

BJs RESTAURANTS INC  
Form 10-Q  
August 04, 2009  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the Quarterly Period Ended June 30, 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 0-21423

**BJ S RESTAURANTS, INC.**

(Exact name of registrant as specified in its charter)

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**California**  
(State or other jurisdiction of  
incorporation or organization)

**33-0485615**  
(I.R.S. Employer

Identification Number)

**7755 Center Avenue**

**Suite 300**

**Huntington Beach, California 92647**

**(714) 500-2400**

(Address, including zip code, and telephone number, including  
area code, of registrant's principal executive offices)

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 website, if any, every interactive data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No .

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (do not check if smaller reporting company) Smaller reporting company

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

As of July 31, 2009, there were 26,743,647 shares of Common Stock of the Registrant outstanding.

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**BJ S RESTAURANTS, INC.**

**Form 10-Q**

**For the thirteen weeks ended June 30, 2009**

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**Table of Contents****PART I. FINANCIAL INFORMATION****Item 1. CONSOLIDATED FINANCIAL STATEMENTS****BJ S RESTAURANTS, INC.****CONSOLIDATED BALANCE SHEETS****(In thousands)**

|  | <b>June 30,<br/>2009</b> | <b>December 30,<br/>2008</b> |
|--|--------------------------|------------------------------|
|  | (Unaudited)              |                              |
| <b>Assets</b>  |                          |                              |
| Current assets:  |                          |                              |
| Cash and cash equivalents  | \$12,732                 | \$8,852                      |
| Accounts and other receivables   | 16,054                   | 10,084                       |
| Inventories  | 3,703                    | 3,606                        |
| Prepays and other current assets   | 3,266                    | 4,500                        |
| Deferred income taxes  | 8,192                    | 8,680                        |
| Total current assets   | 43,947                   | 35,722                       |
| Property and equipment, net  | 266,322                  | 256,027                      |
| Non-current investments  | 29,783                   | 30,617                       |
| Goodwill   | 4,673                    | 4,673                        |
| Notes receivable   | 586                      | 633                          |
| Other assets, net  | 7,635                    | 7,537                        |
| Total assets   | \$352,946                | \$335,209                    |
| <b>Liabilities and Shareholders Equity</b>   |                          |                              |
| Current liabilities:   |                          |                              |
| Accounts payable   | \$11,887                 | \$12,688                     |
| Accrued expenses   | 41,269                   | 42,648                       |
| Total current liabilities  | 53,156                   | 55,336                       |
| Deferred income taxes  | 13,788                   | 11,803                       |
| Long-term debt   | 7,000                    | 9,500                        |
| Other liabilities  | 35,821                   | 26,293                       |
| Total liabilities  | 109,765                  | 102,932                      |
| Commitments and contingencies  |                          |                              |
| Shareholders equity:   |                          |                              |
| Preferred stock, 5,000 shares authorized, none issued or outstanding   |                          |                              |
| Common stock, no par value, 60,000 shares authorized and 26,744 and 26,718 shares issued and outstanding as of June 30, 2009 and December 30, 2008, respectively | 166,729                  | 166,649                      |
| Capital surplus  | 18,918                   | 17,108                       |
| Accumulated other comprehensive income (loss)  | (3,517)                  | (4,383)                      |
| Retained earnings  | 61,051                   | 52,903                       |

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|  |           |           |
|--|-----------|-----------|
| Total shareholders' equity                 | 243,181   | 232,277   |
| Total liabilities and shareholders' equity | \$352,946 | \$335,209 |

See accompanying notes to unaudited consolidated financial statements.

**Table of Contents****BJ'S RESTAURANTS, INC.****UNAUDITED CONSOLIDATED STATEMENTS OF INCOME**

(In thousands, except per share data)

|  | For The Thirteen<br>Weeks Ended |                 | For The Twenty-Six<br>Weeks Ended |                 |
|--|---------------------------------|-----------------|-----------------------------------|-----------------|
|  | June 30,<br>2009                | July 1,<br>2008 | June 30,<br>2009                  | July 1,<br>2008 |
| Revenues                                       | \$107,743                       | \$92,227        | \$210,168                         | \$179,049       |
| Costs and expenses:                            |                                 |                 |                                   |                 |
| Cost of sales                                  | 26,824                          | 23,026          | 52,265                            | 44,923          |
| Labor and benefits                             | 37,428                          | 32,490          | 73,723                            | 63,161          |
| Occupancy and operating                        | 23,110                          | 19,077          | 44,825                            | 36,823          |
| General and administrative                     | 7,601                           | 6,998           | 14,736                            | 14,394          |
| Depreciation and amortization                  | 5,891                           | 4,484           | 11,601                            | 8,752           |
| Restaurant opening                             | 688                             | 2,215           | 1,672                             | 3,342           |
| Loss on disposal of assets                     |                                 | 299             |                                   | 351             |
| Total costs and expenses                       | 101,542                         | 88,589          | 198,822                           | 171,746         |
| Income from operations                         | 6,201                           | 3,638           | 11,346                            | 7,303           |
| Other income:                                  |                                 |                 |                                   |                 |
| Interest income, net                           | 67                              | 375             | 143                               | 1,026           |
| Other income, net                              | 47                              | 61              | 196                               | 201             |
| Total other income                             | 114                             | 436             | 339                               | 1,227           |
| Income before income taxes                     | 6,315                           | 4,074           | 11,685                            | 8,530           |
| Income tax expense                             | 1,926                           | 1,181           | 3,537                             | 2,517           |
| Net income                                     | \$4,389                         | \$2,893         | \$8,148                           | \$6,013         |
| Net income per share:                          |                                 |                 |                                   |                 |
| Basic  | \$0.16                          | \$0.11          | \$0.30                            | \$0.23          |
| Diluted  | \$0.16                          | \$0.11          | \$0.30                            | \$0.23          |
| Weighted average number of shares outstanding: |                                 |                 |                                   |                 |
| Basic  | 26,739                          | 26,361          | 26,736                            | 26,359          |
| Diluted  | 27,128                          | 26,707          | 27,017                            | 26,719          |

See accompanying notes to unaudited consolidated financial statements.



**Table of Contents****BJ S RESTAURANTS, INC.****UNAUDITED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In thousands)

|   | <b>For The Twenty-Six Weeks Ended</b> |                     |
|---|---------------------------------------|---------------------|
|   | <b>June 30, 2009</b>                  | <b>July 1, 2008</b> |
| <b>Cash flows from operating activities:</b>  |                                       |                     |
| Net income  | \$8,148                               | \$6,013             |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities: |                                       |                     |
| Depreciation and amortization   | 11,601                                | 8,752               |
| Deferred income taxes   | 2,473                                 | (144)               |
| Stock-based compensation expense  | 1,708                                 | 1,654               |
| Loss on disposal of assets  |                                       | 351                 |
| Changes in assets and liabilities:  |                                       |                     |
| Accounts and other receivables  | (5,970)                               | (3,011)             |
| Inventories   | (97)                                  | (521)               |
| Prepays and other current assets  | 1,234                                 | 72                  |
| Other assets, net   | (211)                                 | (163)               |
| Accounts payable  | (801)                                 | 2,661               |
| Accrued expenses  | (1,379)                               | 2,118               |
| Other liabilities   | 15,958                                | 2,592               |
| Landlord contribution for tenant improvements, net  | (6,430)                               | 5,881               |
| <b>Net cash provided by operating activities</b>  | <b>26,234</b>                         | <b>26,255</b>       |
| <b>Cash flows from investing activities:</b>  |                                       |                     |
| Purchases of property and equipment   | (21,687)                              | (40,298)            |
| Proceeds from investments sold  | 1,700                                 | 10,500              |
| Purchases of investments  |                                       | (6,500)             |
| Collection of notes receivable  | 47                                    | 40                  |
| <b>Net cash used in investing activities</b>  | <b>(19,940)</b>                       | <b>(36,258)</b>     |
| <b>Cash flows from financing activities:</b>  |                                       |                     |
| Borrowings on line of credit  |                                       | 7,500               |
| Payments on line of credit  | (2,500)                               | (2,500)             |
| Excess tax benefit from stock-based compensation, net                                       | 6                                     | (11)                |
| Proceeds from exercise of stock options   | 80                                    | 74                  |
| <b>Net cash (used in) provided by financing activities</b>                                  | <b>(2,414)</b>                        | <b>5,063</b>        |
| <b>Net increase (decrease) in cash and cash equivalents</b>                                 | <b>3,880</b>                          | <b>(4,940)</b>      |
| <b>Cash and cash equivalents, beginning of period</b>                                       | <b>8,852</b>                          | <b>11,617</b>       |
| <b>Cash and cash equivalents, end of period</b>   | <b>\$12,732</b>                       | <b>\$6,677</b>      |
| <b>Supplemental disclosure of cash flow information:</b>                                    |                                       |                     |
| Cash paid for interest, net of capitalized interest   | \$                                    | \$                  |
| Cash paid for income taxes  | \$1,241                               | \$1,104             |



**Supplemental disclosure of non-cash financing activity:**

|                                      |      |       |
|--------------------------------------|------|-------|
| Stock-based compensation capitalized | \$96 | \$161 |
|--------------------------------------|------|-------|

See accompanying notes to unaudited consolidated financial statements.

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**BJ'S RESTAURANTS, INC.**

**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**1. BASIS OF PRESENTATION**

The accompanying unaudited consolidated financial statements include the accounts of BJ's Restaurants, Inc. (referred to herein as the Company or in the first person notations we, us and our) and our wholly owned subsidiaries. The financial statements presented herein include all material adjustments (consisting of normal recurring adjustments) which are, in the opinion of management, necessary for a fair statement of the financial condition, results of operations and cash flows for the period. Our consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial information, and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. The preparation of financial statements in accordance with U.S. generally accepted accounting principles requires us to make certain estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses. Actual amounts could differ from these estimates.

Certain information and footnote disclosures normally included in consolidated financial statements in accordance with U.S. generally accepted accounting principles (GAAP) have been omitted pursuant to requirements of the Securities and Exchange Commission (SEC). A description of our accounting policies and other financial information is included in our audited consolidated financial statements as filed with the SEC on Form 10-K for the year ended December 30, 2008. We believe that the disclosures included in our accompanying interim financial statements and footnotes are adequate to make the information not misleading, but should be read in conjunction with our consolidated financial statements and notes thereto included in the Annual Report on Form 10-K. The accompanying consolidated balance sheet as of December 30, 2008 has been derived from our audited consolidated financial statements.

***Reclassifications***

Certain reclassifications have been made to prior year's balances to conform to the current period's presentation.

***Recent Accounting Pronouncements***

In September 2006, the Financial Accounting Standards Board (FASB) issued Statement No. 157, *Fair Value Measurements* (FAS 157), which defines fair value, establishes a framework for using fair value to measure assets and liabilities, and expands disclosures about fair value measurements. This Statement applies whenever other statements require or permit assets or liabilities to be measured at fair value. This Statement is effective for fiscal years beginning after November 15, 2007, except for non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis, for which application has been deferred for one year. We adopted the provisions of FAS 157 during the first quarter of fiscal 2008.

On February 12, 2008, the FASB issued Statement No. 157-2, *Effective Date of FASB Statement No. 157* (FAS 157-2), which amends FAS 157 to delay the implementation date to November 15, 2008 for nonfinancial assets and nonfinancial liabilities. We adopted the provisions of FAS 157-2 during the first quarter of fiscal 2009 and there was no impact on our consolidated financial statements.

In February 2007, the FASB issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities Including an Amendment of FASB Statement No. 115* (FAS 159). FAS 159 permits entities to choose to measure many financial instruments and certain other items at fair value, with unrealized gains and losses related to these financial instruments reported in earnings at each subsequent reporting date. FAS 159 is effective for fiscal years beginning after November 15, 2007. We did not elect to measure any additional assets or liabilities at fair value that are not already measured at fair value under existing standards. Therefore, the adoption of the standard has no impact on our consolidated financial statements.

In December 2007, the FASB issued Statement No. 141 (Revised), *Business Combinations* (FAS 141R). FAS 141R establishes principals and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed (including intangibles), and any non-controlling interest in the acquiree. FAS 141R also provides guidance for recognizing and measuring the goodwill

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acquired in the business combination and determines what information to disclose to enable users of the financial statements to evaluate the effects of the business combination. FAS 141R is effective for fiscal years beginning December 15, 2008. We will apply the provisions of FAS 141R for any acquisitions after the adopted date.

In April 2009, the FASB also issued Staff Position No. FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments* ( FSP 107-1 ). FSP 107-1 extends the disclosure requirements regarding the fair value of financial instruments under FAS 107, *Disclosures about Fair Value of Financial Instruments* ( FAS 107 ), to interim financial statements of publically traded companies. FSP 107-1 is effective for interim reporting periods ending after June 15, 2009. This FSP was effectively adopted as of the beginning of our current fiscal year as our interim disclosure about the fair value of our financial instruments incorporates the requirements of this FSP.

