

STEAK & SHAKE CO  
Form 10-Q  
May 18, 2009

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

FORM 10-Q

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

For the quarterly period ended April 8, 2009

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-8445

THE STEAK N SHAKE COMPANY

(Exact name of registrant as specified in its charter)

INDIANA  
(State or other jurisdiction  
of incorporation or organization)

37-0684070  
(I.R.S. Employer  
Identification No.)

36 S. Pennsylvania Street, Suite 500  
Indianapolis, Indiana  
(Address of principal executive offices)

46204  
(Zip code)

(317) 633-4100  
(Registrant's telephone number, including area code)

Not Applicable  
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

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Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer   
Smaller reporting company

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

As of May 13, 2009, 28,774,077 shares of the registrant's Common Stock, \$.50 par value, were outstanding.

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THE STEAK N SHAKE COMPANY

FORM 10-Q

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## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

## Condensed Consolidated Statements of Financial Position

## The Steak n Shake Company

(Amounts in \$000s except share and per share data)

|  | April 8,<br>2009<br>(Unaudited) | September 24,<br>2008<br>(Unaudited) |
|--|---------------------------------|--------------------------------------|
| Assets:  |                                 |                                      |
| Current Assets   |                                 |                                      |
| Cash and cash equivalents  | \$ 35,010                       | \$ 6,855                             |
| Receivables, net   | 6,110                           | 15,622                               |
| Inventories  | 7,302                           | 6,795                                |
| Deferred income taxes  | 2,902                           | 3,260                                |
| Assets held for sale   | 21,055                          | 25,395                               |
| Other current assets   | 4,581                           | 3,009                                |
| Total current assets   | 76,960                          | 60,936                               |
| Net property and equipment   | 413,045                         | 432,690                              |
| Goodwill   | 14,503                          | 14,503                               |
| Other intangible assets, net                                       | 1,660                           | 1,765                                |
| Other assets   | 7,673                           | 10,242                               |
| Total assets   | \$ 513,841                      | \$ 520,136                           |
| Liabilities and Shareholders' Equity:                              |                                 |                                      |
| Current Liabilities  |                                 |                                      |
| Accounts payable   | \$ 22,667                       | \$ 25,302                            |
| Accrued expenses   | 31,515                          | 31,685                               |
| Current portion of long-term debt                                  | 5,732                           | 733                                  |
| Line of credit   | 17,000                          | 14,180                               |
| Current portion of obligations under leases                        | 4,452                           | 4,417                                |
| Total current liabilities  | 81,366                          | 76,317                               |
| Deferred income taxes  | 3,599                           | 2,209                                |
| Other long-term liabilities  | 6,657                           | 7,439                                |
| Obligations under leases   | 131,634                         | 134,809                              |
| Long-term debt   | 6,302                           | 15,783                               |
| Commitments and Contingencies                                      |                                 |                                      |
| Shareholders' Equity:  |                                 |                                      |
| Common stock - \$0.50 stated value, 50,000,000 shares authorized - |                                 |                                      |
| shares issued: 30,332,839  | 15,166                          | 15,166                               |
| Additional paid-in capital   | 128,779                         | 128,526                              |
| Retained earnings  | 160,546                         | 161,733                              |
| Treasury stock - at cost: 1,549,517 shares as of April 8, 2009;    |                                 |                                      |
| 1,760,531 shares as of September 24, 2008                          | (20,208)                        | (21,846)                             |
| Total shareholders' equity   | 284,283                         | 283,579                              |
| Total liabilities and shareholders' equity                         | \$ 513,841                      | \$ 520,136                           |

See accompanying notes.

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## Condensed Consolidated Statements of Operations

## The Steak n Shake Company

(Amounts in \$000s except share and per share data)

|   | Sixteen Weeks Ended             |                                 | Twenty-Eight Weeks Ended        |                                 |
|---|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
|   | April 8,<br>2009<br>(Unaudited) | April 9,<br>2008<br>(Unaudited) | April 8,<br>2009<br>(Unaudited) | April 9,<br>2008<br>(Unaudited) |
| <b>Revenues:</b>  |                                 |                                 |                                 |                                 |
| Net sales   | \$ 187,975                      | \$ 189,272                      | \$ 318,694                      | \$ 324,768                      |
| Franchise fees  | 1,054                           | 1,215                           | 2,012                           | 2,115                           |
| Total revenues  | 189,029                         | 190,487                         | 320,706                         | 326,883                         |
| <b>Costs and Expenses:</b>  |                                 |                                 |                                 |                                 |
| Cost of sales   | 45,611                          | 47,447                          | 77,642                          | 80,131                          |
| Restaurant operating costs  | 101,526                         | 104,039                         | 176,208                         | 179,849                         |
| General and administrative  | 10,799                          | 14,072                          | 19,444                          | 24,490                          |
| Depreciation and amortization   | 9,537                           | 10,455                          | 16,929                          | 18,113                          |
| Marketing   | 9,873                           | 10,376                          | 17,416                          | 16,377                          |
| Interest  | 4,049                           | 4,240                           | 7,651                           | 7,553                           |
| Rent  | 4,659                           | 4,520                           | 8,224                           | 7,728                           |
| Pre-opening costs   | —                               | 677                             | —                               | 1,131                           |
| Asset impairments and provision for restaurant closing                | 741                             | —                               | 917                             | —                               |
| Loss (gain) on disposal of property                                   | 47                              | 297                             | (12)                            | 13                              |
| Other income, net   | (419)                           | (524)                           | (338)                           | (975)                           |
| Total costs and expenses  | 186,423                         | 195,599                         | 324,081                         | 334,410                         |
| Earnings (Loss) Before Income Taxes                                   | 2,606                           | (5,112)                         | (3,375)                         | (7,527)                         |
| Income Taxes  | 353                             | (2,302)                         | (2,188)                         | (3,530)                         |
| Net Earnings (Loss)   | \$ 2,253                        | \$ (2,810)                      | \$ (1,187)                      | \$ (3,997)                      |
| <b>Basic Earnings (Loss) Per Common and Common Equivalent Share</b>   |                                 |                                 |                                 |                                 |
|   | \$ 0.08                         | \$ (0.10)                       | \$ (0.04)                       | \$ (0.14)                       |
| <b>Diluted Earnings (Loss) Per Common and Common Equivalent Share</b> |                                 |                                 |                                 |                                 |
|   | \$ 0.08                         | \$ (0.10)                       | \$ (0.04)                       | \$ (0.14)                       |
| <b>Weighted Average Shares and Equivalents:</b>                       |                                 |                                 |                                 |                                 |

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|         |            |            |            |            |
|---------|------------|------------|------------|------------|
| Basic   | 28,478,365 | 28,269,538 | 28,402,685 | 28,221,692 |
| Diluted | 28,554,395 | 28,269,538 | 28,402,685 | 28,221,692 |

See accompanying notes.

