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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-K**

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(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED DECEMBER 27, 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 000-51485

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**RUTH'S HOSPITALITY GROUP, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**72-1060618**

(I.R.S. Employer  
Identification No.)

**400 International Parkway, Suite 325**

**Heathrow, Florida**

(Address of Principal Executive Offices)

**32746**

(Zip Code)

**Registrant's Telephone Number, Including Area Code: (407) 333-7440**

**Securities Registered Pursuant to Section 12(b) of the Act:**

**Common stock, par value \$0.01 per share**

(Title of class)

**The NASDAQ Stock Market LLC**

(Name of exchange on which registered)

**Securities Registered Pursuant to Section 12(g) of the Act:**

**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (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 Exchange Act). Yes  No

As of June 28, 2009, the last day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock, par value \$0.01 per share, held by non-affiliates of the registrant was approximately \$90,384,787.

The number of shares outstanding of the registrant's common stock as of March 5, 2010, was 34,352,455.

**DOCUMENTS INCORPORATED BY REFERENCE**

The information required by Part III of Form 10-K, to the extent not set forth herein, is incorporated herein by reference to the registrant's Proxy Statement for the 2010 Annual Meeting of Shareholders to be held on or around May 26, 2010, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the close of the registrant's fiscal year.

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[Table of Contents](#)

TABLE OF CONTENTS

	<u>Page</u>
<b>PART I</b>	
Item 1. <a href="#">Business</a>	1
Item 1A. <a href="#">Risk Factors</a>	12
Item 1B. <a href="#">Unresolved Staff Comments</a>	17
Item 2. <a href="#">Properties</a>	17
Item 3. <a href="#">Legal Proceedings</a>	21
Item 4. <a href="#">Reserved</a>	21
<b>PART II</b>	
Item 5. <a href="#">Market for the Registrant’s Common Stock, Related Stockholder Matters and Issuer Purchases of Equity Securities</a>	22
Item 6. <a href="#">Selected Financial Data</a>	24
Item 7. <a href="#">Management’s Discussion and Analysis and Results of Operations and Financial Condition</a>	26
Item 7A. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	38
Item 8. <a href="#">Financial Statements and Supplementary Data</a>	39
Item 9. <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	39
Item 9A. <a href="#">Controls and Procedures</a>	40
Item 9B. <a href="#">Other Information</a>	44
<b>PART III</b>	
Item 10. <a href="#">Directors, Executive Officers and Corporate Governance</a>	44
Item 11. <a href="#">Executive Compensation</a>	44
Item 12. <a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>	44
Item 13. <a href="#">Certain Relationships and Related Transactions, and Director Independence</a>	45
Item 14. <a href="#">Principal Accountant Fees and Services</a>	45
<b>PART IV</b>	
Item 15. <a href="#">Exhibits and Financial Statement Schedules</a>	45
<a href="#">Signatures</a>	46

## FORWARD LOOKING STATEMENTS

This Annual Report on Form 10-K and the materials incorporated by reference herein contain “forward-looking statements” that reflect, when made, the Company’s expectations or beliefs concerning future events that involve risks and uncertainties. Forward-looking statements frequently are identified by the words “believe,” “anticipate,” “expect,” “estimate,” “intend,” “project,” “will be,” “will continue,” “will likely result,” or other similar words and phrases. Similarly, statements herein that describe the Company’s objectives, plans or goals also are forward-looking statements. Actual results could differ materially from those projected, implied or anticipated by the Company’s forward-looking statements. Some of the factors that could cause actual results to differ include: changes in economic conditions and general trends; the loss of key management personnel; the effect of market volatility on the Company’s stock price; health concerns about beef or other food products; the effect of competition in the restaurant industry; changes in consumer preferences or discretionary spending; reductions in the availability of, or increases in the cost of, USDA Prime grade beef, fish and other food items; labor shortages or increases in labor costs; the impact of federal, state or local government regulations relating to Company employees, the sale or preparation of food, the sale of alcoholic beverages and the opening of new restaurants; harmful actions taken by the Company’s franchisees; the Company’s ability to protect its name and logo and other proprietary information; the impact of litigation; the restrictions imposed by the Company’s credit agreement; and failure of internal controls over financial reporting. For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, please see Item 1A. “Risk Factors” in this Annual Report on Form 10-K as well as the Company’s other filings with the Securities and Exchange Commission (the “SEC”), all of which are available on the SEC’s website at [www.sec.gov](http://www.sec.gov). All forward-looking statements are qualified in their entirety by this cautionary statement, and the Company undertakes no obligation to revise or update this Annual Report on Form 10-K to reflect events or circumstances after the date hereof. Stockholders and other security holders or buyers of the Company’s securities or its other creditors should not assume that material events subsequent to the date of this report have not occurred.

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Unless the context otherwise indicates, all references in this report to the “Company,” “Ruth’s Chris,” “we,” “us” or “our” or similar words are to Ruth’s Hospitality Group, Inc., and its wholly owned subsidiaries.

**PART I**

**Item 1. BUSINESS**

**Introduction**

Ruth's Hospitality Group, Inc. is a leading restaurant company focused on the upscale dining segment. The Company owns the Ruth's Chris Steak House, Mitchell's Fish Market, Columbus Fish Market, Mitchell's Steakhouse and Cameron's Steakhouse concepts. As of December 27, 2009, there were 130 Ruth's Chris Steak House restaurants, of which 64 were company-owned and 66 were franchisee-owned, including fourteen international franchisee-owned restaurants in Aruba, Canada, China (Hong Kong), Mexico, Japan, Taiwan, and the United Arab Emirates. The Company also operates 19 Mitchell's Fish Markets and three Cameron's Steakhouse restaurants, located primarily in the mid-west and Florida.

We have a 52/53 week fiscal year ending the last Sunday in December. Our 2009 fiscal year ended December 27, 2009, our 2008 fiscal year ended December 28, 2008, and our 2007 fiscal year ended December 30, 2007. Fiscal years 2009, 2008 and 2007 each had 52 weeks.

The following description of our business should be read in conjunction with the information in our Management's Discussion and Analysis of Results of Operations of Financial Condition incorporated by reference in Item 7 of this Form 10-K and our consolidated financial statements located elsewhere in this Form 10-K.

**Background**

The Company was founded in 1965 when Ruth Fertel mortgaged her home for \$22,000 to purchase the "Chris Steak House," a 60-seat restaurant located near the New Orleans Fair Grounds racetrack. After a fire destroyed the original restaurant, Ruth relocated her restaurant to a new 160-seat facility nearby. As the terms of the original purchase prevented the use of the "Chris Steak House" name at a new location, Ruth added her name to that of the original restaurant—thus creating the "Ruth's Chris Steak House" brand.

The Company's expansion began in 1972, when Ruth opened a second restaurant in Metairie, a suburb of New Orleans. In 1976, the first franchisee-owned Ruth's Chris Steak House opened in Baton Rouge, Louisiana. In July 1999, affiliates of Madison Dearborn Partners LLC ("Madison Dearborn") and certain unaffiliated investors acquired all of the Company's outstanding capital stock. On May 19, 2005, the Company reincorporated in Delaware by merging Ruth's Chris Steak House, Inc., a Louisiana corporation, into a newly formed Delaware subsidiary. In August 2005, the Company and certain selling shareholders completed an initial public offering of the Company's common stock, which is currently listed on the Nasdaq Global Select Market.

On February 19, 2008, the Company acquired all of the operating assets and intellectual property of Columbus, Ohio based Mitchell's Fish Market, which operates 19 restaurants operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, which operates three restaurants operating under the names Cameron's Steakhouse and Mitchell's Steakhouse, from Cameron Mitchell Restaurants, LLC (CMR).

In connection with the acquisition, the Company changed its name from Ruth's Chris Steak House, Inc. to Ruth's Hospitality Group, Inc. The name change was made in order for the Company to have a name that would better represent the business after the acquisition, as the Company began operating some restaurants that are not considered steak houses. The name change was approved by our stockholders at our 2008 annual meeting and became effective on May 23, 2008.

## 2009 Developments

- On February 26, 2009, the Company announced that it had signed a First Amendment to its First Amended and Restated Credit Agreement to provide the Company with requested covenant relief and to make other changes to the existing agreement. The Amendment decreased the Company's Fixed Charge Coverage Ratio and increased its maximum Leverage Ratio, in each case beginning with the fourth quarter of 2008 continuing through the second quarter of 2010, after which these two covenants reset to their original levels. The Amendment also added two new covenants, a minimum EBITDA test as well as restrictions on capital expenditures.
- On February 28, 2009 the Company closed its San Juan, Puerto Rico Ruth's Chris Steak House location after choosing not to renew an expiring lease. This restaurant reopened as a franchise in the fourth quarter of 2009.
- On May 23, 2009 the Company closed an underperforming Ruth's Chris Steak House restaurant in Naples, Florida.
- On June 25, 2009, the company filed a shelf registration statement on Form S-3 with the SEC to allow the company to raise capital through the sale of securities.
- On December 22, 2009 the Company announced a plan to raise \$25 million via a subscription rights offering to existing shareholders, and a sale of \$25 million of preferred stock to Bruckmann, Rosser, Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P. The transaction closed on February 12, 2010 resulting in a \$44.3 million paydown on the Company's revolving credit facility. As a result of this repayment and satisfaction of other agreed-upon conditions, the Second Amendment to the Credit Agreement also became effective on this date. The Second Amendment to the Credit Agreement extended the maturity of the facility by two years and provided the Company with a less restrictive set of covenants.

## Restaurant Concepts

### *Ruth's Chris Steak House*

With 130 locations, Ruth's Chris Steak House is the largest upscale steakhouse company in the world. The menu features a broad selection of high-quality USDA Prime grade steaks and other premium offerings served in Ruth's Chris' signature fashion—"sizzling" and topped with seasoned butter—complemented by other traditional menu items inspired by its New Orleans heritage. Ruth's Chris complements its distinctive food offerings with an award-winning wine list, featuring bottles priced between \$24 and \$2,000 and many selections offered by the glass.

The Ruth's Chris brand reflects its more than 40-year commitment to the core values instilled by its founder, Ruth Fertel, of caring for guests by delivering the highest quality food, beverages and genuine hospitality in a warm and inviting atmosphere.

### *Mitchell's Fish Market*

Acquired by the Company in 2008, Mitchell's Fish Market is a 19 location upscale seafood concept whose success has been built on a reputation for excellent guest service and a superior menu featuring the freshest seafood flown in daily from around the world. Mitchell's Fish Market is open for both lunch and dinner, offering a menu of more than 80 seafood choices that changes frequently based on availability and season. Popular menu items include the Mitchell's Fish Market 12 Species of Fresh Catch, top quality fish selections that are hand filleted in a temperature controlled seafood cutting room.

### *Mitchell's/Cameron's Steakhouse*

Mitchell's/Cameron's Steakhouse is a modern American steakhouse concept offering hand selected prime steaks aged to perfection, along with a selection of true Japanese Kobe beef. Complementing its selection of

## [Table of Contents](#)

prime steaks and the freshest seafood are house-made side dishes and a wine list featuring 200 of the world's finest labels. Mitchell's Steakhouse has two locations in the Columbus, Ohio area. Cameron's Steakhouse is located in Birmingham, MI.

### **Our Strengths**

The Company believes that the key strengths of its business model are the following:

#### ***Premier Upscale Steakhouse Brand***

The Company believes that Ruth's Chris is one of the strongest brands in the upscale steakhouse segment of the restaurant industry. The Company's Ruth's Chris restaurants continue to receive numerous awards at the local and national level. Many continue to be ranked best steakhouse by local publications in the areas in which they operate. In addition, the Company has been recognized for its award-winning core wine list, for which a majority of its company-owned restaurants received "Awards of Excellence" from *Wine Spectator* magazine in 2009.

#### ***Premier Upscale Casual Seafood Concept***

Mitchell's Fish Market is an award-winning, upscale, yet comfortable, seafood restaurant and bar recognized for its high-quality food, contemporary dining atmosphere, and excellent service. Mitchell's Fish Market is committed to fresh seafood with all of its seafood flown in daily. Year after year, Mitchell's Fish Market continues to earn "best seafood restaurant" awards from guests and publications as well as recognition for its high-quality food, warm and inviting atmosphere and excellent service.

#### ***Appealing Dining Experience***

At our Ruth's Chris restaurants, the Company seeks to exceed guests' expectations by offering high-quality food with courteous, friendly service in the finest tradition of Southern hospitality. The Company's entire restaurant staff is dedicated to ensuring that guests enjoy a superior dining experience. The Company's team-based approach to table service is designed to enhance the frequency of guest contact and speed of service without intruding on the guest experience.

Mitchell's Fish Market upscale casual restaurants, with their sophisticated yet comfortable atmosphere and emphasis on fresh seafood, complement our Ruth's Chris restaurants. The Company believes that Mitchell's Fish Market shares many characteristics of the Ruth's Chris model, including solid unit economics and broad guest appeal.

#### ***Solid Unit Economics***

The Company believes that it has successfully operated restaurants in a wide range of markets and achieved attractive rates of return on invested capital. The Company's five newest company-owned Ruth's Chris Steak House restaurants that opened in 2008 generated average unit volumes of approximately \$4.6 million in fiscal 2009, compared to average unit volumes of approximately \$3.9 million in fiscal 2009 for the other company-owned Ruth's Chris Steak House restaurants opened at least 15 months.

## **Our Strategy**

The Company believes there continues to be opportunities to grow its business, strengthen its competitive position and enhance its brand through the continued implementation of the following strategies:

### ***Improve Sales/Profitability***

The Company intends to improve profitability by continuing to implement key operating initiatives. These operating initiatives include:

- ensuring consistency of food quality through more streamlined preparation and presentation;
- increasing emphasis on wine sales by providing wine education for managers;
- increasing brand awareness through enhanced media plans at the national and local levels;
- enhancing and/or developing innovative marketing programs, such as its websites, [www.ruthschris.com](http://www.ruthschris.com), [www.mitchellsfishmarket.com](http://www.mitchellsfishmarket.com), [www.mitchellssteakhouse.com](http://www.mitchellssteakhouse.com), and [www.camerons-steakhouse.com](http://www.camerons-steakhouse.com), social media, and email communication; and
- creating and/or enhancing revenue opportunities via Ruth's Catering, Private Dining, HD Satellite Programs and Gift Cards.

### ***Expand Relationships with New and Existing Franchisees***

The Company intends to grow its franchising business by developing relationships with a limited number of new franchisees and by expanding the rights of existing franchisees to open new restaurants. The Company believes that building relationships with quality franchisees is a cost-effective way to strengthen the Ruth's Chris brand and generate additional revenues. Franchisees opened 42 Ruth's Chris restaurants from 1999 to the end of 2009. In fiscal 2009, existing and new franchisees opened four and two restaurants, respectively. During fiscal 2009, the Company also entered into four development agreements with new franchisees. Overall, there are 17 outstanding franchise locations to be built as of December 27, 2009. The Company intends to continue to focus on providing operational guidance to its franchisees, including the sharing of "best practices" from company-owned Ruth's Chris restaurants.

The Company currently is evaluating plans to franchise Mitchell's Fish Market.

## **Menu**

### ***Ruth's Chris Steak House***

The Ruth's Chris menu features a broad selection of high-quality USDA Prime grade steaks and other premium offerings served in Ruth's Chris signature fashion—"sizzling" and topped with seasoned butter—complemented by other traditional menu items inspired by its New Orleans heritage. USDA Prime is a meat grade label, which refers to the evenly distributed marbling that enhances the flavor of the steak. The Ruth's Chris menu also includes premium quality lamb chops, veal chops, fish, chicken and lobster. Dinner entrees are generally priced from \$18.00 to \$47.00. While Ruth's Chris is predominantly open dinner hours only, seven select locations open for lunch five days a week and an additional ten locations open for lunch one day per week. The lunch menu offers entrees generally ranging in price from \$13.00 to \$29.00. The blended guest check average at Ruth's Chris is approximately \$69.00. The Ruth's Chris core menu is similar at all of its restaurants. The Company occasionally introduces new items such as specials and prix-fixe offerings that allow it to give its guests additional choices while taking advantage of fresh sourcing and advantageous cost opportunities. In 2009, Ruth's Chris introduced Ruth's Classics, a three course prix fixe meal designed to offer great value and a certainty of price point.

The Company's Ruth's Chris restaurants offer ten to thirteen standard appetizer items, including New Orleans-style barbequed shrimp, mushrooms stuffed with crabmeat, shrimp remoulade, Louisiana seafood gumbo, lobster bisque, crabtini, as well as seven different salads. They also offer seven to nine types of potatoes

## [Table of Contents](#)

and eight to ten types of vegetables as side dishes ranging in price from \$7.00 to \$10.00. For dessert, crème brulee, bread pudding with whiskey sauce, chocolate sin cake, fresh seasonal berries with sweet cream sauce and other selections are available for \$6.00 to \$9.00 each.

The Company's wine list features bottles typically ranging in price from \$24 to \$2,000. Individual restaurants supplement their 200-bottle core wine list with a minimum of 50 additional selections that reflect local market tastes. Most of the Company's Ruth's Chris restaurants also offer approximately 30 to 40 wines-by-the-glass and numerous beers, liquors and alcoholic dessert drinks. Wine sales account for approximately 65% of the total beverage sales.

### ***Mitchell's Fish Market***

Although the menu changes frequently based on availability and season, it includes more than 80 seafood choices, including fish from all over the world. Popular menu items include the Mitchell's Fish Market 12 Species of Fresh Catch, top quality fish selections that are hand filleted on-site in a temperature controlled seafood cutting room. The Mitchell's Fish Market menu offers traditional seafood favorites such as Chesapeake Bay Crab Cakes and Fish and Chips, as well as more innovative offerings such as Cedar Planked Salmon and Pumpkin Seed crusted Tilapia. Menu offerings also include non-seafood items such as steak and chicken. Mitchell's Fish Market also offers an award winning dessert menu that features desserts such as Seven-Layer Carrot Cake, Sharkfin Pie and other selections.

Mitchell's Fish Markets are open for lunch and dinner daily. Lunch entrees are priced from \$8.50 to \$18.95, while dinner entrees are priced from \$15.50 to \$29.95. The Mitchell's Fish Market blended check average is approximately \$34.00. The Mitchell's Fish Market core menu is similar at all 19 company-owned restaurants. Mitchell's Fish Markets introduced a three course prix-fixe meal in 2009 to offer guests great value.

The Mitchell's Fish Market core wine list features bottles typically ranging in price from \$26 to \$195. Individual restaurants supplement their approximately 60 bottle core wine list with a minimum of 15 to 20 additional selections that reflect local market tastes. Restaurants also offer approximately 24 types of wine-by-the-glass. Wine sales account for approximately 51% of the total beverage sales.

### **Purchasing**

The Company's ability to maintain consistent quality throughout its restaurants depends in part upon its ability to acquire food and other supplies from reliable sources in accordance with its specifications. Purchasing at the restaurant level is directed primarily by the executive chef, who is trained in the Company's purchasing philosophy and specifications, and who works with its regional and corporate managers to ensure consistent sourcing of meat, fish, produce and other supplies.

During fiscal 2009 the Company purchased more than 60% of the beef it used in its company-owned Ruth's Chris restaurants from one vendor, New City Packing Company, Inc. In addition, the Company has a long-term distribution arrangement with a national food and restaurant supply distributor, Distribution Market Advantage, Inc. (DMA), which purchases products for the Company from various suppliers and through which currently all 64 of its company-owned Ruth's Chris Steak House restaurants receive a significant portion of their food supplies. The Company purchased more than 80% of the fresh seafood served in its Mitchell's Fish Market from two vendors, Michael's Finer Meats and Seafood and Save On Seafood Company.

### **Restaurant Operations and Management**

#### ***Ruth's Chris Steak House***

The Ruth's Chris Chief Operating Officer has primary responsibility for managing its company-owned restaurants and participates in analyzing restaurant-level performance and strategic planning. The Company has six regional vice presidents that oversee restaurant operations at nine to fourteen company-owned restaurants and one regional vice president that has oversight responsibility for franchise-owned restaurants.



## [Table of Contents](#)

The Company's typical company-owned restaurant employs five managers, including a general manager, two front-of-the-house managers, an executive chef and a sous chef. The Company's company-owned restaurants also typically have approximately 70 hourly employees. The general manager of each restaurant has primary accountability for ensuring compliance with the Company's operating standards. The front-of-the-house managers assist the general manager in the day-to-day operations of the restaurant and are directly responsible for the supervision of the bar, host, server, runner and service assistant personnel. The executive chef supervises and coordinates all back-of-the-house operations, including ensuring that its quality standards are being met while maintaining a safe, efficient and productive work environment.

### ***Mitchell's Fish Market***

The Mitchell's Fish Market Chief Operating Officer has primary responsibility for managing its restaurants and participates in analyzing restaurant-level performance and strategic planning. The Company has a Vice President of Operations and three regional directors that oversee restaurant operations at five to six company-owned restaurants.

