in prepaid expenses, are amortized over a one-year period commencing on the date a restaurant opens.

Property at cost - Expenditures for new facilities and those that substantially increase the useful lives of the property are capitalized. Maintenance, repairs, and minor renewals are expensed as incurred. When properties are retired or otherwise disposed of, the related cost and accumulated depreciation are removed from the accounts and gains or losses on the dispositions are reflected in results of operations.

Facilities leased under capital leases are stated at the present value of minimum lease payments at the beginning of the lease term, not to exceed fair value.

Buildings, equipment and leasehold improvements are depreciated using the straight-line method based on the estimated useful lives of the assets or over the lease term for certain capital leases (buildings 15 to 33 years and equipment 3 to 30 years).

Investments - The Company accounted for its 39% investment in Family Restaurants, Inc. ("FRI") using the equity method of accounting. In 1995 the Company completely wrote off its investment in FRI as described in Note 2.

Trading area rights represent the amount allocated under purchase accounting to reflect the value of operating existing restaurants within their specific trading area. These rights are amortized on a straight-line basis over the period of control of the property, not exceeding 40 years, and are retired when a restaurant is franchised or sold.

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Lease acquisition costs represent the acquired values of existing lease contracts having lower contractual rents than fair market rents and are amortized over the remaining lease term.

Other assets primarily include deferred franchise contract costs, deferred finance costs and goodwill. Deferred franchise contract costs represent the acquired value of franchise contracts and are amortized over the term of the franchise agreement, usually 20 years. Deferred finance costs are amortized on the interest method over the terms of the respective loan agreements, from 4 to 10 years. Goodwill represents the cost of business in excess of net assets at acquisition and is amortized on a straight-line basis over 40 years. The Company assesses the recoverability of goodwill by determining whether the amortization of the balance over its remaining life can be recovered through projected undiscounted future cash flows. Based on these calculations, the Company has determined that this intangible asset was not impaired and no reduction in the related estimated useful life is warranted.

Franchise operations - Franchise arrangements generally provide for initial license fees of approximately $50 (formerly $25) per restaurant and continuing payments to the Company based on a percentage of sales.

Among other things, the franchisee may be provided the use of land and building, generally for a period of 20 years, and is required to pay negotiated rent, property taxes, insurance and maintenance. Franchise fees are recorded as revenue when the Company has substantially performed all of its contractual obligations. Expenses associated with the issuance of the franchise are expensed as incurred. Franchise rents and royalties are recorded as income on an accrual basis. Gains on sales of restaurant businesses to franchisees, which have not been material, are recorded as other revenues when the sales are consummated and certain other criteria are met.

Income taxes - Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

Net earnings (loss) per share for each year is computed based on the weighted average number of common and common equivalent shares outstanding. When dilutive, stock options and warrants are included as share equivalents using the treasury stock method. For all years presented, primary and fully diluted earnings (loss) per share are not materially different.

Stock options - The Company accounts for stock options under the intrinsic value based method whereby compensation expense is recognized for the excess, if any, of the quoted market price of the Company stock at the date of grant over the option price. The Company's policy is to grant stock options at fair value at the date of grant.

Advertising costs - The Company maintains a marketing fund consisting of funds contributed by the Company equal to at least 5% of gross sales of all Company-operated JACK IN THE BOX restaurants and contractual marketing fees paid monthly by franchisees for restaurants operated in the United States. Production costs of commercials, programming and other marketing activities are expensed to the marketing fund.

Estimations - Management is required to make certain assumptions and estimates in conformity with generally accepted accounting principles that affect reported amounts of assets, liabilities, disclosure of contingencies, revenues and expenses. Actual amounts could differ from these estimates.

2. FAMILY RESTAURANTS, INC.

On January 27, 1994, Foodmaker, Apollo FRI Partners, L.P. ("Apollo") and Green Equity Investors, L.P. ("GEI"), whose general partner is Leonard Green & Partners, acquired Restaurant Enterprises Group, Inc. ("REGI"), a company that owned, operated and franchised various restaurant chains including El Torito, Carrows and Coco's. Contemporaneously, REGI changed its name to Family Restaurants, Inc. ("FRI"). Concurrently, Foodmaker contributed its entire Chi-Chi's Mexican restaurant chain to FRI in exchange for a 39% equity interest in FRI, valued at $62 million, a five-year warrant to acquire 111,111 additional shares at $240 per share, which would increase its equity interest to 45% and approximately $173 million in cash ($208 million less the face amount of Chi-Chi's debt assumed, of approximately $35 million). Apollo and GEI, respectively, contributed $62 million and $29 million in cash and held approximate 39% and 18% equity positions in FRI. Management of FRI invested $2.5 million in cash and notes and held an approximate 4% equity position. The net cash received was used by Foodmaker to repay all of the debt outstanding under its then existing bank credit facility, which has been terminated, and to reduce other debt, to the extent permitted by the Company's financing agreements, and to provide funds for capital expenditures and general corporate purposes.

(Dollars in thousands, except per share data)

As a result of substantial sales declines, FRI wrote off the goodwill attributable to Chi-Chi's in its quarter ended December 25, 1994. The Company then wrote off its 39% investment in FRI in its first quarter of fiscal year 1995.

Because of FRI's continuing substantial losses and resulting increased borrowing requirements, the major FRI stockholders were required to purchase a participation in any additional advances by the banks to FRI. Rather than become liable for these advances, the Company, by an agreement dated November 20, 1995, transferred all of its stock and warrants to Apollo. Since the Company's investment in FRI was previously written off in fiscal 1995, the consummation of this agreement had no effect on the consolidated financial condition or results of operations of the Company in fiscal 1996.

3. LONG-TERM DEBT

	September 29, 1996	October 1, 1995
The detail of long-term debt follows:		
Senior notes, 9 1/4% interest, due March 1, 1999, redeemable beginning March 1, 1997.	$175,000	$175,000
Senior subordinated notes, 9 3/4% interest, due June 1, 2002, redeemable beginning June 1, 1997	125,000	125,000
Senior subordinated notes, 14 1/4% interest, due May 15, 1998, redeemable beginning May 15, 1993, repaid in full on May 15, 1996.	--	42,843
Financing lease obligations, net of discounts of $2,548 reflecting a 10.3% effective interest rate, semi-annual payments of $3,413 and $747 to cover interest and sinking fund requirements, respectively, due in equal installments January 1, 2003 and November 1, 2003.	67,452	67,077
Secured notes, 11 1/2% interest, due in monthly installments through May 1, 2005.	9,356	9,954
Secured notes, 9 1/2% interest, due in monthly installments through August 1, 2017	8,456	8,580
Capitalized lease obligations, 11% average interest rate	11,043	11,127
Other notes, principally unsecured, 10% average interest rate. . .	1,845	2,474
	398,152	442,055
Less current portion	1,812	1,836
	$396,340	$440,219

The Company's revolving bank credit agreement which was restated March 15, 1996, expires December 31, 1998, and provides for a credit facility of up to $60 million, including letters of credit of up to $25 million. The credit agreement requires the payment of an annual commitment fee of either 1/2% or 3/8% of the unused credit line depending on the Company's leverage ratio. The Company had no borrowings under the agreement at the end of fiscal years 1996 or 1995.

(Dollars in thousands, except per share data)

The Company is subject to a number of covenants under its various credit agreements including limitations on additional borrowings, capital expenditures, lease commitments and dividend payments, and requirements to maintain certain financial ratios, cash flows and net worth. The secured notes and bank loans are secured by substantially all the Company's real and personal property.

3. LONG-TERM DEBT (continued)

In early January 1994, the Company entered into financing lease arrangements with two limited partnerships (the "Partnerships"), in which estates for years relating to 76 restaurants were sold. The acquisition of the properties, including costs and expenses, was funded through the issuance by a special purpose corporation acting as agent for the Partnerships of $70 million senior secured notes. On January 1, 2003 and November 1, 2003, the Company must make offers to reacquire 50% of the properties at each date at a price which is sufficient, in conjunction with previous sinking fund deposits, to retire the notes. If the Partnerships reject the offers, the Company may purchase the properties at less than fair market value or cause the Partnerships to fund the remaining principal payments on the notes and, at the Company's option, cause the Partnerships to acquire the Company's residual interest in the properties. If the Partnerships are allowed to retain the estates for years, the Company has available options to extend the leases for total terms of up to 35 years, at which time the ownership of the property will revert to the Company. The transactions are reflected as financings with the properties remaining in the Company's consolidated financial statements.

Aggregate maturities and sinking fund requirements on all long-term debt are $2,948, $178,069, $3,229 and $3,410 for the years 1998 through 2001, respectively.

Interest capitalized during the construction period of restaurants was $200, $161 and $727 in 1996, 1995 and 1994, respectively.

4. LEASES

As Lessee - The Company leases restaurant and other facilities under leases having terms expiring at various dates through 2046. The leases generally have renewal clauses of 5 to 20 years exercisable at the option of the Company and in some instances have provisions for contingent rentals based upon a percentage of defined revenues. Total rent expense for all operating leases was $81,006, $75,680 and $77,296, including contingent rentals of $3,903, $2,843 and $3,486 in 1996, 1995 and 1994, respectively.

Future minimum lease payments under capital and operating leases are as follows:

Fiscal year	Capital leases	Operating leases
1997	$ 1,689	$ 68,803
1998	1,611	65,494
1999	1,568	62,814
2000	1,549	56,667

(Dollars in thousands, except per share data)

2001	1,531	52,422
Thereafter	15,426	348,427
Total minimum lease payments	23,374	$654,627
Less amount representing interest	12,331	
Present value of obligations under capital leases	11,043	
Less current portion	468	
Long-term capital lease obligations	$10,575	

4. LEASES (continued)

Building assets recorded under capital leases were $13,281 and $10,248, net of accumulated depreciation of $3,639 and $3,033, as of September 29, 1996 and October 1, 1995, respectively.

As Lessor - The Company leases or subleases restaurants to certain franchisees and others under agreements which generally provide for the payment of percentage rentals in excess of stipulated minimum rentals, usually for a period of 20 years. Total rental revenue was $21,497, $21,309 and $21,911, including contingent rentals of $5,469, $4,763 and $4,979 in 1996, 1995 and 1994, respectively.

The minimum rents receivable under these non-cancelable leases are as follows:

Fiscal year	Sales-type leases	Operating leases
1997	$ 44	$ 16,542
1998	44	16,193
1999	44	15,968
2000	44	15,531
2001	45	15,262
Thereafter	211	90,081
Total minimum future rentals	432	$169,577
Less amount representing interest	168	
Net investment (included in other assets)	$ 264	

Land and building assets held for lease were $65,156 and $67,972, net of accumulated depreciation of $17,038 and $14,862, as of September 29, 1996 and October 1, 1995, respectively.