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Condensed Consolidated Statements of Cash Flows  
The Steak n Shake Company  
(Amounts in \$000s)

|   | Twenty-Eight Weeks Ended        |                                 |
|---|---------------------------------|---------------------------------|
|   | April 8,<br>2009<br>(Unaudited) | April 9,<br>2008<br>(Unaudited) |
| <b>Operating Activities:</b>  |                                 |                                 |
| Net loss  | \$ (1,187)                      | \$ (3,997)                      |
| Adjustments to reconcile net loss to net cash provided by operating activities: |                                 |                                 |
| Depreciation and amortization   | 16,929                          | 18,113                          |
| Provision for deferred income taxes   | 1,748                           | 257                             |
| Asset impairments and provision for restaurant closing                          | 917                             | —                               |
| Non-cash expense for stock-based compensation and deferred rent                 | 1,942                           | 1,584                           |
| (Gain) loss on disposal of property   | (12)                            | 13                              |
| Changes in receivables and inventories  | 9,312                           | 1,515                           |
| Changes in other assets   | (2,098)                         | (2,354)                         |
| Changes in accounts payable and accrued expenses                                | (1,748)                         | (1,244)                         |
| Net cash provided by operating activities                                       | 25,803                          | 13,887                          |
| <b>Investing Activities:</b>  |                                 |                                 |
| Additions of property and equipment   | (2,612)                         | (23,858)                        |
| Proceeds from property and equipment disposals                                  | 6,590                           | 9,872                           |
| Net cash provided by (used in) investing activities                             | 3,978                           | (13,986)                        |
| <b>Financing Activities:</b>  |                                 |                                 |
| Net proceeds from line of credit facility                                       | 2,820                           | 2,355                           |
| Principal payments on long-term debt  | (4,482)                         | (1,055)                         |
| Proceeds from equipment and property sale-leasebacks                            | 2,005                           | —                               |
| Principal payments on direct financing lease obligations                        | (2,407)                         | (2,272)                         |
| Proceeds from exercise of stock options   | —                               | 140                             |
| Excess tax benefits from stock-based awards                                     | —                               | 10                              |
| Repurchase of employee shares for tax withholding                               | (128)                           | —                               |
| Proceeds from employee stock purchase plan                                      | 566                             | 1,004                           |
| Net cash (used in) provided by financing activities                             | (1,626)                         | 182                             |
| Increase in Cash and Cash Equivalents   | 28,155                          | 83                              |
| Cash and Cash Equivalents at Beginning of Period                                | 6,855                           | 1,497                           |
| Cash and Cash Equivalents at End of Period                                      | \$ 35,010                       | \$ 1,580                        |

See accompanying notes.



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Notes to Condensed Consolidated Financial Statements

The Steak n Shake Company

(Unaudited)

(Amounts in \$000s, except share and per share data)

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of The Steak n Shake Company (“we”, “us”, the “Company”, or “Steak n Shake”) have been prepared in accordance with accounting principles generally accepted in the United States of America applicable to interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by accounting principles generally accepted in the United States of America for complete financial statements.

In our opinion, all adjustments considered necessary to present fairly the condensed consolidated Statement of Financial Position as of April 8, 2009, the condensed consolidated Statements of Operations for the sixteen and twenty-eight weeks ended April 8, 2009 and April 9, 2008, and condensed consolidated Statements of Cash Flows for the twenty-eight weeks ended April 8, 2009 and April 9, 2008 have been included.

The condensed consolidated Statements of Operations for the sixteen and twenty-eight weeks ended April 8, 2009 and April 9, 2008 are not necessarily indicative of the consolidated Statements of Operations for the entire fiscal years. For further information, refer to the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended September 24, 2008.

2. Seasonal Aspects

We have substantial fixed costs that do not decline in line with decreasing sales. Our first and second fiscal quarters, which include the winter months, usually reflect lower average weekly unit volumes as compared to the third and fourth fiscal quarters. Additionally, sales in the first and second fiscal quarters can be adversely affected by severe winter weather. We may also be negatively affected by adverse weather during the first and fourth fiscal quarters as hurricanes and tropical storms may impact the Southeastern portion of the United States, where we have a significant number of restaurants.

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3. New Accounting Standards

In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards No. 157, “Fair Value Measurements” (“SFAS 157”), which defines fair value, establishes a formal framework for measuring fair value, and expands disclosures about fair value measurements. SFAS 157 is only applicable to existing accounting pronouncements that require or permit fair value measurements and does not require any new fair value measurements. As originally issued, SFAS 157 was to be effective as of the beginning of our fiscal year 2009. With the issuance in February 2008 of FSP 157-2, “Effective Date of FASB Statement No. 157,” the FASB approved a one-year deferral to the beginning of our fiscal year 2010 for the implementation of SFAS 157 with regard to non-financial assets and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The FASB has also excluded leases from the scope of SFAS 157 with the issuance of FSP 157-1, “Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements that Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13.” The adoption of SFAS 157 with regard to financial assets and liabilities as of September 25, 2008 did not materially impact our financial statements. See Note 13 for information regarding the partial implementation of SFAS 157. We are in the process of determining the effect, if any, that the adoption of SFAS 157 with regard to non-financial assets and liabilities will have on our financial statements in fiscal year 2010.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS 159”). SFAS 159 provides companies with an option to report selected financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings at each subsequent reporting date. SFAS 159 is effective for fiscal years beginning after November 15, 2007, our fiscal year 2009. We have determined not to elect the fair value measurement option under SFAS 159.

In December 2007, the FASB issued SFAS No. 141(R), “Business Combinations” (“SFAS 141(R)”), which replaces SFAS 141. SFAS 141(R) requires that the fair value of the purchase price of an acquisition including the issuance of equity securities be determined on the acquisition date; requires that all assets, liabilities, noncontrolling interests, contingent consideration, contingencies, and in-process research and development costs of an acquired business be recorded at fair value at the acquisition date; requires that acquisition costs generally be expensed as incurred; requires that restructuring costs generally be expensed in periods subsequent to the acquisition date; and requires that changes in deferred tax asset valuation allowances and acquired income tax uncertainties after the measurement period impact income tax expense. SFAS 141(R) also broadens the definition of a business combination and expands disclosures related to business combinations. SFAS 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008, our fiscal year 2010, except that business combinations consummated prior to the effective date must apply SFAS 141(R) income tax requirements immediately upon adoption. We are in the process of determining the effect, if any, that the adoption of SFAS 141(R) will have on our financial statements.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51” (“SFAS 160”). SFAS 160 clarifies the accounting for noncontrolling interests and establishes accounting and reporting standards for the noncontrolling interest in a subsidiary, including classification as a component of equity. SFAS 160 is effective for fiscal years beginning after December 15, 2008, our fiscal year 2010. We are in the process of determining the effect, if any, that the adoption of SFAS 160 will have on our financial statements.

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In April 2008, the FASB issued FASB Staff Position No. 142-3, "Determination of the Useful Life of Intangible Assets" ("FSP 142-3"). FSP 142-3 amends the factors that should be considered in developing renewal or extension assumptions that are used to determine the useful life of a recognized intangible asset under SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"), and requires enhanced related disclosures. FSP 142-3 must be applied prospectively to all intangible assets acquired as of and subsequent to fiscal years beginning after December 15, 2008, our fiscal year 2010. We are in the process of determining the effect, if any, that the adoption of FSP 142-3 will have on our financial statements.