In April 2009, the FASB issued Staff Position No. FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* ( FSP 115-2 ). FSP 115-2 amends the other-than-temporary impairment guidance in U.S. GAAP for debt securities, where changes in fair value are not regularly recognized in earnings, to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments on debt securities in the financial statements. FSP 115-2 also provides guidance for evaluating whether an impairment of a debt security is other than temporary and for determining the amount of an other-than-temporary impairment recognized in earnings and other comprehensive income. Under this guidance, if management intends to sell an impaired debt security, or it is more likely than not that it will be required to sell the security before recovery, then they are required to separate other-than-temporary impairments into two components: (i) the amount related to credit losses (which is recorded in earnings) and (ii) the amount related to all other factors (which is recorded in other comprehensive income). Both components are required to be shown in the statement of income. FSP 115-2 is effective for interim and annual reporting periods ending after June 15, 2009. We have effectively applied the guidance and disclosure requirements of FSP 115-2 as it applies to our investments during the first quarter of fiscal 2009 and there was no impact on our consolidated financial statements.

In May 2009, the FASB issued Statement No. 165, *Subsequent Events* ( FAS 165 ), which establishes general standards of accounting for and disclosure of events that occur after the balance sheet date, but before the financial statements are issued or available to be issued ( subsequent events ). FAS 165 requires disclosure of the date through which the entity has evaluated subsequent events and the basis for that date. For public entities, this is the date the financial statements are issued. FAS 165 does not apply to subsequent events or transactions that are within the scope of other GAAP and will not result in significant changes in the subsequent events reported by us. FAS 165 is effective for interim or annual periods ending after June 15, 2009. We implemented FAS 165 during the quarter ended June 30, 2009. We evaluated for subsequent events through August 3, 2009, the issuance date of our consolidated financial statements. No recognized or non-recognized subsequent events were noted.

In June 2009, the FASB approved the FASB Accounting Standards Codification ( the Codification ) as the single source of authoritative nongovernmental GAAP. All existing accounting standard documents, such as the FASB, American Institute of Certified Public Accountants, Emerging Issues Task Force and other related literature, excluding guidance from the Securities and Exchange Commission ( SEC ), will be superseded by the Codification. All non-grandfathered, non-SEC accounting literature not included in the Codification will become non-authoritative. The Codification does not change GAAP, but instead introduces a new structure that will combine all authoritative standards into a comprehensive, topically organized online database. The Codification will be effective for interim or annual periods ending after September 15, 2009, and will impact the Company s consolidated financial statement disclosures beginning with the quarter ending September 29, 2009, as all future references to authoritative accounting literature will be referenced in accordance with the Codification. There will be no changes to the content of the Company s consolidated financial statements or disclosures as a result of implementing the Codification.

**Table of Contents****2. INVESTMENTS**

Investments consist of the following (in thousands):

|                                | Cost or Par<br>Value | Fair Value       |
|--------------------------------|----------------------|------------------|
| Non-current assets:            |                      |                  |
| Investments available-for-sale | \$ 41,100            | \$ 41,100        |
| Settlements                    | (6,100)              | (6,100)          |
| Gross unrealized gains         |                      | 631              |
| Gross unrealized losses        |                      | (5,014)          |
| <b>December 30, 2008</b>       | <b>\$ 35,000</b>     | <b>\$ 30,617</b> |
| Settlements                    | (1,700)              | (1,700)          |
| Gross unrealized gains         |                      | 1,386            |
| Gross unrealized losses        |                      | (520)            |
| <b>June 30, 2009</b>           | <b>\$ 33,300</b>     | <b>\$ 29,783</b> |

Our investment portfolio consists of auction rate securities ( ARS ), AAA-rated when purchased, which are long-term debt obligations secured by student loans and 97% guaranteed by the U.S. Government under the Federal Family Education Loan Program ( FFELP). In addition to the U.S. Government guarantee on such student loans, many of the securities also have separate insurance policies guaranteeing both the principal and accrued interest. While the final maturity dates of these ARS investments are between 2020 and 2047, the liquidity for these securities had historically been provided by an auction process that resets the applicable interest rate at pre-determined intervals up to 35 days. The value of these investments is determined by not only the credit rating of these investments, but also by the liquidity of the markets in which they trade.

Beginning February 2008, the general illiquidity conditions in the credit markets affected the marketability of our holdings in ARS investments, since auctions for these securities have failed to settle on their respective settlement dates. While we continue to earn interest on our ARS investments, these investments are not actively trading or trading on a consistent basis and, therefore, do not currently have a readily determinable market value. Accordingly, these ARS investments were classified as available-for-sale and reported at their fair value with unrealized gains and losses excluded from net income and reported as a separate component of shareholders' equity (net of related tax effect) until realized in accordance with FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* ( FAS 115 ) and FSP 115-2, described above.

In accordance with FAS 157, we estimated the fair value of our auction rate securities investments using valuation models and methodologies provided by a third party. These types of pricing inputs may generally be considered Level 2, as defined by FAS 157. However, since there are no currently active markets for our ARS investments, these pricing inputs are currently deemed Level 3 in accordance with FAS 157. Based on these valuation models and methodologies, during the second quarter of fiscal year 2009 we recognized an incremental estimated temporary unrealized gain in the fair value of our ARS investments of approximately \$1.4 million, bringing our net estimated unrealized loss to approximately \$3.5 million as of June 30, 2009. During the second quarter of fiscal 2009, an additional \$1.1 million of our ARS investments were redeemed at par. For the twenty-six weeks ended June 30, 2009, \$1.7 million of our ARS investments were redeemed at par.

Due to the continued illiquidity of these investments and the continued uncertainty regarding the auction rate securities market, we have classified these investments as non-current investments for the current reporting period at fair value. Absent a more favorable remedy in our current arbitration proceedings relating to our ARS investments, we currently anticipate holding these ARS investments until either a recovery of the auction process or until their maturity. We currently believe that it is more likely than not that we will not be required to sell these ARS investments before any recovery. Any future fluctuation in estimated fair value related to these investments that we consider temporary, including any recoveries of previous write-downs, would be recorded to accumulated other comprehensive income (loss). If we determine that any future valuation adjustment was other than temporary under applicable accounting rules, we would record a charge to earnings as appropriate. We have also filed an arbitration claim against the broker-dealer relating to investments in auction rate securities made on our behalf. We cannot predict the ultimate outcome of our claim in this respect.



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**3. FAIR VALUE MEASUREMENT**

In September 2006, the FASB issued Statement No. 157, *Fair Value Measurements*, which defines fair value, establishes a framework for using fair value to measure assets and liabilities, and expands disclosure about fair value measurements. FAS 157 applies whenever other statements require or permit asset or liabilities to be measured at fair value. We adopted the provisions of FAS 157 as of January 2, 2008, for our financial instruments.

FAS 157 establishes a three-tier fair value hierarchy, which prioritizes the inputs used to measure fair value. These tiers include:

Level 1: Defined as observable inputs such as quoted prices in active markets for identical assets or liabilities as of the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

Level 2: Defined as pricing inputs other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reporting date. Level 2 includes those financial instruments that are valued using models or other valuation methodologies. These models are primarily industry-standard models that consider various assumptions, including quoted forward prices for commodities, time value, volatility factors, and current market and contractual prices for the underlying instruments, as well as other relevant economic measures.

Level 3: Defined as pricing inputs that are generally less observable from objective sources. These inputs may be used with internally developed methodologies that result in management's best estimate of fair value.

As of June 30, 2009, we held auction rate securities investments which are classified as available-for-sale investments and are required to be measured at fair value on a recurring basis. As discussed in Note 2 in this section of our Form 10-Q, the recent uncertainties in the credit markets have affected our holdings in auction rate securities investments, since the auctions for these securities have failed to settle on their respective settlement dates. Therefore, in the absence of an active market, we estimated the fair value of these investments using valuation models and methodologies provided by a third party as of June 30, 2009. The analysis considered, among other items, the collateralization underlying the security investments, the creditworthiness of the counterparty; the timing of the expected future cash flows; the investments interest rate compared to like investments and treasury strips interest rates with comparable maturities, the current illiquidity of the investments; and the expectation of the next time the security is expected to have a successful auction; as well as certain qualitative and quantitative metrics (i.e., structure, collateral and liquidity of the investment and a trinomial discount model, respectively) that an investor would consider when deciding to hold or sell a position based on the certain risk assessments.

Based on these valuation models and methodologies, we recognized an estimated temporary unrealized holding gain in the fair value of our auction rate securities investments of approximately \$1.4 million for the thirteen weeks ended June 30, 2009. However, as a result of the overall temporary decline in fair value of our auction rate securities investments to date, which we attribute to liquidity issues rather than credit issues, we have recorded a net estimated unrealized loss of approximately \$3.5 million as of June 30, 2009. Any future fluctuation in fair value related to these investments that we deem to be temporary, including any recoveries of previous write-downs, would be recorded to accumulated other comprehensive income (loss). If we determine that any future valuation adjustment was other than temporary or if based on changing economic circumstances, we believe it is more likely than not that we will be required to sell these investments, we would record a charge to earnings as prescribed by FSP 115-2, describe above.

The assets measured at fair value on a recurring basis subject to the disclosure requirements of FAS 157 at June 30, 2009, were as follows (in thousands):

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|  | Fair Value Measurement at Reporting Date Using   |   |  |
|--|--|---|--|
|  | Quoted Prices<br>in<br>Active<br>Markets<br>for<br>Identical<br>Assets<br>(Level<br>1) | Significant<br>Other<br>Observable<br>Inputs<br>(Level 2) | Significant<br>Unobservable<br>Inputs<br>(Level 3) |
| Auction rate securities investments, par value               | \$   | \$  | \$ 33,300  |
| Total gains or losses (realized and unrealized):             |  |   |  |
| Included in net income                                       |  |   |  |
| Included in accumulated other comprehensive income<br>(loss) |  |   | (3,517)  |
| Balance at June 30, 2009                                     | \$   | \$  | \$ 29,783  |

**4. LONG-TERM DEBT****Line of Credit**

On October 17, 2007, we established a \$25 million unsecured revolving line of credit with a major financial institution (the Line of Credit). The Line of Credit expires on September 30, 2012 and may be used for working capital and other general corporate purposes. The Line of Credit was increased to \$45 million during the first quarter of 2008. We expect to utilize the Line of Credit principally for letters of credit that are required to support certain of our self insurance programs and for working capital and construction requirements. As of June 30, 2009, there were funded borrowings of \$7.0 million outstanding under the Line of Credit and there were outstanding letters of credit totaling approximately \$2.8 million. Any borrowings under the Line of Credit will bear interest at the financial institution's prime rate or at LIBOR plus a percentage not to exceed 1.375% based on a Lease Adjusted Leverage Ratio as defined in the Line of Credit agreement. The Line of Credit agreement also requires compliance with a Fixed Charge Coverage Ratio and a Total Lease Adjusted Leverage Ratio. At June 30, 2009, we were in compliance with these covenants. Any interest on the Line of Credit will be payable quarterly and all related borrowings must be repaid on or before September 30, 2012. At June 30, 2009, interest paid on the funded borrowings under the Line of Credit was approximately \$97,000, of which \$37,000 related to the twenty-six weeks ended June 30, 2009. The weighted average interest rate was approximately 1.5%.

**5. NET INCOME PER SHARE**

Basic net income per share is computed by dividing the net income attributable to common shareholders by the weighted average number of common shares outstanding during the period. Diluted net income per share reflects the potential dilution that could occur if stock options and restricted stock units issued by the Company to sell common stock at set prices were exercised. The consolidated financial statements present basic and diluted net income per share. Common share equivalents included in the diluted computation represent shares to be issued upon assumed exercises of outstanding stock options and restricted stock units using the treasury stock method.

In accordance with the provisions of FASB Statement No. 128, *Earnings Per Share* (FAS 128), basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during the period. Diluted net income per share includes the dilutive effect of both outstanding stock options and restricted stock units, calculated using the treasury stock method. Assumed proceeds from in-the-money options, include the windfall tax benefits, net of shortfalls, calculated under the as-if method as prescribed by FASB Statement No. 123(R), *Share-Based Payment* (FAS 123(R)).

The following table presents a reconciliation of basic and diluted net income per share computations and the number of dilutive securities (stock options and restricted stock units) that were included in the dilutive net income per share computation (in thousands).