The typical Mitchell's Fish Market restaurant employs five to six managers based on sales volume, including a general manager, two dining room managers, an executive chef and one or two sous chefs. The restaurants also typically have approximately 70 hourly employees. The general manager of each restaurant has primary accountability for ensuring compliance with the Company's operating standards. The front-of-the-house managers assist the general manager in the day-to-day operations of the restaurant and are directly responsible for the supervision of the bar, host, server, runner and service assistant personnel. The executive chef supervises and coordinates all back-of-the-house operations, including ensuring that its quality standards are being met while maintaining a safe, efficient and productive work environment.

### **Quality Control**

The Company strives to maintain quality and consistency in its company-owned Ruth's Chris and Mitchell's Fish Market restaurants through careful training and supervision of personnel and standards established for food and beverage preparation, maintenance of facilities and conduct of personnel. The primary goal of the Company's training and supervision programs is to ensure that its employees display the characteristics of its brand and values that distinguish it from its competitors. Restaurant managers in its Ruth's Chris company-owned restaurants must complete a training program that is typically seven weeks long, during which they are instructed in multiple areas of restaurant management, including food quality and preparation, guest service, alcoholic beverage service, liquor regulation compliance and employee relations. Restaurant managers also receive operations manuals relating to food and beverage preparation and restaurant operations. The Ruth's Chris Steak House restaurants employ Steritech, a third-party food safety firm to ensure proper training, routine inspections and achieving the highest standards for cleanliness throughout the restaurant. The Company instructs chefs and assistants on safety, sanitation, housekeeping, repair and maintenance, product and service specifications, ordering and receiving food products and quality assurance.

Restaurant managers in its Mitchell's Fish Markets are certified by the National Restaurant Association Educational Foundation (NRAEF) for food safety. The Company also employs CNS FoodSafe, a third-party food safety firm which developed a program exclusively for Mitchell's Fish Markets to ensure proper training, routine inspections and achieving the highest standards for cleanliness throughout the restaurant. General managers and certified coaches provide all other employee training at the restaurants. The Company requires that all restaurant-level employees be able to demonstrate knowledge of its systems, standards and operating philosophy.

On a daily basis at our Ruth's Chris restaurants, the executive chef, together with the restaurant managers, oversees a line check system of quality control and must complete a quality assurance checklist verifying the flavor, presentation and proper temperature of the food and beverages. At our Mitchell's Fish Markets, quality

## Table of Contents

checks are performed twice daily by the chef and management team to verify stringent specifications for flavor, presentation and that proper temperature of food and beverages are met. In addition, the Company's regional vice presidents and directors perform system-wide quality assessments of all aspects of restaurant operations, with a focus on back-of-the-house functions, on a regular basis.

### **Marketing and Promotions**

The goals of the Company's marketing efforts are to increase comparable restaurant sales by attracting new guests, increase the frequency of visits by current guests, improve brand recognition in new markets or markets where it intends to open a restaurant and to communicate the overall uniqueness, value and quality exemplified by our restaurants. The Company uses multiple media channels to accomplish these goals and complements its national advertising with targeted local media such as print, radio and outdoor.

#### *Advertising*

In fiscal 2009, the Company spent \$11.7 million, or 3.5% of its revenues, in total advertising expenditures. Of its total advertising expenditures, \$8.0 million, or 68%, was spent on local media and local events. This local media spending was split between local, entertainment and business magazines and newspapers, outdoor billboards and airport dioramas, local radio, internet media and local community events such as golf tournaments, art gatherings and charitable events. In fiscal 2009, the Company spent approximately \$3.7 million, or 32% of total advertising expenditures, on national media for the Ruth's Chris Steak House brand, consisting primarily of national radio and national magazines, and also including in-flight magazines, sponsorships, online initiatives and consumer research.

In fiscal 2009, the Company optimized its online marketing efforts for all brands. Online advertisements appeared on highly visited sites. The Company also utilized paid search at the main internet search sites. The Company used local online advertising for sites catering to company and franchise geographic locations. Ruth's Chris website was upgraded with additional functionality to allow restaurants to promote local events in their community. A Catering micro-site was launched in conjunction with the national launch of Ruth's Chris catering. Additionally, we created Wireless Application Protocol enabled mobile sites for Blackberry and iPhone devices. The Company's online strategy also included an increased emphasis on targeted emails with special offers and announcements. Communication included seasonal specials, holiday offers, and personalized birthday and anniversary invitations.

Ruth's Chris Steak House's current food-focused advertising campaign is integrated into all marketing communications including television, radio, print and outdoor advertisement. In addition, the Company uses its websites, [www.ruthschris.com](http://www.ruthschris.com), [www.mitchellsfishmarket.com](http://www.mitchellsfishmarket.com), [www.mitchellssteakhouse.com](http://www.mitchellssteakhouse.com) and [www.camerons-steakhouse.com](http://www.camerons-steakhouse.com) to help increase brand identity and facilitate online reservations and gift card sales. In fiscal 2009, Ruth's Chris Steak House participated in co-branded campaigns with American Express Membership Rewards program and participated in direct marketing initiatives. Many of the Company's locations also schedule events to strengthen community ties and increase local market presence. The Company's franchisees also conduct their own local media and advertising plans.

At Mitchell's and Columbus Fish Markets "Fish any Fresher would still be in the Ocean" advertising campaign and branding message is integrated into all marketing communications. Local-radio DJ endorsements and local print media placements are used to keep the concept top of mind with consumers and several sweepstakes throughout the year provide a valuable means of extending reach and gathering consumer data.

Mitchell's and Cameron's Steakhouses receive marketing support with print media, as well as targeted sponsorship opportunities in their communities.

### **Gift Cards**

The Company sells Ruth's Chris gift cards at its Ruth's Chris Steak House restaurants (with the exception of its Aruba, Hong Kong, Japan and Taiwan locations), through its toll-free reservation system and on its website. In 2009, the online ordering site was updated and streamlined to include new functionality such as the ability to ship multiple cards to multiple addresses within one order. Ruth's Chris patrons frequently purchase gift cards for holidays, including Christmas, Hanukkah, Valentine's Day, Mothers' Day and Fathers' Day, and other special occasions such as birthdays, graduations and anniversaries. These gift cards are popular as holiday gifts and among business professionals celebrating promotions. In fiscal 2009, system-wide gift card sales were approximately \$40.8 million. Ruth's Chris gift cards are redeemable at both company- and franchise-owned Ruth's Chris restaurants.

The Company sells Mitchell's gift cards at its Mitchell's Steak House and Mitchell's Fish Market restaurants and on its website. In fiscal 2009, system-wide gift card sales were approximately \$2.5 million. Mitchell's gift cards are redeemable at Mitchell's Fish Market, Mitchell's Steakhouse, Columbus Fish Market and Cameron's Steakhouse restaurants.

### **Franchise Program and Relationship**

The Company's 66 franchise-owned Ruth's Chris restaurants are owned by 27 franchisees with the three largest franchisees owning nine, eight, and six restaurants, respectively. Currently, the Company has open agreements with franchisees for an aggregate of 17 additional Ruth's Chris restaurants. Prior to 2004, each franchisee entered into a ten-year franchise agreement with three ten-year renewal options for each restaurant. Each agreement grants the franchisee territorial protection, with the option to develop a certain number of restaurants in their territory. The Company's franchise agreements generally include termination clauses in the event of nonperformance by the franchisee and non-compete clauses if the agreement is terminated. To date, only five franchisees have had the Company's franchise agreement terminated or a restaurant closed as a result of nonperformance.

Under the Company's franchise program, the Company offers certain services and licensing rights to the franchisee to help maintain consistency in system-wide operations. The Company's services include training of personnel, site selection and construction assistance, providing the new franchisee with standardized operating procedures and manuals, business and financial forms, consulting with the new franchisee on purchasing and supplies and performing supervisory quality control services. The Company conducts reviews of its franchisee-owned restaurants on an ongoing basis, in order to ensure compliance with its standards.

Under the Company's franchise program, each franchise arrangement consists of a development agreement, if multiple restaurants are to be developed, with a separate franchise agreement executed for each restaurant. The Company's new form of development agreement grants exclusive rights to a franchisee to develop a minimum number of restaurants in a defined area, typically during a five-year period. Individual franchise agreements govern the operation of each restaurant opened and have a 20-year term with two renewal options each for additional 10-year terms if certain conditions are met. The Company's new form of franchise agreement requires franchisees to pay a 5% royalty on gross revenues plus up to a 1% advertising fee applied to national advertising expenditures. Under the Company's prior form of franchise agreement, franchisees pay a 5% royalty on gross revenues, of which the Company has applied 1% to national advertising.

Under the Company's form of development agreement, and unless agreed otherwise, the Company collects a \$50,000 development fee, which is credited toward the \$150,000 franchise fee, for each restaurant the franchisee has rights to develop. Under the Company's new form of the franchise agreement, it collects up to \$150,000 of the franchise fee at the time of executing the franchise agreement for each restaurant. If one restaurant is to be developed, a single unit franchise agreement is executed and the \$150,000 franchise fee is collected at signing. To date, the Company has used its new form of agreement with fourteen new franchisees (four of which are located outside of the United States) and five existing franchisees.

## [Table of Contents](#)

The Company's existing franchise agreements signed before 2004 generally limit the number of restaurants each franchisee can develop to two. The Company expanded its domestic franchise base in 2004 by first offering existing franchisees the opportunity to open additional restaurants in its existing territories. In order to obtain these new rights, existing franchisees were required to sign the Company's new form of development and franchise agreement which commits the franchisee to a store development schedule. These new franchise rights and obligations enable the Company to better manage the growth of its franchise system. The Company anticipates opening one to three franchise restaurants in 2010.

The Company currently is evaluating plans to franchise Mitchell's Fish Market.

### **Information Systems and Restaurant Reporting**

All of the Company's restaurants use computerized point-of-sale systems, which are designed to improve operating efficiency, provide corporate management timely access to financial and marketing data and reduce restaurant and corporate administrative time and expense. These systems record each order and print the food requests in the kitchen for the cooks to prepare. The data captured for use by operations and corporate management includes gross sales amounts, cash and credit card receipts and quantities of each menu item sold. Sales and receipts information is generally transmitted to the corporate office daily, where it is reviewed and reconciled by the accounting department before being recorded in the accounting system.

The Company's corporate systems provide management with operating reports that show company-owned restaurant performance comparisons with budget and prior year results. These systems allow the Company to monitor company-owned restaurant sales, food and beverage costs, labor expense and other restaurant trends on a regular basis.

### **Service Marks**

The Company has registered the main service marks "Ruth's Chris" and its "Ruth's Chris Steak House, U.S. Prime & Design" logo, as well as other service marks used by its restaurants, including "Mitchell's Fish Market" and the common law service marks "Mitchell's Steakhouse," "Columbus Fish Market" and "Cameron's Steakhouse," with the United States Patent and Trademark Office and in the foreign countries in which its restaurants operate. The Company has also registered in other foreign countries in anticipation of new store openings within those countries. The Company is not aware of any infringing uses that could materially affect its business. The Company believes that its service marks are valuable to the operation of its restaurants and are important to its marketing strategy.

### **Seasonality**

The Company's business is subject to seasonal fluctuations. Historically, the percentage of its annual revenues earned during the first and fourth fiscal quarters have been higher due, in part, to increased restaurant sales during the year-end holiday season.

## [Table of Contents](#)

### Employees

As of December 27, 2009, the Company employed 5,603 persons, of whom 475 were salaried and 5,128 were hourly personnel, who were employed in the positions set forth in the table below. None of the Company's employees are covered by a collective bargaining agreement.

<u>Functional Area</u>	<u>Number of Employees</u>
Senior Officers / Corporate VPs / Operations VPs	25
General Managers	82
Managers	149
Regional Corporate Chefs / Executive Chefs	94
Sous Chefs	72
Non-salaried restaurant staff	5,125
Corporate salaried	53
Corporate non-salaried	3
Total number of employees	<u>5,603</u>

### Executive Officers of the Registrant

Certain information regarding our executive officers is provided below:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Michael P. O'Donnell	53	President and Chief Executive Officer
Robert M. Vincent	57	Executive Vice President and Chief Financial Officer
Kevin W. Toomy	55	President, Chief Operating Officer of Ruth's Chris Steak House
Samuel A. Tancredi	57	President, Chief Operating Officer of Mitchell's Fish Market

*Michael P. O'Donnell* has served as the Company's President and Chief Executive Officer since August 2008. Prior to that, Mr. O'Donnell served as the Chief Executive Officer, President and Chairman of the Board of Champps Entertainment, Inc., an experience that culminated in the successful sale of the company to Fox and Hound Restaurant Group in late 2007. Prior to that, Mr. O'Donnell held the position of President, Chief Executive Officer and Director of Sbarro, Inc., where he was responsible for all operational and strategic aspects of managing more than 1,000 restaurants including Sbarro, Boulder Creek Steak & Saloon, Rothmann's Steakhouse and Carmela's of Brooklyn brands. Additionally, Mr. O'Donnell held the position of President and Chief Executive Officer of New Business at Outback Steakhouse, Inc., where he was responsible for all non-Outback Steakhouse brands. Prior to that, he served as President of the Roy's brand at Outback Steakhouse, Inc. Mr. O'Donnell serves on the Board of Directors for Ruth's Hospitality Group, Inc., Cosi, Inc., Sbarro, Inc., and Logan's Roadhouse, Inc.

*Robert M. Vincent* has served as the Company's Executive Vice President and Chief Financial Officer of Ruth's Hospitality Group, Inc., since March 2008. From 2000 to 2008, Mr. Vincent served as Executive Vice President—Finance, Chief Financial Officer and Treasurer of Uno Restaurant Holdings Corporation, where he was responsible for the management of all accounting and financial activity for the system of more than 200 company-owned and franchised casual full-service restaurants. From 1992 to 2000, Mr. Vincent served as the Senior Vice President—Finance, Chief Financial Officer and Treasurer, and Vice President—Finance and Controller of Uno Restaurant Holdings Corporation. Additionally, Mr. Vincent served as the Chief Financial Officer for Omega Corporation from 1988 to 1992 and as the Vice President—Finance for Boston Restaurant Associates, Inc. from 1985 to 1988, where he was responsible for the management of financial activity for a chain of retail restaurants.

*Kevin W. Toomy* has served as President and Chief Operating Officer of Ruth's Chris Steak House since March 2010. Prior to his promotion, Mr. Toomy served as the Company's Senior Vice President since October 2008 and Vice President of Special Projects from September 2008 to October 2008. Prior to that, from August

## [Table of Contents](#)

2007 to September 2008, he served as an independent restaurant consultant. Prior to that, from October 2002 to August 2007, he served as Owner and President of Goldcoast Seafood Grill in South Florida. He started his career serving as a General Manager for Steak & Ale, Corporation, and shortly thereafter, joined two former Steak & Ale executives to grow the now nationwide Houston's restaurant brand. Kevin has also been a joint venture partner for the Roy's and Outback Steakhouse brands.

*Samuel A. Tancredi* has served as the Company's President and Chief Operating Officer of Mitchell's Fish Market since March 2010. Prior to his promotion, Mr. Tancredi served as our Senior Vice President since December 2008. From May 2006 until his appointment as an officer of the Company, Mr. Tancredi was a Franchisee and Chief Operating Officer of six Paradise Bakery & Cafes in Indianapolis, Indiana. From February 2001 to October 2006, Mr. Tancredi served as President, Franchisee and Development Partner of nine Bonefish Grills for Indianapolis, Indiana based Fishbuds Inc. Prior to that, Mr. Tancredi served in leadership roles with Outback Steakhouse, Inc., Chi Chi's and The Magic Pan.

### **Government Regulation**

The Company is subject to extensive federal, state and local government regulation, including regulations relating to public health and safety, zoning and fire codes and the sale of alcoholic beverages and food. The Company maintains the necessary restaurant, alcoholic beverage and retail licenses, permits and approvals. Federal and state laws govern the Company's relationship with its employees, including laws relating to minimum wage requirements, overtime, tips, tip credits and working conditions. A significant number of the Company's hourly employees are paid at rates related to the federal or state minimum wage.

The offer and sale of franchises are subject to regulation by the U.S. Federal Trade Commission ("FTC") and many states. The FTC requires that the Company furnish to prospective franchisees a franchise disclosure document containing prescribed information. A number of states also regulate the sale of franchises and require state registration of franchise offerings and the delivery of a franchise disclosure document to prospective franchisees. The Company's noncompliance could result in governmental enforcement actions seeking a civil or criminal penalty, rescission of a franchise, and loss of its ability to offer and sell franchises in a state, or a private lawsuit seeking rescission, damages and legal fees.

### **Competition**

The restaurant business is highly competitive and highly fragmented, and the number, size and strength of the Company's competitors vary widely by region. The Company believes that restaurant competition is based on, among other things, quality of food products, customer service, reputation, restaurant location, name recognition and price. The Company's restaurants compete with a number of upscale steakhouses and upscale casual seafood restaurants within their markets, both locally owned restaurants and restaurants within regional or national chains. The principal upscale steakhouses with which the Company competes are Fleming's, The Capital Grille, Smith & Wollensky, The Palm, Del Frisco's and Morton's of Chicago. The principal seafood restaurants with which the Company competes are McCormick & Schmick's, Legal Seafood, Bonefish Grill and The Oceanaire Seafood Room. Many of the Company's competitors are better established in certain of its existing markets and/or markets into which it intends to expand.

### **Available Information**

The Company maintains a website on the Internet at [www.rhgi.com](http://www.rhgi.com). The Company makes available free of charge, through the investor relations section of its website, its Annual Reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports electronically filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934. Such information is available as soon as reasonably practicable after it files such reports with the SEC. Additionally, our Code of Ethics may be accessed within the Investor Relations section of our website. Information found on our website is not part of this Annual Report on Form 10-K or any other report filed with the SEC.

**Item 1A. RISK FACTORS**

*In addition to the other information in this Annual Report on Form 10-K, the following risk factors should be considered carefully in evaluating the Company and its business. The risks and uncertainties described below are not the only ones the Company faces. Additional risks and uncertainties not presently known to us or that the Company currently deems immaterial may also impair its business operations. If any of these certain risks and uncertainties were to actually occur, the Company's business, financial condition or results of operations could be materially adversely affected. In such case, the trading price of the Company's common stock could decline and its investors may lose all or part of their investment. These risks and uncertainties include, but are not limited to, the following:*

***Current levels of market volatility and the contraction of the capital and real estate markets are unprecedented and are unlikely to improve in the near future, which could adversely affect our business and results of operations and increase the volatility of our common stock.***

Dramatic declines in the housing market, with falling home prices and increasing foreclosures and unemployment, have resulted in significant market turmoil and tightening of credit. In turn, this has led to an increased level of commercial and consumer delinquencies, lack of consumer confidence, increased market volatility and widespread reduction of business activity generally. The Company currently anticipates that the difficult conditions in the financial markets are not likely to improve in the near future. The significant deterioration in economic conditions in any of the Company's markets has and will continue to reduce guest traffic and required certain of the Company's affected restaurants to lower their prices, which reduce the Company's total revenues and operating income. For the fourth fiscal quarter of 2009, the Company's Ruth's Chris company-owned restaurants experienced an 11.2% decrease in comparable restaurants sales compared with the fourth fiscal quarter of 2008. Ruth's Chris company-owned restaurants generated reduced average unit volumes of approximately \$4.0 million in fiscal 2009, compared to average unit volumes of approximately \$4.9 million in fiscal 2008. The Company believes these economic conditions and market volatility have and may continue to adversely affect the price of its common stock. Any changes in economic conditions, or a continuation or increase in the severity of the current economic downturn would affect the Company's ability to attract guests or price its menu items at favorable levels, which would result in significant reductions in revenue and/or operating income and, in turn, the market price for its common stock.

***Market volatility could adversely affect our stock price.***

Many factors affect the trading price of our stock, including factors over which we have no control, such as reports on the economy or the price of commodities, as well as negative or positive announcements by competitors, regardless of whether the report relates directly to our business. In addition to investor expectations, trading activity in our stock can reflect the portfolio strategies and investment allocation changes of institutional holders and non-operating initiatives such as a share repurchase program. Any failure to meet market expectations whether for sales growth rates, earnings per share or other metrics could adversely affect our share price.

***Turmoil in the financial services industry, volatility in securities trading markets and general economic downturns may adversely affect our ability to access the credit and capital markets to finance a portion of our working capital requirements and support our liquidity needs.***

The Company has exposure to many different financial institutions and counterparties including under its existing senior credit facility and other credit and financing arrangements, including interest rate swaps. Many of these transactions expose the Company to credit risk in the event that any of its lenders or counterparties are unable to honor its commitments or otherwise defaults under a financing agreement. Credit and capital markets have recently experienced a great deal of turmoil, and certain leading financial institutions have either declared bankruptcy or have shown significant deterioration in their financial stability. If any of these counterparties

## [Table of Contents](#)

declares bankruptcy and/or becomes insolvent, they may not be able to perform under their contracts with the Company, which could leave the Company with reduced or no senior credit facility or unhedged against changes in interest rates. The constriction of the credit markets, if not alleviated, could increase the Company's cost of borrowing or limit its ability to obtain additional financing on terms it finds acceptable. Any significant limitations on its ability to access the financing provided under our existing credit facility or under any of the Company's other credit or financing arrangements could materially and adversely affect the Company's business and results of operations.