5. INCOME TAXES

The fiscal year income taxes consist of the following:

	1996	1995	1994
Federal - current	$ 7,179	$ (388)	$ (624)
- deferred	(2,680)	345	3,236

State - current	737	256	478
- deferred	64	287	(1,858)
Subtotal	5,300	500	1,232
Income tax benefit of extraordinary item	--	--	1,778
Income taxes	$ 5,300	$ 500	$ 3,010

FOODMAKER, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Dollars in thousands, except per share data)
(continued)

5. INCOME TAXES (continued)

A reconciliation of fiscal year income taxes with the amounts computed at the statutory federal rate of 35% follows:

	1996	1995	1994
Computed at federal statutory rate	$ 8,874	$(23,960)	$(11,640)
State income taxes (benefits), net of federal effect	521	353	(897)
Amortization of intangibles	53	27	327
Targeted jobs credit wages	--	(733)	(742)
Addition (reduction) to valuation allowance	(4,295)	26,280	18,520
Gain on sale of subsidiary	--	--	(1,988)
Benefit of reattributed net operating loss carryback	--	(1,420)	--
Other, net	147	(47)	(570)
	$ 5,300	$ 500	$ 3,010

The tax effects of temporary differences that give rise to significant portions of deferred tax assets and deferred tax liabilities are presented below:

	September 29, 1996	October 1, 1995
Deferred tax assets:		
Tax loss, captial loss, contribution and tax credit carryforwards	$ 57,698	$ 33,387
Investment in subsidiary	--	26,130
Insurance reserves	16,569	14,393
Accrued pension and postretirement benefits	8,775	9,552
Accrued vacation pay expense	6,257	6,029
Other reserves and allowances	5,049	5,871
Deferred income	3,840	3,598
Other, net	$ 3,352	$ 2,383
Total gross deferred tax assets	101,540	101,343
Less valuation allowance	45,212	49,507
Net deferred tax assets	56,328	51,836
Deferred tax liabilities:		
Property and equipment, principally due to differences in depreciation	47,707	43,889
Intangible assets	15,592	17,059
Other, net	319	474
Total gross deferred tax liabilities	63,618	61,422

(Dollars in thousands, except per share data)

Net deferred tax liability	$ 7,290	$ 9,586

5. INCOME TAXES (continued)

The valuation allowance of $45,212 as of September 29, 1996 represents deferred tax assets that may not be realized by the reversal of future taxable temporary differences. In fiscal 1996, the Company recognized a decrease in the valuation allowance of $4,295 related to the expected use of tax credit carryforwards.

At September 29, 1996, the Company had federal tax net operating loss carryforwards of approximately $16,101 which expire in 2008 through 2010, general business credit carryforwards of approximately $10,777 which expire in 2000 through 2010 and captial loss carryforwards of approximately $65,000 which expire in 2001. The Company has alternative minimum tax credit carryforwards of approximately $13,856. The alternative minimum tax credit carryforwards have no expiration date; however, they may only be utilized to reduce any regular tax liability the Company may have in the future.

6. RETIREMENT, SAVINGS AND BONUS PLANS

The Company has non-contributory defined benefit pension plans covering substantially all salaried and hourly employees meeting certain eligibility requirements. These plans are subject to modification at any time. The plans provide retirement benefits based on years of service and compensation. It is the Company's practice to fund retirement costs as necessary.

The components of the fiscal year net defined benefit pension expense are as follows:

	1996	1995	1994
Present value of benefits earned during the year	$ 2,634	$ 2,303	$ 2,456
Interest cost on projected benefit obligations	3,659	3,355	2,961
Actual return on plan assets	(3,630)	(3,300)	(538)
Net amortization	978	1,431	(908)
Net pension expense for the period	$ 3,641	$ 3,789	$ 3,971

The funded status of the plans is as follows:

	September 29, 1996		October 1, 1995	
	Qualified plans	Non-qualified plan	Qualified plans	Non-qualified plan
Actuarial present value of benefit obligations:				
Vested benefits	$(29,021)	$(5,204)	$(27,598)	$(4,154)
Nonvested benefits	(6,859)	(715)	(3,723)	(1,033)
Accumulated benefit obligation	(35,880)	(5,919)	(31,321)	(5,187)
Effect of future salary increases	(8,374)	(2,780)	(7,527)	(2,836)
Projected benefit obligation	(44,254)	(8,699)	(38,848)	(8,023)
Plan assets at fair value	39,677	--	32,843	--
Projected benefit obligations in excess of plan assets	(4,577)	(8,699)	(6,005)	(8,023)
Unrecognized prior service cost	(243)	2,774	(278)	2,973

(Dollars in thousands, except per share data)

Unrecognized net transition obligation	47	139	56	166
Unrecognized net (gain) loss	4,046	(534)	3,981	(532)
Pension liability	$ (727)	$(6,320)	$ (2,246)	$(5,416)

6. RETIREMENT, SAVINGS AND BONUS PLANS (continued)

In determining the present values of benefit obligations at each year end, a 7.75% discount rate and a 5% rate of increase in compensation levels were assumed. The long-term rate of return on assets was 8.5% in both years. Assets of the qualified plans consist primarily of listed stocks and bonds.

The Company maintains a savings plan pursuant to Section 401(k) of the Internal Revenue Code, which allows administrative and clerical employees who have satisfied the service requirements and reached age 21 to defer from 2% to 12% of their pay on a pre-tax basis. The Company contributes an amount equal to 50% of the first 4% of compensation that is deferred by the participant. The Company's contributions under this plan were $1,067, $498 and $1,081 in 1996, 1995 and 1994, respectively. The Company also maintains an unfunded, non-qualified deferred compensation plan, which was created in 1990 for key executives and other members of management who were then excluded from participation in the qualified savings plan. This plan allows participants to defer up to 15% of their salary on a pre-tax basis. The Company contributes an amount equal to 100% of the first 3% contributed by the employee. The Company's contributions under the non-qualified deferred compensation plan were $233, $212 and $285 in 1996, 1995 and 1994, respectively. In each plan, a participant's right to Company contributions vests at a rate of 25% per year of service.

The Company maintains a bonus plan that allows certain officers and employees of the Company to earn annual cash bonuses based upon achievement of certain financial and performance goals approved by the compensation committee of the Company's Board of Directors. Under this plan, $3,195 and $710 was expensed in 1996 and 1995, respectively.

The Company adopted a deferred compensation plan for non-management directors in the second quarter of 1995. Under the plan's equity option, those who are eligible to receive directors' fees or retainers may choose to defer receipt of their compensation. The amounts deferred are converted into stock equivalents at the then current market price of the Company's common stock. The Company provides a credit equal to 25% of the compensation initially deferred. Under this plan, a total of $186 and $116 was expensed in 1996 and 1995, respectively, for both the deferment credit and the stock appreciation on the deferred compensation.

7. POSTRETIREMENT BENEFIT PLAN

The Company sponsors a health care plan that provides postretirement medical benefits for employees who meet minimum age and service requirements. The plan is contributory, with retiree contributions adjusted annually, and contains other cost-sharing features such as deductibles and coinsurance. The Company's policy is to fund the cost of medical benefits in amounts determined at the discretion of management.

The normal net periodic postretirement benefit cost was $1,201, $1,440 and $1,533 in 1996, 1995 and 1994, respectively. The plan was amended to eliminate retiree medical benefits coverage for those under age 45 at September 30, 1995, resulting in a curtailment gain of $1,900.

FOODMAKER, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Dollars in thousands, except per share data)
(continued)

7. POSTRETIREMENT BENEFIT PLAN (continued)

The components of the fiscal year net periodic postretirement benefit cost are as follows:

	1996	1995	1994
Service cost	$ 505	$ 675	$ 770
Interest cost	816	854	763
Net amortization and deferral	(120)	(89)	--
Curtailment gain	--	(1,900)	--
Net periodic postretirement benefit cost (gain)	$1,201	$ (460)	$1,533

The plan's funded status reconciled with amounts recognized in the Company's consolidated balance sheets is as follows:

	September 29, 1996	October 1, 1995
Accumulated postretirement benefit obligation:		
Retirees	$ (1,343)	$ (1,198)
Fully eligible active plan participants	(2,777)	(2,478)
Other active plan participants	(7,684)	(6,855)
	(11,804)	(10,531)
Plan assets at fair value	--	--
Accumulated postretirement benefit obligation in excess of plan assets	(11,804)	(10,531)
Unrecognized prior service cost	--	--
Unrecognized net gain	(2,062)	(2,180)
Accrued postretirement benefit cost included in other long-term liabilities	$(13,866)	$(12,711)

In determining the above information, the Company's actuaries assumed a discount rate of 7.75% as of September 29, 1996 and October 1, 1995.

For measurement purposes, a 9.5% annual rate of increase in the per capita cost of covered benefits (i.e., health care cost trend rate) was assumed for 1996 for plan participants under age 65; the rate was assumed to decrease 1/2% per year to 5% by the year 2005 and remain at that level thereafter. For plan participants age 65 years or older, a 7.5% annual health care cost trend rate was assumed for 1996; the rate was assumed to decrease 1/2% per year to 4% by the year 2003. The health care cost trend rate assumption has a significant effect on the amounts reported. For example, increasing the assumed health care cost trend rates by one percentage point in each year would increase the accumulated postretirement benefit obligation as of September 29, 1996 by $2,466, or 21%, and the aggregate of the service and interest cost components of net periodic postretirement benefit cost for the year ended September 29, 1996 by $336 or 25%.

8. STOCK OPTIONS

(Dollars in thousands, except per share data)

The Company offers stock option plans to attract, retain and motivate key officers, non-employee directors and employees by providing for or increasing the proprietary interests of such persons to work toward the future financial success of the Company.

8. STOCK OPTIONS (continued)

In January 1992, the Company adopted the 1992 Employee Stock Incentive Plan (the "1992 Plan") and, as part of a merger, assumed outstanding options to employees under its predecessor's 1990 Stock Option Plan and assumed contractually the options to purchase 42,750 shares of common stock granted to two non-employee directors of the Company. Under the 1992 Plan, employees are eligible to receive stock options, restricted stock and other various stock-based awards. Subject to certain adjustments, up to a maximum of 1,875,000 shares of common stock may be sold or issued under the 1992 Plan. No awards shall be granted after January 16, 2002, although stock may be issued thereafter, pursuant to awards granted prior to such date.

In August 1993, the Company adopted the 1993 Stock Option Plan (the "1993 Plan"). Under the 1993 Plan, employees who do not participate in the 1992 Plan are eligible to receive annually stock options with an aggregate exercise price equivalent to a maximum of 10% of their eligible earnings. Subject to certain adjustments, up to a maximum of 3,000,000 shares of common stock may be sold or issued under the 1993 Plan. No awards shall be granted after December 11, 2003, although common stock may be issued thereafter, pursuant to awards granted prior to such date.

In February 1995, the Company adopted the Non-Employee Director Stock Option Plan (the "Director Plan"). Under the Director Plan, any eligible director of the Company who is not an employee of the Company or a subsidiary of the Company is granted annually an option to purchase 10,000 shares of common stock at fair market value. Subject to certain adjustments, up to a maximum of 250,000 shares of common stock may be sold or issued under the Director Plan. Unless sooner terminated, no awards shall be granted after February 17, 2005, although common stock may be issued thereafter, pursuant to awards granted prior to such date.

The terms and conditions of the stock-based awards under the plans are determined by a committee of the Board of Directors on each award date and may include provisions for the exercise price, expirations, vesting, restriction on sales and forfeiture, as applicable. Options granted under the plans have terms not exceeding 11 years and provide for an option exercise price no less than 100% of the fair market value of the common stock.

The following is a summary of stock option activity for the three fiscal years ended September 29, 1996:

	Shares	Option price per share
Balance at October 3, 1993	1,855,611	$ .96-13.38
Granted	323,000	5.88-10.13
Exercised	(115,050)	.96-1.13
Cancelled	(252,970)	5.88-13.38
Balance at October 2, 1994	1,810,591	.96-12.25
Granted	812,098	4.18-6.50
Exercised	(42,900)	.96-1.13

(Dollars in thousands, except per share data)

Cancelled	(267,818)	1.13-12.25
Balance at October 1, 1995	2,311,971	.96-12.25
Granted	540,891	6.75-9.125
Exercised	(10,880)	1.13-6.50
Cancelled	(129,395)	1.13-11.00
Balance at September 29, 1996	2,712,587	.96-12.25

Stock options for the purchase of 1,732,685 shares of common stock were exercisable at September 29, 1996.

9. STOCKHOLDERS' EQUITY

The Company has 15,000,000 shares of preferred stock authorized for issuance at a par value of $.01 per share. No shares have been issued.