## 4. Earnings (Loss) Per Share

Earnings (loss) per share of common stock is based on the weighted average number of shares outstanding during the period. The following table presents a reconciliation of the basic and diluted weighted average common shares as required by Statement of Financial Accounting Standards No. 128, "Earnings Per Share."

|  | Sixteen Weeks Ended |                  | Twenty-Eight Weeks Ended |                  |
|--|---------------------|------------------|--------------------------|------------------|
|  | April 8,<br>2009    | April 9,<br>2008 | April 8,<br>2009         | April 9,<br>2008 |
| Basic earnings (loss) per share:               |                     |                  |                          |                  |
| Weighted average common shares                 | 28,478,365          | 28,269,538       | 28,402,685               | 28,221,692       |
| Diluted earnings (loss) per share:             |                     |                  |                          |                  |
| Weighted average common shares                 | 28,478,365          | 28,269,538       | 28,402,685               | 28,221,692       |
| Dilutive effect of stock awards                | 76,030              | —                | —                        | —                |
| Weighted average common and incremental shares | 28,554,395          | 28,269,538       | 28,402,685               | 28,221,692       |

Number of share-based awards excluded from the calculation of diluted earnings (loss) per share because the awards' exercise prices were greater than the average market price of the Company's common stock, or because they were antidilutive due to the Company's net losses for the twenty-eight weeks ended April 8, 2009 and for the sixteen and twenty-eight weeks ended April 9, 2008

|  |           |           |           |           |
|--|-----------|-----------|-----------|-----------|
|  | 1,241,775 | 1,443,593 | 1,410,623 | 1,445,749 |
|--|-----------|-----------|-----------|-----------|

## 5. Restaurant Closings

We permanently closed one Company-owned restaurant during the first quarter of fiscal year 2009 and thirteen Company-owned restaurants in the fourth quarter of fiscal year 2008. The restaurant closed in the first quarter of fiscal year 2009 and ten of the restaurants closed in fiscal year 2008 were located near other Company-owned stores that continue to operate. Therefore, the results of operations of these restaurants are not presented as discontinued operations and continue to be included in continuing operations in the condensed consolidated Statements of Operations.

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The assets of three restaurants closed in fiscal year 2008 were not located near other Company-owned stores, and we do not expect to have significant continuing involvement in the operations after disposal. Although these restaurants meet the definition of “discontinued operations,” as defined in SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (“SFAS 144”), we have not segregated the results of operations as the amounts are immaterial. Net loss after tax related to the three restaurants was \$92 and \$145 for the sixteen and twenty-eight weeks ended April 9, 2008, respectively.

## 6. Net Property and Equipment

Net property and equipment consists of the following:

|  | April 8,<br>2009 | September 24,<br>2008 |
|--|------------------|-----------------------|
| Land   | \$ 151,677       | \$ 151,006            |
| Buildings                                      | 150,438          | 156,695               |
| Land and leasehold improvements                | 154,531          | 157,738               |
| Equipment                                      | 200,834          | 204,116               |
| Construction in progress                       | 2,392            | 2,423                 |
|  | 659,872          | 671,978               |
| Less accumulated depreciation and amortization | (246,827)        | (239,288)             |
| Net property and equipment                     | \$ 413,045       | \$ 432,690            |

## 7. Assets Held for Sale

Assets held for sale is comprised of the following:

|                                 | April 8,<br>2009 | September 24,<br>2008 |
|---------------------------------|------------------|-----------------------|
| Land and buildings              | \$ 18,105        | \$ 21,726             |
| Land and leasehold improvements | 2,932            | 3,388                 |
| Equipment                       | 18               | 281                   |
| Total assets held for sale      | \$ 21,055        | \$ 25,395             |

Assets held for sale consists of property and equipment related to closed restaurants and parcels of land that are currently being marketed for disposal. The April 8, 2009 balances include assets related to 13 restaurants closed during prior years and 18 parcels of land. During the twenty-eight weeks ended April 8, 2009, we sold one restaurant and three parcels of land that were held for sale as of September 24, 2008, and we classified one additional parcel of land as held for sale. The current year-to-date pre-tax loss on the sale of these properties was \$314.

The September 24, 2008 balances include assets related to seven restaurants closed during the fourth quarter of fiscal year 2008, seven restaurants closed during prior years, and 20 parcels of land.

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For assets to be classified as held for sale, SFAS 144 requires, among other things, that the sale of the assets must be probable to occur within one year. This limitation is subject to certain exceptions, including consideration of circumstances that were previously considered unlikely. Continued classification as held for sale can be appropriate if an entity initiates actions necessary to respond to the change in circumstances, continues to actively market the asset at a price that is reasonable given the change in circumstances, and continues to meet all other criteria required for classification as held for sale in accordance with SFAS 144. If at any time the criteria are no longer met, a long-lived asset classified as held for sale must be reclassified as held and used, subject to certain adjustments to the carrying value.

We continue to actively market properties held for sale and routinely evaluate the reasonableness of the estimated selling price in response to current market conditions. As a result of this analysis, during the quarter and year-to-date periods ended April 8, 2009, we recorded \$741 and \$812, respectively, relating to the loss on disposal of held for sale assets and adjustments to the carrying value of held for sale properties we continue to own. The charges have been recorded as asset impairment charges in the condensed consolidated Statement of Operations.

## 8. Goodwill and Other Intangibles

### Goodwill

Our condensed consolidated Statements of Financial Position as of April 8, 2009 and September 24, 2008 include goodwill of acquired businesses of \$14,503. Goodwill consists of the excess of the purchase price over the fair value of the net assets acquired in connection with the acquisitions of Creative Restaurants, Inc. ("CRI") and Kelley Restaurants, Inc. ("KRI") on July 6, 2006 and December 29, 2004, respectively. The related goodwill is allocated to reporting units that benefited from the acquisition using a relative fair value methodology.

Under SFAS No. 142, "Goodwill and Other Intangible Assets," ("SFAS 142") we are required to assess goodwill and any indefinite-lived intangible assets for impairment annually or more frequently if circumstances indicate impairment may have occurred. We perform our annual assessment of the recoverability of our goodwill in accordance with SFAS 142 during the fourth quarter of each fiscal year. A significant amount of judgment is required in performing goodwill impairment tests. Such tests include periodically determining or reviewing the estimated fair value of our reporting units. There are several methods of estimating a reporting unit's fair value, including market quotations, asset and liability fair values and other valuation techniques, such as discounted projected future cash flow and multiples of earnings. If the carrying amount of a reporting unit, including goodwill, exceeds the estimated fair value, then individual assets, including identifiable intangible assets, and liabilities of the reporting unit are estimated at fair value. The excess of the estimated fair value of the reporting unit over the estimated fair value of net assets would establish the implied value of goodwill. The excess of the recorded amount of goodwill over the implied value is then charged to earnings as an impairment loss.

In conjunction with our annual goodwill analysis for fiscal 2008, our step one results indicated that impairment potentially existed for one reporting unit, and we began the second step of the analysis for this reporting unit. During the first quarter of fiscal year 2009, we completed our analysis and have determined that we did not have an impairment as of the annual assessment date.