### ***Negative publicity surrounding the Company's restaurants or the consumption of beef generally, or shifts in consumer tastes, could reduce sales in one or more of our restaurants and make our brand less valuable.***

The Company's success depends, in large part, upon the popularity of its menu offerings. Negative publicity resulting from poor food quality, illness, injury or other health concerns (including e-coli, Bovine Spongiform Encephalopathy (mad cow disease), Hepatitis A and foot and mouth disease), whether related to one of the Company's restaurants or to the beef or seafood industries in general, or operating problems related to one or more restaurants, could make the Company's menu offerings less appealing to consumers and reduce demand in its restaurants. In addition, any other shifts in consumer preferences away from the kinds of food the Company offers, particularly beef and seafood, whether because of dietary or other health concerns or otherwise, would make its restaurants less appealing and adversely affect revenues.

In addition, some types of seafood have been subject to adverse publicity due to certain levels of contamination at their source, which can adversely affect both supply and market demand. The Company's Mitchell's restaurants maintain an in-house inspection program for seafood purchases and, in the past, have not experienced any detriment from contaminated seafood. However, future seafood contamination or inadequate supplies of seafood could have a significant and materially adverse effect on the Company's operating results and profitability.

### ***The Company may not be able to compete successfully with other restaurants, which could reduce its revenues.***

The restaurant industry is intensely competitive with respect to price, service, location, food quality, atmosphere and overall dining experience. The Company's competitors include a large and diverse group of well-recognized upscale steakhouse and upscale casual restaurant chains, including steakhouse and seafood chains as well as restaurants owned by independent local operators. Some of the Company's competitors may have substantially greater financial, marketing and other resources, and may be better established in the markets where its restaurants are or may be located. If the Company cannot compete effectively in one or more of its markets, the Company may be unable to maintain recent levels of comparable restaurant sales growth and/or may be required to close existing restaurants.

### ***Health concerns arising from outbreaks of flu viruses or other diseases may have an adverse effect on our business.***

The United States and other countries have experienced, or may experience in the future, outbreaks of viruses, such as norovirus, Avian Flu or "SARS", and H1N1 or "swine flu", or other diseases. If a virus is transmitted by human contact, our employees or guests could become infected, or could choose, or be advised, to avoid gathering in public places, any of which could adversely affect our restaurant guest traffic, and our ability to adequately staff our restaurants, receive deliveries on a timely basis or perform functions at the corporate level. We also could be adversely affected if jurisdictions in which we have restaurants impose mandatory closures, seek voluntary closures or impose restrictions on operations. Even if such measures are not implemented and a virus or other disease does not spread significantly, the perceived risk of infection or significant health risk may adversely affect our business.



## [Table of Contents](#)

### ***If the Company's vendors or distributors do not deliver food and beverages in a timely fashion it may experience short-term supply shortages and/or increased food and beverage costs.***

The Company's ability to maintain consistent quality throughout company-owned restaurants depends in part upon its ability to purchase USDA Prime and Choice grade beef, seafood and other food products in accordance with its rigid specifications. During fiscal 2009, the Company purchased more than 60% of the beef it used in company-owned restaurants from one vendor, New City Packing Company, Inc. In addition, the Company currently has a long-term distribution arrangement with a national food and restaurant supply distributor, Distribution Market Advantage, Inc. (DMA), which purchases products for the Company from various suppliers, and through which all 64 of its company-owned Ruth's Chris Steak House restaurants receive a significant portion of their food supplies. The Company also purchased more than 80% of the fresh seafood served in its Mitchell's Fish Market from two vendors, Michael's Finer Meats and Seafood and Save On Seafood Company. If these or other vendors or distributors cease doing business with the Company, it could experience short-term supply shortages in certain company-owned restaurants and could be required to purchase supplies at higher prices until the Company is able to secure an alternative supply source. Any delay the Company experiences in replacing vendors or distributors on acceptable terms could increase food costs or, in extreme cases, require it to temporarily remove items from the menu of one or more restaurants.

### ***Increases in the prices of, or reductions in the availability of, any of our core food products could reduce the Company's operating margins and revenues.***

The Company purchases large quantities of beef, particularly USDA Prime grade beef, which is subject to extreme price fluctuations due to seasonal shifts, climate conditions, industry demand and other factors. The Company's beef costs represented approximately 34.0% of its food and beverage costs during fiscal 2009. During fiscal 2009, the Company entered into contracts with beef suppliers to establish set pricing on a portion of its anticipated beef purchases. In fiscal 2010, the Company has negotiated set pricing for approximately 50% of its prime beef requirements, which represents 25% of its beef purchases. The market for USDA Prime grade beef is particularly volatile.

In the recent past, certain types of seafood have experienced fluctuations in availability. Seafood is also subject to fluctuations in price based on availability, which is often seasonal. If certain types of seafood are unavailable, or if our costs increase, our results of operations could be adversely affected.

### ***Labor shortages or increases in labor costs could slow the Company's growth or harm its business.***

The Company's success depends in part upon its ability to continue to attract, motivate and retain employees with the qualifications to succeed in its industry and the motivation to apply the Company's core service philosophy, including regional operational managers, restaurant general managers and chefs. If the Company is unable to continue to recruit and retain sufficiently qualified individuals, its business and growth could be adversely affected. Competition for these employees could require the Company to pay higher wages, which could result in higher labor costs. In addition, the Company has a substantial number of hourly employees who are paid wage rates at or based on the federal or state minimum wage and who rely on tips as a large portion of their income. Increases in the minimum wage or decreases in allowable tip credits would increase the Company's labor costs. The Company may be unable to increase its prices in order to pass these increased labor costs on to its guests, in which case its margins would be negatively affected.

### ***Regulations affecting the operation of the Company's restaurants could increase operating costs and restrict growth.***

Each of the Company's restaurants must obtain licenses from regulatory authorities allowing it to sell liquor, beer and wine, and each restaurant must obtain a food service license from local health authorities. Each restaurant's liquor license must be renewed annually and may be revoked at any time for cause, including

## [Table of Contents](#)

violation by the Company or its employees of any laws and regulations relating to the minimum drinking age, advertising, wholesale purchasing and inventory control. In certain states, including states where the Company has a large number of restaurants or where it plans to open restaurants in the near term, the number of liquor licenses available is limited and licenses are traded at market prices. If the Company is unable to maintain existing licenses, or if it chooses to open a restaurant in those states, the cost of a new license could be significant. Obtaining and maintaining licenses is an important component of each of the Company's restaurant's operations, and the failure to obtain or maintain food and liquor licenses and other required licenses, permits and approvals would materially adversely impact existing restaurants or the Company's growth strategy.

The Company is also subject to a variety of federal and state labor laws, such as minimum wage and overtime pay requirements, unemployment tax rates, workers' compensation rates and citizenship requirements. Government-mandated increases in minimum wages, overtime pay, paid leaves of absence and mandated health benefits, or increased tax reporting and tax payment requirements for employees who receive gratuities, or a reduction in the number of states that allow tips to be credited toward minimum wage requirements could increase the Company's labor costs and reduce its operating margins. In addition, the Federal Americans with Disabilities Act prohibits discrimination on the basis of disability in public accommodations and employment. Although the Company's restaurants are designed to be accessible to the disabled, it could be required to make modifications to its restaurants to provide service to, or make reasonable accommodations for, disabled persons.

***The Company's strategy to open franchisee-owned restaurants subjects it to extensive government regulation, compliance with which might increase its investment costs and restrict its growth.***

The Company is subject to the rules and regulations of the FTC and various state laws regulating the offer and sale of franchises. The FTC requires that the Company furnish to prospective franchisees a franchise disclosure document containing prescribed information and can restrict its ability to sell franchises. A number of states also regulate the sale of franchises and require the obtaining of a permit and/or registration of the franchise disclosure document with state authorities and the delivery of the franchise disclosure document to prospective franchisees. Non-compliance with those laws could result in governmental enforcement actions seeking a civil or criminal penalty, rescission of a franchise, and loss of the Company's ability to offer and sell franchises in a state, or a private lawsuit seeking rescission, damages and legal fees, which could have a material adverse effect on its business.

***The Company's franchisees could take actions that harm its reputation and reduce its royalty revenues.***

The Company does not exercise control over the day-to-day operations of its franchisee-owned restaurants. While the Company attempts to ensure that franchisee-owned restaurants maintain the same high operating standards that it demands of company-owned restaurants, one or more of these restaurants may fail to maintain these standards. Any operational shortcomings of the Company's franchisee-owned restaurants are likely to be attributed to its system-wide operations and could adversely affect its reputation and damage its brand as well as have a direct negative impact on the royalty income it receives from those restaurants.

***The Company's failure to enforce its service marks or other proprietary rights could adversely affect its competitive position or the value of its brands.***

The Company owns certain common law service mark rights and a number of federal and international service mark registrations, most importantly the Ruth's Chris Steak House, Mitchell's and Cameron's names and logos, copyrights relating to text and print uses, and other proprietary intellectual property rights. The Company believes that its service marks, copyrights and other proprietary rights are important to its success and competitive position. Protective actions the Company takes with respect to these rights may fail to prevent unauthorized usage or imitation by others, which could harm the Company's reputation, brand or competitive position and, if the Company commences litigation to enforce its rights, cause us to incur significant legal expenses.

## [Table of Contents](#)

### ***Litigation concerning food quality, health and other issues could require the Company to incur additional liabilities and/or cause guests to avoid its restaurants.***

Occasionally, the Company's guests file complaints or lawsuits against it alleging that the Company is responsible for some illness or injury they suffered at or after a visit to its restaurants. The Company is also subject to a variety of other claims arising in the ordinary course of its business, including personal injury claims, contract claims, claims from franchisees, claims alleging violations of federal and state law regarding workplace and employment matters and discrimination and similar matters. In addition, the Company could become subject to class action lawsuits related to these matters in the future. For example, in fiscal 2005 the Company settled a class-action claim based on violation of wage and hour laws in California. The restaurant industry has also been subject to a growing number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their guests. In addition, the Company is subject to "dram shop" statutes. These statutes generally allow a person injured by an intoxicated person to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Recent litigation against restaurant chains has resulted in significant judgments, including punitive damages, under dram shop statutes. Regardless of whether any claims against the Company are valid or whether it is liable, claims may be expensive to defend and may divert time and money away from the Company's operations and hurt its performance. A judgment significantly in excess of the Company's insurance coverage for any claims would materially adversely affect its financial condition and results of operations. Adverse publicity resulting from these claims may negatively impact revenues at one or more of the Company's restaurants.

### ***The terms of the Company's senior credit agreement may restrict its ability to operate its business and to pursue its business strategies.***

The Company's First Amended and Restated Credit Agreement contains, and any agreements governing future indebtedness would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions on it. The Company's First Amended and Restated Credit Agreement limits its ability, among other things, to:

- pay dividends or purchase stock in excess of the \$1.0 million permitted under the senior credit agreement;
- borrow money or issue guarantees;
- make investments;
- use assets as security in other transactions;
- sell assets or merge with or into other companies;
- enter into transactions with affiliates;
- sell stock in its subsidiaries; and
- create or permit restrictions on its subsidiaries' ability to make payments to it.

The Company's ability to engage in these types of transactions is limited even if it believes that a specific transaction would contribute to its future growth or improve its operating results. The Company's senior credit agreement also requires it to achieve specified financial and operating results and maintain compliance with certain financial ratios. The Company's ability to comply with these ratios may be affected by events outside of its control. Any non-compliance would result in a default under its senior credit agreement and could result in its lenders declaring the Company's senior debt immediately due and payable, which would have a material adverse effect on its ability to operate as a going concern.

### ***An impairment in the carrying value of our goodwill or other intangible assets could adversely affect our financial condition and consolidated results of operations.***

Goodwill represents the difference between the purchase price of acquired companies and the related fair values of net assets acquired. We test goodwill for impairment annually and whenever events or changes in

## [Table of Contents](#)

circumstances indicate that impairment may have occurred. We compare the carrying value of a reporting unit, including goodwill, to the fair value of the unit. Carrying value is based on the assets and liabilities associated with the operations of that reporting unit. If the carrying value is less than the fair value, no impairment exists. If the carrying value is higher than the fair value, there is an indication of impairment. A significant amount of judgment is involved in determining if an indication of impairment exists. Factors may include, among others: a significant decline in our expected future cash flows; a sustained, significant decline in our stock price and market capitalization; a significant adverse change in legal factors or in the business climate; unanticipated competition; the testing for recoverability of a significant asset group within a reporting unit; and slower growth rates. Any adverse change in these factors would have a significant impact on the recoverability of these assets and negatively affect our financial condition and consolidated results of operations. We compute the amount of impairment by comparing the implied fair value of reporting unit goodwill with the carrying amount of that goodwill. We are required to record a non-cash impairment charge if the testing performed indicates that goodwill has been impaired.

We evaluate the useful lives of our other intangible assets, primarily our trademarks, to determine if they are definite or indefinite-lived. Reaching a determination on useful life requires significant judgments and assumptions regarding the future effects of obsolescence, demand, competition, other economic factors (such as the stability of the industry, legislative action that results in an uncertain or changing regulatory environment, and expected changes in distribution channels), the level of required maintenance expenditures, and the expected lives of other related groups of assets.

As with goodwill, we test our indefinite-lived intangible assets (primarily trade names) for impairment annually and whenever events or changes in circumstances indicate that their carrying value may not be recoverable. We estimate the fair value of the trademarks based on an income valuation model using the relief from royalty method, which requires assumptions related to projected revenues from our annual long-range plan, assumed royalty rates that could be payable if we did not own the trademarks and a discount rate.

We cannot accurately predict the amount and timing of any impairment of assets. Should the value of goodwill or other intangible assets become impaired, there could be an adverse effect on our financial condition and consolidated results of operations.

### ***Failure of our internal controls over financial reporting could harm our business and financial results.***

Our management is responsible for establishing and maintaining effective internal control over financial reporting. Internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that we would prevent or detect a misstatement of our financial statements or fraud. Our growth and acquisition of other restaurant companies with procedures not identical to our own could place significant additional pressure on our system of internal control over financial reporting. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud. A significant financial reporting failure or material weakness in internal control over financial reporting could cause a loss of investor confidence and decline in the market price of our common stock.

### **Item 1B. UNRESOLVED STAFF COMMENTS**

None.

### **Item 2. PROPERTIES**

Company-owned restaurants are generally located in spaces leased by wholly-owned direct or indirect subsidiaries of Ruth's Hospitality Group, Inc. Restaurant lease expirations, including renewal options, range

## [Table of Contents](#)

from approximately two years to 30 years. Sixty-seven of the Company's Ruth's Chris restaurants, including those not yet commenced, operate in leased space, of which fifty-eight provide for an option to renew for terms ranging from approximately five years to 15 years. Twenty-five of the Company's Mitchell's leases, including those not yet commenced, provide for at least one option to renew. Historically, the Company has not had difficulty in renewing its leases in a timely manner. Restaurant leases provide for a specified annual rent, and some leases call for additional or contingent rent based on sales volumes over specified levels.

On September 17, 2008, the Company completed the sale of five restaurant properties to Sovereign Investment Company for \$17.6 million in proceeds. Concurrent with the sales transaction, the Company entered into agreements to lease the properties back for initial terms of between 12 and 20 years, along with two five-year options. This sale-leaseback transaction involving real estate does not provide for any continuing involvement other than a normal lease whereby the Company intends to actively use the property during the term. The properties are located in Metairie, Louisiana; Palm Beach and Sarasota, Florida; Columbus, Ohio (Columbus Fish Market); and Palm Desert, California.

On June 28, 2009, the Company completed the sale of its former home office land and building of approximately 22,000 square feet in Metairie, Louisiana. The Company received \$0.8 million in net proceeds, and recorded a loss of \$0.9 million related to the sale.

On December 15, 2009, the Company completed the sale of its home office building of approximately 75,860 square feet in Heathrow, Florida, which houses its corporate headquarters. The transaction generated net proceeds of approximately \$9.7 million, which were used to reduce borrowings under the credit facility. The Company recorded a loss of \$0.8 million related to the sale. The Company's corporate headquarters now resides in leased space (17,380 square feet) in Heathrow, Florida, with a term set to expire in August 2011.

The Company currently owns the real estate for three Ruth's Chris operating restaurants: Ft. Lauderdale (7,800 square feet); Houston, Texas (7,200 square feet); and Columbus, Ohio (8,100 square feet).

The following table sets forth information about the Company's existing company-owned and franchisee-owned restaurants as of December 27, 2009. As of December 27, 2009, the Company operated 64 Ruth's Chris company-owned restaurants and 22 Mitchell's restaurants. In addition, its franchisees operated 66 restaurants. Company-owned Ruth's Chris restaurants range in size from approximately 6,000 to approximately 13,000 square feet. The Company expects that future restaurants will range in size from 8,000 to 10,000 square feet with approximately 230 to 250 seats. Company-owned Mitchell's restaurants range in size from approximately 6,000 to 11,000 square feet with approximately 225 to 250 seats.

Company-Owned Ruth's Chris Restaurants			Franchisee-Owned Ruth's Chris Restaurants		
Year Opened	Locations	Property Leased or Owned	Year Opened	Locations	
1972	Metairie, LA**	Leased	1976	Baton Rouge, LA	
1977	Lafayette, LA	Leased	1985	Austin, TX	
1977	Houston, TX	Owned	1985	Mobile, AL	
1983	Washington, D.C.	Leased	1986	Atlanta (Buckhead), GA	
1984	Beverly Hills, CA	Leased	1987	Pittsburgh, PA	
1985	Ft. Lauderdale, FL	Owned	1987	Hartford, CT	
1986	Phoenix, AZ	Leased	1988	Philadelphia, PA	
1986	Nashville, TN	Leased	1989	Honolulu, HI	
1987	San Francisco, CA	Leased	1989	Las Vegas, NV	
1987	N. Palm Beach, FL**	Leased	1991	Richmond, VA	
1988	Seattle, WA	Leased	1992	Baltimore, MD	
1989	Memphis, TN	Leased	1993	Birmingham, AL	

## Table of Contents

### Company-Owned Ruth's Chris Restaurants

Year Opened	Locations	Property Leased or Owned
1990	Weehawken, NJ	Leased
1990	Scottsdale, AZ	Leased
1992	Palm Desert, CA**	Leased
1992	Minneapolis, MN	Leased
1992	Chicago, IL	Leased
1993	Arlington, VA	Leased
1993	Manhattan, NY	Leased
1994	San Diego, CA	Leased
1995	Westchester, NY	Leased
1996	Dallas, TX	Leased
1996	Troy, MI	Leased
1996	Tampa, FL	Leased
1996	Bethesda, MD	Leased
1997	Kansas City, MO	Leased
1997	Irvine, CA	Leased
1997	Portland, OR	Leased
1997	Jacksonville, FL	Leased
1998	Louisville, KY	Leased
1998	Parsippany, NJ	Leased
1998	Northbrook, IL	Leased
1999	Columbus, OH	Owned
1999	Coral Gables, FL	Leased
1999	Ponte Vedra, FL	Leased
1999	Winter Park, FL	Leased
2000	Sarasota, FL**	Leased
2000	Del Mar, CA	Leased
2000	Boca Raton, FL	Leased
2001	Orlando, FL	Leased
2001	Greensboro, NC	Leased
2002	Woodland Hills, CA	Leased
2002	Fairfax, VA	Leased
2002	Bellevue, WA	Leased
2002	Washington, D.C. (Conv.)	Leased
2003	Walnut Creek, CA	Leased
2005	Roseville, CA	Leased
2005	Boston, MA	Leased
2005	Sacramento, CA	Leased
2006	Pasadena, CA	Leased
2006	Bonita Springs, FL	Leased
2006	Providence, RI	Leased
2007	Lake Mary, FL*	Land Leased
2007	Anaheim, CA*	Land Leased
2007	Biloxi, MS	Leased
2007	Knoxville, TN	Leased
2007	Tyson's Corner, VA	Leased
2007	Santa Barbara, CA	Leased

### Franchisee-Owned Ruth's Chris Restaurants

Year Opened	Locations
1993	San Antonio, TX
1993	Taipei, Taiwan
1993	Cancun, Mexico
1993	Sandy Springs, GA
1994	Indianapolis, IN
1995	Long Island, NY
1995	Toronto, CA
1996	Taichung, Taiwan
1996	Indianapolis, IN
1997	Hong Kong
1997	Raleigh (Cary), NC
1998	Annapolis, MD
1998	Maui, HI
1999	Atlanta (Centennial Park), GA
2000	Pikesville, MD
2000	San Antonio (Sunset), TX
2000	Wailea, HI
2001	Kaohsiung, Taiwan
2001	King of Prussia, PA
2001	Queensway, Hong Kong
2001	Cabo San Lucas, Mexico
2003	Mississauga, Canada
2005	Virginia Beach, VA
2005	Baltimore, MD
2005	Atlantic City, NJ
2005	Charlotte (South Park), NC
2006	St. Louis, MO
2006	Ocean City, MD
2006	Destin, FL
2006	Mauna Lani, HI
2006	Huntsville, AL
2006	Edmonton, Canada
2007	Charlotte (Uptown), NC
2007	Waikiki, HI
2007	Columbia, SC
2007	Mishawaka, IN
2007	Tokyo, Japan
2007	Madison, WI
2007	Calgary, Canada
2007	Rogers, AR
2007	Park City, UT
2008	Aruba
2008	Myrtle Beach, SC
2008	Wilmington, SC
2008	Ridgeland, MS
2008	Wilkes-Barre, PA

## Table of Contents

### Company-Owned Ruth's Chris Restaurants

Year Opened	Locations	Property Leased or Owned
2007	West Palm Beach, FL	Leased
2008	Ft. Worth, TX	Leased
2008	New Orleans, LA	Leased
2008	Princeton, NJ*	Land Leased
2008	Fresno, CA	Leased
2008	South Barrington, IL*	Land Leased

### Franchisee-Owned Ruth's Chris Restaurants

Year Opened	Locations
2008	Raleigh, NC
2008	Savannah, GA
2009	Dubai
2009	Greenville, SC
2009	St. Louis, MO
2009	Durham, NC
2009	Kennesaw, GA
2009	Carolina, Puerto Rico

### Company-Owned Mitchell's Fish Market Restaurants

Year Opened	Locations	Property Leased or Owned
2008	Grandview, OH**	Leased
2008	Crosswoods, OH	Leased
2008	Pittsburgh - Waterfront, PA	Leased
2008	Newport, KY	Leased
2008	Louisville, KY	Leased
2008	Lansing, MI	Leased
2008	Birmingham, MI	Leased
2008	Cleveland, OH	Leased
2008	West Chester, OH	Leased
2008	Glenview, IL	Leased
2008	Carmel, IN	Leased
2008	Livonia, MI	Leased
2008	Pittsburgh (South Hills Galleria), PA	Leased
2008	Tampa, FL	Leased
2008	Rochester Hills, MI	Leased
2008	Brookfield, WI	Leased
2008	Sandestin, FL	Leased
2008	Jacksonville, FL	Leased
2008	Stamford, CT	Leased

### Company-Owned Mitchell's Steakhouse Restaurants

Year Opened	Locations	Property Leased or Owned
2008	Columbus (Downtown), OH	Leased
2008	Birmingham, MI	Leased
2008	Polaris, OH	Leased

\* The Company owns the building and leases the land pursuant to a long-term ground lease.