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|   | For The Thirteen<br>Weeks Ended |                 | For The Twenty-Six<br>Weeks Ended |                 |
|---|---------------------------------|-----------------|-----------------------------------|-----------------|
|   | June 30,<br>2009                | July 1,<br>2008 | June 30,<br>2009                  | July 1,<br>2008 |
| <b>Numerator:</b>                                     |                                 |                 |                                   |                 |
| Net income for basic and diluted net income per share | \$ 4,389                        | \$ 2,893        | \$ 8,148                          | \$ 6,013        |
| <b>Denominator:</b>                                   |                                 |                 |                                   |                 |
| Weighted average shares outstanding basic             | 26,739                          | 26,361          | 26,736                            | 26,359          |
| Effect of dilutive common stock equivalents           | 389                             | 346             | 281                               | 360             |
| Weighted average shares outstanding diluted           | 27,128                          | 26,707          | 27,017                            | 26,719          |

For the thirteen weeks ended June 30, 2009 and July 1, 2008, there were approximately 517,000 and 1,035,000 stock options outstanding, respectively, whereby the exercise price exceeded the average common stock market value, respectively. For the twenty-six weeks ended June 30, 2009 and July 1, 2008, there were approximately 850,000 and 924,600 stock options outstanding, respectively, whereby the exercise price exceeded the average common stock market value, respectively. The effects of the shares which would be issued upon the exercise of these options have been excluded from the calculation of diluted net income per share because they are anti-dilutive.

**6. RELATED PARTY**

As of June 30, 2009, we believe that Jacmar Companies and their affiliates (collectively referred to herein as Jacmar) owned approximately 16.2% of our outstanding common stock. Jacmar, through its specialty wholesale food distributorship, is currently our largest supplier of food, beverage and paper products. Jacmar also owns the Shakey's pizza parlor chain. In July 2006, after an extensive competitive bidding process, we entered into a three-year agreement with a national foodservice distribution system whose shareholders are prominent regional foodservice distributors, of which Jacmar is one. As such, Jacmar services our restaurants in California and Nevada, while other system distributors service our restaurants in all other states. In July 2009, after another extensive competitive bidding process, we are in the process of entering into a new three-year agreement with the same national foodservice distribution system. We believe that Jacmar sells products to us at prices comparable to those offered by unrelated third parties. Jacmar supplied us with approximately \$25.1 million and \$23.4 million of food, beverage and paper products for the twenty-six weeks ended June 30, 2009 and July 1, 2008, respectively, which represents 48.1% and 52.0% of our total costs for these products, respectively. We had trade payables related to these products of approximately \$3.5 million and \$3.8 million at June 30, 2009 and July 1, 2008, respectively.

**7. STOCK-BASED COMPENSATION**

We have two stock-based compensation plans—the 2005 Equity Incentive Plan and the 1996 Stock Option Plan—under which we may issue shares of our common stock to employees, officers, directors and consultants. Upon effectiveness of the 2005 Equity Incentive Plan, the 1996 Stock Option Plan was closed for purposes of new grants and the remaining available shares for grant, including those shares related to option awards forfeited or terminated without exercise under the 1996 Stock Option Plan accrue to the 2005 Equity Incentive Plan. Both of these plans have been approved by our shareholders. Under the 2005 Equity Incentive Plan, we have granted incentive stock options, non-qualified stock options, and restricted stock units.

Beginning in 2007, substantially all of our restaurant general managers, executive kitchen managers, regional kitchen operations managers, area/regional directors and certain brewery operations positions are eligible to participate in our equity-based incentive program called the BJs Gold Standard Stock Ownership Program (the GSSOP) under our 2005 Equity Incentive Plan. The GSSOP is a longer-term equity incentive program that utilizes Company restricted stock units (RSUs). The GSSOP is dependent on each participant's extended service with us in their respective positions and their achievement of certain agreed-upon performance objectives during that service period (i.e., five years).

Beginning in 2008, we also began issuing restricted stock units as a component of the annual equity grant award to officers and other employees. Under our 2005 Equity Incentive Plan we have issued 653,000 RSUs as of June 30, 2009.



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We account for equity grants under these plans in accordance with the fair value recognition provisions of FAS 123(R), using the modified-prospective-transition method. Compensation expense recognized in the twenty-six weeks ended June 30, 2009 and July 1, 2008 include: (a) compensation expense for all share-based payments granted prior to, but not yet vested as of January 4, 2006 (adoption date of FAS 123(R)), based on the grant date fair value estimated in accordance with the original provisions of FASB Statement No. 123, *Accounting for Stock-Based Compensation* ( FAS 123 ) and (b) compensation expense for all share-based payments granted subsequent to January 4, 2006, based on the grant date fair value estimated in accordance with the provisions of FAS 123(R).

The following table presents information related to stock-based compensation (in thousands):

|   | For The Thirteen |                 | For The Twenty-Six |                 |
|---|------------------|-----------------|--------------------|-----------------|
|   | Weeks Ended      |                 | Weeks Ended        |                 |
|   | June 30,<br>2009 | July 1,<br>2008 | June 30,<br>2009   | July 1,<br>2008 |
| Labor and benefits stock-based compensation         | \$ 228           | \$ 221          | \$ 501             | \$ 429          |
| General and administrative stock-based compensation | \$ 601           | \$ 617          | \$ 1,207           | \$ 1,225        |
| Capitalized stock-based compensation (1)            | \$ 39            | \$ 81           | \$ 96              | \$ 161          |

(1) Capitalized stock-based compensation is included in Property and equipment, net on the Consolidated Balance Sheets.

*Stock Options*

The exercise price of the stock options under the Company's stock-based compensation plans shall be equal to or exceed 100% of the fair market value of the shares at the date of option grant. Stock options generally vest at 20% per year or cliff vest, either ratably in years three through five or 100% in year five and expire ten years from date of grant. Stock option activity during the twenty-six weeks ended June 30, 2009 was as follows:

|  | Options Outstanding      |  | Options Exercisable      |  |
|--|--------------------------|--|--------------------------|--|
|  | Shares<br>(in thousands) | Weighted<br>Average<br>Exercise<br>Price | Shares<br>(in thousands) | Weighted<br>Average<br>Exercise<br>Price |
| Outstanding options at December 30, 2008 | 2,023                    | \$ 15.82                                 | 1,321                    | \$ 14.50                                 |
| Granted                                  | 332                      | 10.80                                    |                          |  |
| Exercised                                | (13)                     | 6.44                                     |                          |  |
| Forfeited                                | (65)                     | 18.39                                    |                          |  |
| Expired                                  |                          |  |                          |  |
| Outstanding options at June 30, 2009     | 2,277                    | \$ 15.06                                 | 1,467                    | \$ 14.93                                 |

The fair value of each stock option grant issued is estimated at the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

|                     | For the Twenty-Six Weeks Ended |              |
|---------------------|--------------------------------|--------------|
|                     | June 30, 2009                  | July 1, 2008 |
| Expected volatility | 81.4%                          | 43.6%        |

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|                               |         |         |
|-------------------------------|---------|---------|
| Risk free interest rate       | 1.58%   | 3.22%   |
| Expected option life          | 5 years | 5 years |
| Dividend yield                | 0%      | 0%      |
| Fair value of options granted | \$7.03  | \$6.16  |

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FAS 123(R) requires us to make certain assumptions and judgments regarding the grant date fair value. These judgments include expected volatility, risk free interest rate, expected option life, dividend yield and vesting percentage. These estimations and judgments are determined by us using many different variables that, in many cases, are outside of our control. The changes in these variables or trends, including stock price volatility and risk free interest rate, may significantly impact the grant date fair value resulting in a significant impact to our financial results. As of June 30, 2009, total unrecognized stock based compensation expense related to non-vested stock options was \$4.7 million, which is expected to be generally recognized over the remaining five years.

*Restricted Stock Units*

Restricted stock unit activity during the twenty-six weeks ended June 30, 2009 was as follows:

|                                       | Shares<br>(in thousands) | Weighted<br>Average<br>Fair Value |
|---------------------------------------|--------------------------|-----------------------------------|
| Outstanding RSUs at December 30, 2008 | 476                      | \$ 16.27                          |
| Granted                               | 237                      | 11.28                             |
| Forfeited                             | (60)                     | 14.24                             |
| Outstanding RSUs at June 30, 2009     | 653                      | \$ 14.65                          |

The fair value of the RSUs is the quoted market value of the Company's common stock on the date of grant. The fair value of each RSU is expensed over the period during which the restrictions are expected to lapse (i.e., five years). The Company recorded stock-based compensation expense related to RSUs of approximately \$788,000 during the twenty-six weeks ended June 30, 2009. In addition, total unrecognized stock-based compensation expense related to non-vested RSUs was \$6.9 million, which is expected to be generally recognized over the remaining five years.

**8. INCOME TAXES**

We utilize the liability method of accounting for income taxes as set forth in FASB Statement No. 109, *Accounting for Income Taxes* ( FAS 109 ).

Deferred income taxes are recognized based on the tax consequences in future years of differences between the tax basis of assets and liabilities and their financial reporting amounts at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized. The provision for income taxes represents the tax payable for the period and the change during the period in deferred tax assets and liabilities.

We recognize the impact of a tax position in our consolidated financial statements if that position is more likely than not of being sustained on audit, based on the technical merits of the position, in accordance with FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ( FIN 48 ), an interpretation of FAS 109. Interest and penalties related to uncertain tax positions are included in income tax expense.

As of June 30, 2009, a valuation allowance of approximately \$1.9 million was established for the deferred tax asset generated by the recording of the temporary change in fair value on our auction rate securities investments, since we would only be able to use this deferred tax asset to offset any future capital gains. As of June 30, 2009, we did not have any capital gains, nor do we expect to have any capital gains in the future. The deferred tax asset and corresponding valuation allowance were recorded in the accumulated other comprehensive income (loss) component of shareholders equity. Subsequent release of this valuation allowance will not have an effect on our Consolidated Statements of Operations.

**9. DIVIDEND POLICY AND STOCK REPURCHASES**

We have not paid any cash dividends since our inception and have currently not allocated any funds for the payment of dividends. Rather, it is our current policy to retain earnings, if any, for expansion of our restaurant and brewing operations, remodeling of existing restaurants and other general corporate purposes. We have no plans to pay any cash dividends in the foreseeable future. Should we decide to pay cash dividends in the future, such payments would be at the discretion of the Board of Directors. We did not have any stock repurchases during the twenty-six weeks ended June 30, 2009.



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Other comprehensive income (loss) consisted of the following (in thousands):

|  | <b>For The Twenty-Six Weeks Ended</b> |                     |
|--|---------------------------------------|---------------------|
|  | <b>June 30, 2009</b>                  | <b>July 1, 2008</b> |
| Net income                                 | \$ 8,148                              | \$ 6,013            |
| Net unrealized holding loss on investments | (3,517)                               | (2,005)             |
| <b>Total other comprehensive income</b>    | <b>\$ 4,631</b>                       | <b>\$ 4,008</b>     |

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS****STATEMENT REGARDING FORWARD-LOOKING DISCLOSURE**

Certain information included in this Form 10-Q and other materials filed or to be filed by us with the Securities and Exchange Commission (as well as information included in oral or written statements made by us or on our behalf), may contain forward-looking statements about our current and expected performance trends, growth plans, business goals and other matters. These statements may be contained in our filings with the Securities and Exchange Commission, in our press releases, in other written communications, and in oral statements made by or with the approval of one of our authorized officers. Words or phrases such as believe, plan, will likely result, expect, intend, will continue, is an estimate, project, may, could, would, should, and similar expressions are intended to identify forward-looking statements. These statements, and any other statements that are not historical facts, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as codified in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended from time to time (the "Act"). The cautionary statements made in this Form 10-Q should be read as being applicable to all related forward-looking statements wherever they appear in this Form 10-Q.

The following discussion and analysis should be read in conjunction with our consolidated financial statements and notes thereto included elsewhere in this Form 10-Q. Except for the historical information contained herein, the discussion in this Form 10-Q contains certain forward-looking statements that involve known and unknown risks and uncertainties, such as statements of our plans, objectives, expectations and intentions. The risks described in this Form 10-Q as well as the risks identified in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 30, 2008 are not the only risks we face. New risks and uncertainties arise from time to time and we cannot predict those events or how they may affect us. There may be other risks and uncertainties that are not currently known, or that are currently deemed by us to be immaterial; however, they may ultimately adversely affect our business, financial condition and/or operating results. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, our actual results may vary materially from forward-looking statements described in this document. These forward-looking statements include, among others, statements concerning:

our restaurant concept, its competitive advantages and our strategies for its continued evolution and expansion;

the rate and scope of our planned future restaurant development;

anticipated dates on which we will commence or complete development of new restaurants;

expectations as to the timing and success of the planned expansion of our contract brewing strategy;

expectations for consumer spending on casual dining restaurant occasions in general;



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expectations as to the availability and costs of key commodities used in our restaurants and brewing operations;

expectations as to our menu price increases and their effect, if any, on revenue and results of operations;

expectations as to our capital requirements, line of credit availability and our ability to liquidate our investments in auction rate securities in an orderly manner;

expectations as to our future revenues, operating costs and expenses, and capital requirements; and,

other statements of expectations, beliefs, future plans and strategies, anticipated developments and other matters that are not historical facts.

These forward-looking statements are subject to risks and uncertainties, including financial, regulatory, consumer behavior, demographic, industry growth and trend projections, that could cause actual events or results to differ materially from those expressed or implied by the statements. Significant factors that could prevent us from achieving our stated goals include, but are not limited to:

Continued deterioration in general economic conditions may affect consumer spending and may adversely affect our revenues, operating results and liquidity.