During the second fiscal quarter, we performed an interim goodwill impairment analysis. The results of our analysis indicated that we did not have an impairment of goodwill for any of our applicable reporting units.

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Our calculation of the fair value of the reporting units considers current market conditions existing at the assessment date. The length and depth of the ongoing economic recession could adversely impact values of our reporting unit and result in impairment charges in future periods. Consequently, it is possible that we will need to update our impairment analysis during future quarters. We can provide no assurance that a material impairment charge will not occur in future periods as a result of these analyses.

## Other Intangibles

Other intangibles are comprised of the following:

|  | April 8,<br>2009 | September 24,<br>2008 |
|--|------------------|-----------------------|
| Gross value of intangible assets subject to amortization | \$ 2,291         | \$ 2,291              |
| Accumulated amortization                                 | (1,131)          | (1,026)               |
| Intangible assets subject to amortization, net           | 1,160            | 1,265                 |
| Intangible assets with indefinite lives                  | 500              | 500                   |
| Total intangible assets                                  | \$ 1,660         | \$ 1,765              |

Intangible assets subject to amortization consist of a right to operate and favorable leases acquired in connection with prior acquisitions, and are being amortized over their estimated weighted average useful lives of 12 years and 8 years, respectively. Amortization expense for the sixteen weeks ended April 8, 2009 and April 9, 2009 was \$60. Amortization expense for the twenty-eight weeks ended April 8, 2009 and April 9, 2008 was \$105. Total annual amortization for each of the next five years is approximately \$190.

Intangible assets with indefinite lives consist of reacquired franchise rights assumed in connection with the acquisitions of CRI and KRI and were recorded in accordance with the provisions of Emerging Issues Task Force Issue No. 04-1, "Accounting for Pre-existing Relationships between the Parties to a Business Combination."

## 9. Borrowings

## Revolving Credit Facility

As amended on November 21, 2008, our Revolving Credit Facility ("Facility") allows us to borrow from time to time up to \$25,000, bears interest based on the One Month LIBOR plus 350 basis points, and expires January 30, 2010. At April 8, 2009, outstanding borrowings under the Facility were \$17,000 at an interest rate of 4.0%.

## Senior Note Agreement

As amended on November 21, 2008, we have agreed to make equal prepayments under our Senior Note Agreement and Private Shelf Facility (the "Senior Note Agreement") and the Facility once the balance of our Facility reaches \$10,000. The amendment also increased the interest rates under the Senior Note Agreement effective November 21, 2008. During the first quarter of fiscal year 2009, we made a principal prepayment of \$4,471 on the Senior Note Agreement. As a result of this prepayment, we incurred a \$506 prepayment penalty which is included in interest expense in the condensed consolidated Statement of Operations.

We had outstanding borrowings under the Senior Note Agreement of \$11,957 at a weighted average fixed rate of 9.0% as of April 8, 2009. Effective September 29, 2008, we can no longer make any new borrowings under the Senior Note Agreement.

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Our Senior Note Agreement and Facility contain restrictions and covenants customary for credit agreements of these types which, among other things, require us to maintain certain financial ratios. The amendments executed on November 21, 2008 include revised financial covenants. We were in compliance with all covenants under those amended agreements as of April 8, 2009.

The Senior Note Agreement and the Facility are secured with the deposit accounts, accounts receivable, inventory, equipment, general intangibles, fixtures, and all other personal property. The Senior Note Agreement and Facility also prohibit us from making cash dividends or repurchasing our common stock. As of November 21, 2008, the amendment to the Senior Note Agreement also relieves us of the requirement to secure the borrowings with certain real estate assets if the principal balance under the Senior Note Agreement is less than \$5,000 on March 31, 2010.

We also have one note in the amount of \$77 outstanding as of April 8, 2009.

10. Income Taxes

Our effective income tax rate increased to 64.8% from 46.9% compared with the same year-to-date period in the prior year. This change is primarily due to the impact of the significant decrease in the Company's pre-tax loss and the related proportionate increase of federal income tax credits as a percentage of the total pre-tax loss. While the amount of our federal income tax credits for the current year-to-date period remained relatively consistent with the prior year-to-date period, the lower pre-tax loss in the current year-to-date period results in a higher effective income tax rate when compared to the prior year-to-date period.

We adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" at the beginning of our fiscal year 2008.

As of April 8, 2009, we had approximately \$998 of unrecognized tax benefits, including approximately \$225 of interest and penalties, which are included in Other long-term liabilities in the condensed consolidated Statement of Financial Position. During the sixteen and twenty-eight weeks ended April 8, 2009, we recognized \$22 and \$45, respectively, in potential interest and penalties associated with uncertain tax positions. Our continuing practice is to recognize interest expense and penalties related to income tax matters in income tax expense. Of the \$998 of unrecognized tax benefits, \$864 would impact the effective income tax rate if recognized.

We file income tax returns which are periodically audited by various federal, state, and local jurisdictions. With few exceptions, we are no longer subject to federal, state, and local tax examinations for fiscal years prior to 2005. We believe we have certain state income tax exposures related to fiscal years 2004 and 2005. Due to the expiration of the various state statutes of limitations for these fiscal years, it is possible that the total amount of unrecognized tax benefits will decrease by approximately \$120 within 12 months.

Included in Receivables at September 24, 2008 was \$11,351 in net income taxes receivable. This amount primarily represented expected federal and state income tax refunds which were received in cash during the first quarter of fiscal year 2009. The refunds received were the result of net operating loss carryback claims. We carried back the fiscal year 2008 taxable loss to fiscal year 2006 which resulted in cash refunds from income taxes previously paid.

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## 11. Common Stock Plans

Employee Stock Options- During the twenty-eight weeks ended April 8, 2009, we granted 110,000 options to employees under plans approved by our shareholders. Employees and non-employee directors forfeited 280,180 options during the year-to-date period. Pre-tax stock-based compensation expense recorded during the twenty-eight weeks ended April 8, 2009 for the stock option plans totaled \$460.

Restricted Shares - During the twenty-eight weeks ended April 8, 2009, we granted 119,116 non-vested restricted shares to employees and non-employee directors under plans approved by our shareholders at a weighted average grant date fair value per share of \$6.21. During the same period, 50,500 restricted shares were forfeited and 82,835 restricted shares vested. Pre-tax stock-based compensation expense recorded during the twenty-eight weeks ended April 8, 2009 for the plan totaled \$774.

Employee Stock Purchase Plan- During the twenty-eight weeks ended April 8, 2009, we issued 111,933 shares to employees under our Employee Stock Purchase Plan. Pre-tax stock-based compensation expense recorded during the twenty-eight weeks ended April 8, 2009 for the Employee Stock Purchase Plan totaled \$130.

During the current quarter, we changed our compensation philosophy to support the Company's objective of maximizing intrinsic business value on a per-share basis. As a consequence, we will no longer routinely issue stock grants and stock options.