\*\* These restaurants were previously owned, but were sold and leased back in fiscal 2008.

The Company has also entered into lease commitments to develop two additional company-owned Ruth's Chris restaurants in Reno, Nevada, and Phoenix, Arizona. In addition, the Company has entered into lease commitments to develop two Mitchell's Fish Market restaurants located in Scottsdale, Arizona, and Orlando, Florida, and one Cameron's Steakhouse, located in Scottsdale, Arizona. The Company intends to develop the Mitchell's Fish Market located in Orlando, Florida, in 2010. The Company does not intend to develop the remaining restaurants in 2010 and is negotiating with the various landlords for a release of its obligations. During fiscal 2009, the Company negotiated for release of its lease obligation for two company-owned Ruth's Chris restaurants in Thousand Oaks, California, and Dedham, Massachusetts.

**Item 3. LEGAL PROCEEDINGS**

*In Re: Katherine Bush; In Re: Melia Stop; In Re: Shelly Goorevich.*

In November 2007, the Company was named as the respondent in two Equal Employment Opportunity Commission (EEOC) charges filed by two former employees wherein each charging party filed a claim of discrimination against the Company on the basis of their sex. Separately, the Company received written demand for both monetary and non-monetary relief from counsel for the two charging parties accompanied by threatened litigation seeking putative, class-wide relief for similarly situated individuals. Subsequently, the company was named as the respondent in a third similar EEOC charge filed by a current employee. The Company has responded to the charges, denied liability, considers the claims without merit and will vigorously defend them. The Company is not currently able to determine the outcome of the pending EEOC charges, whether class-wide certification will occur, any possible exposures or whether such exposures would be material.

*Nikko Rose and Brandon Rose v. Ruth's Chris Steak House Boston, LLC.*

In November 2007, one current and one former employee filed a complaint in the United States District Court for the District of Massachusetts alleging that one of the Company's affiliates violated the Fair Labor Standards Act ("FLSA") by inappropriately taking the "tip credit" set forth in section 203 (m) of the FLSA. Plaintiffs filed the action seeking putative, class-wide relief though no judicial certification has been made. In October 2009, the parties agreed to settle plaintiff's claims and the action was dismissed with prejudice.

*Kierland Crossing, LLC v. Ruth's Chris Steak House, Inc., et al.*

This is an Ohio state court action filed in December 2009 for breach of lease for not building and opening a restaurant location in Scottsdale, Arizona. This claim is not insured. A response was filed on March 1, 2010.

*Coastland Center, LLC, as successor in interest to Coastland Center, L.P., as successor in interest to Coastland Center Joint Venture, v. RCSH Operations, LLC.*

This is a Florida circuit court action filed in September 2009 for breach of lease for failing to pay rent for a restaurant location in Naples, Florida. This claim is not insured. A response has been filed.

From time to time, the Company has been named as a defendant in other litigation arising in the normal course of business. Claims typically pertain to "slip and fall" accidents at its restaurants, employment claims and claims from guests alleging illness, injury or other food quality, health or operational concerns. Other claims and disputes have arisen in connection with supply contracts, the site development and construction of system restaurants, and with respect to franchise matters. Certain of these claims are not covered by existing insurance policies; however, many are referred to and are covered by insurance, except for deductible amounts, and have not had a material effect on us. As of the date of hereof, we believe that the ultimate resolution of any such claims in the ordinary course of business will not materially affect our financial condition or earnings.

**Item 4. Reserved**



**PART II****Item 5. MARKET FOR THE REGISTRANT'S COMMON STOCK, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

The Company's common stock is listed on the Nasdaq Global Select Market under the trading symbol "RUTH." As of March 1, 2010, there were 37 holders of record of its common stock. The transfer agent and registrar for its common stock is American Stock Transfer & Trust Company, 59 Maiden Lane, New York, NY 10038, telephone (800) 937-5449.

There were no repurchases of the Company's equity securities by or on behalf of it during the fourth quarter of fiscal 2009 and the Company does not have a formal or publicly announced stock repurchase program.

The following table sets forth, for the period indicated, the highest and lowest sale price for its common stock for fiscal 2008 and fiscal 2009, as reported by the Nasdaq Global Select Market:

	<u>High</u>	<u>Low</u>
<b>Fiscal Year ended December 28, 2008</b>		
First Quarter	\$8.94	\$6.27
Second Quarter	\$8.27	\$5.30
Third Quarter	\$5.35	\$3.56
Fourth Quarter	\$4.15	\$ .92
<b>Fiscal Year ended December 27, 2009</b>		
First Quarter	\$2.24	\$0.70
Second Quarter	\$4.37	\$1.08
Third Quarter	\$4.74	\$2.77
Fourth Quarter	\$4.54	\$2.09

The closing sale price for its common stock on March 1, 2010 was \$3.88.

**Dividend Policy**

The Company currently expects to retain all future earnings to finance the growth of its business. Since its acquisition by affiliates of Madison Dearborn in 1999, the Company has not paid, and has no current plans to pay in the future, cash dividends to holders of its common stock. The payment of dividends is within the discretion of the Company's board of directors and will depend on its earnings, capital requirements and operating and financial condition, among other factors. In addition, the Company's senior credit facilities limit its ability to pay dividends. The Company may not pay a dividend if there is a default (or if a default would result from such dividend payment) under its senior credit facilities, and may not pay dividends in excess of an aggregate of \$1.0 million in any fiscal year. With respect to the Company's Preferred Stock, dividends will accrue at an annual rate of 10% of the then applicable liquidation preference of such Preferred Stock and will be payable on a quarterly basis when, as, and if declared by the Company's board of directors. The Company may elect to satisfy its obligation to pay quarterly dividends in cash, or, by increasing the liquidation preference on the shares of Preferred Stock. In the event a dividend is declared with respect to the shares of the Company's common stock, the holders of the Preferred Stock shall be entitled to receive such dividend in the amount that they would have received had they converted their shares of Preferred Stock into common stock immediately prior to the record date for such dividend.

**Unregistered Recent Sales of Securities**

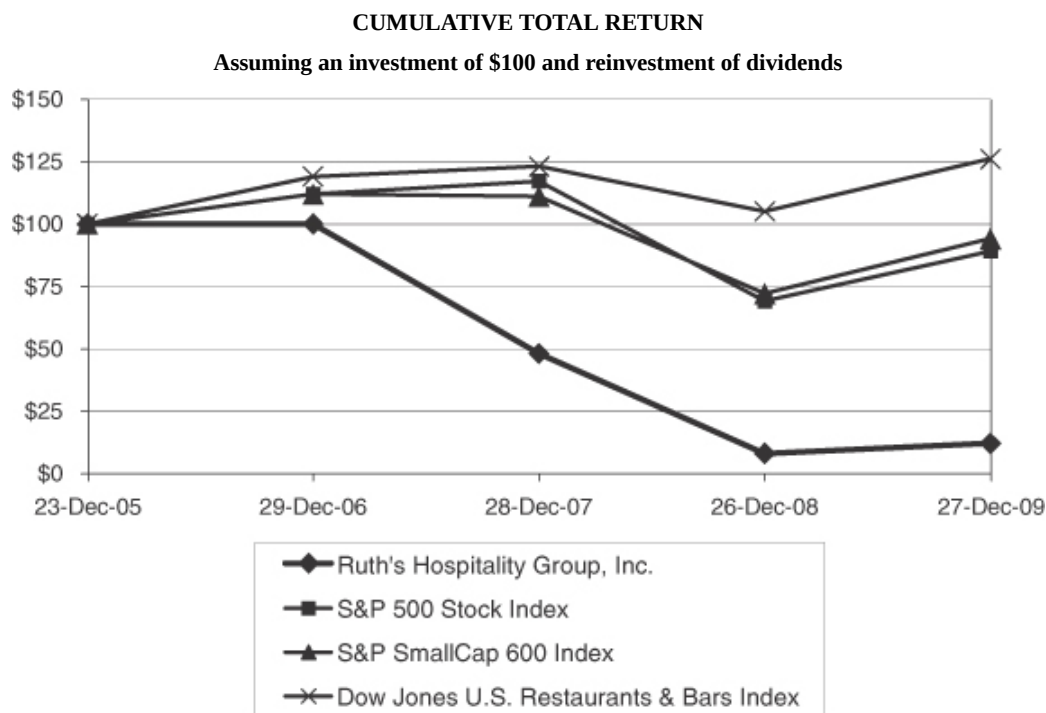
None.

**Securities Authorized for Issuance Under Equity Compensation Plans**

See Item 12, Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters, of this Annual Report on Form 10-K for information regarding securities authorized for issuance under the Company’s equity compensation plans.

**Performance Graph**

The following table and graph shows the cumulative total stockholder return on the Company’s Common Stock with the S&P 500 Stock Index, the S&P Small Cap 600 Index and the Dow Jones U.S. Restaurants & Bars Index, in each case assuming an initial investment of \$100 on December 23, 2005 and full dividend reinvestment.



	<u>12/23/05</u>	<u>12/29/06</u>	<u>12/28/07</u>	<u>12/26/08</u>	<u>12/27/09</u>
Ruth's Hospitality Group, Inc.	\$ 100	\$ 100	\$ 48	\$ 8	\$ 12
S&P 500 Stock Index	100	112	117	69	89
S&P SmallCap 600 Index	100	112	111	72	94
Dow Jones U.S. Restaurants & Bars Index	100	119	123	105	126

All amounts rounded to the nearest dollar.

\*\*\*\*\*

The stock performance graph should not be deemed filed or incorporated by reference into any other filing made by us under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that we specifically incorporate the stock performance graph by reference in another filing.

[Table of Contents](#)

**Item 6. SELECTED FINANCIAL DATA**

The following table sets forth the Company's selected financial data for the year indicated and should be read in conjunction with the disclosures in Item 7, Management's Discussion and Analysis of Results of Operations and Financial Condition and Item 8, Financial Statements and Supplementary Data, of this report.

	2005	2006	Fiscal Year 2007 (\$ in thousands)	2008	2009
<b>Income Statement Data:</b>					
Revenues:					
Restaurant sales	\$ 194,898	\$ 248,322	\$ 292,916	\$ 377,424	\$ 330,533
Franchise income	11,432	12,399	12,896	12,703	10,533
Other operating income	885	4,648	3,201	3,520	3,564
Total revenues	<u>207,215</u>	<u>265,369</u>	<u>309,013</u>	<u>393,647</u>	<u>344,630</u>
Costs and expenses:					
Food and beverage costs	61,804	82,016	96,660	122,292	96,934
Restaurant operating expenses	86,876	108,102	132,615	188,608	176,995
Marketing and advertising	6,696	8,328	8,383	13,939	11,697
General and administrative costs	14,872	22,497	24,507	28,994	23,777
Depreciation and amortization expenses	6,489	8,690	11,768	16,706	16,499
Pre-opening costs	1,623	1,891	4,421	2,869	16
Hurricane and relocation costs, net of insurance proceeds	2,660	(3,949)	(3,478)	—	—
Loss on impairment	—	970	—	77,051	8,634
Restructuring	—	—	—	8,926	40
Loss on the disposal of property and equipment, net	—	13	1,229	508	1,963
Operating income (loss)	<u>26,195</u>	<u>36,811</u>	<u>32,908</u>	<u>(66,246)</u>	<u>8,075</u>
Other income (expense):					
Interest expense	(8,453)	(2,856)	(5,956)	(10,334)	(7,754)
Accrued dividends and accretion on mandatorily redeemable senior preferred stock	(1,891)	—	—	—	—
Other	(39)	33	726	868	532
Income (loss) from continuing operations before income tax expense (benefit)	15,812	33,988	27,678	(75,712)	853
Income tax expense (benefit)	5,043	10,534	8,889	(27,203)	(1,668)
Income (loss) from continuing operations	10,769	23,454	18,789	(48,509)	2,521
Discontinued operations, net of income tax benefit	(164)	(336)	643	5,374	102
Net income (loss)	<u>\$ 10,933</u>	<u>\$ 23,790</u>	<u>\$ 18,146</u>	<u>\$ (53,883)</u>	<u>\$ 2,419</u>

## [Table of Contents](#)

	Fiscal Year				
	2005	2006	2007	2008	2009
	(\$ in thousands, except per share data)				
Less dividends earned on junior preferred stock and warrant expense	3,753	—	—	—	—
Net income (loss) available to common shareholders	\$ 7,180	\$ 23,790	\$ 18,146	\$ (53,883)	\$ 2,419
Basic earnings (loss) per share:					
Continuing operations	\$ 0.39	\$ 1.01	\$ 0.81	\$ (2.08)	\$ 0.11
Discontinued operations	0.01	0.02	(0.03)	(0.23)	(0.01)
Basic earnings (loss) per share	\$ 0.40	\$ 1.03	\$ 0.78	\$ (2.31)	\$ 0.10
Diluted earnings (loss) per share:					
Continuing operations	\$ 0.38	\$ 1.00	\$ 0.81	\$ (2.08)	\$ 0.11
Discontinued operations	0.01	0.02	(0.03)	(0.23)	(0.01)
Diluted earnings (loss) per share	\$ 0.39	\$ 1.02	\$ 0.78	\$ (2.31)	\$ 0.10
Shares used in computing net income (loss) per common share:					
Basic	17,961,198	23,175,323	23,206,864	23,307,198	23,566,358
Diluted	18,710,141	23,429,185	23,399,446	23,307,198	23,733,260
<b>Balance Sheet Data (at end of fiscal year):</b>					
Cash and cash equivalents	\$ 8,985	\$ 4,690	\$ 12,311	\$ 3,876	\$ 1,681
Total assets	134,196	209,720	260,278	293,519	254,415
Total long-term debt including current portion	38,500	68,000	96,750	160,250	125,500
Total shareholders' equity	40,265	67,978	88,067	37,142	41,765

Certain prior year amounts in the above selected financial data have been reclassified to conform to the current year presentation of discontinued operations. In addition, certain corrections have been made for the reporting of the Company's classification of sales discounts within the consolidated statements of income (loss). The consolidated statements of income (loss) for fiscal years 2005, 2006, 2007 and 2008 have been revised to correct an immaterial error in the accounting for sales discounts, which should have been recorded as a reduction of sales instead of as operating expenses. When reviewing the previously reported annual consolidated statements of income (loss) in comparison to those reported in this Form 10-K, restaurant sales decreased by \$4.7 million, \$6.4 million, \$8.5 million and \$10.9 million, other operating income increased by \$0.1 million, \$0.3 million, \$0.6 million and \$0.7 million, restaurant operating expenses decreased by \$4.3 million, \$5.6 million, \$7.3 million and \$9.8 million, and general and administrative expenses decreased by \$0.3 million, \$0.5 million, \$0.6 million and \$0.4 million for the fiscal years ended December 25, 2005, December 31, 2006, December 30, 2007, and December 28, 2008, respectively. For all periods above, reclassifications had no impact on previously reported operating income (loss), net income (loss) or earnings (loss) per share amounts.

In the Company's 8-K filed on February 19, 2010, the company furnished exhibits along with its fiscal fourth quarter earnings press release presenting unaudited consolidated statements of income (loss) for the 13-week and 52-week periods ended December 27, 2009. Reflected in the 52-week period ended December 27, 2009 presented in the selected financial data above, income tax benefit and income from continuing operations increased by \$1.5 million to \$1.7 million and \$2.5 million, respectively, from \$0.1 million and \$1.0 million, respectively, as presented in the unaudited exhibit. Discontinued operations, net of income tax benefit decreased by the same \$1.5 million change to a loss of \$0.1 million compared to a benefit of \$1.4 million as presented in the unaudited exhibit. There is no difference when comparing operating income (loss), net income (loss) or earnings (loss) per share.

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

**Overview**

Ruth's Hospitality Group, Inc. is a leading restaurant company focused on the upscale dining segment. The Ruth's Chris menu features a broad selection of high-quality USDA Prime and Choice grade steaks and other premium offerings served in Ruth's Chris' signature fashion—"sizzling" and topped with seasoned butter—complemented by other traditional menu items inspired by our New Orleans heritage. The Ruth's Chris restaurants reflect the more than 40-year commitment to the core values instilled by our founder, Ruth Fertel, of caring for our guests by delivering the highest quality food, beverages and service in a warm and inviting atmosphere. We believe that Ruth's Chris is one of the strongest brands in the upscale steakhouse category.

Our restaurants cater to families and special occasion diners, in addition to the business clientele traditionally served by upscale steakhouses, by providing a dining experience designed to appeal to a wide range of guests. We believe our focus on creating this broad appeal provides us with opportunities to expand into a wide range of markets, including many markets not traditionally served by upscale steakhouses.

We offer USDA Prime and Choice grade steaks that are aged and prepared to exact company standards and cooked in 1,800-degree broilers. We also offer veal, lamb, poultry and seafood dishes, and a broad selection of appetizers, including New Orleans-style barbecued shrimp, mushrooms stuffed with crabmeat, shrimp remoulade, Louisiana seafood gumbo, onion soup au gratin, crabtini and seven salad variations. We complement our distinctive food offerings with an award-winning wine list, typically featuring bottles priced at between \$24 and \$2,000 and many selections offered by the glass. The current average check is \$69.

As of December 27, 2009, there were 130 Ruth's Chris restaurants, of which 64 were company-owned and 66 were franchisee-owned, including 14 international franchisee-owned restaurants in Aruba, Canada, China (Hong Kong), Japan, Mexico, Taiwan, and the United Arab Emirates.

On February 19, 2008, we completed the acquisition of the operating assets and intellectual property of Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR) for approximately \$93.0 million, including capitalized acquisition costs. There are currently 19 Mitchell's Fish Markets and three Cameron's Steakhouse's with locations in the Midwest, Northeast, and Florida. Mitchell's Fish Market is an award-winning, upscale, yet comfortable, seafood restaurant and bar recognized for its high-quality food, contemporary dining atmosphere, and excellent service. We believe that Mitchells' focus on upscale casual dining is a wonderful complement to our own brand.

Mitchell's Fish Market is committed to fresh seafood and all of its seafood is flown in daily. Although the menu changes frequently based on availability and season, it includes more than 80 seafood choices, including fish from all over the world. The current average check is \$34.