On July 26, 1996, the Board of Directors declared a dividend of one preferred stock purchase right (a "Right") for each outstanding share of the Company's common stock, which Rights expire on July 26, 2006. Each Right entitles a stockholder to purchase for an exercise price of $40, subject to adjustment, one one-hundredth of a share of Series A Junior Participating Cumulative Preferred Stock of the Company, or, under certain circumstances, shares of common stock of the Company or a successor company with a market value equal to two times the exercise price. The Rights would only become exercisable for all other persons when any person has acquired or commences to acquire a beneficial interest of at least 20% of the Company's outstanding common stock. The Rights have no voting privileges and may be redeemed by the Board of Directors at a price of $.001 per Right at any time prior to the acquisition of a beneficial ownership of 20% of the outstanding common shares. There are 388,405 shares of Series A Junior Participating Cumulative Preferred Stock reserved for issuance upon exercise of the Rights.

In conjunction with the December 1988 acquisition of the Company, warrants for the purchase of 1,584,573 shares of common stock were issued and are exercisable at $.93 per share, as adjusted. As of September 29, 1996, warrants for 1,478,076 shares had been exercised.

At September 29, 1996, the Company had 4,893,647 shares of common stock reserved for issuance upon the exercise of stock options and 106,497 shares reserved for issuance upon exercise of warrants.

10. AVERAGE SHARES OUTSTANDING

Fiscal year net earnings (loss) per share is based on the weighted average number of shares outstanding during the year, determined as follows:

	1996	1995	1994
Shares outstanding, beginning of fiscal year	38,802,195	38,668,200	38,234,250
Effect of common stock issued	16,071	29,566	296,797
Assumed additional shares issued upon exercise of stock options and warrants, net of shares reacquired at the average market price	482,510	216,874	--

(Dollars in thousands, except per share data)

Weighted average shares outstanding	39,300,776	38,914,640	38,531,047
	==========	==========	==========

11. RELATED PARTY TRANSACTIONS

The Company provides distribution services to a portion of FRI's Mexican restaurants, principally those operated under the Chi-Chi's name. Distribution sales to those restaurants subsequent to FRI's acquisition of Chi-Chi's aggregated $65,106, $78,195 and $63,702 in 1996, 1995 and 1994, respectively. In relation to the distribution sales, the Company had accounts receivable of $2,924 and $3,839 due from Chi-Chi's at September 29, 1996 and October 1, 1995, respectively. Distribution services continue to be provided by the Company even though FRI is no longer a related party.

Gibbons, Goodwin, van Amerongen ("GGvA"), successor to Gibbons, Green, van Amerongen, general partners in the limited partnerships which owned approximately 45% of the Company's outstanding common stock until such stock was distributed to the limited partners in November 1995, were paid fees of $150 and $900 in 1995 and 1994, respectively, under an agreement which expired December 1994, whereby GGvA provided certain management services to the Company.

12. CONTINGENT LIABILITIES

Various claims and legal proceedings are pending against the Company in a federal court and in state courts in the state of Washington, seeking monetary damages for personal injuries relating to the outbreak of food-borne illness (the "Outbreak") attributed to hamburgers served at JACK IN THE BOX restaurants. The Company, in consultation with its insurance carriers and attorneys, does not anticipate that the total liability on all such lawsuits and claims will exceed the coverage available under its applicable insurance policies.

The Company is engaged in litigation with the Vons Companies, Inc. ("Vons") and other suppliers seeking reimbursement for all damages, costs and expenses incurred in connection with the Outbreak. The initial litigation was filed by the Company on February 4, 1993. Vons has filed cross-complaints against the Company and others alleging certain contractual, indemnification and tort liabilities; seeking damages in unspecified amounts and a declaration of the rights and obligations of the parties. The claims of the parties arise out of two separate lawsuits which have been consolidated and are now set for trial in the Los Angeles Superior Court, Los Angeles, California in July 1997.

On April 6, 1996 an action was filed by one of the Company's international franchisees, Wolsey, Ltd., in the United States District Court in San Diego, California against the Company and its directors, its international franchising subsidiary, and certain officers of the Company and others. The complaint alleges certain contractual, tort and law violations related to the franchisees' development rights in the Far East and seeks damages in excess of $25 million, injunctive relief, attorney fees and costs. The Company has successfully dismissed portions of the complaint, including the single claim alleging wrongdoing by the Company's outside directors. Management believes the remaining allegations are without foundation and intends to vigorously defend the action.

12. CONTINGENT LIABILITIES (Continued)

On November 5, 1996 an action was filed by the "National JIB Franchisee Association, Inc." (the "Association") and several of the Company's franchisees in the Superior Court of California, County of San Diego in San Diego, California, against the Company and others. The lawsuit alleges that certain Company policies are unfair business practices and violate sections of the California Corporations Code regarding material modifications of franchise agreements and interfere with franchisees' right of association. It seeks injunctive relief, a declaration of the rights and duties of the parties, unspecified damages and recission of alleged material modifications of plaintiffs' franchise agreements. The complaint also alleges fraud, breach of a fiduciary duty and breach of a third party beneficiary contract in connection with certain payments that the Company received from suppliers and seeks unspecified damages, interest, punitive damages and an accounting. Management believes that its policies are lawful and that it has satisfied any obligation to its franchisees in regard to such supplier payments.

On December 10, 1996, a suit was filed by the Company's Mexican licensee, Foodmex, Inc., in the United States District Court in San Diego, California against the Company and its international franchising subsidiary. Foodmex formerly operated several JACK IN THE BOX franchise restaurants in Mexico, but its licenses were terminated by the Company for, among other reasons, chronic insolvency and failure to meet operational standards. Foodmex's suit alleges wrongful termination of its master license, breach of contract and unfair competition and seeks an injunction to prohibit termination of its license as well as unspecified monetary damages. The Company believes its termination of the Foodmex license was proper, and that there is no merit to the Foodmex claims. The Company intends to vigorously defend the action.

On February 2, 1995, an action by Christina Jorgensen was filed against the Company in the U.S. District Court in San Francisco, California alleging that restrooms at a JACK IN THE BOX restaurant failed to comply with laws regarding disabled persons and seeking damages in unspecified amounts, punitive damages, injunctive relief, attorney fees and prejudgment interest. In an amended complaint damages are also sought on behalf of all physically disabled persons who have been denied access to restrooms at the restaurant. A motion has been filed, but has not been heard, to permit the lawsuit to proceed as a class action and to include all Company-operated restaurants.

The amount of liability from the claims and actions described above cannot be determined with certainty, but in the opinion of management, based in part upon advice from legal counsel, the ultimate liability from all pending legal proceedings, asserted legal claims and known potential legal claims which are probable of assertion should not materially affect the consolidated financial position of the Company.

13. SUPPLEMENTAL FINANCIAL STATEMENT INFORMATION

	September 29,	October 1,

	1996	1995
Accounts receivable:		
Trade	$ 7,489	$ 16,521
Notes	2,010	5,698
Other	6,476	7,584
Allowance for doubtful accounts	(3,493)	(4,531)
	$ 12,482	$ 25,272
Other Assets:		
Trading area rights, net of amortization of $18,669 and $15,618, respectively	$ 67,663	$ 69,761
Lease acquisition costs, net of amortization of $20,896 and $18,580, respectively	22,299	25,003
Other assets, net of amortization of $18,259 and $16,316, respectively	34,261	36,310
	$124,223	$131,074
Accrued liabilities:		
Payroll and related taxes	$ 29,889	$ 26,372
Sales and property taxes	10,125	9,922
Advertising	12,294	7,487
Insurance	41,494	32,406
Interest	7,352	10,437
Other	14,804	11,542
	$115,958	$ 98,166

14. QUARTERLY RESULTS OF OPERATIONS (Unaudited)

	16 weeks ended	12 weeks ended		
	Jan. 22, 1995	Apr. 16, 1995	July 9, 1995	Oct. 1, 1995
Revenues	$293,680	$229,661	$244,075	$251,300
Gross profit	29,391	25,272	29,885	30,689
Net earnings (loss)	(72,291)	(3,146)	2,622	3,857
Net earnings (loss) per share	(1.87)	(.08)	.07	.10

	16 weeks ended	12 weeks ended		
	Jan. 21, 1996	Apr. 14, 1996	July 7, 1996	Sept. 29, 1996
Revenues	$330,630	$249,975	$243,147	$239,070
Gross profit	43,047	29,870	36,134	34,560
Net earnings	4,690	4,013	5,515	5,833
Net earnings per share	.12	.10	.14	.15

Exhibit 3.1

RESTATED
CERTIFICATE OF INCORPORATION
OF
FOODMAKER, INC.

Foodmaker, Inc., a corporation organized and existing under the laws of the State of Delaware hereby certifies as follows:

1. The name of the Corporation is Foodmaker, Inc. Foodmaker, Inc. was originally incorporated under the name National Restaurant Systems, Inc., and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 28, 1971.

2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Restated Certificate of incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of this Corporation.

3. The text of the Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

NAME OF CORPORATION

The name of this Corporation is Foodmaker, Inc .

ARTICLE II

REGISTERED OFFICE

The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, and the name of its registered agent at that address is The Corporation Trust Company.

ARTICLE III

PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "GCL").

ARTICLE IV

AUTHORIZED CAPITAL STOCK

A. The total number of shares which the Corporation shall have authority to issue is ninety million (90,000,000) shares, consisting of seventy-five million (75,000,000) shares of Common Stock, par value of $.01 per share (the "Common Stock"), and fifteen million (15,000,000) shares of Preferred Stock, par value $.01 per share (the "Preferred Stock").

B. The Board of Directors is hereby authorized to issue the Preferred Stock in one or more series, to fix the number of shares of any such series of Preferred Stock, to determine the designation of any such series, and to fix the powers, preferences and rights, and the qualifications, limitations or restrictions of the Preferred Stock to the full extent permitted under the GCL.

C. The authority of the Board of Directors shall include, without limitation, the power to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions, if any), the redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such unissued series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

The designation and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof of the initial series of Preferred Stock are the following:

(1) Designation and Number of Shares. The distinctive designation of such series of Preferred Stock is "Junior Preferred Stock" (the "Junior Preferred Stock"). The number of shares of Junior Preferred Stock shall be 5,000,000.

(2) Dividends. The holders of shares of the Junior Preferred Stock shall be entitled to receive, from and after the filing of this Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, when, as and if declared by the Board of Directors of the Corporation out of the funds of the Corporation legally available therefor, dividends at the rate of nine dollars ($9) per year, payable only in the form of additional shares of Junior Preferred Stock (valued at $100 per share) and not in cash. Dividends shall be paid on a quarterly basis in arrears and will be cumulative from the date of issue.

Fractional shares of Junior Preferred Stock shall be issued to the extent necessary to make such dividend payments. Each fractional share of Junior Preferred Stock outstanding shall be entitled to a ratably proportionate amount of all dividends accruing with respect to each outstanding share of the Junior Preferred Stock pursuant to this paragraph (2), and all of such dividends with respect to such outstanding fractional shares shall be fully cumulative and shall accrue (whether or not declared), and shall be payable in the same manner and at such times as provided for in this paragraph (2) with respect to dividends on each outstanding share of the Junior Preferred Stock.

(3) Priority With Respect to Dividends. Shares of Junior Preferred Stock shall have priority as to the payment of dividends with respect to the Common Stock of the Corporation and other future series of Preferred Stock ranking junior to the Junior Preferred Stock as to the payment of dividends. No dividends may be paid on any junior series of Preferred Stock or on the Common Stock (other than dividends payable in the Corporation's capital stock) unless full cumulative dividends have been paid (or declared and shares sufficient for the payment thereof set apart for such payment) on the Junior Preferred Stock for all quarterly dividend periods terminating on or prior to the date of payment in full of such dividends on the Common Stock and Junior Preferred Stock.

The Corporation may not redeem or purchase or otherwise acquire for value shares of Common Stock or any other class of stock or series of Preferred Stock thereof ranking junior to or a parity with the Junior Preferred Stock as to dividends or upon liquidation (other than

redemptions pursuant to employee stock subscription agreements between the Corporation and certain officers and key employees of the Corporation or its subsidiaries) unless, at the time of making such redemption, purchase or other acquisition, the Corporation is not in default with respect to any dividends payable on, or any obligation to redeem or retire, shares of the Junior Preferred Stock.