## 12. Restructuring

During fiscal years 2007 and 2008, same-store sales declined while certain restaurant operating costs, such as food costs and labor rates, increased. As a result, a number of cost reduction initiatives were undertaken to reduce the cost structure. The majority of planned cost reductions were achieved through headcount reductions in the field and at the corporate offices. In order to execute the plan, we incurred restructuring expenses related to the headcount reductions, which were recorded in general and administrative expense in the condensed consolidated Statement of Operations.

The table below summarizes all restructuring-related severance accruals and payments during the first and second fiscal quarters of fiscal year 2009:

|  |    |       |
|--|----|-------|
| September 24, 2008 accrual balance     | \$ | 372   |
| Year-to-date fiscal year 2009 accruals |    | 88    |
| Year-to-date fiscal year 2009 payments |    | (445) |
| April 8, 2009 accrual balance          | \$ | 15    |

The remaining restructuring accrual will be paid prior to the end of fiscal year 2009.



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In addition to severance related to restructuring, during fiscal year 2008 and the second quarter of fiscal year 2009 we also incurred severance expense related to the departure of former executives. The severance is being paid out according to the terms of the executives' agreements. During 2009, we paid \$419 of the September 24, 2008 executive severance accrual balance of \$474. The remaining \$55 will be paid prior to the end of fiscal year 2009.

We accrued an additional \$223 of executive severance during the second quarter of fiscal year 2009, \$24 of which was paid as of April 8, 2009. The remaining \$199 will be paid during the rest of fiscal year 2009 and during the first quarter of fiscal year 2010.

## 13. Fair Value of Financial Assets and Liabilities

In September 2006, the FASB issued SFAS 157, which defines fair value, establishes a formal framework for measuring fair value, and expands disclosures about fair value measurements. The provisions of SFAS 157 were effective for the Company on September 25, 2008; however, the FASB deferred the effective date of SFAS 157 until the beginning of our fiscal year 2010 as it relates to fair value measurement requirements for non-financial assets and liabilities that are not measured at fair value on a recurring basis. Accordingly, we adopted SFAS 157 for financial assets and liabilities measured at fair value on a recurring basis as of September 25, 2008, which did not materially impact our financial statements.

The fair value framework as established in SFAS 157 requires the categorization of assets and liabilities into three levels based upon the assumptions (inputs) used to price the assets or liabilities. Level 1 provides the most reliable measure of fair values, whereas Level 3 generally requires significant management judgment. The three levels are defined as follows:

- Level 1: Unadjusted quoted prices in active markets for identical assets and liabilities.
- Level 2: Observable inputs other than those included in Level 1. For example, quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets or liabilities in inactive markets.
- Level 3: Unobservable inputs reflecting management's own assumptions about the inputs used in pricing the asset or liability.

As of April 8, 2009, the fair values of financial assets were as follows:

| Assets   | Level 1 | Level 2   | Level 3 | Total     |
|--|---------|-----------|---------|-----------|
| Cash equivalents                                     | \$ —    | \$ 26,581 | \$ —    | \$ 26,581 |
| Non-qualified deferred compensation plan investments | 325     | —         | —       | 325       |
| Total assets at fair value                           | \$ 325  | \$ 26,581 | \$ —    | \$ 26,906 |

There were no financial liabilities measured at fair value as of April 8, 2009. There were no changes in our valuation techniques used to measure fair values on a recurring basis as a result of partially adopting SFAS 157.

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14. Supplemental Cash Flow Information

During the twenty-eight weeks ended April 8, 2009, we issued a total of 169,393 shares with a market value of \$1,005, which were primarily restricted shares and were predominantly issued to employees and non-employee directors; we recorded notes receivable of \$100 as a result of the refranchising of seven restaurants to a franchisee; and we had \$182 of capital expenditures in accounts payable as of April 8, 2009. During the twenty-eight weeks ended April 9, 2008, we issued 1,000 restricted shares with a market value of \$8 to a non-employee director, and we had \$145 of capital expenditures in accounts payable as of April 9, 2008.

15. Commitments and Contingencies

We are engaged in various legal proceedings in the ordinary course of our business and have certain unresolved claims pending. The ultimate liability, if any, for the aggregate amounts claimed cannot be determined at this time. However, management believes, based on examination of these matters and experiences to date, that the ultimate liability, if any, in excess of amounts already provided for in the condensed consolidated financial statements is not likely to have a material effect on our financial position, results of operations or cash flows.

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

(Amounts in \$000s, except share and per share data)

Overview

In the following discussion, the term "same-store sales" refers to the sales of only those Company-owned units open 18 months as of the beginning of the current fiscal quarter and which remained open through the end of the fiscal quarter.

Fiscal Second Quarter 2009 Results

Net earnings for the second quarter of fiscal year 2009 were \$2,253, or \$0.08 per diluted share, contrasted to a net loss of (\$2,810), or (\$0.10) per diluted share in the second quarter of fiscal year 2008. Quarterly same-store sales increased 2.4% due to an increase in guest traffic of 7.8%, offset by a 5.4% contraction in the average guest check. Net sales decreased 0.7% from \$189,272 to \$187,975 in the current quarter because we operated 21 fewer Company-owned restaurants following the closure and refranchising of certain units after the same period in the previous year.

Fiscal Year 2009 Results (Year-to-date)

Year-to-date net loss through the second quarter of fiscal year 2009 was (\$1,187), or (\$0.04) per diluted share, contrasted to a net loss of (\$3,997), or (\$0.14) per diluted share for the same period a year ago. Year-to-date same-store sales increased 0.9%. Net sales decreased 1.9% from \$324,768 to \$318,694 in the current year because we operated 21 fewer Company-owned restaurants following the closure and refranchising of certain units after the same period in the previous year.

During the first two quarters of fiscal year 2009, we closed one Company-owned restaurant and refranchised seven Company-owned restaurants to franchisees, bringing the total number of Company-owned restaurants to 415. A franchisee also closed one restaurant, bringing the total number of franchised units to 74.

New management, during the fourth quarter of fiscal year 2008, enacted a change in strategic direction under which we began to operate in a manner designed to generate cash. Our long-term objective is to maximize intrinsic business value per share of the Company. (Intrinsic value is computed by taking all future cash flows into and out of the business and then discounting the resultant number at an appropriate interest rate.) Thus, our financial goal is to maximize free cash flow and return on invested capital. We regard capital allocation as immensely important to creating shareholder value.

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## Critical Accounting Policies

Management's discussion and analysis of financial condition and results of operations is based upon our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of our financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, expenses and related disclosure of contingent assets and liabilities. Critical accounting policies are those we believe are most important to portraying our financial condition and results of operations and also require the most subjective or complex judgments by management. Judgments and uncertainties regarding the application of these policies may result in materially different amounts being reported under various conditions or using different assumptions. On an ongoing basis, we evaluate our estimates and assumptions based on historical experience and other factors that are believed to be relevant under the circumstances. There have been no material changes to the critical accounting policies previously disclosed in our Annual Report on Form 10-K for the fiscal year ended September 24, 2008.