If we do not successfully expand our restaurant operations, our growth rate and results of operations would be adversely affected.

Our ability to open new restaurants on schedule in accordance with our projected growth rate may be adversely affected by delays or problems associated with securing suitable restaurant locations and leases and by other factors, some of which are beyond our control and the timing of which is difficult to forecast accurately.

Access to sources of capital and our ability to raise capital in the future may be limited, which could adversely affect our business.

Continued deterioration in general economic conditions could have a material adverse impact on our landlords or on businesses neighboring our locations, which could adversely affect our revenues and results of operations.

Any failure of our existing or new restaurants to achieve expected results could have a negative impact on our consolidated sales and financial results, including a potential impairment of the long-lived assets of certain restaurants.

Our growth may strain our infrastructure and resources, which could slow our development of new restaurants and adversely affect our ability to manage our existing restaurants.

Our decision to reduce openings or accelerate the pace of openings may positively or adversely affect our comparative financial performance.

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Our future operating results may fluctuate significantly due to our relatively small number of existing restaurants and the expenses required to open new restaurants.

A significant number of our restaurants are concentrated in California and other Western states, which makes us particularly sensitive to economic, regulatory, weather and other conditions in those states.

Our operations are susceptible to changes in our food and supply costs, which could adversely affect our profitability.

Our increasing dependence on contract brewers could have an adverse effect on our operations if they cease to supply us with our proprietary beer.



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Other government laws and regulations affecting the operation of our restaurants, including those that apply to the acquisition and maintenance of our brewing and retail liquor licenses, increases in federal, state and county tax rates and higher health care costs, including federal or state mandated health insurance coverage, could increase our operating costs and restrict our growth.

For a more detailed description of these risk factors and other considerations, see Part II, Item 1A Risk Factors of this Form 10-Q and the risk factors identified in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 30, 2008.

### **GENERAL**

On July 31, 2009, we owned and operated 85 restaurants located in California, Texas, Arizona, Colorado, Oregon, Nevada, Florida, Ohio, Oklahoma, Kentucky, Indiana, Louisiana and Washington. A licensee also operates one restaurant in Lahaina, Maui. Each of our restaurants is operated either as a BJ's Restaurant & Brewery® which includes a brewery within the restaurant, a BJ's Restaurant & Brewhouse® which receives the beer it sells from one of our breweries or an approved third-party craft brewer of our proprietary recipe beers (contract brewer), or a BJ's Pizza & Grill® which is a smaller format, full service restaurant. Our menu features our BJ's® award-winning, signature deep-dish pizza, our own hand-crafted beers as well as a wide selection of appetizers, entrees, pastas, sandwiches, specialty salads and desserts, including our unique Pizookie® dessert. Several of our BJ's Restaurant & Brewery restaurants feature in-house brewing facilities where BJ's proprietary handcrafted beers are produced for many of our restaurants.

Our revenues are comprised of food and beverage sales at our restaurants. Revenues from restaurant sales are recognized when payment is tendered at the point of sale. Revenues from our gift cards are recognized upon redemption in our restaurants. Effective June 2007, we began recognizing gift card breakage as other income on our Consolidated Statements of Income. Gift card breakage is recorded when the likelihood of the redemption of the gift cards becomes remote, which is typically after 24 months from original gift card issuance.

Cost of sales is comprised of food and beverage supplies. The components of cost of sales are variable and typically fluctuate with sales volumes. Labor and benefit costs include direct hourly and management wages, bonuses and payroll taxes and fringe benefits for restaurant employees.

Occupancy and operating expenses include restaurant supplies, credit card fees, marketing costs, fixed rent, percentage rent, common area maintenance charges, utilities, real estate taxes, repairs and maintenance and other related restaurant costs. Occupancy and operating expenses generally increase with sales volume increases, but generally decline as a percentage of restaurant sales due to the semi-fixed and fixed nature of many of the expenses in this category. On the other hand, these expenses will typically increase as a percentage of sales for the same reasons in the event of a decline in comparable sales volumes.

General and administrative costs include all corporate, field supervision and administrative functions that support existing operations and provide infrastructure to facilitate our future growth. Components of this category include corporate management, field supervision and corporate hourly staff salaries and related employee benefits (including stock-based compensation expense), travel and relocation costs, information systems, the cost to recruit and train new restaurant management employees, corporate rent and professional and consulting fees.

Depreciation and amortization principally include depreciation on capital expenditures for restaurants. Restaurant opening expenses, which are expensed as incurred, consist of the costs of hiring and training the initial hourly work force for each new restaurant, travel, the cost of food and supplies used in training, grand opening promotional costs, the cost of the initial stocking of operating supplies and other direct costs related to the opening of a restaurant, including rent during the construction and in-restaurant training period.

We currently have one smaller, legacy BJ's Pizza & Grill location and one BJ's Restaurant and Brewhouse location that are operating on month-to-month leases. Additionally, we have one lease that will expire during the next 12 months for another one of our smaller, legacy BJ's Pizza & Grill locations. We believe that the expired and expiring leases can be renewed on satisfactory terms and we are currently communicating with the respective landlords to determine the specific terms of the renewals. However, there is no guarantee that for any of these locations the Company and landlord can mutually agree to a new lease that is satisfactory to both parties.

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In calculating comparable company-owned restaurant sales, we include a restaurant in the comparable base once it has been open for 18 months.

**RESULTS OF OPERATIONS**

The following table sets forth, for the periods indicated, our unaudited Consolidated Statements of Income expressed as percentages of total revenues. The results of operations for the twenty-six weeks ended June 30, 2009 and July 1, 2008 are not necessarily indicative of the results to be expected for the full fiscal year.

|                                  | For The Thirteen<br>Weeks Ended |                 | For The Twenty-Six<br>Weeks Ended |                 |
|----------------------------------|---------------------------------|-----------------|-----------------------------------|-----------------|
|                                  | June 30,<br>2009                | July 1,<br>2008 | June 30,<br>2009                  | July 1,<br>2008 |
| Revenues                         | 100.0%                          | 100.0%          | 100.0%                            | 100.0%          |
| Costs and expenses:              |                                 |                 |                                   |                 |
| Cost of sales                    | 24.9                            | 25.0            | 24.9                              | 25.1            |
| Labor and benefits               | 34.7                            | 35.2            | 35.1                              | 35.3            |
| Occupancy and operating          | 21.4                            | 20.7            | 21.3                              | 20.6            |
| General and administrative       | 7.1                             | 7.6             | 7.0                               | 8.0             |
| Depreciation and amortization    | 5.5                             | 4.9             | 5.5                               | 4.9             |
| Restaurant opening               | 0.6                             | 2.4             | 0.8                               | 1.9             |
| Loss on disposal of fixed assets | 0.0                             | 0.3             | 0.0                               | 0.2             |
| Total costs and expenses         | 94.2                            | 96.1            | 94.6                              | 96.0            |
| Income from operations           | 5.8                             | 3.9             | 5.4                               | 4.0             |
| Other income:                    |                                 |                 |                                   |                 |
| Interest income, net             | 0.1                             | 0.4             | 0.1                               | 0.6             |
| Other income, net                | 0.0                             | 0.1             | 0.1                               | 0.1             |
| Total other income               | 0.1                             | 0.5             | 0.2                               | 0.7             |
| Income before income taxes       | 5.9                             | 4.4             | 5.6                               | 4.7             |
| Income tax expense               | 1.8                             | 1.3             | 1.7                               | 1.4             |
| Net income                       | 4.1%                            | 3.1%            | 3.9%                              | 3.3%            |

*Thirteen Weeks Ended June 30, 2009 Compared to Thirteen Weeks Ended July 1, 2008.*

*Revenues.* Total revenues increased by \$15.5 million, or 16.8%, to \$107.7 million during the thirteen weeks ended June 30, 2009 from \$92.2 million during the comparable thirteen week period of 2008. The \$15.5 million increase

in revenues consisted of an increase of approximately \$16.6 million in restaurant sales from new restaurants not in our comparable restaurant sales base for the prior year, partially offset by an approximate \$1.1 million or 1.3% decrease in comparable restaurant sales. The decrease in comparable restaurant sales resulted from decreased guest traffic offset by an estimated effective menu price increase of approximately 3.2%. The slowing domestic economy, increasing unemployment rates and continued uncertainty in overall consumer confidence continue to negatively impact consumer spending for casual dining restaurant occasions in general. Accordingly, we do not currently expect overall guest traffic in our comparable restaurant base to recover during the remainder of fiscal 2009. In addition, overall guest traffic may continue to decline if the economy further weakens and unemployment rates continue to increase, particularly in California and other Western states where the majority of our restaurants are located.

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Our restaurants, like most in casual dining, continue to be impacted by inflationary pressures on the costs of certain commodities, labor and other operating expenses. If these inflationary pressures continue, it may be necessary to consider additional menu price increases to help protect our restaurant operating margins during fiscal 2009. However, if our guests do not accept our price increases, either by reducing their visits to our restaurants or by changing their purchasing patterns at our restaurants, the expected benefit of the menu price increase could be negated and our operating margins could be impacted. Additionally, to help protect guest traffic and to respond to the actions of our competitors, we may consider selective menu offerings at reduced price points, in certain markets

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from time to time, which could have the effect of further reducing the benefit of any menu price increases. We also believe that some of our larger casual dining chain competitors have recently increased their media advertising levels to more effectively communicate a stronger value pricing or reduced/discounted pricing message to consumers. This recent competitive development may also impact general levels of guest traffic in our restaurants.

All potential menu price increases must be carefully considered in light of their ultimate acceptability by our restaurant guests. Additionally, other factors outside of our control, such as inclement weather, shifts in the holiday calendar, competitive restaurant intrusions into our trade areas, general economic and competitive conditions and other factors, as described in the Risk Factors section in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 30, 2008, can impact comparable sales comparisons. Accordingly, there can be no assurance that increases in comparable sales will be achieved as a result of increased menu prices or other factors.

*Cost of Sales.* Cost of sales increased by \$3.8 million, or 16.5%, to \$26.8 million during the thirteen weeks ended June 30, 2009 from \$23.0 million during the comparable thirteen week period of 2008. As a percentage of revenues, cost of sales decreased slightly to 24.9% for the current thirteen week period from 25.0% for the prior year comparable thirteen week period. This slight decrease is primarily due to increased revenues from our estimated effective menu price increases and lower cheese costs, partially offset by increased commodity costs for pizza dough, bread and chicken.

We do anticipate that cost of sales in our new restaurants will typically be higher during the first several months of operations versus our mature restaurants, as our restaurant management teams become accustomed to optimally predicting, managing and servicing sales volumes at our new restaurants. Accordingly, a comparatively large number of new restaurant openings in any single quarter may significantly impact total cost of sales comparisons for our entire business. Additionally, restaurants opened in new markets may initially experience higher commodity costs than our established restaurants, where we have greater market penetration that generally results in purchasing and distribution economies of scale.

We provide our customers a large variety of menu items and therefore we are not overly dependent on a single group of commodities. We believe the overall cost environment for food commodities in general will remain volatile during 2009, primarily due to domestic and worldwide agricultural, supply/demand and other macroeconomic factors that are outside of our control. While we continue to work with our suppliers to control food costs and we have taken steps to enter into agreements for some of the commodities used in our restaurant operations, there can be no assurance that future supplies and costs for such commodities will not fluctuate due to weather and other market conditions outside of our control. We are currently unable to contract for many of our fresh commodities such as produce and fluid dairy items for long periods of time.

The cost to produce and distribute our proprietary beer is included in our cost of sales. In 2008, after several months of operational due diligence, we engaged two larger commercial brewers of quality craft beer in the United States to begin producing several of our higher-volume craft beers. We are also in the process of engaging additional large-scale contract brewers and expect to utilize a total of three or four contract brewers during 2009. We currently estimate that as much as 55% of our total requirement for proprietary beer (approximately 30,500 barrels) will be provided by contract brewers during fiscal 2009. Our longer-term objective is to have large contract brewers produce substantially all of our larger-volume beers. We currently expect to continue to create and brew our smaller-volume seasonal and specialty beers. We believe the larger-scale contract brewers have greater economies of scale, stronger quality control systems and more effective, leverageable supply chain relationships than we have as a relatively small restaurant company. As a result, over the next several years, we expect that the production cost of our larger volume proprietary beers can be gradually reduced, while simultaneously providing an improvement in the overall consistency of our beer. However, freight costs from our contract brewing locations will likely absorb a large portion of those production cost savings for a period of time until we can further increase the number of restaurants we operate and therefore obtain increased leverage with our transportation vendors.