(4) Voting Rights. The holders of the Junior Preferred Stock shall not be entitled to vote, except as hereinafter provided in this paragraph (4) or as otherwise provided by law. On matters subject to a vote by holders of the Junior Preferred Stock, the holders shall be entitled to one vote per share.

(a) So long as shares of Junior Preferred Stock remain outstanding, the Corporation shall not directly or indirectly or through merger or consolidation with any other Corporation, without the affirmative vote at a meeting (or the written consent with or without a meeting) of the holders of at least a majority in number of shares of the Junior Preferred Stock then outstanding, (i) create any class or classes of stock ranking equal or prior to the Junior Preferred Stock, either as to dividends or upon liquidation, or increase the number of authorized shares of any class or classes of stock ranking equal or prior to the Junior Preferred Stock either as to dividends or upon liquidation, (ii) amend, alter or repeal (whether by merger, consolidation or otherwise and whether or not the Corporation is the surviving corporation) any of the provisions of the Certificate of Incorporation of the Corporation so as to affect adversely the preferences, special rights or powers of the Junior Preferred Stock (iii) authorize any reclassification of the Junior Preferred Stock.

(b) In the event that six (6) or more quarterly dividends (whether or not consecutive) payable on the Junior Preferred Stock are in arrears, the number of directors of the Corporation shall automatically be increased by one and the holders of all outstanding shares of Junior Preferred Stock, voting as a separate class, shall be entitled to elect one director of the Corporation. Such voting right shall remain vested until such time as all dividends in arrears are paid (or declared and a sum sufficient for the payment thereof set aside for payment).

(i) Whenever such voting right shall have vested, such right may be exercised initially either at a

special meeting of the holders of the Junior Preferred Stock, called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at such annual meetings or by the written consent of the holders of the Junior Preferred Stock pursuant to Section 228 of the GCL. Such voting right shall continue until such time as (x) all cumulative dividends accumulated on the Junior Preferred Stock, together with additional dividends accrued thereon, if any, shall have been paid in full, and (y) all mandatory redemption obligations with respect to the Junior Preferred Stock which have matured have been met, at which time such voting right of the holders of the Junior Preferred Stock shall terminate, subject to revesting in the event of each and every subsequent event of default of the character indicated above.

(ii) At any time when such voting right shall have vested in the holders of the Junior Preferred Stock, and if such right shall not already have been initially exercised, a proper officer of the Corporation shall, upon the written request of the holders of record of ten percent (10%) of the shares of Junior Preferred Stock then outstanding, addressed to the Secretary of the Corporation, call a special meeting of the holders of the Junior Preferred Stock and of any other class or classes of stock having voting power with respect thereto for the purpose of electing directors. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Corporation or, if none, at a place designated by the Secretary of the Corporation. If such meeting shall not be called by the proper officers of the corporation within 30 days after the personal service of such written request upon the Secretary of the Corporation, or within 30 days after mailing the same within the United States, by registered mail, addressed to the Secretary of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), the holders of record of ten percent (10%) of the shares of the Junior Preferred Stock then outstanding may designate in writing a holder of Junior Preferred Stock to call such meeting at the expense of the Corporation and such meeting may be called by such person so designated upon the notice required for annual meetings of stockholders and shall be held at the same place as is elsewhere provided in this sub-paragraph (ii). Any holder of Junior Preferred Stock entitled to vote at such meeting shall have access to the stock books of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to the provisions of this sub-paragraph (ii).

Notwithstanding the provisions of this sub-paragraph (ii), however, no such special meeting shall be called during a period within ninety (90) days immediately preceding the date fixed for the next annual meeting of stockholders.

(iii) At any meeting held for the purpose of electing directors at which the holders of Junior Preferred Stock shall have the right to elect a director as provided herein, the presence in person or by proxy of the holders of a majority of the then outstanding shares of Junior Preferred Stock shall be required and be sufficient to constitute a quorum of such class for the election of directors by such class. At any such meeting or adjournment thereof (x) the absence of a quorum of the holders of the Junior Preferred Stock having such right shall not prevent the election of directors other than those to be elected by the holders of Junior Preferred Stock and the absence of a quorum or quorums of the holders of capital stock entitled to elect such other directors shall not prevent the election of directors to be elected by the holders of the Junior Preferred Stock entitled to elect such directors and (y) in the absence of a quorum of the holders of any class of stock entitled to vote for the election of directors, a majority of the holders of such class present in person or by proxy shall have the power to adjourn the meeting for the election of directors which the holders of such class are entitled to elect, from time to time, without notice (except as required by law) other than announcement at the meeting, until a quorum shall be present.

(iv) Any director elected by the holders of Junior Preferred Stock pursuant to sub-paragraph (b) shall serve until the earlier of payment in full of the dividend arrearage or the next annual meeting of stockholders, and may be otherwise removed, with or without cause, only by the holders of at least a majority of the shares of Junior Preferred Stock outstanding at the time of such removal.

(5) Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Junior Preferred Stock (including shares issued as dividends) will be entitled to receive $100 per share (or pro rata portion thereof with respect to fractional shares) plus an amount equal to the cash value of accrued and unpaid dividends to the date fixed for distribution before any distribution of assets may be made to holders of Common Stock or of any other class of stock of the corporation or series of Preferred Stock ranking junior to the Junior Preferred Stock with respect to the

distribution of assets. If upon any liquidation, dissolution or winding up of the Corporation, the amounts payable with respect to the Junior Preferred Stock and any other shares of capital stock of the Corporation ranking as to any such distribution on a parity with the Junior Preferred Stock are not paid in full, the holders of the Junior Preferred Stock and of such other shares will share ratably in any such distribution of assets of the

Corporation in proportion to the full respective preferential amounts to which they are entitled. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of shares of Junior Preferred Stock will not be entitled to any further participation in any distribution of assets by the Corporation. Such liquidation rights are not triggered by any consolidation or merger of the Corporation with or into any other corporation or by the sale, transfer or lease of all or substantially all of the Corporation's assets, provided that the Corporation shall not effect such transaction unless provision is made in the certificate of incorporation of the resulting and surviving corporation or otherwise for the protection of the rights of the holders of Junior Preferred Stock.

(6) Optional Redemption. The Junior Preferred Stock may be redeemed at any time at the option of the Corporation, in whole or in part, upon not less than thirty (30) nor more than sixty (60) days' prior notice at a redemption price of $100 per share plus an amount equal to the cash value of all accrued and unpaid dividends to the redemption date. On and after the redemption date, dividends shall cease to accumulate on shares of Junior Preferred Stock called for redemption.

(7) Mandatory Redemption. The Corporation shall redeem all outstanding shares of Junior Preferred Stock at a redemption price of $100 per share plus an amount equal to the cash value of all accrued and unpaid dividends to the redemption date upon or immediately prior to the occurrence of any of the following: (i) the sale of all or substantially all of the Corporation's assets to any person other than an affiliate of the Corporation; (ii) the merger or consolidation of the Corporation with or into another corporation or of another corporation with or into the Corporation with the effect that the common stockholders of the Corporation immediately prior to such transaction hold less than 50% of the total voting power entitled to vote in election of directors, managers or trustees of the surviving corporation of such merger; (iii) the liquidation or dissolution of the Corporation; or (iv) the completion by the Corporation of one or more

public offerings of Common Stock for aggregate net proceeds of at least $75 million; provided, however, that no such redemption may be effected until the earlier of May 15, 1998 and the date on which no 14-1/4% Senior Subordinated Notes due 1998 of the Corporation remain outstanding.

If, for any reason, the Corporation shall fail to discharge its mandatory obligations pursuant to this paragraph (7), such mandatory redemption obligations shall be discharged as soon as the Corporation is able to discharge such obligations, but the redemption price shall be determined as of the date such redemption should have occurred except with respect to the calculation of the amount equal to accrued and unpaid dividends, which calculation shall include all such dividends to the date of payment. If and so long as any mandatory redemption obligations with respect to the Junior Preferred Stock shall not be fully discharged, the Corporation shall not declare or pay any cash dividend or make any distributions in cash upon, or, directly or indirectly, purchase, redeem or otherwise acquire, any capital stock (including any warrants, rights or options exercisable for or convertible into any capital stock of the Corporation, but not including the Junior Preferred Stock) or permit any of its subsidiaries or affiliates to, directly or indirectly, purchase or acquire any such capital stock. Dividends shall continue to accrue on a compounding basis on any mandatory redemption obligation that has not been discharged by the Corporation pursuant to this paragraph (7).

(8) Selection of Securities to be Redeemed. In the event that fewer than all of the outstanding shares of Junior Preferred Stock are to be redeemed at any time, number of shares to be redeemed shall be determined by Board of Directors and the shares to be redeemed shall determined as follows: first, all fractional shares of Junior Preferred Stock shall be redeemed, then the Corporation shall select the remaining shares of Junior Preferred Stock to be redeemed pro rata or by lot as may be determined by the Board of Directors.

(9) Procedure for Redemption.

(a) In the event the Corporation shall redeem shares of Junior Preferred Stock at any time, notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60 days prior to the redemption date, to each

holder of record of the shares to be redeemed at such holder's address as the same appears on the stock register of the Corporation; provided, however, that no failure to mail such notice nor any defect therein shall affect the validity of the proceeding for the redemption of any shares of Junior Preferred Stock to be redeemed except as to the holder to whom the Corporation has failed to mail said notice or except as to the holder whose notice was defective. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Junior Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed from such holder, the number of shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price, and (v) that dividends on the shares to be redeemed will cease to accrue on such redemption date unless the Corporation defaults in making such payment.

(b) Notice having been mailed as aforesaid, from and after the redemption date (unless the Corporation shall fail to provide money for the payment of the redemption price of the shares called for redemption) dividends on the shares of Junior Preferred Stock so called for redemption shall cease to accrue, and said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price including an amount equal to any accrued and unpaid dividends) shall cease. Upon surrender in accordance with said notice of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the redemption price aforesaid. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

ARTICLE V

DIRECTORS

The number of directors may hereafter be fixed from time to time pursuant to procedures set forth in the Corporation's bylaws.

ARTICLE VI

BOARD POWER REGARDING BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the bylaws of the Corporation.

ARTICLE VII

ELECTION OF DIRECTORS

Elections of directors at annual or special meetings need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE VIII

LIMITATION OF DIRECTOR LIABILITY

To the fullest extent permitted by the GCL as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the GCL is amended after the date of the filing of this Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended from time to time. No repeal or modification of this Article VIII by the stockholders shall adversely affect any right or protection of a director of the Corporation existing by virtue of this Article VIII at the time of such repeal or modification.

ARTICLE IX

INDEMNIFICATION OF DIRECTORS

The Corporation shall indemnify, in the manner and to the full extent permitted by law, any person (or the estate of any person) who was or is a party to, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by

reason of the fact that such person is or was a director officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other enterprise. The Corporation may, to the full extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against him. To the full extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and, in the manner provided by law, any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the person seeking indemnification to repay such amounts if it is ultimately determined that he is not entitled to be indemnified. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

ARTICLE X

SECTION 203 ELECTION

The Corporation expressly elects not to be governed by Section 203 of the General Corporation Law.

ARTICLE XI

CORPORATE POWER

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed under the seal of the Corporation this 6th day of March, 1992.

FOODMAKER, INC.

By: ROBERT L. SUTTIE

Robert L. Suttie
Corporate Vice President
and Controller

Attest:

WILLIAM E. RULON
- ----------------
William E. Rulon
Secretary

CERTIFICATE OF DESIGNATIONS

OF

SERIES A JUNIOR PARTICIPATING

CUMULATIVE PREFERRED STOCK

$.01 Par Value

of

FOODMAKER, INC.