## Results of Operations

The following table sets forth the percentage relationship to total revenues, unless otherwise indicated, of items included in our condensed consolidated Statements of Operations for the periods indicated:

|  | Sixteen Weeks Ended |                  | Twenty-Eight Weeks Ended |                  |
|--|---------------------|------------------|--------------------------|------------------|
|  | April 8,<br>2009    | April 9,<br>2008 | April 8,<br>2009         | April 9,<br>2008 |
| <b>Revenues:</b>   |                     |                  |                          |                  |
| Net sales  | 99.4%               | 99.4%            | 99.4%                    | 99.4%            |
| Franchise fees   | 0.6%                | 0.6%             | 0.6%                     | 0.6%             |
| Total revenues   | 100.0%              | 100.0%           | 100.0%                   | 100.0%           |
| <b>Costs and Expenses:</b>                                   |                     |                  |                          |                  |
| Cost of sales (1)  | 24.3%               | 25.1%            | 24.4%                    | 24.7%            |
| Restaurant operating costs (1)                               | 54.0%               | 55.0%            | 55.3%                    | 55.4%            |
| General and administrative                                   | 5.7%                | 7.4%             | 6.1%                     | 7.5%             |
| Depreciation and amortization                                | 5.0%                | 5.5%             | 5.3%                     | 5.5%             |
| Marketing  | 5.2%                | 5.4%             | 5.4%                     | 5.0%             |
| Interest   | 2.1%                | 2.2%             | 2.4%                     | 2.3%             |
| Rent   | 2.5%                | 2.4%             | 2.6%                     | 2.4%             |
| Pre-opening costs  | 0.0%                | 0.4%             | 0.0%                     | 0.3%             |
| Asset impairments and<br>provision for<br>restaurant closing | 0.4%                | 0.0%             | 0.3%                     | 0.0%             |
| Loss (gain) on disposal of<br>property                       | 0.0%                | 0.2%             | (0.0) %                  | 0.0%             |
| Other income, net  | (0.2) %             | (0.3) %          | (0.1) %                  | (0.3) %          |
| <b>Earnings (Loss) Before Income<br/>Taxes</b>               |                     |                  |                          |                  |
| Taxes  | 1.4%                | (2.7) %          | (1.1) %                  | (2.3) %          |
| <b>Income Taxes</b>  |                     |                  |                          |                  |
| Income Taxes   | 0.2%                | (1.2) %          | (0.7) %                  | (1.1) %          |
| <b>Net Earnings (Loss)</b>                                   |                     |                  |                          |                  |
| Net Earnings (Loss)  | 1.2%                | (1.5) %          | (0.4) %                  | (1.2) %          |

(1) Cost of sales and restaurant operating costs are expressed as a percentage of net sales.

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Comparison of Sixteen Weeks Ended April 8, 2009 to Sixteen Weeks Ended April 9, 2008

Net Earnings (Loss)

We recorded net earnings of \$2,253, or \$0.08 per diluted share, for the current quarter as compared with a net loss of (\$2,810) or (\$0.10) per diluted share for the second quarter of fiscal year 2008.

Revenues

Net sales decreased 0.7% from \$189,272 to \$187,975 in the current quarter because we operated 21 fewer Company-owned restaurants following the closure and refranchising of certain units since the same period of the prior year. Second quarter same-store sales increased 2.4% compared with the same quarter in the prior year. The increase in same-store sales was driven by an increase in guest traffic of 7.8%, partially offset by a 5.4% contraction in average guest check.

Franchise fees decreased slightly in the current fiscal quarter due to a decrease in franchisee same store sales of 3.9%, which resulted in lower royalty fees accrued. The decrease in franchise fees was partially offset by the growth in the number of franchised units from 67 at the end of the second quarter of fiscal year 2008 to 74 at the end of the current quarter.

Costs and Expenses

Cost of sales was \$45,611 or 24.3% of net sales, compared with \$47,447 or 25.1% of net sales in the second quarter of fiscal year 2008 primarily due to favorable shifts in the sales mix.

Restaurant operating costs were \$101,526 or 54.0% of net sales, compared with \$104,039 or 55.0% of net sales in the second quarter of fiscal year 2008. Labor and benefit costs declined by \$2,420 due primarily to improvements in productivity and wage and benefit management.

As part of our plan to reduce costs, general and administrative expenses decreased \$3,273 (23.3%) to \$10,799 and decreased as a percentage of total revenues from 7.4% to 5.7%. Wages, payroll taxes, and related benefits declined by approximately \$1,380 due to reductions in staffing that occurred during the third and fourth quarters of fiscal year 2008. Legal and professional fees, travel, and outside services declined \$1,540.

Marketing expense decreased \$503 (4.8%) to \$9,873 and decreased as a percentage of total revenues from 5.4% to 5.2%. The net decline was due to a prior year shift in the timing of advertising to the second quarter of fiscal year 2008.

Interest expense decreased slightly related primarily to a decrease in total outstanding borrowings.

Rent expense increased slightly primarily due to sale-leaseback transactions entered into during the second half of fiscal year 2008.

We did not incur pre-opening costs for the current quarter due to the fact that we did not open any new units in the current quarter, compared to five during the second quarter of fiscal year 2008.

Asset impairments and provision for restaurant closing was \$741, or 0.4% of total revenues in the current quarter, which related primarily to the loss on disposal of held for sale assets and adjustments to the carrying value of held for sale properties we continue to own. No asset impairment charges were recorded for the second quarter of fiscal year 2008.

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Income Taxes

Our effective income tax rate decreased from 45.0% to 13.5% in the same period in the prior year primarily due to the change from a pre-tax loss to pre-tax earnings. Federal income tax credits will decrease the effective income tax rate in conjunction with pre-tax earnings while increasing the effective income tax rate in conjunction with a pre-tax loss.

Comparison of Twenty-Eight Weeks Ended April 8, 2009 to Twenty-Eight Weeks Ended April 9, 2008

Net Loss

We recorded a net loss of (\$1,187), or (\$0.04) per diluted share, for the current year-to-date period as compared with a net loss of (\$3,997) or (\$0.14) per diluted share for the same period of fiscal year 2008.

Revenues

Net sales decreased 1.9% from \$324,768 to \$318,694 in the current year-to-date period because we operated 21 fewer Company-owned restaurants following the closure and refranchising of certain units since the same period of the prior year. Year-to-date same-store sales increased 0.9% compared with the same period of fiscal year 2008. The increase in same-store sales was driven by an increase in guest traffic of 4.2%, partially offset by a 3.3% contraction in average guest check.

Franchise fees decreased slightly in the current year-to-date period due to a decrease in franchisee same store sales of 3.5%, which resulted in lower royalty fees accrued. The decrease in franchise fees was partially offset by the growth in the number of franchised units from 67 at the end of the second quarter of fiscal year 2008 to 74 at the end of the current quarter.

Costs and Expenses

Year-to-date cost of sales was \$77,642 or 24.4% of net sales, compared with \$80,131 or 24.7% of net sales in the same period of fiscal year 2008 primarily due to favorable shifts in the sales mix.

Year-to-date restaurant operating costs were \$176,208 or 55.3% of net sales, compared with \$179,849 or 55.4% of net sales in the same period of fiscal year 2008. Labor and benefit costs declined by \$2,980 due primarily to improvements in productivity and wage and benefit management.