**Key Financial Terms and Metrics**

We evaluate our business using a variety of key financial measures:

*Restaurant Sales.* Restaurant sales consist of food and beverage sales by company-owned restaurants. Restaurant sales are primarily influenced by total operating weeks in the relevant period and comparable restaurant sales growth. Total operating weeks is the total number of company-owned restaurants multiplied by the number of weeks each is in operation during the relevant period. Total operating weeks are impacted by restaurant openings and closings, as well as changes in the number of weeks included in the relevant period. Comparable restaurant sales growth reflects the change in year-over-year or quarter-over-quarter, as applicable, sales for the comparable restaurant base. We define the comparable restaurant base to be those company-owned

## [Table of Contents](#)

restaurants in operation for not less than fifteen months prior to the beginning of the fiscal quarter including the period being measured. Comparable restaurant sales growth is primarily influenced by the number of entrées sold and the average guest check. The number of entrees sold is influenced by the popularity of our menu items, our guest mix, our ability to deliver a high-quality dining experience and overall economic conditions. Average guest check, a measure of total restaurant sales divided by the number of entrées, is driven by menu mix and pricing.

*Franchise Income.* Franchise income includes (1) franchise and development option fees charged to franchisees and (2) royalty income. Franchise royalties consist of 5.0% of adjusted gross sales from each franchisee-owned restaurant. In addition, our new franchise agreements require up to a 1% advertising fee to be paid by the franchisee which is applied to national advertising expenditures. Under our prior franchise agreements, the Company would pay 1% out of the 5% royalty toward national advertising. We evaluate the performance of our franchisees by measuring franchisee-owned restaurant operating weeks, which is impacted by franchisee-owned restaurant openings and closings, and comparable franchisee-owned restaurant sales growth, which together with operating weeks, drives royalty income.

*Other Operating Income.* Other operating income includes banquet related guarantee and services revenue and other incidental guest fees as well as other licensing fees and income associated with the sale of gift cards. While we always honor gift cards, even beyond any stated expiration dates on the card and as required in several jurisdictions, our historical experience has shown that very few cards are redeemed after 18 months following the date of last activity. As such, we record in other operating income the full remaining value (original issue less any partial redemption) of any gift cards unredeemed after 18 months from the date of last activity, subject to limitations in some jurisdictions in which we operate.

*Food and Beverage Costs.* Food and beverage costs include all restaurant-level food and beverage costs of company-owned restaurants. We measure food and beverage costs by tracking cost of sales as a percentage of restaurant sales and cost per entrée. Food and beverage costs are generally influenced by the cost of food and beverage items, distribution costs and menu mix.

*Restaurant Operating Expenses.* We measure restaurant-operating expenses for company-owned restaurants as a percentage of restaurant sales. Restaurant operating expenses include the following:

- Labor costs, consisting of restaurant management salaries, hourly staff payroll and other payroll-related items, including taxes and fringe benefits. We measure our labor cost efficiency by tracking hourly and total labor costs as a percentage of restaurant sales;
- Operating costs, consisting of maintenance, utilities, bank and credit card charges, and any other restaurant-level expenses; and
- Occupancy costs, consisting of both fixed and variable portions of rent, common area maintenance charges, insurance premiums and real property taxes.

*Marketing and Advertising.* Marketing and advertising includes all media, production and related costs for both local restaurant advertising and national marketing. We measure the efficiency of our marketing and advertising expenditures by tracking these costs as a percentage of total revenues. We have historically spent approximately 2.5% to 4.0% of total revenues on marketing and advertising and expect to maintain this level in the near term. All franchise agreements executed based on our new form of franchise agreement include up to a 1.0% advertising fee in addition to the 5.0% royalty fee. We spend this designated advertising fee on national advertising and record these fees as liabilities against which specified advertising and marketing costs will be charged.

*General and Administrative.* General and administrative costs include costs relating to all corporate and administrative functions that support development and restaurant operations and provide an infrastructure to support future company and franchisee growth. General and administrative costs are comprised of management,

## [Table of Contents](#)

supervisory and staff salaries and employee benefits, travel, information systems, training, corporate rent, professional and consulting fees, technology and market research. We measure our general and administrative expense efficiency by tracking these costs as a percentage of total revenues.

*Depreciation and Amortization.* Depreciation and amortization includes depreciation of fixed assets and certain definite life intangible assets. We depreciate capitalized leasehold improvements over the shorter of the total expected lease term or their estimated useful life.

*Pre-Opening Costs.* Pre-opening costs consist of costs incurred prior to opening a company-owned restaurant, which are comprised principally of manager salaries and relocation costs, employee payroll and related training costs for new employees, including practice and rehearsal of service activities as well as lease costs incurred prior to opening.

### Results of Operations

The table below sets forth certain operating data expressed as a percentage of restaurant sales and total revenues for the periods indicated. Our historical results are not necessarily indicative of the operating results that may be expected in the future. Certain prior year amounts have been reclassified to conform to the current year presentation of discontinued operations and sales discounts. See Note 19 of the notes to our audited financial statements located in this Form 10-K for reclassifications due to corrections to previously reported amounts. These reclassifications had no effect on previously reported net income.

	Fiscal Year		
	2007	2008	2009
Revenues:			
Restaurant sales	94.8%	95.9%	95.9%
Franchise income	4.2%	3.2%	3.1%
Other operating income	1.0%	0.9%	1.0%
Total revenues	100.0%	100.0%	100.0%
Costs and expenses:			
Food and beverage costs (percentage of restaurant sales)	33.0%	32.4%	29.3%
Restaurant operating expenses (percentage of restaurant sales)	45.3%	50.0%	53.5%
Marketing and advertising	2.7%	3.5%	3.4%
General and administrative costs	7.9%	7.4%	6.9%
Depreciation and amortization expenses	3.8%	4.2%	4.8%
Pre-opening costs	1.4%	0.7%	—
Hurricane and relocation costs, net of insurance proceeds	(1.1)%	—	—
Loss on impairment	—	19.6%	2.5%
Restructuring	—	2.3%	—
Loss on the disposal of property and equipment, net	0.4%	0.1%	0.6%
Operating income (loss)	10.6%	(16.8)%	2.3%
Other income (expense):			
Interest expense	(1.9)%	(2.6)%	(2.2)%
Other	0.2%	0.2%	0.2%
Income (loss) from continuing operations before income tax expense (benefit)	9.0%	(19.2)%	0.2%
Income tax expense (benefit)	2.9%	(6.9)%	(0.5)%
Income (loss) from continuing operations	6.1%	(12.3)%	0.7%
Discontinued operations, net of income tax benefit	0.2%	1.4%	—
Net income (loss)	5.9%	(13.7)%	0.7%

**Fiscal Year 2009 Compared to Fiscal Year 2008**

*Restaurant sales.* Restaurant sales decreased \$46.9 million, or 12.4%, to \$330.5 million in fiscal 2009 from \$377.4 million in fiscal 2008. Ruth's Chris comparable restaurants experienced a sales decrease of 19.5%, consisting of a 15.8% decrease in entrée growth (traffic) and a per entrée check average decrease of 4.2%, offset by sales mix shifts. This was offset by a \$3.5 million or 4.8% increase in 2009 sales from the 22 Mitchell's restaurants acquired in February 2008. Full year 2009 Mitchell's sales were \$75.5 million compared to partial year 2008 sales of \$72.0 million.

*Franchise Income.* Franchise income decreased \$2.2 million, or 17.3%, to \$10.5 million in fiscal 2009 from \$12.7 million in fiscal 2008. The decrease was driven primarily by a 13.8% decrease in franchise-owned restaurant sales.

*Other Operating Income.* Other operating income increased \$0.1 million, to \$3.6 million in fiscal 2009 from \$3.5 million in fiscal 2008.

*Food and Beverage Costs.* Food and beverage costs decreased \$25.4 million, or 20.8%, to \$96.9 million in fiscal 2009 from \$122.3 million in fiscal 2008. As a percentage of restaurant sales, food and beverage costs decreased to 29.3% in fiscal 2009 from 32.4% in fiscal 2008. This decrease in food and beverage costs as a percentage of restaurant sales was primarily due to favorable beef costs.

*Restaurant Operating Expenses.* Restaurant operating expenses decreased \$11.6 million, or 6.2%, to \$177.0 million in fiscal 2009 from \$188.6 million in fiscal 2008 due to reduction in variable expenses consistent with restaurant sales decrease. Restaurant operating expenses, as a percentage of restaurant sales, increased to 53.5% in fiscal 2009 from 50.0% in fiscal 2008 due to reduced fixed expense leverage experienced from lower comparable store sales.

*Marketing and Advertising.* Marketing and advertising expenses decreased \$2.2 million, or 15.8%, to \$11.7 million in fiscal 2009 from \$13.9 million in fiscal 2008. Marketing and advertising expenses, as a percentage of total revenues, increased to 3.5% in fiscal 2009 from 3.4% in fiscal 2008.

*General and Administrative Costs.* General and administrative costs decreased \$5.2 million, or 17.9%, to \$23.8 million in fiscal 2009 from \$29.0 million in fiscal 2008. General and administrative costs, as a percentage of total revenues, decreased to 6.9% in fiscal 2009 from 7.4% in fiscal 2008. This decrease was primarily due to our corporate reorganization completed during the fourth quarter of 2008.

*Depreciation and Amortization Expenses.* Depreciation and amortization expense decreased \$0.2 million, or 1.2%, to \$16.5 million in fiscal 2009 from \$16.7 million in fiscal 2008 due to a decrease in investments at our existing company-owned restaurants.

*Pre-Opening Costs.* There were minimal pre-opening costs in fiscal 2009 as there were no company-owned restaurant openings. There were pre-opening costs of \$2.9 million in fiscal 2008. There were no new company-owned restaurant openings in fiscal 2009. We opened five new company-owned restaurants in fiscal 2008.

*Loss on Impairment.* We recognized a loss on the impairment of long-lived and intangible assets of \$8.6 million in fiscal 2009 compared to a loss on the impairment of long-lived and intangible assets of \$81.3 million in fiscal 2008. Of the total loss on impairment recognized in 2009, \$0.8 million was related to the impairment of long-lived assets, \$0.2 million was related to the impairment of the Mitchell's Fish Market and Mitchell's Steakhouse trademarks, \$5.1 million was related to the impairment of franchise rights for seven company-owned restaurants acquired in 2006 and three company-owned restaurants acquired in 2007, and \$2.2 million was related to the impairment of goodwill. The remaining \$0.3 million loss was due to impairment charges related to the closure of the Ruth's Chris Steak House location in San Juan, Puerto Rico, on February 28, 2009, due to an expired lease term in February 2009.



## [Table of Contents](#)

*Restructuring Expenses.* In 2009, we recognized \$40 of restructuring expenses which consisted of a \$417 charge related to the settlement of lease obligations of undeveloped restaurant properties in Thousand Oaks, California, and Dedham, Massachusetts, offset by a \$377 recovery on the lease obligation for our corporate headquarters.

*Loss on the disposal of property and equipment, net.* Loss on the disposal of property and equipment was \$2.0 million in fiscal 2009 compared to loss on disposal of property and equipment of \$0.5 million in fiscal 2008. Loss on disposal in fiscal 2009 was primarily due to the sale of our former home office land and building in Metairie, Louisiana, and the sale of the home office land and building in Heathrow, Florida.

*Interest Expense.* Interest expense, net of interest income, decreased \$2.5 million, or 24.3%, to \$7.8 million in fiscal 2009 from \$10.3 million in fiscal 2008. During fiscal 2009, we recorded a gain of \$1.4 million for a mark-to-market non-cash adjustment relating to interest rate swap agreements. During fiscal 2008, we recorded a non-cash charge of \$1.0 million for a mark-to-market adjustment relating to interest rate swap agreements.

*Income Tax Benefit.* Income tax benefit decreased \$25.5 million, or 93.8%, to a net benefit of \$1.7 million in fiscal 2009 from a net benefit of \$27.2 million in fiscal 2008. The decrease was due to a net loss before income tax of \$75.7 million in fiscal 2008 compared to net income of \$0.9 million before tax in fiscal 2009.

*Income (Loss) from Continuing Operations.* Income from continuing operations increased \$51.0 million, or 105.2%, to \$2.5 million in fiscal 2009 from a net loss of \$48.5 million in fiscal 2008.

*Discontinued Operations, net of Income Tax Benefit.* Discontinued operations resulted in a \$0.1 million loss in fiscal 2009 compared to \$5.4 million of loss in fiscal 2008. Discontinued operations income and loss relates to former operations in New York, New York, and Naples, Florida. The change was caused primarily by a \$4.2 million loss from impairment in the Naples restaurant in 2008.

During the third quarter of fiscal 2007, we were notified that the replacement tenant in the Manhattan-UN, New York, location was placed in default by the landlord and as a result, we resumed lease payments with respect to this property during the third quarter of fiscal 2008. Payments will equal \$0.6 million in the aggregate per fiscal year through September 2016. We will attempt to sublease the property in order to recover some or all of the amounts paid with respect to the lease. As of December 27, 2009, we maintain a contingent lease liability of \$0.8 million related to this property. We accounted for our exit costs in accordance with the provisions of "Exit or Disposal Cost Obligations," FASB Accounting Standards Codification Topic 420 (Topic 420), which requires that such costs be expensed in the periods whereby such costs are incurred. All of the losses incurred are included in discontinued operations in the accompanying condensed consolidated income statements.

During the second quarter of fiscal 2009, we made the decision to close the company-owned Ruth's Chris restaurant in Naples, Florida. At December 27, 2009, we maintained a liability for lease exit costs in accordance with the provisions of Topic 420. All of the losses incurred with respect to this location are included in discontinued operations in the accompanying consolidated income statements.

### ***Fiscal Year 2008 Compared to Fiscal Year 2007***

*Restaurant sales.* Restaurant sales increased \$84.5 million, or 28.8%, to \$377.4 million in fiscal 2008 from \$292.9 million in fiscal 2007. This increase was due primarily to an additional \$72.0 million contributed from 22 Mitchell's restaurants acquired during fiscal 2008, and \$39.7 million from Ruth's Chris Steak Houses opened during fiscal 2007 and 2008. This increase was offset by a decrease in comparable restaurant sales. Ruth's Chris comparable restaurants experienced a sales decrease of 10.2%, consisting of a 10.2% decrease in entrée growth (traffic). The per entrée check average remained unchanged from 2007.

## [Table of Contents](#)

*Franchise Income.* Franchise income decreased \$0.2 million, or 1.6%, to \$12.7 million in fiscal 2008 from \$12.9 million in fiscal 2007. The decrease was driven primarily by a \$0.3 million reduction in franchise opening fees. Operational weeks increased 19.2% while blended comparable franchise-owned restaurant sales decreased 9.9%.

*Other Operating Income.* Other operating income increased \$0.3 million, or 9.4%, to \$3.5 million in fiscal 2008 from \$3.2 million in fiscal 2007. This increase was due primarily to increased gift card breakage.

*Food and Beverage Costs.* Food and beverage costs increased \$25.6 million, or 26.5%, to \$122.3 million in fiscal 2008 from \$96.7 million in fiscal 2007. The increase was due to higher restaurant sales and partially offset by lower meat costs. As a percentage of restaurant sales, food and beverage costs decreased to 32.4% in fiscal 2008 from 33.0% in fiscal 2007.

*Restaurant Operating Expenses.* Restaurant operating expenses increased \$56.0 million, or 42.2%, to \$188.6 million in fiscal 2008 from \$132.6 million in fiscal 2007. The increase was due to higher restaurant sales in fiscal 2008, increased hourly labor costs, staffing related to new restaurant openings and increased occupancy costs. Restaurant operating expenses, as a percentage of restaurant sales, increased to 50.0% in fiscal 2008 from 45.3% in fiscal 2007. This increase in restaurant operating expenses as a percentage of restaurant sales was due to increased labor, operating, and occupancy expenses of newly opened restaurants as well as reduced fixed expense leverage experienced from lower comparable restaurant sales.

*Marketing and Advertising.* Marketing and advertising expenses increased \$5.5 million, or 65.5%, to \$13.9 million in fiscal 2008 from \$8.4 million in fiscal 2007. Marketing and advertising expenses, as a percentage of total revenues, increased to 3.5% in fiscal 2008 from 2.7% in fiscal 2007. This increase was primarily due to value promotions introduced during the second half of 2008 aimed at improving guest traffic.

*General and Administrative Costs.* General and administrative costs increased \$4.5 million, or 18.4%, to \$29.0 million in fiscal 2008 from \$24.5 million in fiscal 2007. General and administrative costs, as a percentage of total revenues, decreased to 7.4% in fiscal 2008 from 7.9% in fiscal 2007. This decrease was primarily due to our corporate reorganization completed during the fourth quarter of 2008.

*Depreciation and Amortization Expenses.* Depreciation and amortization expense increased \$4.9 million, or 41.5%, to \$16.7 million in fiscal 2008 from \$11.8 million in fiscal 2007. The increase was due primarily to the addition of new Ruth's Chris company-owned restaurants and acquired restaurants during 2007 and 2008 as well as investments at our existing company-owned restaurants and corporate headquarters.

*Pre-Opening Costs.* Pre-opening costs decreased \$1.5 million, or 34.1%, to \$2.9 million in fiscal 2008 from \$4.4 million in fiscal 2007. This decrease was due to the opening of five new Ruth's Chris company-owned restaurants in fiscal 2008 versus eight locations during fiscal 2007.

*Hurricane and Relocation costs net of insurance proceeds.* We recognized income, net of relocation costs, of \$0.0 million in fiscal 2008 compared to \$3.5 million in fiscal 2007. These net insurance proceeds recognized in 2007 related to our business interruption losses and property losses in New Orleans and Metairie, Louisiana and Biloxi, Mississippi as a result of Hurricane Katrina. We finalized the claim in fiscal 2007 and do not expect further proceeds related to Hurricane Katrina.

*Loss on Impairment.* We recognized a loss on the impairment of long-lived and intangible assets of \$81.3 million in fiscal 2008 compared with no impairments in fiscal 2007. Of the total loss on impairment recognized, \$32.1 million was related to the impairment of long-lived assets, \$12.1 million was related to the impairment of the Mitchell's Fish Market and Mitchell's Steakhouse trademarks and \$5.9 million was related to the impairment of franchise rights for three company-owned restaurants acquired in 2007. The remaining \$31.2 million was related to the impairment of goodwill.

## [Table of Contents](#)

*Restructuring Expenses.* We recognized restructuring expenses of \$8.9 million in fiscal 2008 compared with no expense in fiscal 2007. Of the \$8.9 million, \$2.2 million was severance related costs, \$6.0 million was related to contingent lease liability charges and write-offs of capitalized development costs on company-owned restaurant development scheduled for 2009. The remaining \$0.7 million was related to a contingent lease liability for vacated leased office space.

*Interest Expense.* Interest expense, net of interest income, increased \$4.3 million, or 71.7%, to \$10.3 million in fiscal 2008 from \$6.0 million in fiscal 2007. This increase was primarily due to the additional borrowings related to the 2007 and 2008 acquired restaurants as well as higher interest rates on those borrowings. Interest expense during the year included a \$1.0 million “mark to market” non-cash charge related to an interest rate swap.

*Income Tax Expense (Benefit).* Income tax expense decreased \$36.1 million, or 405.6%, to a net benefit of \$27.2 million in fiscal 2008 from an \$8.9 million expense in fiscal 2007. The decrease was due to a net loss before income tax that was partially offset by an increase in the annual effective tax rate from 32.1% in fiscal 2007 to 34.0% in fiscal 2008.

*Income (Loss) from Continuing Operations.* Income from continuing operations decreased \$67.3 million, or 358.0%, to a loss of \$48.5 million in fiscal 2008 from income of \$18.8 million in fiscal 2007.

*Discontinued Operations, net of Income Tax Benefit.* Discontinued operations resulted in \$5.4 million of loss in fiscal 2008 compared to \$0.6 million of loss in fiscal 2007. Discontinued operations income and loss relates to former operations in New York, New York, and Naples, Florida. Discontinued operations in fiscal 2008 included a \$4.2 million charge for impairment of long-lived assets.

During the third quarter of fiscal 2007, we were notified that the replacement tenant in the Manhattan-UN, New York, location was placed in default by the landlord and as a result, we resumed lease payments with respect to this property during the third quarter of fiscal 2008. Payments will equal \$0.6 million in the aggregate per fiscal year through September 2016. We will attempt to sublease the property in order to recover some or all of the amounts paid with respect to the lease. As of December 28, 2008, we maintained a contingent lease liability of \$1.1 million related to this property. We accounted for our exit costs in accordance with the provisions of Topic 420, which requires that such costs be expensed in the periods whereby such costs are incurred. All of the losses incurred are included in discontinued operations in the accompanying consolidated income statements.

### Potential Fluctuations in Quarterly Results and Seasonality

Our quarterly operating results may fluctuate significantly as a result of a variety of factors. See “Risk Factors,” which discloses certain material risks that could affect its quarterly operating results.

Our business is also subject to seasonal fluctuations. Historically, the percentages of our annual total revenues during the first and fourth fiscal quarters have been higher due, in part, to the year-end holiday season. Accordingly, results for any one quarter are not necessarily indicative of results to be expected for any other quarter or for any year, and comparable restaurant sales for any particular period may decrease. In the future, operating results may fall below the expectations of securities analysts and investors. If this occurs, the price of our common stock would likely decrease. The following table presents summary quarterly results of operations for fiscal 2008 and fiscal 2009.