Pursuant to Section 151 of the

General Corporation

Law of the State of Delaware

We, Charles W. Duddles, Executive Vice President and Chief Financial Officer, and William E. Rulon, Senior Vice President and Secretary, of Foodmaker, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, in accordance with the provisions of Section 103 thereof, DO HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors by the Restated Certificate of Incorporation of the Corporation, the Board of Directors on July 26, 1996, adopted the following resolution creating a series of 750,000 (seven hundred and fifty thousand) shares of Preferred Stock, par value $0.01 per share, designated as Series A Junior Participating Cumulative Preferred Stock:

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of its Restated Certificate of Incorporation, a series of Preferred Stock of the Corporation be, and it hereby is, created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof, are as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as Series A Junior Participating Cumulative Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock"), and the number of shares constituting such series shall be 750,000 (seven hundred and fifty thousand).

Section 2. Dividends and Distributions.

(a) The holders of shares of Series A Preferred Stock, in preference to the holders of shares of Common Stock, par value $.01 per share, of the Corporation (the "Common Stock") and of any other junior stock of the Corporation that may be outstanding, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the tenth day of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (i) $.25 per share ($1.00 per annum), or (ii) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock, or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event that the Corporation shall at any time declare or pay any dividend on Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then and in each such event, the amount to which the holder of each share of Series A Preferred Stock was entitled immediately prior to such event under clause (ii) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (a) of this Section 2 immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided, however, that in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $.25 per share ($1.00 per annum) on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which cases such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall cumulate but shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(a) Each share of Series A Preferred Stock shall entitle the holder thereof to 100 votes (and each one one-hundredth of a share of Series A Preferred Stock shall entitle the holder thereof to one vote) on all matters submitted to a vote of the stockholders of the Corporation. In the event that the Corporation shall at any time declare or pay any dividend on Common Stock payable in shares of Common Stock or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then and in each such event, the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the

numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided in the Restated Certificate of Incorporation of the Corporation or herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) In addition, the holders of shares of Series A Preferred Stock shall have the following special voting rights:

(i) In the event that at any time dividends on Series A Preferred Stock, whenever accrued and whether or not consecutive, shall not have been paid or declared and a sum sufficient for the payment thereof set aside, in an amount equivalent to six quarterly dividends on all shares of Series A Preferred Stock at the time outstanding, then and in each such event, the holders of shares of Series A Preferred Stock and each other series of preferred stock now or hereafter issued that shall be accorded such class voting right by the Board of Directors and that shall have the right to elect one director (or, in the event any such other series is entitled to a greater number of directors, such number of directors, which shall be cumulative with and not in addition to the director provided for herein, such director or directors being hereinafter referred to as "Special Directors") as the result of a prior or subsequent default in payment of dividends on such series (each such other series being hereinafter called "Other Series of Preferred Stock"), voting separately as a class without regard to series, shall be entitled to elect the Special Director at the next annual meeting of stockholders of the Corporation, in addition to the directors to be elected by the holders of all shares of the Corporation entitled to vote for the election of directors, and the holders of all shares (including the Series A Preferred Stock) otherwise entitled to vote for directors, voting separately as a class, shall be entitled to elect the remaining members of the Board of Directors, provided that the Series A Preferred Stock and each Other Series of Preferred Stock, voting as a class, shall not have the right to elect more than one Special Director (in addition to any Special Director to which the holders of any Other Series of Preferred Stock are then entitled). Such special voting right of the holders of shares of Series A Preferred Stock may be exercised

until all dividends in default on the Series A Preferred Stock shall have been paid in full or declared and funds sufficient therefor set aside, and when so paid or provided for, such special voting right of the holders of shares of Series A Preferred Stock shall cease, but subject always to the same provisions for the vesting of such special voting rights in the event of any such future dividend default or defaults.

(ii) At any time after such special voting rights shall have so vested in the holders of shares of Series A Preferred Stock, the Secretary of the Corporation may, and upon the written request of the holders of record of 10% or more in number of the shares of Series A Preferred Stock and each Other Series of Preferred Stock then outstanding addressed to the Secretary at the principal executive office of the Corporation shall, call a special meeting of the holders of shares of Preferred Stock so entitled to vote, for the election of the Special Directors to be elected by them as herein provided, to be held within 60 days after such call and at the place and upon the notice provided by law and in the By laws for the holding of meetings of stockholders; provided, however, that the Secretary shall not be required to call such special meeting in the case of any such request received less than 90 days before the date fixed for any annual meeting of stockholders, and if in such case such special meeting is not called or held, the holders of shares of Preferred Stock so entitled to vote shall be entitled to exercise the special voting rights provided in this paragraph at such annual meeting. If any such special meeting required to be called as above provided shall not be called by the Secretary within 30 days after receipt of any such request, then the holders of record of 10% or more in number of the shares of Series A Preferred Stock and each Other Series of Preferred Stock then outstanding may designate in writing one of their number to call such meeting, and the person so designated may, at the expense of the Corporation, call such meeting to be held at the place and upon the notice given by such person, and for that sole purpose shall have access to the stock books of the Corporation. No such special meeting and no adjournment thereof shall be held on a date later than 60 days before the annual meeting of stockholders. If, at any meeting so called or at any annual meeting held while the holders of shares of Series A Preferred Stock have the special voting rights provided for in this paragraph, the holders of not less than 40% of the aggregate voting power of Series A Preferred Stock and each Other Series of Preferred Stock then outstanding are present in person or by proxy, which percentage shall be sufficient to

constitute a quorum for the election of additional directors as herein provided, the then authorized number of directors of the Corporation shall be increased by the number of Special Directors to be elected, as of the time of such special meeting or the time of the first such annual meeting held while such holders have special voting rights and such quorum is present, and the holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock, voting as a class, shall be entitled to elect the Special Director or Directors so provided for. If the directors of the Corporation are then divided into classes under provisions of the Restated Certificate of Incorporation of the Corporation or the Bylaws, the Special Director or Directors shall belong to each class of directors in which a vacancy is created as a result of such increase in the authorized number of directors. If the foregoing expansion of the size of the Board of Directors shall not be valid under applicable law, then the holders of shares of Series A Preferred Stock and of each Other Series of Preferred Stock, voting as a class, shall be entitled, at the meeting of stockholders at which they would otherwise have voted, to elect a Special Director or Directors to fill any then existing vacancies on the Board of Directors, and shall additionally be entitled, at such meeting and each subsequent meeting of stockholders at which directors are elected, to elect all of the directors then being elected until by such class vote the appropriate number of Special Directors has been so elected.

(iii) Upon the election at such meeting by the holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock, voting as a class, of the Special Director or Directors they are entitled so to elect, the persons so elected, together with such persons as may be directors or as may have been elected as directors by the holders of all shares (including Series A Preferred Stock) otherwise entitled to vote for directors, shall constitute the duly elected directors of the Corporation. Each Special Director so elected by holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock, voting as a class, shall serve until the next annual meeting or until their respective successors shall be elected and qualified, or if any such Special Director is a member of a class of directors under provisions dividing the directors into classes, each such Special Director shall serve until the annual meeting at which the term of office of such Special Director's class shall expire or until such Special Director's successor shall be elected and shall qualify, and at each subsequent meeting of stockholders

at which the directorship of any Special Director is up for election, said special class voting rights shall apply in the reelection of such Special Director or in the election of such Special Director's successor; provided, however, that whenever the holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock shall be divested of the special rights to elect one or more Special Directors as above provided, the terms of office of all persons elected as Special Directors, or elected to fill any vacancies resulting from the death, resignation, or removal of Special Directors shall forthwith terminate (and the number of directors shall be reduced accordingly).

(iv) If, at any time after a special meeting of stockholders or an annual meeting of stockholders at which the holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock, voting as a class, have elected one or more Special Directors as provided above, and while the holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock shall be entitled so to elect one or more Special Directors, the number of Special Directors who have been so elected (or who by reason of one or more resignations, deaths or removals have succeeded any Special Directors so elected) shall by reason of resignation, death or removal be reduced the vacancy in the Special Directors may be filled by any one or more remaining Special Director or Special Directors. In the event that such election shall not occur within 30 days after such vacancy arises, or in the event that there shall not be incumbent at least one Special Director, the Secretary of the Corporation may, and upon the written request of the holders of record of 10% or more in number of the shares of Series A Preferred Stock and each Other Series of Preferred Stock then outstanding addressed to the Secretary at the principal office of the Corporation shall, call a special meeting of the holders of shares of Series A Preferred Stock and each Other Series of Preferred Stock so entitled to vote, for an election to fill such vacancy or vacancies, to be held within 60 days after such call and at the place and upon the notice provided by law and in the Bylaws for the holding of meetings of stockholders; provided, however, that the Secretary shall not be required to call such special meeting in the case of any such request received less than 90 days before the date fixed for any annual meeting of stockholders, and if in such case such special meeting is not called, the holders of shares of Preferred Stock so entitled to vote shall be entitled to fill such vacancy or vacancies at such annual meeting. If any such special meeting required to be called as above provided

shall not be called by the Secretary within 30 days after receipt of any such request, then the holders of record of 10% or more in number of the shares of Series A Preferred Stock and each Other Series of Preferred Stock then outstanding may designate in writing one of their number to call such meeting, and the person so designated may, at the expense of the Corporation, call such meeting to be held at the place and upon the notice above provided, and for that purpose shall have access to the stock books of the Corporation; no such special meeting and no adjournment thereof shall be held on a date later than 60 days before the annual meeting of stockholders.

(d) Nothing herein shall prevent the directors or stockholders from taking any action to increase the number of authorized shares of Series A Preferred Stock, or increasing the number of authorized shares of Preferred Stock of the same class as the Series A Preferred Stock or the number of authorized shares of Common Stock, or changing the par value of the Common Stock or Preferred Stock, or issuing options, warrants or rights to any class of stock of the Corporation as authorized by the Restated Certificate of Incorporation of the Corporation, as it may hereafter be amended.

(e) Except as set forth herein, holders of shares of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote as set forth in the Restated Certificate of Incorporation of the Corporation or herein or by law) for taking any corporate action.

Section 4. Certain Restrictions.

(a) Whenever any dividends or other distributions payable on the Series A Preferred Stock as provided in Section 2 hereof are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not, directly or indirectly:

(i) declare or pay dividends on, or make any other distributions with respect to, any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends on, or make any other distributions with respect to, any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on shares

of the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration, directly or indirectly, any shares of stock of the Corporation unless the Corporation could, under paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of preferred stock, without designation as to series, and may be reissued as part of any series of preferred stock created by resolution or resolutions of the Board of Directors (including Series A Preferred Stock), subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made to:

(a) the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received the greater of (i) $1.00 per share ($.001 per one one-hundredth of a share), plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (ii) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock; or

(b) the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred

Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

In the event that the Corporation shall at any time declare or pay any dividend on Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise) into a greater or lesser number of shares of Common Stock, then and in each such event, the aggregate amount to which the holder of each share of Series A Preferred Stock was entitled immediately prior to such event under the proviso in clause (a) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In the event that the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, or otherwise changed, then and in each such event, the shares of Series A Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event that the Corporation shall at any time declare or pay any dividend on Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification

or otherwise) into a greater or lesser number of shares of Common Stock, then and in each such event, the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable. Notwithstanding the foregoing, the Corporation may acquire shares of Series A Preferred Stock in any other manner permitted by law, the Restated Certificate of Incorporation of the Corporation or herein.

Section 9. Rank. Unless otherwise provided in the Restated Certificate of Incorporation of the Corporation or a Certificate of Designations relating to a subsequent series of preferred stock of the Corporation, the Series A Preferred Stock shall rank junior to all other series of the Corporation's preferred stock as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up, and senior to the Common Stock of the Corporation.

Section 10. Amendment. The Restated Certificate of Incorporation of the Corporation shall not be amended in any manner that would materially and adversely alter or change the powers, preferences or special rights of the Series A Preferred Stock without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single series.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share (in one one-hundredths (1/100) of a share and integral multiples thereof) that shall entitle the holder thereof, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and have the benefit of all other rights of holders of shares of Series A Preferred Stock.