As part of our plan to reduce costs, general and administrative expenses decreased \$5,046 (20.6%) to \$19,444 and decreased as a percentage of total revenues from 7.5% to 6.1%. Wages, payroll taxes, and related benefits declined by approximately \$2,960 due to reductions in staffing that occurred during the third and fourth quarters of fiscal year 2008. Legal and professional fees, travel, and outside services declined \$1,630.

Marketing expense increased \$1,039 (6.3%) to \$17,416 and increased as a percentage of total revenues from 5.0% to 5.4%. Management, by design, increased promotional expenditures in fiscal year 2009.

Interest expense increased slightly as a percentage of total revenues due primarily to the \$506 prepayment penalty related to the \$4,471 principal prepayment on our Senior Note Agreement and Private Shelf Facility (the "Senior Note Agreement") that we amended during the first quarter of fiscal year 2009. The increase was partially offset by lower interest expense related primarily to a decrease in total outstanding borrowings.

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Rent expense increased slightly as a percentage of total revenues primarily due to sale-leaseback transactions entered into during the second half of fiscal year 2008.

We did not incur pre-opening costs during fiscal year 2009 due to the fact that we did not open any new units in the current year, compared to nine during the year-to-date period of fiscal year 2008.

Asset impairments and provision for restaurant closing was \$917, or 0.3% of total revenues in the current year-to-date period, which related primarily to the loss on disposal of held for sale assets and adjustments to the carrying value of held for sale properties we continue to own. No asset impairment charges were recorded for the same period of fiscal year 2008.

### Income Taxes

Our effective income tax rate increased to 64.8% from 46.9% compared with the same year-to-date period in the prior year. This change is primarily due to the impact of the significant decrease in the Company's pre-tax loss and the related proportionate increase of federal income tax credits as a percentage of the total pre-tax loss. While the amount of our federal income tax credits for the current year-to-date period remained relatively consistent with the prior year-to-date period, the lower pre-tax loss in the current year-to-date period results in a higher effective income tax rate when compared to the prior year-to-date period.

### Liquidity and Capital Resources

We generated \$25,803 in cash flows from operations during the twenty-eight weeks ended April 8, 2009 as compared to \$13,887 during the twenty-eight weeks ended April 9, 2008. The increase resulted primarily from \$11,608 related to income tax refunds, net of the year-to-date provision.

Net cash provided by investing activities of \$3,978 during the twenty-eight weeks ended April 8, 2009 resulted primarily from proceeds of \$6,590 related to the sale of three parcels of land, one restaurant property, and the transfer of two Company-owned buildings to a franchisee. We closed one Company-owned restaurant and refranchised seven Company-owned restaurants to a franchisee during the current year-to-date period.

Net cash used in investing activities of \$13,986 during the twenty-eight weeks ended April 9, 2008 resulted primarily from capital expenditures of \$23,858. During that year-to-date period, we opened nine new Company-owned restaurants and refranchised eight Company-owned restaurants to franchisees. We received proceeds of \$9,872 from the sale of six parcels of land and from the transfer of three Company-owned buildings and various equipment to franchisees during the same period of fiscal year 2008.

Capital expenditures for the remainder of fiscal year 2009 will be limited principally to maintenance capital expenditures. We intend to meet our working capital needs and fund capital expenditures by using existing cash, anticipated cash flows from operations, net operating loss carryback tax refunds, existing credit facilities, and the sale of excess properties. We continually review available financing alternatives. In addition, we may consider, on an opportunistic basis, strategic decisions to create value and improve operating performance.

### Revolving Credit Facility

As amended on November 21, 2008, our Revolving Credit Facility ("Facility") allows us to borrow from time to time up to \$25,000, bears interest based on the One Month LIBOR plus 350 basis points, and expires January 30, 2010. At April 8, 2009, outstanding borrowings under the Facility were \$17,000 at an interest rate of 4.0%.



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Senior Note Agreement

As amended on November 21, 2008, we have agreed to make equal prepayments under the Senior Note Agreement and the Facility once the balance of our Facility reaches \$10,000. The amendment also increased the interest rates under the Senior Note Agreement effective November 21, 2008. During the first quarter of fiscal year 2009, we made a principal prepayment of \$4,471 on the Senior Note Agreement. As a result of this prepayment, we incurred a \$506 prepayment penalty which is included in Interest expense in the condensed consolidated Statement of Operations.

We had outstanding borrowings under the Senior Note Agreement of \$11,957 at a weighted average fixed rate of 9.0% as of April 8, 2009. Effective September 29, 2008, we can no longer make any new borrowings under the Senior Note Agreement.

Our Senior Note Agreement and Facility contain restrictions and covenants customary for credit agreements of these types which, among other things, require us to maintain certain financial ratios. The amendments executed on November 21, 2008 include revised financial covenants. For the quarter ended April 8, 2009, these covenants include, among others, requirements to limit the ratio of total liabilities to tangible net worth (as defined in the amendments) to a maximum of 1.10 and to maintain a minimum fixed charge coverage ratio (as defined in the amendments) of 1.10. On April 8, 2009, our ratio of total liabilities to tangible net worth was 0.86 and our fixed charge coverage ratio was 1.86. We were in compliance with all covenants under the amended agreements as of April 8, 2009.

The Senior Note Agreement and the Facility are secured with the deposit accounts, accounts receivable, inventory, equipment, general intangibles, fixtures, and all other personal property. The Senior Note Agreement and Facility also prohibit us from making cash dividends or repurchasing our common stock. As of November 21, 2008, the amendment to the Senior Note Agreement also relieves us of the requirement to secure the borrowings with certain real estate assets if the principal balance under the Senior Note Agreement is less than \$5,000 on March 31, 2010.

We also have one note in the amount of \$77 outstanding as of April 8, 2009.

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New Accounting Standards

In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards No. 157, “Fair Value Measurements” (“SFAS 157”), which defines fair value, establishes a formal framework for measuring fair value, and expands disclosures about fair value measurements. SFAS 157 is only applicable to existing accounting pronouncements that require or permit fair value measurements and does not require any new fair value measurements. As originally issued, SFAS 157 was to be effective as of the beginning of our fiscal year 2009. With the issuance in February 2008 of FSP 157-2, “Effective Date of FASB Statement No. 157,” the FASB approved a one-year deferral to the beginning of our fiscal year 2010 for the implementation of SFAS 157 with regard to non-financial assets and liabilities that are not recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The FASB has also excluded leases from the scope of SFAS 157 with the issuance of FSP 157-1, “Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements that Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13.” The adoption of SFAS 157 with regard to financial assets and liabilities as of September 25, 2008 did not materially impact our financial statements. See Note 13 for information regarding the partial implementation of SFAS 157. We are in the process of determining the effect, if any, that the adoption of SFAS 157 with regard to non-financial assets and liabilities will have on our financial statements in fiscal year 2010.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS 159”). SFAS 159 provides companies with an option to report selected financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings at each subsequent reporting date. SFAS 159 is effective for fiscal years beginning after November 15, 2007, our fiscal year 2009. We have determined not to elect the fair value measurement option under SFAS 159.