	Quarter Ended				Quarter Ended			
	March 30, 2008	June 29, 2008	September 28, 2008	December 28, 2008	March 29, 2009	June 28, 2009	September 27, 2009	December 27, 2009
	(\$ in millions, except per share data)							
Total revenues	\$ 95.2	\$ 105.5	\$ 96.0	\$ 96.9	\$ 94.7	\$ 86.4	\$ 76.1	\$ 87.4
Cost and expenses	(86.0)	(100.5)	(94.4)	(179.0)	(87.8)	(81.9)	(75.2)	(91.7)
Operating income (loss)	\$ 9.2	\$ 4.9	\$ 1.7	(82.1)	\$ 6.9	\$ 4.5	\$ 1.0	(4.3)
Interest expense, net	(3.2)	(1.2)	(2.5)	(3.4)	(2.3)	(1.8)	(1.9)	(1.7)
Other	0.3	0.2	0.2	0.1	0.2	0.3	(0.1)	0.2
Income (loss) from continuing operations before income tax expense (benefit)	6.4	3.9	(0.6)	(85.4)	4.8	3.0	(1.0)	(5.8)
Income tax expense (benefit)	1.9	1.0	(0.3)	(29.8)	1.0	0.4	(0.1)	(2.9)
Income (loss) from continuing operations	4.5	2.9	(0.3)	(55.6)	3.8	2.6	(0.9)	(3.0)
Discontinued operations, net of income tax benefit	(0.0)	0.1	0.3	5.0	0.1	0.3	0.0	(0.3)
Net income (loss)	4.5	2.8	(0.5)	(60.7)	3.7	2.3	(1.0)	(2.7)
Basic earnings (loss) per share:								
Continuing operations	\$ 0.20	\$ 0.13	\$ (0.01)	\$ (2.38)	\$ 0.16	\$ 0.11	\$ (0.04)	\$ (0.12)
Discontinued operations	0.00	(0.01)	(0.01)	(0.21)	(0.00)	(0.01)	(0.00)	0.01
Basic earnings (loss) per share	\$ 0.20	\$ 0.12	\$ (0.02)	\$ (2.59)	\$ 0.16	\$ 0.10	\$ (0.04)	\$ (0.11)
Diluted earnings (loss) per share:								
Continuing operations	\$ 0.19	\$ 0.13	\$ (0.01)	\$ (2.38)	\$ 0.16	\$ 0.11	\$ (0.04)	\$ (0.12)
Discontinued operations	0.00	(0.01)	(0.01)	(0.21)	(0.00)	(0.01)	(0.00)	(0.01)
Diluted earnings (loss) per share	\$ 0.19	\$ 0.12	\$ (0.02)	\$ (2.59)	\$ 0.16	\$ 0.10	\$ (0.04)	\$ (0.11)
Shares (in millions) used in computing net income (loss) per common share:								
Basic	23.2	23.3	23.3	23.4	23.5	23.6	23.6	23.6
Diluted	23.4	23.4	23.3	23.4	23.6	23.8	23.6	23.6
Quarterly percentage of annual revenues	24.2%	26.8%	24.4%	24.6%	27.5%	25.1%	22.1%	25.4%
Operating margin	9.7%	4.7%	1.7%	-84.7%	7.3%	5.2%	1.3%	-4.9%

## [Table of Contents](#)

### Liquidity and Capital Resources

Our principal sources of cash during fiscal 2009 were net cash provided by operating activities and proceeds from the sale of property and equipment. Our principal use of cash during fiscal 2009 was debt paydowns. We expect that our principal uses of cash in 2010 will be for capital expenditures on existing restaurants and to pay down debt.

During the fourth quarter of fiscal 2009, the Company negotiated an amendment to its First Amended and Restated Credit Agreement. The Second Amendment to First Amended and Restated Credit Agreement became effective on February 12, 2010. The amendment to the credit agreement reduces the revolving loan commitment to \$129.6 million, extends the scheduled maturity of the credit agreement by two years, to February 2015, and provides the Company with a less restrictive set of covenants, which the Company believes will enhance its financial and operating flexibility. Specifically, the amendment provides for no financial covenant testing until the end of fiscal year 2010, provides less restrictive leverage and coverage covenants thereafter, and permanently eliminates the minimum EBITDA covenant. The amendment provides for higher interest rates under the credit facility, with interest rates based on the Company's actual leverage ratio, ranging from 3.25% to 5.00% above the applicable LIBOR rate or, at the Company's option, from 2.00% to 3.75% above the applicable base rate.

### Cash Flows

The following table summarizes our primary sources of cash in the periods presented:

	Fiscal Year		
	2007	2008	2009
Net cash provided by (used in):			
Operating activities	\$ 34,772	\$ 37,073	\$ 28,436
Investing activities	(56,082)	(107,949)	6,412
Financing activities	28,931	62,441	(37,043)
Net increase (decrease) in cash and cash equivalents	<u>\$ 7,621</u>	<u>\$ (8,435)</u>	<u>\$ (2,195)</u>

Our operations have not required significant working capital and, like many restaurant companies, we have been able to operate with negative working capital. Restaurant sales are primarily by cash or by credit card, and restaurant operations do not require significant inventories or receivables. In addition, we receive trade credit for the purchase of food, beverage and supplies, thereby reducing the need for incremental working capital to sustain operations.

*Operating Activities.* Net cash provided by operating activities was \$34.8 million and \$37.1 million in fiscal 2007 and fiscal 2008, respectively, compared to \$28.4 million in fiscal 2009. The decrease in net cash from operating activities from fiscal 2008 was primarily due to changes in working capital.

*Investing Activities.* Net cash used in investing activities was \$56.1 million and \$108.0 million in fiscal 2007 and fiscal 2008, respectively, compared to net cash provided by investing activities of \$6.4 million in fiscal 2009. The change in 2009 was primarily due to \$10.7 million in proceeds from the sale of the former and current corporate headquarters, as well as a decrease in capital expenditures.

*Financing Activities.* Net cash provided by financing activities totaled \$28.9 million in fiscal 2007 and \$62.4 million in fiscal 2008 compared to net cash used in financing activities of \$37.0 million in fiscal 2009. The decrease was the result of debt paydowns.

### Capital Expenditures

Capital expenditures and other acquisitions totaled \$4.3 million in fiscal 2009, \$125.0 million in fiscal 2008 and \$56.2 million in fiscal 2007. Capital expenditures in fiscal 2009 resulted from approximately \$2.3 million for remodels and \$2.0 million of maintenance capital. We anticipate capital expenditures in fiscal 2010 will be

## [Table of Contents](#)

approximately \$7.0 to \$8.0 million. We expect to open one new company-owned Mitchell's Fish Market restaurant in Winter Park, Florida in 2010. We do not expect to open any Ruth's Chris Steak House company-owned restaurants in fiscal 2010.

### **Senior Credit Facility**

On February 19, 2008, we amended and restated our existing credit facility to increase the revolving loan commitment to \$250.0 million. The amended and restated credit extended the maturity date of the outstanding principal from March 11, 2010 to February 19, 2013, and changed the maximum Consolidated Leverage Ratio in the financial covenants to 3.50:1.00.

On February 26, 2009, we signed an amendment reducing the revolving loan commitment from \$250.0 million to \$175.0 million, with additional reductions scheduled beginning December 31, 2009 through the final maturity date of February 19, 2013. The amendment decreased our Fixed Charge Coverage Ratio and increased our maximum Consolidated Leverage Ratio, in each case beginning with the fourth quarter of 2008 and continuing through the second quarter of 2010, after which these two covenants reset to their original levels. The amendment increased the interest rates applicable to borrowings based on our actual leverage ratio, ranging from 2.50% to 4.25% above the applicable LIBOR rate or, at our option, from 1.25% to 3.00% above the applicable base rate.

During the fourth quarter of fiscal 2009, the Company negotiated an amendment to its First Amended and Restated Credit Agreement. The Second Amendment to First Amended and Restated Credit Agreement became effective on February 12, 2010. The amendment to the credit agreement reduces the revolving loan commitment to \$129.6 million, extends the scheduled maturity of the credit agreement by two years, to February 2015, and provides the Company with a less restrictive set of covenants, which the Company believes will enhance its financial and operating flexibility. Specifically, the amendment provides for no financial covenant testing until the end of fiscal year 2010, provides less restrictive leverage and coverage covenants thereafter, and permanently eliminates the minimum EBITDA covenant. The amendment provides for higher interest rates under the credit facility, with interest rates based on the Company's actual leverage ratio, ranging from 3.25% to 5.00% above the applicable LIBOR rate or, at the Company's option, from 2.00% to 3.75% above the applicable base rate.

As of December 27, 2009, we had an aggregate of \$125.5 million of outstanding indebtedness under our senior credit facility at a weighted average interest rate of 4.22%. We had approximately \$41.0 million of borrowings available under our revolving credit facility, net of outstanding letters of credit of approximately \$3.5 million. As of the February 12, 2010 amendment date, the outstanding indebtedness under our senior credit facility was \$78.8 million, at a weighted average interest rate of 4.48%. Under the amended revolving loan commitment as of this date, we had approximately \$47.3 million of borrowings available under our revolving credit facility, net of outstanding letters of credit of approximately \$3.5 million. We are required to maintain certain financial covenants and are also subject to several restrictive covenants under our borrowings. The restrictive covenants include, but are not limited to, covenants that, subject to exceptions: (1) prohibit the Company and its subsidiaries from incurring additional indebtedness and from guaranteeing obligations of others; (2) prohibit the Company and its subsidiaries from creating, incurring, assuming or permitting to exist any lien on or with respect to any property or asset; (3) limit the Company's ability and its subsidiaries' ability to enter into joint ventures, acquisitions, and other investments; (4) prohibit the Company and its subsidiaries from directly or indirectly creating or becoming liable with respect to any contingent liabilities; and (5) restrict the Company and its subsidiaries from directly or indirectly declaring, ordering, paying, or making any restricted junior payments in excess of the \$1.0 in annual dividends permitted under the credit agreement.

Our obligations under the senior credit facility are guaranteed by each of our existing and future subsidiaries and are secured by substantially all of our assets and a pledge of the capital stock of our subsidiaries.

## [Table of Contents](#)

### **Contractual Obligations**

The following table summarizes our contractual obligations as of December 27, 2009:

	Payments due by period				
	Total	Less than 1 year	1-2 years (in millions)	3-5 years	More than 5 years
Long-term debt obligations	\$ 125.5	\$ —	\$ —	\$ 125.5	\$ —
Operating lease obligations	319.6	24.1	23.9	65.0	206.6
Total	<u>\$445.1</u>	<u>\$ 24.1</u>	<u>\$23.9</u>	<u>\$190.5</u>	<u>\$ 206.6</u>

### **Off-Balance Sheet Arrangements**

As of December 27, 2009, we do not have any off-balance sheet arrangements.

### **Critical Accounting Policies and Estimates**

Our discussion and analysis of results of operations and financial condition are based upon our audited consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements is based, in part, on our critical accounting policies that require us to make estimates and judgments that affect the amounts reported in those financial statements. Our significant accounting policies, which may be affected by our estimates and assumptions, are more fully described in Note 2 to our consolidated financial statements that appear elsewhere in Item 8. Critical accounting policies are those that we believe are most important to portraying our financial condition and results of operations and also require the greatest amount of subjective or complex judgments by management. 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 the combined financial statements.

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

We review property and equipment (which includes leasehold improvements) for impairment when events or circumstances indicate these assets might be impaired. We test impairment using historical cash flow and other relevant facts and circumstances as the primary basis for our estimates of future cash flows. The analysis is performed at the restaurant level for indicators of permanent impairment. In determining future cash flows, we make significant estimates with respect to future operating results of each restaurant over its remaining lease term. If assets are determined to be impaired, the impairment charge is measured by calculating the amount by which the asset-carrying amount exceeds its fair value. This process requires the use of estimates and assumptions, which are subject to a high degree of judgment. If these assumptions change in the future, we may be required to record additional impairment charges for these assets.

The judgments we make related to the expected useful lives of long-lived assets and our ability to realize undiscounted cash flows in excess of the carrying amounts of these assets are affected by factors such as the ongoing maintenance and improvements of the assets, changes of economic conditions, changes in usage or operating performance and desirability of the restaurant sites. As we assess the ongoing expected cash flows and carrying amounts of our long-lived assets, significant adverse changes in these factors could cause us to realize a material impairment charge.

We account for exit or disposal activities, including restaurant closures, in accordance with Topic 360-10. Such costs include the cost of disposing of the assets as well as other facility-related expenses from previously

closed restaurants. These costs are generally expensed as incurred. Additionally, at the date we cease using a property under an operating lease, we record a liability for the net present value of any remaining lease obligations, net of estimated sublease income. Any subsequent adjustments to that liability as a result of lease termination or changes in estimates of sublease income are recorded in the period incurred. Upon disposal of the assets associated with a closed restaurant, any gain or loss is recorded in the same line within our consolidated statements of income (loss) as the original impairment.

#### ***Goodwill, Franchise Rights and Trademarks***

Goodwill and other indefinite lived assets arose primarily from our acquisition of franchisee-owned restaurants and Mitchell's Fish Markets. The most significant acquisitions were completed in 1996, 1999, 2006, 2007 and 2008. Goodwill and other indefinite lived assets acquired prior to 2008 are not subject to amortization. Such assets must be tested for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable and at least annually. We completed the most recent impairment test in December 2009 and determined that impairment losses related to goodwill and other indefinite lived assets in the amount of \$7.5 million should be recorded. In assessing the recoverability of goodwill and other indefinite lived assets, market values and projections regarding estimated future cash flows and other factors are used to determine the fair value of the respective assets.

A significant amount of judgment is involved in determining if an indicator of impairment has occurred. Such indicators may include, among others: future revenues and expenses, potential unit growth, as well as market multiples. Any adverse change in these factors could have a significant impact on the recoverability of these assets and could have a material impact on our consolidated financial statements. If these estimates or related projections change in the future, we may be required to record additional impairment charges for these assets.

The goodwill impairment test involves a two-step process. The first step is a comparison of the carrying value of the long-lived assets to the fair value of the reporting unit, which is considered to be the individual restaurant acquired. Consistent with the valuation of restaurant operations, the Company utilized a multiple of EBITDA to approximate the fair value of the reporting units for purposes of completing Step 1 of the evaluation. The Company considered EBITDA multiples of publicly held companies, including its own, as well as other private reporting unit acquisitions. For reporting units whose estimated fair value exceeded its carrying value, no impairment was recorded. For reporting units whose fair value did not exceed the carrying value as the balance sheet date, the Company completed Step 2 of the evaluation by comparing the implied fair value of goodwill with the carrying amount at the reporting unit level. The Company calculated the implied fair value by allocating the fair value of a reporting unit to all of its assets and liabilities as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the price paid to acquire the unit. For reporting units whose implied fair value did not exceed the carrying amount of the reporting unit net asset value as of the balance sheet date, the Company recorded an impairment charge for the difference, not to exceed the goodwill carrying value. The fair values of the reporting units with goodwill on the balance sheet as of December 27, 2009 significantly exceed their carrying values.

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

We maintain various insurance policies for workers' compensation, employee health, general liability, and property damage. Pursuant to those policies, we are responsible for losses up to certain limits and are required to estimate a liability that represents our ultimate exposure for aggregate losses below those limits. This liability is based on management's estimates of the ultimate costs to be incurred to settle known claims and claims not reported as of the balance sheet date. Our estimated liability is not discounted and is based on a number of assumptions and factors, including historical trends, actuarial assumptions, and economic conditions. If actual trends differ from our estimates, our financial results could be impacted.



### ***Income Taxes***

We account for income taxes in accordance with “Income Taxes,” FASB Accounting Standards Codification Topic 740 (Topic 740). This Statement establishes financial accounting and reporting standards for the effects of income taxes that result from an enterprise’s activities during the current and preceding years. It requires an asset and liability approach for financial accounting and reporting of income taxes. We recognize deferred tax liabilities and assets for the future consequences of events that have been recognized in our consolidated financial statements or tax returns. In the event the future consequences of differences between financial reporting bases and tax bases of our assets and liabilities resulted in a net deferred tax asset, an evaluation is made of the probability of our ability to realize the future benefits indicated by such asset. A valuation allowance related to a deferred tax asset is recorded when it is more likely than not that some portion or the entire deferred tax asset will not be realized. The realization of such net deferred tax will generally depend on whether we will have sufficient taxable income of an appropriate character within the carry-forward period permitted by the tax law. Without sufficient taxable income to offset the deductible amounts and carry forwards, the related tax benefits will expire unused. We have evaluated both positive and negative evidence in making a determination as to whether it is more likely than not that all or some portion of the deferred tax asset will not be realized. Measurement of deferred items is based on enacted tax laws.

### ***Share-Based Compensation***

“Accounting for Stock-Based Compensation,” FASB Accounting Standards Codification Topic 718 (Topic 718) requires the recognition of compensation expense in the consolidated statements of income related to the fair value of employee share-based options. Determining the fair value of share-based awards at the grant date requires judgment, including estimating the expected term that stock options will be outstanding prior to exercise and the expected dividends. Judgment is also required in estimating the amount of share-based awards expected to be forfeited prior to vesting. If actual forfeitures differ significantly from these estimates, share-based compensation expense could be materially impacted. Prior to adopting Topic 718, we applied APB Opinion No. 25, and related Interpretations, in accounting for our stock-based compensation plans. All employee stock options were granted at or above the grant date market price.

Prior to the adoption of Topic 718, we presented the tax savings resulting from tax deductions resulting from the exercise of stock options as an operating cash flow, in accordance with Emerging Issues Task Force (“EITF”) Issue No. 00-15, “Classification in the Statement of Cash Flows of the Income Tax Benefit Received by a Company upon Exercise of a Nonqualified Employee Stock Option.” Topic 718 requires us to reflect the tax savings resulting from tax deductions in excess of expense reflected in its financial statements as a financing cash flow related to certain stock option transactions.

### **Recent Accounting Pronouncements For Future Application**

Accounting standards that have been issued by the FASB or other standards-setting bodies that do not require adoption until a future date are not expected to have a material impact on the consolidated financial statements upon adoption.

## **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

### ***Interest Rate Risk***

The Company is exposed to market risk from fluctuations in interest rates. For fixed rate debt, interest rate changes affect the fair market value of such debt but do not impact earnings or cash flows. Conversely for variable rate debt, including borrowings under the Company’s senior credit facility, interest rate changes generally do not affect the fair market value of such debt, but do impact future earnings and cash flows, assuming other factors are held constant. At December 27, 2009, the Company had \$125.5 million of variable rate debt of

## [Table of Contents](#)

which \$25.0 million has been converted to fixed rates through the use of interest rate swaps. Holding other variables constant (such as foreign exchange rates and debt levels), a hypothetical immediate one percentage point change in interest rates would be expected to have an impact on pre-tax earnings and cash flows for fiscal 2009 of approximately \$1 million.

The Company has an interest rate swap to manage its exposure on its debt facility. By using the interest rate swap to hedge exposures to changes in interest rates, the Company exposes itself to credit risk and market risk. Credit risk is the failure of the counterparty to perform under the terms of the derivative contract. When the fair value of a derivative contract is positive, the counterparty owes the Company, which creates credit risk for the Company. When the fair value of a derivative contract is negative, the Company owes the counterparty and, therefore, it does not possess credit risk.

Market risk is the adverse effect on the value of a financial instrument that results from a change in interest rates. The market risk associated with interest-rate contracts is managed by establishing and monitoring parameters that limit the types and degree of market risk that may be undertaken.

During fiscal 2009, interest expense included a \$1.4 million “mark to market” non-cash gain related to an interest rate swap.

### ***Foreign Currency Risk***

In accordance with the Company’s franchise agreements relating to the Company’s international locations, the Company receives royalties from those franchisees in U.S. dollars, and therefore the Company believes that fluctuations in foreign exchange rates do not present a material risk to its operations.

### ***Commodity Price Risk***

The Company is exposed to market price fluctuations in beef and other food product prices. Given the historical volatility of beef and other food product prices, this exposure can impact the Company’s food and beverage costs. As the Company typically sets its menu prices in advance of its beef and other food product purchases, the Company cannot quickly take into account changing costs of beef and other food items. To the extent that the Company is unable to pass the increased costs on to its guests through price increases, the Company’s results of operations would be adversely affected. In fiscal 2010, the Company has negotiated set pricing for approximately 50% of its prime beef requirements. The Company currently does not use financial instruments to hedge its risk to market price fluctuations in other food product prices.

### ***Effects of Inflation***

Components of the Company’s operations subject to inflation include food, beverage, lease and labor costs. The Company’s leases require it to pay taxes, maintenance, repairs, insurance and utilities, all of which are subject to inflationary increases. The Company believes inflation has not had a material impact on its results of operations in recent years.

## **Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The Company’s consolidated financial statements, together with the related notes and report of independent registered accounting firm, are set forth in the pages indicated in Item 15 of this Annual Report on Form 10-K.