*Labor and Benefits.* Labor and benefit costs for our restaurants increased by \$4.9 million, or 15.2%, to \$37.4 million during the thirteen weeks ended June 30, 2009 from \$32.5 million during the comparable thirteen week period of 2008. This increase was primarily due to the opening of 12 new restaurants since the thirteen weeks ended July 1, 2008. As a percentage of revenues, labor and benefit costs decreased to 34.7% for the current thirteen week period from 35.2% for the prior year comparable thirteen week period. This percentage decrease is primarily due to lower workers compensation and management labor costs coupled with increased revenues from our estimated effective menu price increases, offset by higher hourly labor costs as a result of the additional training related to our

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extensive menu upgrade in May 2009. Included in labor and benefits for the thirteen weeks ended June 30, 2009 and July 1, 2008 is approximately \$228,000 and \$221,000, or 0.2% of revenues, respectively, of stock-based compensation expense related to restricted stock units granted in accordance with our Gold Standard Stock Ownership Program, respectively. See Note 7, Stock-Based Compensation, in this Form 10-Q.

Our restaurants can be affected by increases in federal and state minimum wages. Additionally, some states have annual minimum wage increases correlated with either state or federal increases in the consumer price index. In July 2009, the federal minimum wage increased by \$0.70 to \$7.25 per hour. We do not expect this recent increase to have a material impact on our hourly labor costs, as the majority of our hourly employees are already paid wages in excess of \$7.25 per hour. In the past, we have been able to react to changes in our key operating costs, including minimum wage increases by gradually increasing our menu prices and improving our productivity in our restaurants. However, we cannot guarantee that all or any future cost increases can be offset by increased menu prices or that increased menu prices will be accepted by our restaurant guests without any resulting changes in their visit frequencies or purchasing patterns.

For new restaurants, labor expenses will typically be higher than normal during the first several months of operations until our restaurant management team at each new restaurant becomes more accustomed to optimally predicting, managing and servicing the sales volumes expected at our new restaurants. Accordingly, a comparatively large number of new restaurant openings in any single quarter may significantly impact labor cost comparisons for the entire Company.

*Occupancy and Operating.* Occupancy and operating expenses increased by \$4.0 million, or 21.1%, to \$23.1 million during the thirteen weeks ended June 30, 2009 from \$19.1 million during the comparable thirteen week period of 2008. The increase reflects additional operating and occupancy expenses related to 12 new restaurants opened since the thirteen weeks ended July 1, 2008. As a percentage of revenues, occupancy and operating expenses increased to 21.4% for the current thirteen week period from 20.7% for the prior year comparable thirteen week period. This percentage increase is principally a result of increased marketing costs for electronic, print and web-based media in response to the overall competitive environment, coupled with the de-leveraging of the fixed component of rent-related expenses as a result of the 1.3% decrease in comparable restaurant sales during the quarter.

*General and Administrative.* General and administrative expenses increased by \$0.6 million, or 8.6%, to \$7.6 million during the thirteen weeks ended June 30, 2009 from \$7.0 million during the comparable thirteen week period of 2008. Included in general and administrative costs for the thirteen weeks ended June 30, 2009 and July 1, 2008 is \$601,000 and \$617,000, respectively, of stock-based compensation expense. The increase in general and administrative costs is primarily due to planned increases in field supervision, marketing research, consulting and legal expenses, partially offset by planned salary and related expense reductions related to the departure of our two co-founders at the end of last year. As a percentage of revenues, general and administrative expenses decreased to 7.1% for the current thirteen week period from 7.6% for the prior year comparable thirteen week period. This decrease is primarily due to the leverage of the fixed component of these expenses over a higher revenue base.

*Depreciation and Amortization.* Depreciation and amortization increased by \$1.4 million, or 31.4%, to \$5.9 million during the thirteen weeks ended June 30, 2009 from \$4.5 million during the comparable thirteen week period of 2008. As a percentage of revenues, depreciation and amortization increased to 5.5% for the thirteen week period from 4.9% for the prior year comparable thirteen week period. This increase is primarily due to increased construction costs for new restaurants and depreciation on our new operating toolsets, restaurant remodels and initiatives, coupled with the deleveraging effect from the 1.3% decrease in comparable restaurant sales for the quarter.

*Restaurant Opening.* Restaurant opening expense decreased by \$1.5 million, or 68.9%, to \$0.7 million during the thirteen weeks ended June 30, 2009 from \$2.2 million during the comparable thirteen week period of 2008. This decrease is primarily due to opening costs related to one new restaurant opening and seven restaurants in progress during the thirteen weeks ended June 30, 2009 as compared to four restaurant openings and six restaurants in-progress during the thirteen weeks ended July 1, 2008.

Our opening costs will fluctuate from period to period, depending upon, but not limited to, the number of restaurant openings, the size and concept of the restaurants being opened, the location of the restaurants and the complexity of the staff hiring and training process. We opened one new restaurant during the second quarter of 2009 in Mesquite,

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Texas. This new restaurant represents our third new restaurant opening during fiscal 2009. As of July 31, 2009, seven new restaurants are under construction and we currently expect to open two new restaurants during the third quarter and five new restaurants during the fourth quarter of fiscal 2009. The actual timing of restaurant openings is inherently difficult to precisely predict and is subject to weather conditions and other factors outside of the Company's control, including factors that are under the control of the Company's landlords, municipalities and contractors.

*Loss on Disposal of Assets.* We did not have any significant fixed asset disposals during the second quarter of 2009. For the same quarter of the prior year, the loss on disposal of assets of approximately \$0.3 million was primarily the result of asset disposal costs related to select restaurant remodeling activities.

*Interest Income, Net.* Net interest income decreased to \$67,000 during the thirteen weeks ended June 30, 2009 from \$375,000 during the comparable thirteen week period of 2008. This decrease is primarily due to lower interest rates and investment balances compared to the same thirteen week period of 2008.

*Other Income, Net.* Net other income decreased to \$47,000 during the thirteen weeks ended June 30, 2009 from \$61,000 during the comparable thirteen week period of 2008, a decrease of \$14,000. This decrease is primarily due to income recognized from gift card breakage. Based on an analysis of our gift card program since its inception, we determined that 24 months after issuance date, the likelihood of gift card redemption is remote.

*Income Tax Expense.* Our effective income tax rate for the thirteen weeks ended June 30, 2009 was 30.5% compared to 29.0% for the comparable thirteen week period of 2008. The effective income tax rate for the thirteen weeks ended June 30, 2009 differs from the statutory income tax rate primarily due to FICA tip credits, the non-deductibility of incentive stock options and tax free interest on our investments. We currently estimate our effective tax rate to be approximately 30.0% to 31.0% for fiscal 2009. However, the actual effective tax rate for fiscal 2009 may be different than our current estimate due to actual revenues, pre-tax income and tax credits achieved during the year, coupled with the amount of tax-exempt income earned on our investments.

*Twenty-Six Weeks Ended June 30, 2009 Compared to Twenty-Six Weeks Ended July 1, 2008.*

*Revenues.* Total revenues increased by \$31.1 million, or 17.4%, to \$210.2 million during the twenty-six weeks ended June 30, 2009 from \$179.0 million during the comparable twenty-six week period of 2008. The \$31.1 million increase in revenues was primarily attributable to an approximate 20% increase in restaurant weeks resulting from the 12 new restaurants that we have opened since the second quarter of 2008, partially offset by a 1.9% decrease in our average weekly sales per restaurant. Comparable restaurant sales decreased approximately 0.7% during the twenty-six weeks ended June 30, 2009. The decrease in comparable restaurant sales resulted from decreased guest traffic, partially offset by an estimated effective menu price increase of approximately 3.4%.

*Cost of Sales.* Cost of sales increased by \$7.3 million, or 16.3%, to \$52.3 million during the twenty-six weeks ended June 30, 2009 from \$44.9 million during the comparable twenty-six week period of 2008. As a percentage of revenues, cost of sales decreased slightly to 24.9% for the current twenty-six week period from 25.1% for the prior year comparable twenty-six week period. This slight decrease is primarily due to increased revenues from our estimated effective menu price increases and lower cheese costs, partially offset by increased commodity costs for pizza dough, bread and chicken.

*Labor and Benefits.* Labor and benefit costs for our restaurants increased by \$10.6 million, or 16.7%, to \$73.7 million during the twenty-six weeks ended June 30, 2009 from \$63.2 million during the comparable twenty-six week period of 2008. This increase was primarily due to the opening of 12 new restaurants since the twenty-six weeks ended July 1 2008. As a percentage of revenues, labor and benefit costs decreased to 35.1% for the current twenty-six week period from 35.3% for the prior year comparable twenty-six week period. This percentage decrease is primarily due to lower management labor costs as a result of less new restaurants opened in the twenty-six week period ended June 30, 2009. Included in labor and benefits is approximately \$501,000 and \$429,000 related to our stock-based compensation plans for both the twenty-six weeks ended June 30, 2009 and July 1, 2008, respectively. See Note 7, Stock-Based Compensation, in this Form 10-Q.

*Occupancy and Operating.* Occupancy and operating expenses increased by \$8.0 million, or 21.7%, to \$44.8 million during the twenty-six weeks ended June 30, 2009 from \$36.8 million during the comparable twenty-six week period of 2008. The increase reflects additional operating and occupancy expenses related to 12 new restaurants

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opened since the twenty-six weeks ended July 1, 2008. As a percentage of revenues, occupancy and operating expenses increased to 21.3% for the twenty-six week period from 20.6% for the prior year comparable twenty-six week period. This percentage increase is principally a result of increased marketing costs for electronic, print and web-based media in response to the overall competitive environment, coupled with the de-leveraging of the fixed component of rent related expenses as a result of the 0.7% decrease in comparable restaurant sales during the first half of fiscal 2009.

*General and Administrative.* General and administrative expenses increased by \$0.3 million, or 2.4%, to \$14.7 million during the twenty-six weeks ended June 30, 2009 from \$14.4 million during the comparable twenty-six week period of 2008. Included in general and administrative costs for the twenty-six weeks ended June 30, 2009 and July 1, 2008 is \$1.2 million, respectively, of stock-based compensation expense. The increase in general and administrative costs is primarily due to planned increases in field supervision, marketing research, consulting and legal expenses, partially offset by planned salary and related expense reductions related to the departure of our two co-founders at the end of last year. As a percentage of revenues, general and administrative expenses decreased to 7.0% for the current twenty-six week period from 8.0% for the prior year comparable twenty-six week period. This decrease is primarily due to leverage of the fixed component of these expenses over a higher revenue base.

*Depreciation and Amortization.* Depreciation and amortization increased by \$2.8 million, or 32.6%, to \$11.6 million during the twenty-six weeks ended June 30, 2009 from \$8.8 million during the comparable twenty-six week period of 2008. As a percentage of revenues, depreciation and amortization increased to 5.5% for the twenty-six week period from 4.9% for the prior year comparable twenty-six week period. This increase is primarily due to increased construction costs for new restaurants and depreciation on our new operating toolsets, restaurant remodels and initiatives, coupled with the deleveraging effect from the 0.7% decrease in comparable restaurant sales during the first half of fiscal 2009.

*Restaurant Opening.* Restaurant opening expense decreased by \$1.7 million, or 50.0%, to \$1.7 million during the twenty-six weeks ended June 30, 2009 from \$3.3 million during the comparable twenty-six week period of 2008. This decrease is primarily due to opening costs related to three restaurant openings and seven restaurants in-progress during the twenty-six weeks ended June 30, 2009, as compared to six restaurant openings and five restaurants in-progress during the twenty-six weeks ended July 1, 2008.

*Loss on Disposal of Assets.* We did not have any significant fixed asset disposals during the twenty-six weeks ended June 30, 2009. For the same twenty-six weeks of the prior year, the loss on disposal of assets of \$0.4 million pertains to asset disposal costs related to select restaurant remodels.

*Interest Income, Net.* Net interest income decreased by \$0.9 million, or 86.1%, to \$0.1 million during the twenty-six weeks ended June 30, 2009 from \$1.0 million during the comparable twenty-six week period of 2008. This decrease is primarily due to lower interest rates and investment balances compared to the same period as last year.

*Other Income, Net.* Net other income decreased to \$196,000 during the comparable twenty-six weeks ended June 30, 2009 from \$201,000 during the comparable twenty-six week period of 2008, a decrease of \$5,000. This decrease is primarily due to income recognized from gift card breakage. Based on an analysis of our gift card program since its inception, we determined that 24 months after issuance date, the likelihood of gift card redemption is remote.

*Income Tax Expense.* Our effective income tax rate for the twenty-six weeks ended June 30, 2009 was 30.3% compared to 29.5% for the comparable twenty-six week period of 2008. The effective income tax rate for the twenty-six weeks ended June 30, 2009 differs from the statutory income tax rate primarily due to anticipated FICA tip credits, the non-deductibility of incentive stock option compensation until the time of a disqualifying disposition and the tax exempt nature of our interest income from our investments.