IN WITNESS WHEREOF, we have executed and subscribed this Certificate and do affirm the foregoing as true under the penalties of perjury this 15th day of August, 1996.

CHARLES W. DUDDLES

Charles W. Duddles
Executive Vice President and
Chief Financial Officer

Attest:

WILLIAM E. RULON
- ----------------------
William E. Rulon
Senior Vice President and Secretary

Exhibit 10.1.1

FIRST AMENDMENT TO AMENDED AND RESTATED
REVOLVING CREDIT AGREEMENT

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT ("Amendment") is made as of November 26, 1996, among Foodmaker, Inc., a Delaware corporation (the "Company"), each of the banks identified on the signature pages hereof (each a "Bank" and, collectively, the "Banks"), Credit Lyonnais New York Branch, as Agent, Collateral Agent and Swing Line Bank and Union Bank, as Issuing Bank.

W I T N E S S E T H

WHEREAS, the Company, the Banks, the Agent, the Collateral Agent, the Swing Line Bank and the Issuing Bank entered into the Amended and Restated Revolving Credit Agreement, dated as of March 15, 1996 (the "Credit Agreement"); and

WHEREAS, the signatories hereto desire to amend the Credit Agreement as set forth herein;

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements contained herein and in the Credit Agreement, the parties hereto agree that the Credit Agreement is hereby amended as set forth herein:

1. Capitalized terms used herein which are not otherwise defined herein but are defined in the Credit Agreement shall have the meanings given to such terms in the Credit Agreement.

2. The definition of "Applicable Margin" in Section 1.01(c) is amended to read in its entirety as follows:

"Applicable Margin" shall mean with respect to ABR Loans and Eurodollar Loans the rate per annum set forth opposite the applicable Leverage Ratio set forth below.

APPLICABLE MARGIN

Leverage Ratio	ABR Loans	Eurodollar Loans
Greater than 4.5:1	1.50%	2.50%
4.00:1 to 4.5:1	1.00%	2.00%
3.50:1 to 4.0:1	0.75%	1.75%
less than 3.50:1	0.50%	1.50%

3. The definition of "Consolidated Capital Expenditures" in Section 1.01(c) is amended to read in its entirety as follows:

"Consolidated Capital Expenditures" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including that portion of Capital Leases which is capitalized on the consolidated balance sheet of the Company and its Subsidiaries), excluding expenditures made for Permitted Restaurant Repurchases and Permitted Sale Leaseback Repurchases, by the Company and its Subsidiaries during such period that in conformity with GAAP would be classified as capital expenditures.

4. The definition of "Leverage Ratio" in Section 1.01(c) is amended to read in its entirety as follows:

"Leverage Ratio" shall mean a ratio of Indebtedness of the Company to Consolidated EBITDA for the previous four fiscal quarters.

5. The definition of "Excluded Asset Sale" in Section 1.01(c) is amended to read in its entirety as follows:

"Excluded Asset Sale" shall mean (i) the sale of goods in the ordinary course of business; (ii) sales of assets to franchisees in the ordinary course of business consistent with past practice; (iii) the sale of any property or assets, excluding properties listed on Schedule 7.01(b)-1, acquired after March 15, 1996 by the Company or its Subsidiaries pursuant to a sale-leaseback transaction; (iv) the sale, lease, transfer or disposal of any asset or assets by the Company or a Subsidiary of the Company to any of the Company or any Subsidiary of the Company; (v) the sale or other disposition of obsolete or worn out equipment or other assets in the ordinary course of business; (vi) the

sale, lease, transfer or disposal of properties listed on Schedule 1.01(c), as amended from time to time; (vii) the sale, lease, transfer or disposal of no more than two properties listed on Schedule 7.01(b)-1 or Schedule 7.01(b)-2 in each fiscal year; provided, however, that the Company may sell such properties if and only if the Company proposes to add an equivalent number of sites, the real estate of each having a book value no less than that of the property for which it is being substituted, to Schedule 7.01(b)-1 and the Agent shall have received (a) evidence satisfactory to the Agent that Mortgages have been filed on the sites to be added to Schedule 7.01(b)-1 and (b) revised versions of Schedule 1.01 (c) and Schedule 7.01(b)-1, marked to show the date of such revisions; (viii) the sale, lease, transfer or disposal of assets (other than goods and services) having a fair value consideration not exceeding $5,000,000 in the aggregate for all of the Company and its Subsidiaries in any fiscal year; provided, however, that for purposes of clause (viii) no sale, lease, transfer or disposal of assets having a fair value consideration of less than $100,000 shall be included in any aggregation of sales, leases, transfers and disposals; or (ix) the sale or other disposition to a Company franchisee of (a) any restaurant that has been acquired by the Company from a franchisee or (b) any other Company restaurant, provided that the aggregate value of such Company restaurants sold or otherwise disposed of pursuant to this clause (ix) does not exceed the aggregate value of restaurants acquired by the Company from its franchisees.

6. The definition of "Net Capital Expenditures" in Section 1.01(c) is amended to read in its entirety as follows:

"Net Capital Expenditures" shall mean capital expenditures in accordance with GAAP, excluding expenditures made for Permitted Restaurant Repurchases and Permitted Sale Leaseback Repurchases, less proceeds from sale-leaseback transactions involving assets not acquired through a Permitted Restaurant Repurchase or Permitted Sale Leaseback Repurchase.

7. The definition of "Permitted Restaurant Repurchases" in Section 1.01(c) is amended to read in its entirety as follows:

"Permitted Restaurant Repurchases" shall mean restaurants repurchased by the Company from one or more of its franchisees, provided that between September 30, 1996 and the Termination Date, the aggregate price of all such repurchases, less any proceeds generated from the sale by

the Company of restaurants to franchisees, does not exceed $24,000,000, and provided further that when the Company acquires a fee interest in the property through such repurchase, the Company shall file a Mortgage on such property within 30 days thereafter, and when the Company acquires a leasehold interest in the property through such repurchase, the Company shall use its best efforts to file a Mortgage on such property promptly thereafter.

8. Clause (ii) of the definition of "Specified Additional Indebtedness" in Section 1.01(c) is amended to read in its entirety as follows:

(ii) Indebtedness incurred pursuant to sale-leaseback transactions, entered into pursuant to the acquisition of new restaurant properties, not exceeding (A) $50,000,000 in the fiscal year ending September 1997 and $60,000,000 in the fiscal year ending October 1998, or (B) $120,000,000 during the period from September 30, 1996 to the Termination Date.

9. Definitions for the terms "Capital Investment" and "Permitted Sale Leaseback Repurchases" are added to Section 1.01(c) to read in their entirety as follows:

"Capital Investment" shall mean capital expenditures in accordance with GAAP, including Permitted Restaurant Repurchases and Permitted Sale Leaseback Repurchases.

"Permitted Sale Leaseback Repurchases" shall mean the repurchase of property with respect to which the Company has previously entered into a sale leaseback arrangement, provided that such repurchase is completed by December 31, 1997 and that the aggregate purchase price of such repurchases does not exceed $18,000,000, and provided further that when the Company acquires a fee interest in the property through such repurchase, the Company shall file a Mortgage on such property within 30 days thereafter, and when the Company acquires a leasehold interest in the property through such repurchase, the Company shall use its best efforts to file a Mortgage on such property promptly thereafter.

10. Section 2.04 shall be amended to read in its entirety as follows:

Section 2.04. Commitment Fee. The Company shall pay to the Agent for the account of the Banks a fee (the "Commitment Fee") equal, (a) if the Leverage Ratio is

greater than 4.00:1, to 0.500 percent (1/2 of 1%) per annum (on the basis of a 365-day year for the actual number of days elapsed) on the daily average Available Commitment from the date hereof to the Termination Date and (b) if the Leverage Ratio is equal to or less than 4.00:1, to 0.375 percent per annum (on the basis of a 365-day year for the actual number of days elapsed) on the daily average Available Commitment from the date thereof to the Termination Date. Such fee shall be payable in arrears on the last day of each calendar quarter, commencing on the first such date after the date hereof, and on the Termination Date.

11. Section 8.02(d) shall be amended to read in its entirety as follows:

(d) Merger, Acquisition or Sales of Assets. Enter into any merger or consolidation or acquire assets of any Person, other than Permitted Restaurant Repurchases, Permitted Sale Leaseback Repurchases, or assets acquired in the ordinary course of the Company's business, or sell, lease, or otherwise dispose of any of its assets, except pursuant to an Excluded Asset Sale, or permit any Subsidiary so to do, except that a Wholly Owned Subsidiary may be merged or consolidated with one or more other Wholly Owned Subsidiaries or into the Company.

12. Section 8.03(a) shall be amended to read in its entirety as follows:

(a) Minimum Consolidated EBITDA. Maintain Consolidated EBITDA of not less than the amounts specified for each of the following periods:

For the Four Fiscal Quarters Ending	Amount (in millions)
01/97	$95
04/97	$97
07/97	$98
09/97	$102
1/98	$106
4/98	$110
7/98	$114
10/98	$119
and thereafter	

13. Section 8.03(b) shall be amended to read in its entirety as follows:

(b) Capital Expenditures. Not make or permit its Subsidiaries to make, during the fiscal year ending at the date specified, aggregate Net Capital Expenditures in an amount in excess of that specified below for such period, provided that if in any fiscal year the Company does not make Net Capital Expenditures equal to the aggregate amount permitted pursuant to this Section 8.03(b), up to

$10,000,000 of the excess of the amount permitted by this Section over the amount of such expenditures made shall carry over to the following fiscal year to increase the amount of permitted expenditures in that period:

For the Fiscal Year Ending	Amount (in millions)
09/97	$55
10/98	$75
10/05/98 - 12/31/98	$20

The Company may purchase property in which the Company has an existing interest for an amount up to $4,000,000, provided, that after subtracting the purchase price from Consolidated EBITDA for the preceding four fiscal quarters, the Company remains in compliance with all covenants of this Section 8.03. If such purchase is made, the purchase price will be subtracted from Consolidated EBITDA for the purpose of determining subsequent fiscal quarters' covenant compliance, the Applicable Margin and the Commitment Fee.

14. Section 8.03(c) shall be amended to read in its entirety as follows:

(c) Minimum Interest Coverage Ratio. Maintain a ratio of Consolidated EBITDA to Consolidated Interest Expense of not less than the ratio specified for each of the following periods:

For the Four Fiscal Quarters Ending	Ratio
01/97	2.15:1
04/97	2.25:1
07/97	2.35:1
09/97	2.45:1
1/98	2.55:1
4/98	2.65:1
7/98	2.80:1
10/98 and thereafter	2.90:1

15. Section 8.03(d) shall be amended to read in its entirety as follows:

(d) Fixed Charge Coverage Ratio. Maintain a ratio of Consolidated EBITDA less Consolidated Capital Expenditures, excluding Consolidated Capital Expenditures made with the proceeds from sale leaseback transactions involving assets not acquired through a Permitted Restaurant Repurchase or Permitted Sale Leaseback Repurchase, and less cash paid for Taxes to Consolidated Fixed Charges of not less than the ratio specified for each of the following periods:

For the Four Fiscal Quarters Ending	Ratio
01/97	1.00:1
04/97	1.00:1
07/97	1.00:1

09/97	1.00:1
1/98	1.00:1
4/98	1.00:1
7/98	1.05:1
10/98 and thereafter	1.10:1

16. Section 8.03(e) shall be amended to read in its entirety as follows:

(e) Maximum Leverage. Maintain a ratio of Indebtedness at the date specified to Consolidated EBITDA for the four fiscal quarters ending at the date specified

not in excess of the ratio set forth below for the applicable period:

For the Fiscal Quarter Ending	Ratio
01/97	4.30:1
04/97	4.20:1
07/97	4.15:1
09/97	4.00:1
1/98	3.85:1
4/98	3.70:1
7/98	3.55:1
10/98 and thereafter	3.40:1

17. The Company agrees to pay on demand all reasonable costs and expenses of the Agent (including all reasonable fees and expenses of counsel to the Agent) in connection with the preparation and execution of this Amendment.

18. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA.

19. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. This Amendment shall become effective as of the date hereof upon the delivery to the Agent of executed counterparts from the Company and all Banks.

20. The Credit Agreement, as amended hereby, shall be binding upon the Company, the Banks, the Agent, the Collateral Agent, the Swing Line Bank and the Issuing Bank and their respective successors and assigns, and shall inure to the benefit of the Company, the Banks, the Agent, the Collateral Agent, the Swing Line Bank and the Issuing Bank and their respective successors and assigns.

21. Except as expressly provided in this Amendment, all of the terms, covenants, conditions, restrictions and other provisions contained in the Credit Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

FOODMAKER, INC.

By: HAROLD L. SACHS

Name: Harold L. Sachs
Title: Treasurer

CREDIT LYONNAIS, NEW YORK BRANCH,
as Agent for the Banks

By: FRED HADDAD

Name: Fred Haddad
Title: Sr. Vice President

Address for Notices:

1301 Avenue of the Americas
New York, New York 10016
Attn: David Miller
Fax: (212) 459-3176

With copies to:

Credit Lyonnais Los Angeles Branch
515 South Flower Street
Los Angeles, California 90071
Attn: Eric Dulot
Fax: (213) 623-3437

Sullivan & Cromwell
444 South Flower Street
Suite 1200
Los Angeles, California 90071
Attn: Alison S. Ressler
Fax: (213) 683-0457

CREDIT LYONNAIS NEW YORK BRANCH
Signing as a Bank, Swing Line
Bank and Collateral Agent

By: FRED HADDAD

Name: Fred Haddad
Title: Sr. Vice President

Address for Notices:

1301 Avenue of the Americas

New York, New York 10016
Attn: David Miller
Fax: (212) 459-3176

With copies to:

Credit Lyonnais Los Angeles Branch
515 South Flower Street
Los Angeles, California 90071
Attn: Eric Dulot
Fax: (213) 623-3437

Sullivan & Cromwell
444 South Flower Street
Suite 1200
Los Angeles, California 90071
Attn: Alison S. Ressler
Fax: (213) 683-0457

NATIONSBANK OF TEXAS, N.A.
as a Bank

By: MICHELE M. SHAFROTH

Name: Michele M. Shafroth
Title: Senior Vice President

Address for Notices:

NationsBank of Texas, N.A.
901 Main Street, 14th Floor
Dallas, Texas 95202

Attn: Kay Hibbs
Fax: (214) 508-0944

Eurodollar Lending Office:

NationsBank of Texas, N.A.
901 Main Street, 14th Floor
Dallas, Texas 95202

Attn: Kay Hibbs
Fax: (214) 508-0944

U.S. NATIONAL BANK OF OREGON
as a Bank

By: JANET E. JORDAN

Name: Janet E. Jordan
Title: Vice President

Address for Notices:

111 S.W. Fifth Avenue, T-29
Portland, Oregon 97204

Attn: Janet E. Jordan
Fax: (503) 275-5428

Eurodollar Lending Office:

111 S.W. Fifth Avenue, T-29
Portland, Oregon 97204

Attn: Janet E. Jordan
Fax: (503) 275-5428

UNION BANK OF CALIFORNIA, N.A. as a
Bank and as the Issuing Bank

By: PASHA MOGHADDAM

Name: Pasha Moghaddam
Title: Vice President

Address for Notices:

445 South Figueroa Street
15th Floor
Los Angeles, California 90071

Attn: Wendy Frear
Fax: (213) 236-6701

Eurodollar Lending Office:

445 South Figueroa Street
15th Floor
Los Angeles, California 90071

Attn: Wendy Frear
Fax: (213) 236-6701

Exhibit 10.10

Form of
Compensation and Benefits
Assurance Agreement for
Executives

Foodmaker, Inc.

September 30, 1996

Contents

Compensation and Benefits Assurance Agreement

This COMPENSATION AND BENEFITS ASSURANCE AGREEMENT (this "Agreement") is made, entered into, and is effective as of this _____ day of ________________ (the "Effective Date") by and between Foodmaker, Inc. (hereinafter referred to as the "Company") and ______________________ (hereinafter referred to as the "Executive").

WHEREAS, the Executive is presently employed by the Company in a key management capacity; and

WHEREAS, the Executive possesses considerable experience and knowledge of the business and affairs of the Company concerning its policies, methods, personnel, and operations; and

WHEREAS, the Company desires assuring the continued employment of the Executive in a key management capacity, and the Executive is desirous of having such assurances.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements of the parties set forth in this Agreement, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

Section 1. Term of Agreement

This Agreement will commence on the Effective Date and shall continue in effect for two full calendar years (through ______________________) (the "Initial Term").

The Initial Term of this Agreement automatically shall be extended for two additional years at the end of the Initial Term, and then again after each successive two-year period thereafter (each such two-year period following the Initial Term a "Successive Period"). However, either party may terminate this Agreement at the end of the Initial Term, or at the end of any Successive Period thereafter, by giving the other party written notice of intent not to renew, delivered at least six (6) months prior to the end of such Initial Term or Successive Period. If such notice is properly delivered by either party, this Agreement, along with all corresponding rights, duties, and covenants shall automatically expire at the end of the Initial Term or Successive Period then in progress.

In the event that a "Change in Control" of the Company occurs (as such term is hereinafter defined) during the Initial Term or any Successive Period, upon the effective date of such Change in Control, the term of this Agreement shall automatically and irrevocably be renewed for a period of twenty-four (24) full calendar months from the effective date of such Change in Control. This Agreement shall thereafter automatically terminate following the twenty-four (24) month Change in Control renewal period. Further, this Agreement shall be assigned to, and shall be assumed by the purchaser in such Change in Control, as further provided in Section 4 herein.

Section 2. Severance Benefits

2.1. Right to Severance Benefits. The Executive shall be entitled to receive from the Company Severance Benefits as described in Paragraph 2.3 herein, if during the term of this Agreement there has been a Change in Control of the Company (as defined in Paragraph 2.4 herein) and if, within twenty-four (24) calendar months immediately thereafter, the Executive's employment with the Company shall end for any reason specified in Paragraph 2.2 herein as being a Qualifying Termination. The Severance Benefits described in Paragraphs 2.3(a), 2.3(b), 2.3(c), and 2.3(d) herein shall be paid in cash to the Executive in a single lump sum as soon as practicable following the Qualifying Termination, but in no event later than thirty (30) calendar days from such date. Notwithstanding the foregoing, Severance Benefits which become due pursuant to Paragraphs 2.2(c) and 4.1 shall be paid immediately.

The Severance Benefits described in Paragraphs 2.3(a), 2.3(b), 2.3(c), and 2.3(d) herein shall be paid out of the general assets of the Company.

2.2. Qualifying Termination. The occurrence of any one or more of the following events (i.e., a "Qualifying Termination") within twenty-four (24) calendar months immediately following a Change in Control of the Company shall trigger the payment of Severance Benefits to the Executive, as such benefits are described under Paragraph 2.3 herein:

(a) The Company's involuntary termination of the Executive's employment without Cause (as such term is defined in Paragraph 2.6 herein);

(b) The Executive's voluntary termination of employment for Good Reason (as such term is defined in Paragraph 2.5 herein); and

(c) The Company, or any successor company, commits a material breach of any of the provisions of this Agreement.

A Qualifying Termination shall not include a termination of the Executive's employment within twenty-four (24) calendar months after a Change in Control by reason of death, disability (as such term is defined under the Company's governing disability plan, or any successor plan thereto), the

Executive's voluntary termination without Good Reason, or the Company's involuntary termination of the Executive's employment for Cause.

2.3. Description of Severance Benefits. In the event that the Executive becomes entitled to receive Severance Benefits, as provided in Paragraphs 2.1 and 2.2 herein, the Company shall pay to the Executive and provide the Executive with the following:

(a) A lump-sum cash amount equal to the Executive's unpaid Base Salary (as such term is defined in Paragraph 2.7 herein), accrued vacation pay, unreimbursed business expenses, and all other items earned by and owed to the Executive through and including the date of the Qualifying Termination. Such payment shall constitute full satisfaction for these amounts owed to the Executive.

(b) A lump-sum cash amount equal to ___ multiplied by the Executive's annual rate of Base Salary in effect upon the date of the Qualifying Termination or, if greater, by the Executive's annual rate of Base Salary in effect immediately prior to the occurrence of the Change in Control.

(c) A lump-sum cash amount equal to ___ multiplied by the greater of: (i) the bonus percentage used to determine the executive's bonus in the prior fiscal year, times the executive's annualized Base Salary determined in (b) above or (ii) the bonus amount paid for the fiscal year immediately prior to the fiscal year of the occurrence of the Change in Control. Such payment shall constitute full satisfaction for these amounts owed to the Executive.

(d) A lump-sum cash amount equal to ___ multiplied by the maximum possible estimated annual Company match of the Executive's contributions to the Company's Capital Accumulation Plan for Executives for the year in which the Executive's Qualifying Termination occurs (this amount shall not be less than the Company match of the Executive's contribution to the Company's Capital Accumulation Plan for the calendar year prior to the date of the qualifying termination). Provided, however, that the source of payment of this sum shall be the general assets of the Company unless the payment of such amounts is otherwise permissible from the corresponding qualified plan trust without violating any governmental regulations or statutes. Such payment shall constitute full satisfaction for these amounts owed to the Executive.

(e) At the exact same cost to the Executive, and at the same coverage level as in effect as of the Executive's date of the Qualifying Termination (subject to changes in coverage levels applicable to all employees generally), a continuation of the Executive's (and the Executive's eligible dependents') health insurance coverage for eighteen (18) months from the date of the Qualifying Termination. This will run concurrently with any coverage provided as required by the Consolidated Budget Reconciliation Act (COBRA). If this requires a monthly payment to the Plan, the Company will pay the required amount, adjusted to a pre-tax basis. For this purpose, the executive shall be deemed to be at the highest marginal rate of federal and state taxes.

The providing of these health insurance benefits by the Company shall be discontinued prior to the end of the eighteen (18) month continuation period to the extent that the Executive becomes covered under the health insurance coverage of a subsequent employer which does not contain any exclusion or limitation with respect to any preexisting condition of the Executive or the Executive's eligible dependents. For purposes of enforcing this offset provision, the Executive shall have a duty to inform the Company as to the terms and conditions of any subsequent employment and the corresponding benefits earned from such employment. The Executive shall provide, or cause to provide, to the Company in writing correct, complete, and timely information concerning the same.

(f) The Executive shall be entitled, at the expense of the Company, to receive standard outplacement services from a nationally recognized outplacement firm of the Executive's selection, for a period of up to two (2) years from the Executive's date of Qualifying Termination. However, such services shall be at the Company's expense to a maximum amount not to exceed thirty-five percent (35%) of the Executive's annual rate of Base Salary as of the date of the Qualifying Termination.

2.4. Definition of "Change in Control." "Change in Control" of the Company means, and shall be deemed to have occurred upon, the first to occur of any of the following events:

(a) Any Person (other than those Persons in control of the Company as of the Effective Date, or other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company, or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company) becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing twenty-five percent (25%) or more of the combined voting power of the Company's then outstanding securities; or

(b) During any period of two (2) consecutive years (not including any period prior to the Effective Date), individuals who at the beginning of such period constitute the Board (and any new Director, whose election by the Company's stockholders was approved by a vote of a least two-thirds (2/3) of the Directors then still in office who either were Directors at the beginning of the period or whose election or nomination for election was so approved), cease for any reason to constitute a majority thereof; or

(c) The stockholders of the Company approve: (i) a plan of complete liquidation of the Company; or (ii) an agreement for the sale or disposition of all or substantially all of the Company's assets; or (iii) a merger, consolidation, or reorganization of the Company with or involving any other corporation, other than a merger, consolidation, or reorganization that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the combined voting power of the voting securities of the Company (or such surviving entity) outstanding immediately after such merger, consolidation, or reorganization.