## **Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**Item 9A. CONTROLS AND PROCEDURES**

***Evaluation of disclosure controls and procedures***

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in reports filed or submitted by the Company under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and that information required to be disclosed by the Company is accumulated and communicated to the Company’s management to allow timely decisions regarding the required disclosure.

Under the supervision and with the participation of the Company’s management, including the Chief Executive Officer and the Chief Financial Officer, the Company conducted an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act), as of December 27, 2009. In conducting the aforementioned evaluation, the Company identified a material weakness in internal control over financial reporting relative to the Company’s accounting for income tax expenses, as described below in Management’s Report on Internal Control Over Financial Reporting. Accordingly, management concluded that the Company’s disclosure controls and procedures were not effective as of December 27, 2009.

***Management’s Report on Internal Control Over Financial Reporting***

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act).

Management, including the Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of the Company’s internal control over financial reporting as of December 27, 2009. In making this assessment, management applied the criteria based on the “Internal Control—Integrated Framework” set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company’s assessment included documenting, evaluating, and testing the design and operating effectiveness of the Company’s internal control over financial reporting.

During this evaluation, the Company identified a material weakness in its internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Company’s annual or interim financial statements will not be prevented or detected on a timely basis. The identified material weakness consists of, as of the end of the period covered by this report, a failure to detect an overstatement of income tax expense during the review of the income tax provision. This material weakness resulted in an overstatement of income tax expense and understatement of net income in the Company’s consolidated statements of income (loss). The Company corrected this error prior to the issuance of its 2009 financial statements.

Based on the Company’s evaluation and the criteria discussed above, the Company has concluded that, as of December 27, 2009, the Company’s internal control over financial reporting was not effective as a result of the aforementioned material weakness.

Notwithstanding the material weakness in the Company’s internal control over financial reporting discussed above, management believes that the consolidated financial statements included in this Annual Report on Form 10-K present fairly, in all material respects, the Company’s financial position, results of operations and cash flows for the periods presented in accordance with the U.S. generally accepted accounting principles.

KPMG, LLP, the Company’s independent registered public accounting firm, has audited the financial statements included herein and issued an audit report, included herein, on the Company’s internal control over financial reporting as of December 27, 2009.

***Change in internal controls over financial reporting***

In response to the material weakness described above, the Company has taken, and intends to take further, remedial measures to strengthen our controls. To date, control enhancements include: (i) providing increased training for existing accounting professionals involved with the preparation and review of the income tax provision; (ii) enhancing the current internal review process in an effort to detect and correct errors earlier in the quarter and year end reporting process; and (iii) adding an independent third party review by an expert with significant income tax provision expertise to ensure that items are properly accounted for within the provision.

Other than as described above, there was no change in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the fiscal quarter ending December 27, 2009 that in the Company's judgment has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
Ruth's Hospitality Group, Inc.:

We have audited Ruth's Hospitality Group, Inc.'s internal control over financial reporting as of December 27, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Ruth's Hospitality Group, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in *Management's Report on Internal Control Over Financial Reporting*, appearing under Item 9a. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. A material weakness related to the Company's income tax provision policies and practices has been identified and included in management's assessment. We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Ruth's Hospitality Group, Inc. and subsidiaries as of December 28, 2008 and December 27, 2009, and the related consolidated statements of income (loss), shareholders' equity and cash flows for the fifty-two weeks ended December 30, 2007, December 28, 2008, and December 27, 2009. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2009 consolidated financial statements, and this report does not affect our report dated March 5, 2010, which expressed an unqualified opinion on those consolidated financial statements.

In our opinion, because of the effect of the aforementioned material weakness on the achievement of the objectives of the control criteria, Ruth's Hospitality Group, Inc. has not maintained effective internal control over financial reporting as of December 27, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

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[Table of Contents](#)

We do not express an opinion or any other form of assurance on management's statements referring to corrective actions taken after December 27, 2009, relative to the aforementioned material weakness in internal control over financial reporting.

/s/ KPMG LLP

Orlando, Florida

March 5, 2010

Certified Public Accountants

[Table of Contents](#)**Item 9B. OTHER INFORMATION**

None.

**PART III****Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this Item for executive officers is set forth under “Executive Officers of the Registrant” in Part I, Item 1 of this report. The other information required by this Item is incorporated by reference to the Company’s Proxy Statement for the 2010 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

We have adopted a Code of Conduct and Ethics Policy that applies to our principal executive officer, principal financial officer and principal accounting officer. The text of our Code of Conduct and Ethics Policy is posted on our website: [www.rhgi.com](http://www.rhgi.com). Our Company intends to disclose future amendments to, or waivers from, certain provisions of the Code of Conduct and Ethics Policy on the Company’s website within four business days following the date of such amendment or waiver. Stockholders may request a free copy of the Code of Conduct and Ethics Policy from: Ruth’s Hospitality Group, Inc., Attention: Corporate Secretary, 400 International Parkway, Suite 325, Heathrow, Florida 32746.

**Item 11. EXECUTIVE COMPENSATION**

The information required by this Item is incorporated by reference to the Company’s Proxy Statement for the 2010 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

**Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Information about security ownership is incorporated by reference to the Company’s Proxy Statement for the 2010 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

The following table summarizes the number of stock options issued and shares of restricted stock granted, net of forfeitures and sales, the weighted-average exercise price of such stock options and the number of securities remaining to be issued under all outstanding equity compensation plans as of December 27, 2009:

<u>Plan Category</u>	<u>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights</u> (a)	<u>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights</u> (b)	<u>Number of Securities Remaining Available for Future Issuance Under an (Excluding Securities Reflected in Column (a))</u> (c)
Equity compensation plans approved by stockholders:			
2000 Stock Option Plan	155,741	\$ 0.48	647,231
2005 Long-Term Equity Incentive Plan	2,489,207	\$ 6.85	1,069,798
Total	<u>2,644,948</u>	<u>\$ 6.48</u>	<u>1,717,029</u>

**Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is incorporated by reference to the Company's Proxy Statement for the 2010 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Form 10-K.

**Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item is incorporated by reference to the Company's Proxy Statement for the 2010 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this report.

**PART IV**

**Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) Financial Statements and Financial Statement Schedules.

See Index to Consolidated Financial Statements appearing on page F-1. All schedules have been omitted because they are not required or applicable or the information is included in the consolidated financial statements or notes thereto.

(b) Exhibits.

See Exhibit Index appearing on page E-1 for a list of exhibits filed with or incorporated by reference as part of this Annual Report on Form 10-K.



**SIGNATURES**

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

March 5, 2010

RUTH'S HOSPITALITY GROUP, INC.

By:           /s/ MICHAEL P. O'DONNELL            
**Michael P. O'Donnell**  
**Director, President, Chief Executive Officer**

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of Ruth's Hospitality Group, Inc. and in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Dates</u>
<u>/s/ MICHAEL P. O'DONNELL</u> <b>Michael P. O'Donnell</b>	Director, President, Chief Executive Officer (Principal Executive Officer)	March 5, 2010
<u>/s/ ROBERT M. VINCENT</u> <b>Robert M. Vincent</b>	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 5, 2010
<u>/s/ ROBIN P. SELATI</u> <b>Robin P. Selati</b>	Chairman of the Board, Director	March 5, 2010
<u>/s/ CARLA R. COOPER</u> <b>Carla R. Cooper</b>	Director	March 5, 2010
<u>/s/ BANNUS B. HUDSON</u> <b>Bannus B. Hudson</b>	Director	March 5, 2010
<u>/s/ ROBERT S. MERRITT</u> <b>Robert S. Merritt</b>	Director	March 5, 2010
<u>/s/ HAROLD O. ROSSER</u> <b>Harold O. Rosser</b>	Director	March 5, 2010
<u>/s/ ALAN VITULI</u> <b>Alan Vituli</b>	Director	March 5, 2010

[Table of Contents](#)

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<u>Page</u>
<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-2
<a href="#">Consolidated Balance Sheets</a>	F-3
<a href="#">Consolidated Statements of Income (Loss)</a>	F-4
<a href="#">Consolidated Statements of Shareholders' Equity</a>	F-5
<a href="#">Consolidated Statements of Cash Flows</a>	F-6
<a href="#">Notes to Consolidated Financial Statements</a>	F-7

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders

Ruth's Hospitality Group, Inc.:

We have audited the accompanying consolidated balance sheets of Ruth's Hospitality Group, Inc. and subsidiaries as of December 28, 2008 and December 27, 2009, and the related consolidated statements of income (loss), shareholders' equity and cash flows for the fifty-two weeks ended December 30, 2007, December 28, 2008, and December 27, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Ruth's Hospitality Group, Inc. and subsidiaries as of December 28, 2008 and December 27, 2009, and the results of their operations and their cash flows for the fifty-two weeks ended December 30, 2007, December 28, 2008, and December 27, 2009, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Ruth's Hospitality Group, Inc.'s internal control over financial reporting as of December 27, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 5, 2010 expressed an adverse opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Orlando, Florida

March 5, 2010

Certified Public Accountants

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Consolidated Balance Sheets****(dollar amounts in thousands, except share and per share data)**

	December 28, 2008	December 27, 2009
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 3,876	\$ 1,681
Accounts receivable, less allowance for doubtful accounts 2008—\$597; 2009—\$339	13,367	10,079
Inventory	8,630	7,368
Assets held for sale	10,500	—
Prepaid expenses and other	3,426	1,346
Deferred income taxes	1,809	1,561
Total current assets	<u>41,608</u>	<u>22,035</u>
Property and equipment, net of accumulated depreciation 2008—\$66,204; 2009—\$77,643	130,380	114,204
Goodwill	24,320	22,097
Franchise rights	37,323	32,200
Trademarks	13,918	13,718
Other intangible assets, net of accumulated amortization of 2008—\$753; 2009—\$1,263	8,472	7,962
Deferred income taxes	34,700	38,246
Other assets	2,798	3,953
Total assets	<u>\$ 293,519</u>	<u>\$ 254,415</u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 10,080	\$ 6,871
Accrued payroll	9,524	10,286
Accrued expenses	7,784	5,995
Deferred revenue	29,421	27,835
Accrued restructuring	6,433	2,891
Other current liabilities	3,965	6,210
Total current liabilities	<u>67,207</u>	<u>60,088</u>
Long-term debt	160,250	125,500
Deferred rent	21,047	20,643
Other liabilities	7,873	6,419
Total liabilities	<u>256,377</u>	<u>212,650</u>
Shareholders' equity:		
Common stock, par value \$.01 per share; 100,000,000 shares authorized, 23,606,943 shares issued and outstanding at December 27, 2009, 23,452,986 shares issued and outstanding at December 28, 2008	235	236
Additional paid-in capital	171,387	173,590
Accumulated deficit	(134,480)	(132,061)
Treasury stock, at cost 71,950 shares at December 28, 2008 and December 27, 2009	—	—
Commitments and contingencies (Note 12)	—	—
Total shareholders' equity	<u>37,142</u>	<u>41,765</u>
Total liabilities and shareholders' equity	<u>\$ 293,519</u>	<u>\$ 254,415</u>

See accompanying notes to consolidated financial statements.

**RUTH'S HOSPITALITY GROUP, INC AND SUBSIDIARIES****Consolidated Statements of Income (Loss)****(dollar amounts in thousands, except share and per share data)**

	<b>Fiscal Year Ended</b>		
	<b>December 30, 2007</b>	<b>December 28, 2008</b>	<b>December 27, 2009</b>
<b>Revenues:</b>			
Restaurant sales	\$ 292,916	377,424	330,533
Franchise income	12,896	12,703	10,533
Other operating income	3,201	3,520	3,564
Total revenues	<u>309,013</u>	<u>393,647</u>	<u>344,630</u>
<b>Costs and expenses:</b>			
Food and beverage costs	96,660	122,292	96,934
Restaurant operating expenses	132,615	188,608	176,995
Marketing and advertising	8,383	13,939	11,697
General and administrative costs	24,507	28,994	23,777
Depreciation and amortization expenses	11,768	16,706	16,499
Pre-opening costs	4,421	2,869	16
Hurricane and relocation costs, net of insurance proceeds	(3,478)	—	—
Loss on impairment	—	77,051	8,634
Restructuring	—	8,926	40
Loss on the disposal of property and equipment, net	1,229	508	1,963
Operating income	<u>32,908</u>	<u>(66,246)</u>	<u>8,075</u>
<b>Other income (expense):</b>			
Interest expense	(5,956)	(10,334)	(7,754)
Other	726	868	532
Income (loss) from continuing operations before income tax expense	<u>27,678</u>	<u>(75,712)</u>	<u>853</u>
Income tax expense (benefit)	8,889	(27,203)	(1,668)
Income (loss) from continuing operations	<u>18,789</u>	<u>(48,509)</u>	<u>2,521</u>
<b>Discontinued operations:</b>			
Loss (income) from operations of discontinued restaurants, net of income tax benefit: 2007—\$370; 2008-\$632; 2009—\$638	643	5,374	102
Net income (loss)	<u>\$ 18,146</u>	<u>(53,883)</u>	<u>\$ 2,419</u>
<b>Basic earnings per share:</b>			
Continuing operations	\$ 0.81	\$ (2.08)	\$ 0.11
Discontinued operations	(0.03)	(0.23)	(0.01)
Basic earnings per share	<u>\$ 0.78</u>	<u>\$ (2.31)</u>	<u>\$ 0.10</u>
<b>Diluted earnings per share:</b>			
Continuing operations	\$ 0.81	\$ (2.08)	\$ 0.11
Discontinued operations	(0.03)	(0.23)	(0.01)
Diluted earnings per share	<u>\$ 0.78</u>	<u>\$ (2.31)</u>	<u>\$ 0.10</u>
<b>Shares used in computing net income (loss) per common share:</b>			
Basic	23,206,864	23,307,198	23,566,358
Diluted	23,399,446	23,307,198	23,733,260

See accompanying notes to consolidated financial statements.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Consolidated Statements of Shareholders' Equity**  
**(dollar and share amounts in thousands)**

	<u>Common Stock</u>		<u>Additional paid-in capital</u>	<u>Accumulated Deficit</u>	<u>Treasury Stock</u>		<u>Shareholders' Equity (Deficit)</u>
	<u>Shares</u>	<u>Value</u>			<u>Shares</u>	<u>Value</u>	
Balance at December 31, 2006	<u>23,238</u>	<u>\$ 232</u>	<u>\$ 166,489</u>	<u>\$ (98,743)</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 67,978</u>
Net income	—	—	—	18,146	—	—	18,146
Shares issued under stock option plan including tax effects	(23)	—	368	—	—	—	368
Compensation expense	—	—	1,575	—	—	—	1,575
Repurchase of Restricted Stock	—	—	—	—	72	—	—
Balance at December 30, 2007	<u>23,215</u>	<u>\$ 232</u>	<u>\$ 168,432</u>	<u>\$ (80,597)</u>	<u>72</u>	<u>\$ —</u>	<u>\$ 88,067</u>
Net loss	—	—	—	(53,883)	—	—	(53,883)
Shares issued under stock option plan including tax effects	237	3	134	—	—	—	137
Compensation expense	—	—	2,820	—	—	—	2,820
Repurchase of Restricted Stock	—	—	—	—	—	—	—
Balance at December 28, 2008	<u>23,452</u>	<u>\$ 235</u>	<u>\$ 171,387</u>	<u>\$ (134,480)</u>	<u>72</u>	<u>\$ —</u>	<u>\$ 37,142</u>
Net income	—	—	—	2,419	—	—	2,419
Shares issued under stock option plan including tax effects	155	1	39	—	—	—	40
Compensation expense	—	—	2,163	—	—	—	2,163
Repurchase of Restricted Stock	—	—	—	—	—	—	—
Balance at December 27, 2009	<u>23,607</u>	<u>\$ 236</u>	<u>\$ 173,590</u>	<u>\$ (132,061)</u>	<u>72</u>	<u>\$ —</u>	<u>\$ 41,765</u>

See accompanying notes to consolidated financial statements.

## RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows  
(dollar amounts in thousands)

	Fiscal Year Ended		
	December 30, 2007	December 28, 2008	December 27, 2009
<b>Cash flows from operating activities:</b>			
Net income	\$ 18,146	(53,883)	\$ 2,419
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	12,010	17,031	16,499
Deferred income taxes	2,909	(29,525)	(3,298)
Non-cash interest expense	99	295	1,127
Loss on the disposal of property and equipment, net	1,229	508	1,126
Loss on the disposal of assets held for sale	—	—	837
Loss on impairment	—	81,273	8,634
Amortization of below market lease	—	200	198
Restructuring	—	8,926	40
Non-cash compensation expense	1,575	2,553	2,163
Changes in operating assets and liabilities:			
Accounts receivables	(705)	(1,541)	3,288
Inventories	(1,941)	1,069	1,262
Prepaid expenses and other	381	(622)	2,080
Other assets	(1,480)	259	51
Accounts payable and accrued expenses	(3,491)	3,252	(4,658)
Deferred revenue	3,010	1,735	(1,586)
Deferred rent	2,244	4,809	(291)
Other liabilities	786	734	(1,455)
Net cash provided by operating activities	<u>34,772</u>	<u>37,073</u>	<u>28,436</u>
<b>Cash flows from investing activities:</b>			
Acquisition of property and equipment	(42,429)	(31,951)	(4,270)
Acquisition of Mitchells	—	(93,037)	—
Acquisition of franchises and lease right	(13,473)	—	—
Acquisition of RCSH Millwork	(260)	—	—
Proceeds on disposal of property and equipment, net	80	—	1,019
Proceeds on disposal of assets held for sale	—	—	9,663
Proceeds from sale-leaseback transactions	—	17,039	—
Net cash (used in) provided by investing activities	<u>(56,082)</u>	<u>(107,949)</u>	<u>6,412</u>
<b>Cash flows from financing activities:</b>			
Principal repayments on long-term debt	(5,000)	(50,500)	(37,250)
Proceeds from long-term financing	33,750	114,000	2,500
Income tax benefits credited to equity upon exercise of stock options	279	108	24
Proceeds from exercise of stock options and warrants	90	30	16
Deferred financing costs	(188)	(1,197)	(2,333)
Net cash (used in) provided by financing activities	<u>28,931</u>	<u>62,441</u>	<u>(37,043)</u>
Net increase (decrease) in cash and cash equivalents	7,621	(8,435)	(2,195)
Cash and cash equivalents at beginning of period	4,690	12,311	3,876
Cash and cash equivalents at end of period	<u>\$ 12,311</u>	<u>\$ 3,876</u>	<u>\$ 1,681</u>
<b>Supplemental disclosures of cash flow information:</b>			
Cash paid during the year for:			
Interest	\$ 5,170	\$ 9,431	\$ 7,978
Income taxes	\$ 8,279	\$ 1,850	\$ 1,511

See accompanying notes to consolidated financial statements.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements**  
**(dollar amounts in thousands)**

**(1) Organization and Description of Business**

Ruth's Hospitality Group, Inc. and its subsidiaries (the "Company") operate 130 Ruth's Chris Steak House, 19 Mitchell's Fish Market, and three Mitchell's Steakhouse restaurants and sell franchise rights to Ruth's Chris Steak House franchisees giving them the exclusive right to operate similar restaurants in a particular location designated in the franchise agreement. At December 28, 2008 and December 27, 2009, there were 152 restaurants operating. Of the 152 restaurants operating at December 27, 2009, 64 were company-owned Ruth's Chris Steak House Company restaurants, 66 were Ruth's Chris Steak House franchise restaurants, 19 were company-owned Mitchell's Fish Markets and three were company-owned Mitchell's Steakhouse restaurants. Of the 152 restaurants operating at December 28, 2008, 66 were company-owned Ruth's Chris Steak House Company restaurants and 64 were Ruth's Chris Steak House franchise restaurants. During 2009, six franchise-owned Ruth's Chris Steak House restaurants were opened and four franchise-owned Ruth's Chris Steak House restaurants were closed. Two company-owned Ruth's Chris Steak House restaurants were closed during fiscal 2009. During 2008, five company-owned Ruth's Chris Steak House restaurants were opened and seven franchisee-owned Ruth's Chris Steak House restaurants were opened.

The Company manages its operations by restaurant.

On February 19, 2008, the Company completed the acquisition of all of the operating assets and intellectual property of Mitchell's Fish Market, operating under the names Mitchell's Fish Market and Columbus Fish Market, and Cameron's Steakhouse, operating under the names Cameron's Steakhouse and Mitchell's Steakhouse from Cameron Mitchell Restaurants, LLC (CMR) for approximately \$93.0 million. There are 19 operating Mitchell's Fish Markets and three operating Cameron's Steakhouses. The acquired operations are included in the consolidated financial statements from the date of acquisition.