**LIQUIDITY AND CAPITAL RESOURCES**

The following tables set forth, for the periods indicated, a summary of our key liquidity measurements (dollar amounts in thousands):

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|                                   | <b>June 30,<br/>2009</b> | <b>December 30,<br/>2008</b> |
|-----------------------------------|--------------------------|------------------------------|
| Cash and investments              | \$12,732                 | \$8,852                      |
| Net working capital (deficit) (1) | (\$9,209)                | \$(19,614)                   |
| Current ratio                     | 0.8:1.0                  | 0.7:1.0                      |

(1) The resulting deficit is principally due to our investments in auction rate securities which are classified as non-current assets.

|                                       | <b>For The Twenty-Six<br/>Weeks Ended</b> |                         |
|---------------------------------------|---|-------------------------|
|                                       | <b>June 30,<br/>2009</b>                  | <b>July 1,<br/>2008</b> |
| Cash provided by operating activities | \$26,234                                  | \$26,255                |
| Capital expenditures                  | \$21,687                                  | \$40,298                |

Our capital requirements are principally related to our restaurant expansion plans. While our ability to achieve our growth plans is dependent on a variety of factors, some of which are outside of our control, our primary growth objective is to achieve an approximate 15% increase in total restaurant operating weeks during fiscal 2009 from the development and opening of new restaurants, coupled with the carryover impact of partial-year 2008 openings. Our base of established restaurant operations is not yet large enough to generate enough cash flow from operations to totally fund our planned expansion at the rate that it is currently contemplated over the longer run. Accordingly, we will continue to actively monitor overall conditions in the capital markets with respect to the potential sources and timing of additional financing for our planned future expansion. However, there can be no assurance that such financing will be available when required or available on terms acceptable to us. If we are unable to secure additional capital resources, we may be required to reduce our longer-term planned rate of expansion.

Similar to many restaurant chains, we typically utilize operating lease arrangements (principally ground leases) for the majority of our restaurant locations. We believe our operating lease arrangements continue to provide appropriate leverage for our capital structure in a financially efficient manner. However, we are not limited to the use of lease arrangements as our only method of opening new restaurants. While our operating lease obligations are not currently required to be reflected as indebtedness on our Consolidated Balance Sheets, the minimum rents and other related lease obligations, such as common area expenses, under our lease agreements must be satisfied by cash flows from our ongoing operations. Accordingly, our lease arrangements reduce, to some extent, our capacity to utilize funded indebtedness in our capital structure. We also require capital resources to maintain our existing base of restaurants and brewery operations and to further expand and strengthen the capabilities of our corporate and information technology infrastructures. Our requirement for working capital is not significant since our restaurant guests pay for their food and beverage purchases in cash or credit cards at the time of the sale. Thus, we are able to sell many of our inventory items before we have to pay our suppliers for such items.

We typically seek to lease our restaurant locations for primary periods of 15 to 20 years under operating lease arrangements. Our rent structures vary from lease to lease, but generally provide for the payment of both minimum and contingent (percentage) rent based on sales, as well as other expenses related to the leases (for example, our pro-rata share of common area maintenance, property tax and insurance expenses). In addition, many of our lease arrangements include the opportunity to secure tenant improvement allowances to partially offset the cost of constructing the related restaurants. Generally, landlords recover the cost of such allowances from increased minimum rents. During fiscal 2009, we are currently expecting to obtain approximately \$12 million to \$13 million of committed tenant improvement allowances. However, in light of current conditions in the credit markets, there can be no assurance that such allowances will continue to be available to us. From time to time, we may also decide to purchase the underlying land for a new restaurant if that is the only way to secure a highly desirable site. Currently, we own the land that underlies four of our restaurants, and we may determine at some future point to monetize those assets through a sale-leaseback or other financial transaction, provided that the financial markets for those transactions are functioning normally. We disburse cash for certain site-related work, buildings, leasehold improvements, furnishings, fixtures and equipment to build our leased and owned premises. We own substantially all of the equipment, furniture and trade fixtures in our restaurants and currently plan to do so in the future.

Our cash flows from operating activities, as detailed in the Consolidated Statements of Cash Flows, provided \$26.2 million of net cash during the twenty-six weeks ended June 30, 2009, representing a \$0.1 million decrease from the



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\$26.3 million provided by during the comparable twenty-six week period of 2008. The slight decrease in cash from operating activities for the twenty-six weeks ended June 30, 2009, in comparison to twenty-six weeks ended July 1, 2008, is primarily due to increased accounts and other receivables, tenant allowance receivables and accrued expenses offset by increased net income, higher depreciation expense due to more restaurants open and decreased prepaid rent due to timing, primarily offset by the increase in other liabilities due to additional deferred tenant improvement allowances.

For the twenty-six weeks ended June 30, 2009, total capital expenditures were \$21.7 million, of which expenditures for the acquisition of restaurant and brewery equipment and leasehold improvements to construct new restaurants were \$16.8 million. These expenditures were primarily related to the construction of our new restaurants in Henderson, Nevada; Gainesville, Florida and Mesquite, Texas which opened during the twenty-six weeks ended June 30, 2009, as well as expenditures related to additional restaurants expected to open in the third and fourth quarters of 2009. In addition, total capital expenditures related to existing restaurants and expenditures for restaurant and corporate systems were \$4.7 million and \$0.2 million, respectively.

On October 17, 2007, we established a \$25 million unsecured revolving line of credit with a major financial institution (the Line of Credit ). The Line of Credit expires on September 30, 2012 and may be used for working capital and other general corporate purposes. The Line of Credit was increased to \$45 million during the first quarter of 2008. We expect to utilize the Line of Credit principally for letters of credit that are required to support certain of our self insurance programs and for working capital and construction requirements. As of June 30, 2009, there were funded borrowings of \$7.0 million outstanding under the Line of Credit and there were outstanding letters of credit totaling approximately \$2.8 million. Any borrowings under the Line of Credit will bear interest at the financial institution's prime rate or at LIBOR plus a percentage not to exceed 1.375% based on a Lease Adjusted Leverage Ratio as defined in the Line of Credit agreement. The Line of Credit agreement also requires compliance with a Fixed Charge Coverage Ratio and the Total Lease Adjusted Leverage Ratio. At June 30, 2009, we were in compliance with these covenants. Any interest on the Line of Credit will be payable quarterly and all related borrowings must be repaid on or before September 30, 2012. While we have the Line of Credit in place and it can be currently drawn upon, in the event that global credit market conditions further deteriorate, it is possible that creditors could place limitations or restrictions on the ability of borrowers in general to draw on existing credit facilities. At this time, however, we have no indication that any such limitations or restrictions are likely to occur.

We currently plan to open as many as 10 new restaurants during fiscal 2009. As of July 31, 2009, three of those restaurants have already opened and seven are under construction and expected to open before the end of the current fiscal year. Additionally, we have one signed lease for a potential new restaurant opening in fiscal year 2010. We have also executed letters of intent for additional restaurant locations. We are in the process of determining our new restaurant development plan for fiscal 2010 and expect to be in a position to comment more specifically on that plan by the end of October 2009. Our capital requirements related to opening additional restaurants will continue to be significant. We currently anticipate our total capital expenditures for 2009, excluding any tenant improvement allowances, to be \$55 million to \$60 million related to the construction of new restaurants, the reinvestment in some of our older restaurants as well as normal maintenance capital expenditures and the investment in toolsets and infrastructure. We expect to fund our future capital expenditures for 2009 with current cash and investment balances, cash provided by operating activities, tenant improvement allowances and our line of credit. During fiscal 2009, we are currently expecting to obtain approximately \$12 million to \$13 million of committed tenant improvement allowances. Our future cash requirements will depend on many factors, including the pace of expansion, real estate markets, construction costs, the specific sites selected for new restaurants, the nature of the lease and associated financing arrangements negotiated with landlords.

On April 16, 2009, General Growth Properties, Inc. ( GGP ) announced that it was voluntarily seeking relief to reduce and restructure its debts under Chapter 11 of the United States Bankruptcy Code ( Chapter 11 filing ). Included in its bankruptcy filing are approximately 158 regional shopping centers owned by GGP and certain other GGP subsidiaries. GGP stated that it intends to work with its constituencies to emerge from bankruptcy as quickly as possible and that the day-to-day operations and business of all of the Company's shopping centers and other properties will continue as usual. We currently operate six restaurants in GGP properties that were included in their Chapter 11 filing. As of June 30, 2009, we have outstanding tenant improvement allowances due from GGP totaling approximately \$678,000 for two of our restaurants, which may be impacted from GGP's Chapter 11 filing. Our restaurant leases with GGP allow us to offset or reduce our rent payable to GGP in the event that our tenant improvement allowances cannot be collected, as agreed upon in our leases with GGP. Although we are in the process of determining the financial impact, if any, of these tenant improvement allowances, we do not believe that

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this matter will have a material impact on our overall liquidity. We may also pursue other legal remedies in this respect. As of July 31, 2009, we have not committed to any additional GGP retail projects for potential future restaurant locations; however, we may decide to do so at some future point. We also have one other delinquent committed tenant improvement allowance due from a different landlord in the amount of \$1.2 million, for a restaurant that was completed in the fourth quarter of 2008; however, we also have a similar right to offset or reduce our rent payable.

As of June 30, 2009, our investments consisted of auction rate securities ( ARS ) with a par or face value of \$33.3 million. These auction rate securities, AAA-rated when purchased, are long-term debt obligations secured by student loans and 97% guaranteed by the U.S. Government under the Federal Family Education Loan Program ( FFELP ). The recent uncertainties in the credit markets have affected our holdings in these ARS investments, since auctions for our investments in these securities have failed to settle on their respective settlement dates. Historically, the fair value of the ARS investments approximated par value due to the frequent resets through the auction process. While we continue to earn interest on our ARS investments, these investments are not currently trading and, therefore, do not currently have a readily determinable market value. In accordance with FASB Statement No. 157, *Fair Value Measurements* ( FAS 157 ), we estimated the fair value of our auction rate securities investments using valuation models and methodologies provided by a third party. Based on these valuation models and methodologies, during the second quarter of fiscal year 2009 we recognized an incremental estimated temporary unrealized gain in the fair value of our ARS investments of approximately \$1.4 million, bringing our net estimated unrealized loss to approximately \$3.5 million as of June 30, 2009. In accordance with FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities* ( FAS 115 ), a temporary change in fair value results in an unrealized holding gain or loss being recorded in the other comprehensive income (loss) component of shareholders equity. Such an unrealized holding gain or loss does not affect net income for the applicable accounting period. We review several factors to determine whether a loss is other than temporary, such as the length of time an investment is in an unrealized loss position, the extent to which fair value is less than amortized cost, the impact of changing interest rates in the short and long term, the financial condition and near term prospects of the issuer and our ability and intent to hold the investment for a period of time sufficient to allow for any anticipated recovery in fair value. Due to the continued illiquidity of these investments and the uncertainty regarding the auction rate securities market, we have classified these investments as non-current investments for the current reporting period at fair value. Absent a more favorable remedy in our current arbitration proceedings relating to our ARS investments, we currently anticipate holding the remaining ARS investments until a recovery of the auction process, recovery of fair value or until maturity, which is between 2020 and 2047. We currently believe that it is more likely than not that we will not be required to sell these ARS investments before any recovery; however, we expect such recoveries to occur prior to maturity. During the second quarter of fiscal year 2009, we continued to receive partial redemptions, at par, of certain ARS investments; however, there is no guarantee we will receive any future redemptions. We will continue to monitor the auction rate securities market and the liquidity and value of the securities we hold. Additional adjustments to the fair value may be required from quarter to quarter to reflect changes in market conditions. We have filed an arbitration claim against the broker-dealer relating to investments in auction rate securities made on our behalf. We cannot predict the ultimate outcome of our claim in this respect.

We currently believe that our projected cash flow from operations, cash balances on hand, agreed-upon tenant improvement allowances and our \$45 million credit facility, should be sufficient, in the aggregate, to finance our planned capital expenditures and other operating activities through the next 12 months. We currently believe that the current lack of liquidity of our auction rate securities investments will not have a material impact on our ability to fund our operations or continue our expansion through at least the second quarter of 2010. However, if current conditions in the auction rate securities market continue for a prolonged period, our longer-term financial flexibility could be impacted until other sources of capital are obtained. Our base of established restaurant operations is not yet large enough to generate enough cash flow from operations to totally fund our planned expansion at the rate that it is currently contemplated over the longer run. Accordingly, we will continue to actively monitor overall conditions in the capital markets with respect to the potential sources and timing of additional financing for our planned future expansion. However, there can be no assurance that such financing will be available when required or available on terms acceptable to us. If we are unable to secure additional capital resources, we may be required to reduce our longer-term planned rate of expansion.

**OFF-BALANCE SHEET ARRANGEMENTS**

We do not participate in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or variable interest entities ( VIEs ), which would have been

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established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow limited purposes. As of June 30, 2009, we are not involved in any off-balance sheet arrangements.