In December 2007, the FASB issued SFAS No. 141(R), “Business Combinations” (“SFAS 141(R)”), which replaces SFAS 141. SFAS 141(R) requires that the fair value of the purchase price of an acquisition including the issuance of equity securities be determined on the acquisition date; requires that all assets, liabilities, noncontrolling interests, contingent consideration, contingencies, and in-process research and development costs of an acquired business be recorded at fair value at the acquisition date; requires that acquisition costs generally be expensed as incurred; requires that restructuring costs generally be expensed in periods subsequent to the acquisition date; and requires that changes in deferred tax asset valuation allowances and acquired income tax uncertainties after the measurement period impact income tax expense. SFAS 141(R) also broadens the definition of a business combination and expands disclosures related to business combinations. SFAS 141(R) applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008, our fiscal year 2010, except that business combinations consummated prior to the effective date must apply SFAS 141(R) income tax requirements immediately upon adoption. We are in the process of determining the effect, if any, that the adoption of SFAS 141(R) will have on our financial statements.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51” (“SFAS 160”). SFAS 160 clarifies the accounting for noncontrolling interests and establishes accounting and reporting standards for the noncontrolling interest in a subsidiary, including classification as a component of equity. SFAS 160 is effective for fiscal years beginning after December 15, 2008, our fiscal year 2010. We are in the process of determining the effect, if any, that the adoption of SFAS 160 will have on our financial statements.

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In April 2008, the FASB issued FASB Staff Position No. 142-3, "Determination of the Useful Life of Intangible Assets" ("FSP 142-3"). FSP 142-3 amends the factors that should be considered in developing renewal or extension assumptions that are used to determine the useful life of a recognized intangible asset under SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"), and requires enhanced related disclosures. FSP 142-3 must be applied prospectively to all intangible assets acquired as of and subsequent to fiscal years beginning after December 15, 2008, our fiscal year 2010. We are in the process of determining the effect, if any, that the adoption of FSP 142-3 will have on our financial statements.

Effects of Governmental Regulations and Inflation

Most of our employees are paid hourly rates related to federal and state minimum wage laws. Any increase in the legal minimum wage would directly increase our operating costs, and the federal minimum wage is scheduled to increase beginning on July 24, 2009. We are also subject to various federal, state and local laws related to zoning, land use, safety standards, working conditions, and accessibility standards. Any changes in these laws that require improvements to our restaurants would increase operating costs. In addition, we are subject to franchise registration requirements and certain related federal and state laws regarding franchise operations. Any changes in these laws could affect our ability to attract and retain franchisees.

Inflation in food, labor, fringe benefits, energy costs, transportation costs, and other operating costs directly affects our operations.

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Risks Associated with Forward-Looking Statements

Certain statements contained in this report represent forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. In general, forward-looking statements include estimates of future revenues, cash flows, capital expenditures or other financial items, as well as assumptions underlying any of the foregoing. Forward-looking statements reflect management's current expectations regarding future events and use words such as "anticipate," "believe," "expect," "may" and other similar terminology. A forward-looking statement is neither a prediction nor a guarantee of future events or circumstances, and those future events or circumstances may not occur. Investors should not place undue reliance on the forward-looking statements, which speak only as of the date of this report. These forward-looking statements are based on currently available operating, financial and competitive information and are subject to various risks and uncertainties. Our actual future results and trends may differ materially depending on a variety of factors, many beyond our control, including, but not limited to:

- the success of our plan to increase store traffic on a profitable basis;
- competition in the restaurant industry for guests, staff, locations, and new products;
  - disruptions in the overall economy and the financial markets;
- our ability to comply with the restrictions and covenants to our debt agreements;
- declines in the market price of our common stock, which could adversely affect our goodwill impairment analysis;
  - the potential to recognize additional impairment charges on our long-lived assets;
- fluctuations in food commodity and energy prices and the availability of food commodities;
  - the ability of our franchisees to operate profitable restaurants;
  - the poor performance or closing of even a small number of restaurants;
    - changes in guest preferences, tastes, and dietary habits;
- changes in minimum wage rates and the availability and cost of qualified personnel;
  - harsh weather conditions or losses due to casualties;
  - unfavorable publicity relating to food safety or food-borne illness;
- exposure to liabilities related to the ownership and leasing of significant amounts of real estate;
  - our ability to comply with existing and future governmental regulations;
- our ability to adequately protect our trademarks, service marks, and other components of our brand; and
  - other risks identified in the periodic reports we file with the Securities and Exchange Commission.

Refer to our Annual Report on Form 10-K for the fiscal year ended September 24, 2008 for a detailed discussion of each of the risks identified above.

Accordingly, such forward-looking statements do not purport to be predictions of future events or circumstances and may not be realized. Additional risks and uncertainties not currently known to us or that are currently deemed immaterial may also become important factors that may harm our business, financial condition, results of operations or cash flows. We assume no obligation to update forward-looking statements except as required in our periodic reports.

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ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our primary market risk exposure with regard to financial instruments is to changes in interest rates. We invest excess cash primarily in cash equivalents due to their relatively low credit risk. Interest rates on these securities are based upon market rates at the time of purchase and remain fixed until maturity.

The Revolving Credit Facility bears interest at a rate based upon the One Month LIBOR plus 350 basis points. Historically we have not used derivative financial instruments to manage exposure to interest rate changes. At April 8, 2009, a hypothetical 100 basis point increase in short-term interest rates would have an impact of (\$26) and (\$105) on our quarterly net earnings and year-to-date net loss, respectively.

We purchase certain food products which are affected by volatility in commodity prices due to weather conditions, supply levels, and other market conditions.

ITEM 4. CONTROLS AND PROCEDURES

Based on an evaluation of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(c)), our Chief Executive Officer and Interim Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of April 8, 2009.

There have been no changes in our internal control over financial reporting that occurred during the current quarter ended April 8, 2009 that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

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PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Please see Note 15 to the Condensed Consolidated Financial Statements (Unaudited) on page 15 of this report.

ITEM 1A. RISK FACTORS

We are dependent on key personnel.

We believe that our success depends in large part on the services of Sardar Biglari, our Chairman, Chief Executive Officer and President. The loss of the services of Mr. Biglari could have a material adverse effect upon our business, financial condition and results of operations. A qualified replacement for Mr. Biglari may not be available in a timely manner, if at all.

In addition, a complete discussion of material risks concerning the Company's business is included in its Annual Report on Form 10-K for the fiscal year ended September 24, 2008.

ITEM 6. EXHIBITS

| Exhibit Number | Description   |
|----------------|---|
| 10.01*         | Separation Agreement between the Steak n Shake Company and David C. Milne (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated February 17, 2009 ) |
| 31.01          | Rule 13(a)-14(a)/15d-14(a) Certification of Chief Executive Officer   |
| 31.02          | Rule 13(a)-14(a)/15d-14(a) Certification of Chief Financial Officer   |
| 32.01          | Section 1350 Certifications   |

\* Indicates management contract or compensatory plans or arrangements required to be filed as an Exhibit.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: May 18, 2009

THE STEAK N SHAKE COMPANY

By: /s/ Duane E. Geiger

Duane E. Geiger

Interim Chief Financial Officer, Vice President and Controller