However, in no event shall a "Change in Control" be deemed to have occurred, with respect to the Executive, if the Executive is part of a purchasing group which consummates the Change in Control transaction. The Executive shall be deemed "part of a purchasing group" for purposes of the preceding sentence if the Executive is an equity participant in the purchasing company or group (except for: (i) passive ownership of less than two percent (2%) of the stock of the purchasing company; or (ii) ownership of equity participation in the purchasing company or group which is otherwise not significant, as determined prior to the Change in Control by a majority of the nonemployee continuing Directors).

2.5. Definition of "Good Reason." "Good Reason" shall be determined by the Executive, in the exercise of good faith and reasonable judgment, and shall mean, without the Executive's express written consent, the occurrence of any one or more of the following within two (2) years immediately following a Change in Control:

(i) The assignment of the Executive to duties inconsistent with the Executive's authorities, duties, responsibilities, and status as an executive of the Company, or a reduction or alteration in the nature or status of the Executive's authorities, duties, or responsibilities, from those in effect as of ninety (90) calendar days prior to the Change in Control, other than an insubstantial and inadvertent act that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) The Company's requiring the Executive to be based at a location in excess of fifty (50) miles from the location of the Executive's principal job location or office immediately prior to the Change in Control; except for required travel on the Company's business to an extent consistent with the Executive's then present business travel obligations;

(iii) A reduction by the Company of the Executive's Base Salary in effect on the Effective Date, or as the same shall be increased from time to time;

(iv) The failure of the Company to keep in effect any of the Company's compensation, health and welfare benefits, retirement benefits, or perquisite programs under which the Executive receives value, as such program exists immediately prior to the Change in Control. However, the replacement of an existing program with a new program will be permissible (and not grounds for a Good Reason termination) if the value to be delivered to the Executive under the new program is at least as great as the value delivered to the Executive under the existing programs; or

Any breach by the Company of its obligations under Section 4 of this Agreement or any failure of a successor company to assume and agree to perform the Company's entire obligations under this Agreement, as required by Section 4 herein.

The Executive's right to terminate employment for Good Reason shall not be affected by the Executive's incapacity due to physical or mental illness. The Executive's continued employment shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason herein.

2.6. Definition of "Cause." "Cause" shall be determined by the Administrative Committee, in the exercise of good faith and reasonable judgment, and shall mean the occurrence of any one or more of the following:

(a) A demonstrably willful and deliberate act or failure to act by the Executive (other than as a result of incapacity due to physical or mental illness) which is committed in bad faith, without reasonable belief that such action or inaction is in the best interests of the Company, which causes actual material financial injury to the Company and which act or inaction is not remedied within fifteen (15) business days of written notice from the Company; or

(b) The Executive's conviction for committing an act of fraud, embezzlement, theft, or any other act constituting a felony involving moral turpitude or causing material harm, financial or otherwise, to the Company.

2.7. Other Defined Terms. The following terms shall have the meanings set forth below:

(a) "Base Salary" means, at any time, the then-regular annualized rate of pay which the Executive is receiving as a salary, excluding amounts (i) designated by the Company as payment toward reimbursement of expenses; or (ii) received under incentive or other bonus plans, regardless of whether or not the amounts are deferred.

(b) "Beneficial Owner" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act (as such term is defined below).

(c) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor act thereto.

(d) "Person" shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) thereof.

Section 3. Excise Tax Avoidance

3.1. Reduction in Award to Avoid Excise Tax Liability. If any portion of the Severance Benefits or any other payment under this Agreement, or under any other agreement with, or plan of the Company, including but not limited to stock options and other long-term incentives (in the aggregate "Total Payments") would constitute an "excess parachute payment," such that an excise tax is due as a result of Section 280G of the Internal Revenue Code, then the payments to be made to the Executive under this Agreement shall be reduced such that the value of the aggregate Total Payments that the Executive is entitled to receive shall be One Dollar ($1) less than the maximum amount which the Executive may receive without becoming subject to the tax imposed by Section 4999 of the Code or which the Company may pay without loss of deduction under Section 280G(a) of the Code.

However, the payments to be made to the Executive under this Agreement shall be reduced if and only if so reducing the payments results in the Executive receiving a greater net benefit than he would have received had a reduction not occurred and an excise tax been paid.

For purposes of this Agreement, the term "excess parachute payment" shall have the meaning assigned to such term in Section 280G of the Internal Revenue Code, as amended (the "Code"), and the term "excise tax" shall mean the tax imposed on such excess parachute payment pursuant to Sections 280G and 4999 of the Code.

Section 4. Successors and Assignments

4.1. Successors. The Company will require any successor (whether via a Change in Control, direct or indirect, by purchase, merger, consolidation, or otherwise) of the Company to expressly assume and agree to perform the obligations under this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

Failure of the Company to obtain such assumption and agreement prior to the effectiveness of any such succession shall, as of the date immediately preceding the date of a Change in Control, automatically give the Executive Good Reason to collect, immediately, full benefits hereunder as a Qualifying Termination.

4.2. Assignment by Executive. This Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. If an Executive should die while any amount is still payable to the Executive hereunder had the Executive continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement, to the Executive's devisee, legatee, or other designee, or if there is no such designee, to the Executive's estate.

An Executive's rights hereunder shall not otherwise be assignable.

Section 5. Miscellaneous

5.1. Administration. This Agreement shall be administered by the Board of Directors of the Company, or by a Committee of the Board designated by the Board (the "Administrative Committee"). The Administrative Committee (with the approval of the Board, if the Board is not the Administrative Committee) is authorized to interpret this Agreement, to prescribe and rescind rules and regulations, and to make all other determinations necessary or advisable for the administration of this Agreement.

In fulfilling its administrative duties hereunder, the Administrative Committee may rely on outside counsel, independent accountants, or other consultants to render advice or assistance.

5.2. Notices. Any notice required to be delivered to the Company or the Administrative Committee by the Executive hereunder shall be properly delivered to the Company when personally delivered to (including by a reputable overnight courier), or actually received through the U.S. mail, postage prepaid, by:

Foodmaker, Inc.
9330 Balboa Avenue
San Diego, CA 92123

Attn: General Counsel

Any notice required to be delivered to the Executive by the Company or the Administrative Committee hereunder shall be properly delivered to the Executive when personally delivered to (including by a reputable overnight courier), or actually received through the U.S. mail, postage prepaid, by, the Executive at his last known address as reflected on the books and records of the Company.

Section 6. Contractual Rights and Legal Remedies

6.1. Contractual Rights to Benefits. This Agreement establishes in the Executive a right to the benefits to which the Executive is entitled hereunder. However, except as expressly stated herein, nothing herein contained shall require or be deemed to require, or prohibit or be deemed to prohibit, the Company to segregate, earmark, or otherwise set aside any funds or other assets, in trust or otherwise, to provide for any payments to be made or required hereunder.

6.2. Legal Fees and Expenses. The Company shall pay all legal fees, costs of litigation, prejudgment interest, and other expenses which are incurred in good faith by the Executive as a result of the Company's refusal to provide the Severance Benefits to which the Executive becomes entitled under this Agreement, or as a result of the Company's (or any third party's) contesting the validity, enforceability, or interpretation of the Agreement, or as a result of any conflict between the parties pertaining to this Agreement.

6.3. Arbitration. The Executive shall have the right and option to elect (in lieu of litigation) to have any dispute or controversy arising under or in connection with this Agreement settled by arbitration, conducted before a panel of three (3) arbitrators sitting in a location selected by the Executive within fifty (50) miles from the location of his or her job with the Company, in accordance with the rules of the American Arbitration

Association then in effect. The Executive's election to arbitrate, as herein provided, and the decision of the arbitrators in that proceeding, shall be binding on the Company and the Executive.

Judgment may be entered on the award of the arbitrator in any court having jurisdiction. All expenses of such arbitration, including the fees and expenses of the counsel for the Executive, shall be borne by the Company.

6.4. Unfunded Agreement. This Agreement is intended to be an unfunded general asset promise for a select, highly compensated member of the Company's management and, therefore, is intended to be exempt from the substantive provisions of the Employee Retirement Income Security Act of 1974 as amended.

6.5. Exclusivity of Benefits. Unless specifically provided herein, neither the provisions of this Agreement nor the benefits provided hereunder shall reduce any amounts otherwise payable, or in any way diminish the Executive's rights as an employee of the Company, whether existing now or hereafter, under any compensation and/or benefit plans, programs, policies, or practices provided by the Company, for which the Executive may qualify.

Vested benefits or other amounts which the Executive is otherwise entitled to receive under any plan, policy, practice, or program of the Company (i.e., including, but not limited to, vested benefits under the Company's 401(k) plan), at or subsequent to the Executive's date of Qualifying Termination shall be payable in accordance with such plan, policy, practice, or program except as expressly modified by this Agreement.

6.6. Includable Compensation. Severance Benefits provided hereunder shall not be considered "includable compensation" for purposes of determining the Executive's benefits under any other plan or program of the Company.

6.7. Employment Status. Nothing herein contained shall be deemed to create an employment agreement between the Company and the Executive, providing for the employment of the Executive by the Company for any fixed period of time. The Executive's employment with the Company is terminable at will by the Company or the Executive and each shall have the right to terminate the Executive's employment with the Company at any time, with or without Cause, subject to the Company's obligation to provide Severance Benefits as required hereunder.

In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement, nor shall the amount of any payment hereunder be reduced by any compensation earned by the Executive as a result of employment by another employer, other than as provided in Paragraph 2.3(e) herein.

6.8. Entire Agreement. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, and agreements concerning the subject matter hereof, including, but not limited to, any prior severance agreement made between the Executive and the Company.

6.9. Tax Withholding. The Company shall withhold from any amounts payable under this Agreement all federal, state, city, or other taxes as legally required to be withheld.

6.10. Waiver of Rights. Except as otherwise provided herein, the Executive's acceptance of Severance Benefits, the Gross-Up Payment (if applicable), and any other payments required hereunder shall be deemed to be a waiver of all rights and claims of the Executive against the Company pertaining to any matters arising under this Agreement.

6.11. Severability. In the event any provision of the Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included.

6.12. Applicable Law. To the extent not preempted by the laws of the United States, the laws of the State of Delaware shall be the controlling law in all matters relating to this Agreement.

IN WITNESS WHEREOF, the Company has executed this Agreement, to be effective as of the day and year first written above.

ATTEST: Foodmaker, Inc.

By:___________________________
Secretary

By:___________________________
Title: _______________________

____
name

Attachment A

The multiple of salary would vary by role. 2.5 is used for the following roles:

- Chief Executive Officer
- Chief Financial Officer
- Chief Legal Officer
- Executive Vice President

1.5 is used for the following roles:

- Vice President, Human Resources
- Vice President, Quality Assurance
- Vice President, Controller
- Vice President, Operations

Independent Auditors' Consents

The Board of Directors
Foodmaker, Inc.;

We consent to incorporation by reference in the registration statement no. 33-50934 on Form S-3 of Foodmaker, Inc. and in registration statement Nos. 33-67450, 33-54602 and 33-51490 on Form S-8 of Foodmaker, Inc. of our report dated November 5, 1996, except for the fifth paragraph of Note 12, which is as of December 10, 1996, relating to the consolidated balance sheets of Foodmaker, Inc. and subsidiaries as of September 29, 1996 and October 1, 1995, and the related consolidated statements of operations, cash flows and stockholders' equity for the fifty-two weeks ended September 29, 1996, October 1, 1995, and October 2, 1994, which report appears in the September 29, 1996 annual report of Form 10-K of Foodmaker, Inc. and subsidiaries.

KPMG PEAT MARWICK LLP

San Diego, California
December 20, 1996

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