### **IMPACT OF INFLATION**

Our profitability is dependent, among other things, on our ability to anticipate and react to changes in the costs of key operating resources, including food and other raw materials, labor, energy and other supplies and services. Substantial increases in costs and expenses could impact our operating results to the extent that such increases cannot be passed along to our restaurant guests. While we have taken steps to enter into agreements for some of the commodities used in our restaurant operations, there can be no assurance that future supplies and costs for such commodities will not fluctuate due to weather and other market conditions outside of our control. We are currently unable to contract for many of our fresh commodities such as produce and fluid dairy items for long periods of time. Consequently, such commodities can be subject to unforeseen supply and cost fluctuations. The impact of inflation on food, labor, energy and occupancy costs can significantly affect the profitability of our restaurant operations.

Many of our restaurant employees are paid hourly rates related to the federal minimum wage. In fiscal 2007, Congress enacted an increase in the federal minimum wage implemented in three phases, beginning in fiscal 2007 and concluding in fiscal 2009. In addition, numerous state and local governments increased the minimum wage within their jurisdictions, with further state minimum wage increases going into effect in fiscal 2009. Additionally, a general shortage in the availability of qualified restaurant management and hourly workers in certain geographical areas in which we operate has caused related increases in the costs of recruiting and compensating such employees. Certain operating costs, such as taxes, insurance and other outside services continue to increase with the general level of inflation or higher and may also be subject to other cost and supply fluctuations outside of our control.

While we have been able to partially offset inflation and other changes in the costs of key operating resources by gradually increasing prices for our menu items, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future. From time to time, competitive conditions could limit our menu pricing flexibility. In addition, macroeconomic conditions that impact consumer discretionary spending for food away from home could make additional menu price increases imprudent. There can be no assurance that all of our future cost increases can be offset by higher menu prices, or that higher menu prices will be accepted by our restaurant guests without any resulting changes in their visit frequencies or purchasing patterns. Many of the leases for our restaurants provide for contingent rent obligations based on a percentage of sales. As a result, rent expense will absorb a proportionate share of any menu price increases in our restaurants. There can be no assurance that we will continue to generate increases in comparable restaurant sales in amounts sufficient to offset inflationary or other cost pressures.

### **SEASONALITY AND ADVERSE WEATHER**

Our business is subject to seasonal fluctuations and adverse weather. Our results of operations have historically been impacted by seasonality, which directly impacts tourism at our coastal California locations. The summer months (June through August) have traditionally been higher sales volume periods than other periods of the year. Additionally, in 2007, we began opening new restaurants beyond the West Coast and Texas to other mid-western and eastern states. Accordingly, these new restaurants will be impacted by weather and other seasonal factors that typically impact other restaurant operations in those regions. Holidays, severe winter weather, hurricanes, thunderstorms and similar conditions may impact restaurant sales volumes seasonally in some of the markets where we operate. Many of our restaurants are located in or near shopping centers and malls that typically experience seasonal fluctuations in sales. Quarterly results have been and will continue to be significantly impacted by the timing of new restaurant openings and their associated restaurant opening expenses. As a result of these and other factors, our financial results for any given quarter may not be indicative of the results that may be achieved for a full fiscal year.

### **CRITICAL ACCOUNTING POLICIES**

Critical accounting policies require the greatest amount of subjective or complex judgments by management and are important to portraying our financial condition and results of operations. Judgments or uncertainties regarding the application of these policies may result in materially different amounts being reported under different conditions or using different assumptions. We consider the following policies to be the most critical in understanding the judgments that are involved in preparing our consolidated financial statements.

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### ***Fair Value of Investments***

We measure all available-for-sale or non-current investments at fair value in accordance with fair value measurements prescribed by FAS 157. We believe that the valuation models and methodologies provided by a third party, who uses Level 3 inputs as defined by FAS 157, provides us with the appropriate basis to estimate fair value for investments that are not currently trading on the open market. In accordance with FAS 157, we recognize temporary changes in the fair value of our investments as unrealized holding gains or losses recorded in other comprehensive income (loss), which is a component of shareholders' equity and does not affect net income for the applicable accounting period. For declines in fair value that are below our carrying value and deemed to be other than temporary, we would record a charge against net earnings.

### ***Property and Equipment***

We record all property and equipment at cost. Property and equipment accounting requires estimates of the useful lives for the assets for depreciation purposes and selection of depreciation methods. We believe the useful lives reflect the actual economic life of the underlying assets. We have elected to use the straight-line method of depreciation over the estimated useful life of an asset or the primary lease term of the respective lease, whichever is shorter. Renewals and betterments that materially extend the useful life of an asset are capitalized while maintenance and repair costs are charged to operations as incurred. Judgment is often required in the decision to distinguish between an asset which qualifies for capitalization versus an expenditure which is for maintenance and repairs. When property and equipment are sold or otherwise disposed of, the asset account and related accumulated depreciation and amortization accounts are relieved, and any gain or loss is included in earnings. Additionally, interest capitalized for new restaurant construction is included in Property and equipment, net on the Consolidated Balance Sheets.

### ***Impairment of Long-Lived Assets***

We assess potential impairments of our long-lived assets whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. Factors considered include, but are not limited to, significant underperformance relative to expected historical or projected future operating results; significant changes in the manner of use of the acquired assets or the strategy for the overall business; and, significant negative industry or economic trends. The recoverability is assessed in most cases by comparing the carrying value of the asset to the undiscounted cash flows expected to be generated by the asset. This assessment process requires the use of estimates and assumptions regarding future cash flows and estimated useful lives, which are subject to a significant degree of judgment. If these assumptions change in the future, we may be required to record impairment charges for these assets. As of June 30, 2009, no other than temporary impairment indicators have been identified.

### ***Self Insurance Liability***

We are self-insured for a portion of our employee workers' compensation program and general liability insurance. We maintain coverage with a third party insurer to limit our total exposure for these programs. The accrued liability associated with these programs are based on our estimate of the ultimate costs to settle known claims as well as claims incurred but not yet reported to us ( IBNR claims ) as of the balance sheet date. Our estimated liability is not discounted and is based on information provided by our insurance broker and insurer, combined with our judgments regarding a number of assumptions and factors, including the frequency and severity of claims, our claims development history, case jurisdiction, related legislation, and our claims settlement practice. Significant judgment is required to estimate IBNR claims as parties have yet to assert such claims. If actual claims trends, including the severity or frequency of claims, differ from our estimates, our financial results could be significantly impacted.

### ***Income Taxes***

We provide for income taxes based on our estimate of federal and state tax liabilities. Our estimates include, but are not limited to, effective state and local income tax rates, allowable tax credits for items such as FICA taxes paid on reported tip income and estimates related to depreciation expense allowable for tax purposes. We usually file our income tax returns several months after our fiscal year-end. We file our tax returns with the advice and compilation of tax consultants. All tax returns are subject to audit by federal and state governments, usually years after the returns are filed, and could be subject to differing interpretation of the tax laws.

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Deferred tax accounting requires that we evaluate net deferred tax assets to determine if these assets will more likely than not be realized in the foreseeable future. This test requires projection of our taxable income into future years to determine if there will be taxable income sufficient to realize the tax assets (future tax deductions and FICA tax credit carryforwards). The preparation of the projections requires considerable judgment and is subject to change to reflect future events and changes in the tax laws.

FIN 48, which clarifies the accounting for uncertainty in tax positions, requires that we recognize the impact of a tax position in our consolidated financial statements if that position is more likely than not of being sustained on audit, based on the technical merits of the position. We recognize interest and penalties related to uncertain tax positions in income tax expense. As of June 30, 2009, unrecognized tax benefits recorded was approximately \$155,000.

### ***Leases***

We lease the majority of our restaurant locations. We account for our leases under the provisions of FASB Statement No. 13, *Accounting for Leases* ( Statement 13 ), which require that our leases be evaluated and classified as operating or capital leases for financial reporting purposes. The term used for this evaluation includes renewal option periods only in instances in which the exercise of the renewal option can be reasonably assured and failure to exercise such option would result in an economic penalty. All of our restaurant leases are classified as operating leases pursuant to the requirements of FASB Statement 13. We disburse cash for leasehold improvements, furniture and fixtures and equipment to build out and equip our leased premises. Tenant improvement allowance incentives may be available to partially offset the cost of developing and opening the related restaurants, pursuant to agreed-upon terms in our leases. Tenant improvement allowances can take the form of cash payments upon the opening of the related restaurants, full or partial credits against minimum or percentage rents otherwise payable by us or a combination thereof. In accordance with FASB Technical Bulletin No. 88-1, *Issues Relating to Accounting for Leases* ( FTB 88-1 ), all tenant improvement allowances received by us are recorded as a deferred rent obligation and amortized over the term of the lease. The related cash received from the landlord is reflected as Landlord contribution for tenant improvements, net within operating activities of our Consolidated Statements of Cash Flows.

The lease term used for straight-line rent expense is calculated from the date we obtain possession of the leased premises through the lease termination date. In accordance with FASB Staff Position No. 13-1, *Accounting for Rental Costs Incurred During a Construction Period*, we expense rent from possession date through restaurant open date as restaurant opening expense. Once a restaurant opens for business, we record straight-line rent over the lease term plus contingent rent to the extent it exceeded the minimum rent obligation per the lease agreement.

There is potential for variability in the rent holiday period, which begins on the possession date and ends on the restaurant open date, during which no cash rent payments are typically due under the terms of the lease. Factors that may affect the length of the rent holiday period generally relate to construction related delays. Extension of the rent holiday period due to delays in restaurant opening will result in greater restaurant opening rent expense recognized during the rent holiday period and lesser occupancy expense during the rest of the lease term (post-opening).

For leases that contain rent escalations, we record the total rent payable during the lease term, as determined above, on the straight-line basis over the term of the lease (including the rent holiday period beginning upon our possession of the premises), and record the difference between the minimum rents paid and the straight-line rent as a lease obligation. Certain leases contain provisions that require additional rental payments based upon restaurant sales volume ( contingent rentals ). Contingent rentals are accrued each period as the liabilities are incurred, in addition to the straight-line rent expense noted above. This results in some variability in occupancy expense as a percentage of revenues over the term of the lease in restaurants where we pay contingent rent.

Management makes judgments regarding the probable term for each restaurant property lease, which can impact the classification and accounting for a lease as capital or operating, the rent holiday and/or escalations in payments that are taken into consideration when calculating straight-line rent and the term over which leasehold improvements for each restaurant are amortized. These judgments may produce materially different amounts of depreciation, amortization and rent expense than would be reported if different assumed lease terms were used.

### ***Stock-based Compensation***

We have two stock-based compensation plans the 2005 Equity Incentive Plan and the 1996 Stock Option Plan under which we may issue shares of our common stock to employees, officers, directors and consultants. Upon

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effectiveness of the 2005 Equity Incentive Plan, the 1996 Stock Option Plan was closed for purposes of new grants. Both of these plans have been approved by our shareholders. Under the 2005 Equity Incentive Plan, we have granted incentive stock options, non-qualified stock options, and restricted stock units. Stock options generally vest at 20% per year or cliff vest, either ratably in years three through five or 100% in year five and expire ten years from date of grant.

Beginning in 2007, substantially all of our restaurant general managers, executive kitchen managers, culinary training managers and our area and regional restaurant directors are eligible to participate in our equity-based incentive program called the BJs Gold Standard Stock Ownership Program (the GSSOP) under our 2005 Equity Incentive Plan. In November 2007, we expanded our GSSOP eligibility to also include certain brewery personnel. The GSSOP is a longer-term equity incentive program that utilizes Company restricted stock units (RSUs). The GSSOP is dependent on each participant's extended service with us in their respective positions (five years) and their achievement of certain agreed-upon performance objectives during that service period.

Beginning in 2008, we also began issuing RSUs as a component of the annual equity grant award to officers and other employees. These grants are non-GSSOP grants. Under our 2005 Equity Incentive Plan we have issued approximately 653,000 RSUs as of June 30, 2009, including both GSSOP and non-GSSOP grants. The fair value of the RSUs is the quoted market value of our common stock on the date of grant. The fair value of each RSU is expensed over the period during which its related restrictions are expected to lapse (i.e., generally five years). RSUs generally cliff vest 100% after five years for GSSOP participants, and generally vest at 20% per year for other RSU grantees.

We account for these plans under the fair value recognition provisions of FAS 123(R) using the modified-prospective-transition method. Compensation expense recognized in the twenty-six weeks ended June 30, 2009 and July 1, 2008 include: (a) compensation expense for all share-based payments granted prior to, but not yet vested as of January 4, 2006 (adoption date of FAS 123 (R)), based on the grant date fair value estimated in accordance with the original provisions of FAS 123 and (b) compensation expense for all share-based payments granted subsequent to January 4, 2006, based on the grant date fair value estimated in accordance with the provisions of FAS 123(R). FAS 123(R) requires us to make certain assumptions and judgments regarding the grant date fair value. These judgments include expected volatility, risk free interest rate, expected option life, dividend yield and vesting percentage. These estimations and judgments are determined by us using many different variables that, in many cases, are outside of our control. The changes in these variables or trends, including stock price volatility and risk free interest rate, may significantly impact the grant date fair value resulting in a significant impact to our financial results. FAS 123(R) requires the cash flow tax benefits resulting from tax deductions in excess of the compensation cost recognized for those options (excess tax benefits) to be classified as financing cash flows.

**Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The following discussion of market risks contains forward-looking statements. Actual results may differ materially from the following discussion based on general conditions in the financial and commodity markets.

Our market risk exposures are related to cash and cash equivalents and investments. We invest our excess cash in highly liquid short-term investments with maturities of less than twelve months as of the date of purchase. These investments are not held for trading or other speculative purposes. Changes in interest rates affect the investment income we earn on our investments and, therefore, impact our cash flows and results of operations. For the twenty-six weeks ended June 30, 2009, the average interest rate earned on cash and cash equivalents and investments was approximately 1.0%. As of June 30, 2009, our investment portfolio consisted of auction rate securities with a par or face value of approximately \$33.3 million currently classified as non-current investments. These auction rate securities, AAA rated when purchased, are long-term debt obligations secured by student loans, which are generally 97% guaranteed by the U.S. Government under the Federal Family Education Loan Program (FFELP). In addition to the U.S. Government guarantee on such student loans, many of the securities also have separate insurance policies guaranteeing both the principal and accrued interest. Liquidity for these securities has historically been provided by an auction process that resets the applicable interest rate at pre-determined intervals up to 35 days. The final maturity dates of these auction rate securities are between 2020 and 2047. The general illiquidity in the credit markets have affected our holdings in auction rate securities investments, since auctions for these securities have failed to settle on their respective settlement dates. While we continue to earn interest on our auction rate securities investments, these investments are not currently trading and, therefore, do not currently have a readily determinable market value. Accordingly, the estimated fair value of these auction rate securities investments no longer approximates par or face value and in accordance with

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applicable accounting rules, we recognized an incremental estimated temporary increase in the fair value of our auction rate securities investments of approximately \$1.4 million during the current quarter, bringing our net estimated unrealized loss to \$3.5 million as of June 30, 2009.

The fair market value of these securities is subject to further interest rate risk and could decline in value if market interest rates increased. If market interest rates were to increase immediately and uniformly by 10% from the levels existing as of June 30, 2009, the decline in the fair value of the portfolio would not be material to our financial position, results of operations and cash flows. However, if interest rates decreased and securities within our portfolio matured and were re-invested in securities with lower interest rates, interest income would decrease in the future. Additionally, the continued illiquidity of our investments in auction rate securities and the continued uncertainty regarding the auction rate securities market has caused us to classify our investments in these securities as non-current assets, and there can be no guarantee that the markets supporting these investments will recover in the near future. If current conditions in the auction rate securities market continue for a prolonged period, our longer-term financial flexibility could be impacted until other sources of capital can be obtained. While we have a \$45 million credit facility in place, in the event that global credit market or general economic conditions further deteriorate, it is possible that creditors could place limitations or restrictions on the ability of borrowers in general to draw on existing credit facilities. At this time, however, we have no indication that any such limitations or restrictions are likely to occur.

We purchase food and other commodities for use in our operations based upon market prices established with our suppliers. Many of the commodities purchased by us can be subject to volatility due to market supply and demand factors outside of our control, whether contracted for or not. To manage this risk in part, we attempt to enter into fixed price purchase commitments, with terms typically up to one year, for many of our commodity requirements. During 2009, it may not be possible for us to enter into as many fixed-price contracts for the entire year for many of our food commodity requirements due to the recent volatility in the worldwide markets for such commodities. Dairy costs can also fluctuate due to government regulation. We believe that substantially all of our food and supplies are available from several sources, which helps to diversify our overall commodity cost risk. We also believe that we have some flexibility and ability to increase certain menu prices, or vary certain menu items offered, in response to food commodity price increases. Some of our commodity purchase arrangements may contain contractual features that limit the price paid by establishing certain price floors or caps. We do not use financial instruments to hedge commodity prices, since our purchase arrangements with suppliers, to the extent that we can enter into such arrangements, help control the ultimate cost that we pay.

### **Item 4. CONTROLS AND PROCEDURES**

#### *Evaluation of Disclosure Controls and Procedures*

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures pursuant to Rules 13a-15 and 15d-15 promulgated under the Securities Exchange Act of 1934 as amended, as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures are effective.

#### *Changes in Internal Control Over Financial Reporting*

There has not been any change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our second fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. LEGAL PROCEEDINGS**

We are subject to a number of private lawsuits, administrative proceedings and claims that arise in the ordinary course of our business. These claims typically involve claims from guests, employees and others related to operational issues common to the foodservice industry. A number of these claims may exist at any given time. We believe that most of our guest claims will be covered by our general liability insurance, subject to certain deductibles and coverage limits. Punitive damages awards and employee unfair practice claims, however, are not covered by our general liability insurance. To date, we have not paid punitive damages with respect to any claims, but there can be

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no assurance that punitive damages will not be awarded with respect to any future claims, employee unfair practice claims or any other actions. We could be affected by adverse publicity resulting from allegations in lawsuits, claims and proceedings, regardless of whether these allegations are valid or whether we are ultimately determined to be liable. We currently believe that the final disposition of these types of lawsuits, proceedings and claims will not have a material adverse effect on our financial position, results of operations or liquidity. It is possible, however, that our future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, proceedings or claims.

The following paragraphs describe certain legal actions recently settled or pending:

***Labor Related Matters***

On February 5, 2004, a former employee of ours, on behalf of herself, and allegedly other employees, filed a class action complaint in Los Angeles County, California Superior Court, Case Number BC310146, and on March 16, 2004, filed an amended complaint, alleging causes of action for: (1) failure to pay reporting time minimum pay; (2) failure to allow meal breaks; (3) failure to allow rest breaks; (4) waiting time penalties; (5) civil penalties; (6) reimbursement for fraud and deceit; (7) punitive damages for fraud and deceit; and, (8) disgorgement of illicit profits. On June 28, 2004, the plaintiff stipulated to dismiss her second, third, fourth and fifth causes of action. During September 2004, the plaintiff stipulated to binding arbitration of the action. On March 2, 2008, and on March 19, 2008, one of Plaintiff's attorneys filed a notice with the California Labor and Workforce Development Agency, alleging failure to keep adequate pay records and to pay Plaintiff minimum wage. To our knowledge, the Agency has not responded to either of these notices. The parties met for mediation on a non-binding basis. In November 2008, the parties agreed to settle this matter subject to approval from the arbitrator and/or the court. The terms of this proposed settlement are not considered by us to be material to our consolidated financial position.

On February 16, 2006, a former employee filed a lawsuit in Orange County, California, Superior Court, Case Number 06CC00030, on behalf of herself and allegedly other employees, for alleged failure to provide rest periods and meal periods and violation of California Business and Professions Code Section 17200. We have answered the complaint, denying the allegations and raising various additional defenses. The parties met for mediation on a non-binding basis. In May 2008, the parties agreed to settle this matter subject to final approval from the court. The court has given preliminary approval of the settlement. The terms of this proposed settlement are not considered by us to be material to our consolidated financial position.

On April 6, 2009, an employee filed a class action complaint in Orange County, California, Superior Court, Case Number 30-2009, 00259460, on behalf of himself and allegedly other employees. The complaint alleges causes of action for failure to pay plaintiff and other alleged class members regular wages and overtime pay, failure to maintain the designated wage scale and secret payment of lower wages, the greater of actual damages or penalties for failure to provide accurate wage statements, and restitution of wages and injunction for violation of California Business and Professions Code Section 17200. The complaint also seeks interest, attorneys' fees and costs. We have not yet responded to the complaint, but we intend to vigorously defend the suit.

On February 4, 2009, an employee, on behalf of himself and allegedly other employees filed a class action complaint in Fresno County, California, Superior Court, Case Number 09 CE CG 00374DRF, which complaint was served on us in the second quarter of 2009. The complaint alleges causes of action for failure to pay wages for on-call time, for violation of California Business and Professional Code section 17200, and for penalties for unpaid wages. The complaint also seeks a constructive trust on money found unlawfully acquired, an injunction against failure to pay wages, restitution, interest, attorney's fees and costs. We have not yet responded to the complaint but we intend to vigorously defend the suit.

On July 16, 2009, Robert Cho, an individual, on behalf of himself and allegedly other recipients or holders in California of our gift cards, filed a class action complaint in Los Angeles County, California, Superior Court, Case Number BC417923, alleging causes of action for unlawful and deceptive trade practices and violation of the Consumer Legal Remedies Act, for failing to redeem or replace a gift card and deducting a dormancy fee, for violation of California Business and Professions Code Section 17200 and for declaratory relief. The complaint seeks restitution, an injunction against the alleged unfair practices, and attorneys' fees. We have not yet responded to the complaint but we intend to vigorously defend this action.



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On June 12, 2008, we filed an arbitration claim with the Financial Industry Regulatory Authority (FINRA) against Citigroup Global Investments, Inc. ( Citigroup ) asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, breach of fiduciary duty, a failure to act to the highest standards of good faith and commercial honor, violations of Federal and California securities laws, failure to properly train financial advisers, violation of settlement agreements with regulatory authorities, conspiracy, and violation of its duty to us concerning selection of proper securities arising out of our auction rate securities investments. Citigroup has denied the allegations. The three arbitrators have been selected. The first day for the arbitration proceeding had initially been set for September 29, 2009. However, due to certain scheduling conflicts a new arbitration date has being scheduled for December 2009. The arbitration proceeding will be held in Los Angeles, California.

**Item 1A. RISK FACTORS**

A discussion of the significant risks associated with investments in our securities are set forth in Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 30, 2008. There have been no material changes in the risks related to us from those disclosed in such Annual Report. These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC. The risks described in this Form 10-Q are not the only risks we face. New risks and uncertainties arise from time to time and we cannot predict those events or how they may affect us. There may be other risks and uncertainties that are not currently known, or that are currently deemed by us to be immaterial; however, they may ultimately adversely affect our business, financial condition and/or operating results.

**Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

On June 3, 2009, we held our Annual Meeting of Shareholders. Shareholders voted upon the election of directors and the ratification of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 29, 2009.

Gerald W. Deitchle, Peter A. Bassi, Larry D. Bouts, Shann M. Brassfield, James A. Dal Pozzo, J. Roger King and John F. Grundhofer all of whom were directors prior to the Annual Meeting and were nominated for re-election, were re-elected at the meeting. The following votes were cast for each of the nominees:

| <b>Name</b>         | <b>For</b> | <b>Authority Withheld</b> |
|---------------------|------------|---------------------------|
| Gerald W. Deitchle  | 23,749,886 | 263,075                   |
| Peter A. Bassi      | 23,761,166 | 251,795                   |
| Larry D. Bouts      | 23,759,959 | 253,002                   |
| Shann M. Brassfield | 23,762,186 | 250,775                   |
| James A. Dal Pozzo  | 22,602,664 | 1,410,297                 |
| J. Roger King       | 23,754,478 | 258,483                   |
| John F. Grundhofer  | 15,980,733 | 8,032,228                 |

There were no abstentions or broker non-votes with respect to the election of directors.

The shareholders also approved the ratification of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 29, 2009. The following votes were cast on the ratification: 23,986,533 For; 24,013 Against; 2,415 Abstain. There were no broker non-votes.

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**Item 6. EXHIBITS**

| <b>Exhibit<br/>Number</b> | <b>Description</b>   |
|---------------------------|--|
| 3.1                       | Amended and Restated Articles of Incorporation of the Company, as amended, incorporated by reference to Exhibit 3.1 to the Registration Statement on Form SB-2 filed with the Securities and Exchange Commission on June 28, 1996, as amended by the Company's Registration Statement on Form SB-2/A filed with the Commission on August 1, 1996 and the Company's Registration Statement on Form SB-2A filed with the Commission on August 22, 1996 (File No. 3335182-LA) (as amended, the Registration Statement). |
| 3.2                       | Amended and Restated Bylaws of the Company, incorporated by reference to Exhibits 3.1 of the Form 8-K filed on June 4, 2007.   |
| 3.3                       | Certificate of Amendment of Articles of Incorporation, incorporated by reference to Exhibit 3.3 of the 2004 Annual Report on Form 10-K.  |
| 4.1                       | Specimen Common Stock Certificate of the Company, incorporated by reference to Exhibit 4.1 of the Registration Statement.  |
| 10.1                      | Employment Agreement dated April 12, 2009 between the Company and Matthew J. Kimble, employed as Chief Human Resource Officer.   |
| 31                        | Section 302 Certifications of Chief Executive Officer and Chief Financial Officer.   |
| 32                        | Section 906 Certification of Chief Executive Officer and Chief Financial Officer.  |

**SIGNATURES**

In accordance with 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.

BJ'S RESTAURANTS, INC.  
(Registrant)

August 3, 2009

By: /s/ GERALD W. DEITCHLE  
Gerald W. Deitchle  
Chairman, President and Chief Executive Officer  
(Principal Executive Officer)

By: /s/ GREGORY S. LEVIN  
Gregory S. Levin  
Executive Vice President,  
Chief Financial Officer and Secretary  
(Principal Financial and Accounting Officer)