**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

(dollar amounts in thousands)

The following table summarizes the changes in the number of Ruth's Chris Steak House, Mitchell's Fish Market and Cameron's Steakhouse company-operated and franchised restaurants during the thirteen and fifty-two weeks ended December 27, 2009:

	13 Weeks Ended December 27, 2009			52 Weeks Ended December 27, 2009		
	Company	Franchised	Total	Company	Franchised	Total
<b>Ruth's Chris Steak House</b>						
Beginning of period	64	65	129	66	64	130
New	—	2	2	—	6	6
Closed	—	1	1	2	4	6
End of period	<u>64</u>	<u>66</u>	<u>130</u>	<u>64</u>	<u>66</u>	<u>130</u>
% of system	49%	51%	100%	49%	51%	100%
<b>Mitchell's Fish Market</b>						
Beginning of period	19	—	19	19	—	19
New	—	—	—	—	—	—
Closed	—	—	—	—	—	—
End of period	<u>19</u>	<u>—</u>	<u>19</u>	<u>19</u>	<u>—</u>	<u>19</u>
% of system	100%	0%	100%	100%	0%	100%
<b>Cameron's Steakhouse</b>						
Beginning of period	3	—	3	3	—	3
New	—	—	—	—	—	—
Closed	—	—	—	—	—	—
End of period	<u>3</u>	<u>—</u>	<u>3</u>	<u>3</u>	<u>—</u>	<u>3</u>
	100%	0%	100%	100%	0%	100%
<b>Consolidated</b>						
Total system	<u>86</u>	<u>66</u>	<u>152</u>	<u>86</u>	<u>66</u>	<u>152</u>
% of system	57%	43%	100%	57%	43%	100%

**(2) Summary of Significant Accounting Policies**

**(a) Reporting Period**

The Company utilizes a 52- or 53-week reporting period ending on the last Sunday of December. The periods ended December 27, 2009 (fiscal 2009), December 28, 2008 (fiscal 2008) and December 30, 2007 (fiscal 2007) each had a 52-week reporting period.

**(b) Principles of Consolidation**

The consolidated financial statements include the financial statements of Ruth's Hospitality Group, Inc. and its wholly owned subsidiaries. All significant inter-company balances and transactions have been eliminated in consolidation.

**(c) Cash Equivalents**

For purposes of the consolidated statements of cash flows, the Company considers all highly-liquid investments purchased with an original maturity of three months or less to be cash equivalents.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

**(d) Accounts Receivable**

Accounts receivable consists primarily of bank credit cards receivable, landlord contributions, franchise royalty payments receivable, banquet billings receivable, and other miscellaneous receivables.

**(e) Allowance for Doubtful Accounts**

The Company performs a specific review of account balances and applies historical collection experience to the various aging categories of receivable balances in establishing an allowance.

**(f) Inventories**

Inventories consist of food, beverages, and supplies and are stated at the lower of cost or market. Cost is determined using the first-in, first-out method.

**(g) Property and Equipment, net**

Property and equipment are stated at cost. Expenditures for improvements and major renewals are capitalized, and minor replacement, maintenance, and repairs are charged to expense. Depreciation is computed on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized on the straight-line basis over the shorter of the lease term or the estimated useful lives of the assets. The estimated useful lives for assets are as follows: Building and Building Improvements, 20 to 40 years; Equipment, 5 years; Furniture and Fixtures, 5 to 7 years; Computer Equipment, 3 to 5 years; and Leasehold Improvements, 5 to 20 years.

**(h) Goodwill, Franchise Rights and Trademarks**

Goodwill and trademarks acquired in a purchase business combination that are determined to have an indefinite useful life are not amortized, but tested for impairment at least annually in accordance with the provisions of "Intangibles—Goodwill and Other," FASB Accounting Standards Codification Topic 350 (Topic 350). Goodwill and trademarks are tested annually for impairment on a reporting unit basis and more frequently if events and circumstances indicate that the asset might be impaired. For purposes of testing goodwill impairment, a reporting unit is defined as a restaurant location. For purposes of testing trademark impairment, a reporting unit is defined as a group of acquired restaurants sharing a common trade name. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value.

Franchise rights acquired prior to 2008 in a purchase business combination that are determined to have an indefinite useful life are not amortized, but tested for impairment at least annually on a reporting unit basis, which is defined as a group of reacquired restaurants, and more frequently if events and circumstances indicate that the asset might be impaired. The Company allows and expects franchisees to renew agreements indefinitely ensuring consistent cash flows. As a result, acquired franchise rights are determined to have indefinite useful lives. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value. Franchise rights acquired after 2007 are no longer considered to have indefinite useful lives and are amortized in accordance Topic 350.

Based upon the Company's review, goodwill, franchise rights and trademark impairment charges were required in fiscal 2008 and 2009. See Note 3.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

***(i) Deferred Financing Costs***

Deferred financing costs represent fees paid in connection with obtaining bank and other long-term financing. The Company paid financing costs of \$188, \$1,197, and \$2,333 in fiscal 2007, 2008 and 2009, respectively, and amortizes these costs using a method that approximates the effective interest method over the term of the related financing. Amortization expense of deferred financing costs was \$99, \$295, and \$1,127 in fiscal 2007, 2008 and 2009, respectively.

***(j) Impairment or Disposal of Long-Lived Assets***

In accordance with "Property, Plant and Equipment—Impairment or Disposal of Long-Lived Assets," FASB Accounting Standards Codification Topic 360-10 (Topic 360-10), long lived assets, such as property, plant and equipment and purchased intangibles subject to amortization are reviewed for impairment on a restaurant-by-restaurant basis whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset. Fair value of long-lived assets is calculated as the discounted future cash flows generated by these assets. Assets to be disposed of would be separately presented in the balance sheet and reported at the lower of the carrying amount or the fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposed group classified as held for sale would be presented separately in the appropriate asset and liability sections of the balance sheet.

We account for exit or disposal activities, including restaurant closures, in accordance with Topic 360-10. Such costs include the cost of disposing of the assets as well as other facility-related expenses from previously closed restaurants. These costs are generally expensed as incurred. Additionally, at the date we cease using a property under an operating lease, we record a liability for the net present value of any remaining lease obligations, net of estimated sublease income. Any subsequent adjustments to that liability as a result of lease termination or changes in estimates of sublease income are recorded in the period incurred. Upon disposal of the assets associated with a closed restaurant, any gain or loss is recorded in the same line within our consolidated statements of income (loss) as the original impairment.

***(k) Rent***

Certain of the Company's operating leases contain predetermined fixed escalations of the minimum rent during the term of the lease. For these leases, the Company recognizes the related rent expense on a straight-line basis over the life of the lease and records the difference between amounts charged to operations and amounts paid as deferred rent.

Additionally, certain of the Company's operating leases contain clauses that provide additional contingent rent based on a percentage of sales greater than certain specified target amounts. The Company recognizes contingent rent expense prior to the achievement of the specified target that triggers the contingent rent, provided achievement of that target is considered probable.

***(l) Marketing and Advertising***

Marketing and advertising expenses in the accompanying consolidated statements of operations included advertising expenses of approximately \$5.6 million, \$9.3 million, and \$8.1 million for fiscal 2007, fiscal 2008 and fiscal 2009, respectively. In 2009, Ruth's Chris Steak House introduced a value promotion, Ruth's Classics, a three course prix fixe meal. Ruth's Classics was advertised via national radio and national and local print media. Advertising costs, including those related to Ruth's Classics, are expensed as incurred.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

***(m) Insurance Liability***

The Company maintains various policies for workers' compensation, employee health, general liability and property damage. Pursuant to those policies, the Company is responsible for losses up to certain limits. The Company records a liability for the estimated exposure for aggregate losses below those limits. This liability is based on estimates of the ultimate costs to be incurred to settle known claims and claims not reported as of the balance sheet date. The estimated liability is not discounted and is based on a number of assumptions and factors, including historical trends, actuarial assumptions and economic conditions.

***(n) Pre-Opening Costs***

Pre-opening costs incurred with the opening of new restaurants are expensed as incurred. These costs include straight-line rent during the rent holiday period, wages, benefits, travel and lodging for the training and opening management teams, and food, beverage and other restaurant operating expenses incurred prior to a restaurant opening for business.

***(o) Income Taxes***

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The Company adopted the provisions of "Income Taxes," FASB Accounting Standards Codification Topic 740 (Topic 740) on January 1, 2007. Topic 740 requires that a position taken or expected to be taken in a tax return be recognized (or derecognized) in the financial statements when it is more likely than not that the position would be sustained upon examination by tax authorities. A recognized tax position is then measured at the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. The implementation of Topic 740 did not result in any changes to the Company's unrecognized tax benefits for uncertain tax positions.

***(p) Derivative Instruments***

The Company utilized derivative instruments in 2008 and 2009 to manage interest rate risk. The Company does not apply hedge accounting as defined by "Derivatives and Hedging," FASB Accounting Standards Codification Topic 815 (Topic 815) and any changes in fair value of the derivative instruments are marked to market through earnings in the period of change. Cash flows related to derivatives are included in operating activities.

***(q) Revenue Recognition***

Revenue from restaurant sales is recognized when food and beverage products are sold. Restaurant sales are presented net of sales taxes and discounts. Deferred revenue primarily represents the Company's liability for gift cards that have been sold but not yet redeemed, and is recorded at the expected redemption value. When the gift cards are redeemed, the Company recognizes restaurant sales and reduces the deferred revenue. Company gift cards redeemed at franchisee-owned locations reduce the deferred revenue but do not result in restaurant sales.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

The expected redemption value of the gift cards represents the full value of all gift cards issued less the amount the Company has recognized as other operating income for gift cards that are not expected to be redeemed. The Company recognizes as other operating income the remaining value of gift cards that have not been redeemed 18 months following the last date of card activity, subject to limitations in some jurisdictions in which it operates.

The Company franchises Ruth's Chris Steak House restaurants. The Company executes franchise agreements for each franchise restaurant, which sets out the terms of its arrangement with the franchisee. The franchise agreements typically require the franchisee to pay an initial, non-refundable fee and continuing fees based upon a percentage of sales. The Company collects ongoing royalties of 5% of sales from franchise restaurants plus a 1% advertising fee applied to national advertising expenditures. The Company is not required to perform any services for the ongoing royalties and thus these royalties are recognized when the royalties are due from the franchisee on a monthly basis. These ongoing royalties are reflected in the accompanying consolidated statements of income (loss) as franchise income. The 1% advertising fee is recorded as a liability against which specified advertising and marketing costs are charged.

The Company executes an area development agreement with franchisees that gives the franchisee exclusive rights to develop a specific number of restaurants within a specified area. The Company charges an initial development fee at the time the area agreements are executed. This fee is related to feasibility studies of the area, certification of the franchisee and for the development opportunities lost or deferred as a result of the rights granted. These services are performed prior to the execution of the agreement. The Company recognizes the initial area development fee upon the signing of the area development agreement by the franchisee.

The Company executes separate, site specific, franchise agreements for each restaurant developed by a franchisee under an area development agreement. The Company charges an initial fee at the time the franchise agreement is executed. This fee is related to assistance in site selection and lease negotiation, construction consulting assistance and consulting regarding purchasing and supplies. These services are performed prior to the restaurant opening. The Company recognizes the initial franchise fee when the related restaurant opens.

***(r) Foreign Revenues***

The Company currently has 14 international franchise locations in Aruba, Canada, Mexico, China (Hong Kong), Japan, Taiwan and Dubai. In accordance with its franchise agreements relating to these international locations, the Company receives royalty revenue from these franchisees in U.S. dollars. Franchise fee revenues from international locations were \$2.2 million, \$2.3 million and \$2.0 million in fiscal year 2007, 2008 and 2009, respectively.

***(s) Stock-Based Compensation***

The Company recognizes stock-based compensation in accordance with "Compensation—Stock Compensation," FASB Accounting Standards Codification Topic 718 (Topic 718) using the modified prospective transition method. Compensation cost recognized during fiscal 2009 includes: a) compensation cost for all share-based payments granted prior to, but not yet vested as of December 26, 2005, based on the grant date fair value estimated in accordance with the original provisions of FAS 123, and b) compensation cost for all share-based payments granted subsequent to December 26, 2005, based on the grant date fair value estimated in accordance with the provisions of Topic 718. Compensation cost is recognized on a straight-line basis, net of estimated forfeitures, over the requisite service period of each award.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements—(Continued)****(dollar amounts in thousands)**

The consolidated statements of income (loss) for fiscal 2007, 2008, and 2009 were impacted by stock-based compensation as follows:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Reduction in operating income from continuing operations	\$ 1,575	\$ 2,820	\$ 2,163
Reduction in income before taxes	1,575	2,820	2,163
Reduction in operating net income	1,655	2,504	1,863
Reduction in earnings per share:			
Basic	\$ 0.07	\$ 0.11	\$ 0.08
Diluted	\$ 0.07	\$ 0.11	\$ 0.08

**(t) Use of Estimates**

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**(u) Fair Value of Financial Instruments**

On January 1, 2008 we adopted new accounting standards for fair value measurements which define fair value, set out a framework for measuring fair value, and expand disclosures about fair value measurements of assets and liabilities to include disclosure about inputs used in the determination of fair value using the following three categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

The new accounting standards apply under other accounting pronouncements previously issued by the Financial Accounting Standards Board, or FASB, which require or permit fair value measurements. Our adoption of the new accounting standards did not have any effect on our consolidated financial statements.

The following methods and assumptions were used to estimate the fair value of each class of financial instruments:

- The carrying amount of cash and cash equivalents, receivables, prepaid expenses, accounts payable and accrued expenses and other current and long-term liabilities are a reasonable estimate of their fair values due to their short duration.
- Borrowings under the senior credit facility as of December 27, 2009 and the term loan and revolving credit facility as of December 28, 2008 have variable interest rates that reflect currently available terms and conditions for similar debt. The carrying amount of this debt is a reasonable estimate of its fair value.
- The fair values of interest rate swap assets and liabilities were estimated by the Company based on information provided by the bank counterparties that is model-driven and whose inputs are observable or whose significant value drivers are observable.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

**(v) Contingencies**

The Company recognizes liabilities for contingencies when there is an exposure that indicates it is both probable that an asset has been impaired or that a liability has been incurred and that the amount of impairment or loss can be reasonably estimated.

**(w) Segment Reporting**

As of December 27, 2009, we operated the Ruth's Chris Steak House, Mitchell's Fish Market, Columbus Fish Market, Mitchell's Steakhouse and Cameron's Steakhouse restaurant concepts in North America as operating segments. The concepts operate within the full-service dining industry, providing similar products to similar customers. The concepts also possess similar economic characteristics, resulting in similar long-term expected financial performance characteristics. Revenues from external customers are derived principally from food and beverage sales. We do not rely on any major customers as a source of revenue. We believe we meet the criteria for aggregating our operating segments into a single reporting segment.

**(x) Newly Adopted Accounting Pronouncements**

In accordance with "Fair Value Measurements and Disclosures," FASB Accounting Standards Codification Topic 820 (Topic 820), we adopted Topic 820 as it applies to nonfinancial assets and liabilities that are measured at fair value on a non-recurring basis during the first quarter of 2009. Our adoption of Topic 820, as it relates to our impairment assessment of long-lived and intangible assets, did not have a material impact on our consolidated financial statements.

In the second quarter of 2009, we adopted "Subsequent Events," FASB Accounting Standards Codification Topic 855 (Topic 855). Topic 855 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. Topic 855 is effective for interim or annual financial periods ending after June 15, 2009. Our adoption of Topic 855 in the second quarter of 2009 has not had a material impact on our consolidated financial statements.

In the third quarter of 2009, we adopted "Generally Accepted Accounting Principles," FASB Accounting Standards Codification Topic 105 (Topic 105). Topic 105 provides for the FASB Accounting Standards Codification™ (the "Codification") to become the single official source of authoritative, nongovernmental U.S. generally accepted accounting principles (GAAP). The Codification did not change GAAP but reorganizes the literature. Topic 105 is effective for interim and annual periods ending after September 15, 2009. Our adoption of Topic 105 in the third quarter of 2009 has not had a material impact on our consolidated financial statements.

In fiscal 2009, we adopted "Business Combinations," FASB Accounting Standards Codification Topic 805-20 (Topic 805-20), which provides companies with guidance on how an acquiring company recognizes and measures in its financial statements the identifiable assets acquired, liabilities assumed and any non-controlling interest in the acquiree as well as the recognition and measurement of goodwill acquired in a business combination. Topic 805-20 also requires certain disclosures to enable users of the financial statements to evaluate the nature and financial effects of the business combination. Acquisition costs incurred as a result of the business combination will generally be expensed as incurred. Topic 805-20 is effective for business combinations occurring in fiscal years beginning after December 15, 2008. Early adoption of Topic 805-20 is not permitted. Our adoption of Topic 805-20 in fiscal 2009 has not had a material impact on our consolidated financial statements.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

***(y) Recent Accounting Pronouncements for Future Application***

Accounting standards that have been issued by the FASB or other standard-setting bodies that do not require adoption until a future date are not expected to have a material impact on the consolidated financial statements upon adoption.

***(z) Reclassifications***

Certain prior year amounts have been reclassified to conform with the current year presentation including discontinued operations and sales discounts (see Note 19). These reclassifications had no effect on previously reported net income.

**(3) Goodwill, Franchise Rights and Trademarks**

During the fourth quarter of fiscal 2009, there was continued deterioration in the Company's business which caused the Company to revise its forward-looking business projections downward. Based on these projections, the Company completed an analysis to determine if goodwill and certain intangible assets were impaired as of the balance sheet date. The Company bases its fair value estimates on assumptions it believes to be reasonable, but which are unpredictable and inherently uncertain.

***Franchise Rights***

Owned franchise rights that have been determined to have indefinite lives must be reviewed for potential impairment when triggering events are detected. During the fourth quarter of fiscal 2009, the Company recorded non-cash impairment charges of \$5.1 million for franchise rights previously recorded as part of the acquisition of ten formerly franchised restaurants in the Pacific Northwest, Midwest and Florida, reducing the carrying value from \$37.3 million to \$32.2 million. This reduction was primarily due to weakening 2009 sales impacting future sales and profitability assumptions. During the fourth quarter of fiscal 2008, the Company recorded non-cash impairment charges of \$5.9 million for franchise rights previously recorded as part of the acquisition of three formerly franchised restaurants acquired in 2007, reducing the carrying value from \$43.2 million to \$37.3 million.

To determine the fair value of its acquired franchise rights, the Company used a multi-period excess earnings approach. This approach involves projecting future earnings, discounting those earnings using an appropriate discount rate and subtracting a contributory charge for net working capital, property, plant and equipment, assembled workforce and customer relationships to arrive at excess earnings attributable to franchise rights. The Company calculated the present value of cash flows generated from future franchise royalties and determined that the fair value did not exceed the carrying value as of December 27, 2009 and December 28, 2008.

***Trademarks***

In accordance with Topic 350, owned trademarks that have been determined to have indefinite lives must be reviewed for potential impairment when triggering events are detected. During the fourth quarter of fiscal 2009, the Company recorded non-cash trademark impairment charges of \$0.2 million previously recorded as part of the Mitchell's acquisition in 2008, reducing the carrying value from \$13.8 million to \$13.6 million. This reduction was primarily due to the weakening of 2009 sales. During the fourth quarter of fiscal 2008, the Company recorded non-cash trademark impairment charges of \$12.1 million previously recorded as part of the Mitchell's acquisition in 2008, reducing the carrying value from \$25.9 million to \$13.8 million.



**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements—(Continued)****(dollar amounts in thousands)**

To determine the fair value of the Mitchell's trademarks, including Mitchell's Fish Market, Columbus Fish Market, Mitchell's Steakhouse and Cameron's Steakhouse, the Company used a relief-from-royalty approach. The method used assumes that in lieu of ownership, a third party would be willing to pay a royalty in order to exploit the related benefits of these types of assets. This approach is dependent on a number of factors, including estimates of future growth and trends, royalty rates in the category of intellectual property, discount rates and other variables. Based on the evaluation, the fair value of the Company's trademarks did not exceed the carrying value as of December 27, 2009 and December 28, 2008.

**Goodwill**

During the fourth quarter of fiscal 2009, the Company recorded non-cash goodwill impairment charges of \$2.2 million, reducing the carrying value from \$24.3 million to \$22.1 million. The impairment charges were related to goodwill recorded as part of the acquisition of the Ruth's Chris Steak House restaurant in Palm Desert, California, in 2002. During the fourth quarter of fiscal 2008, the Company recorded non-cash goodwill impairment charges of \$31.2 million, reducing the carrying value from \$55.5 million to \$24.3 million. Impairment charges of \$22.8 million related to goodwill recorded as part of the Mitchell's restaurants acquisition, while the remainder was related to Ruth's Chris Steak House acquired restaurants.

In performing the 2009 evaluation of goodwill impairment under Topic 350-20 Step 1, the Company compared the carrying value of the long-lived assets to the fair value of the reporting unit, which is considered to be the individual restaurant acquired. Consistent with the valuation of restaurant operations, the Company utilized a multiple of EBITDA to approximate the fair value of the reporting unit for purposes of completing Step 1 of the evaluation. The Company considered EBITDA multiples of publicly held companies, including its own, as well as other private reporting unit acquisitions. For reporting units whose estimated fair value exceeded its carrying value, no impairment was recorded. For reporting units whose fair value did not exceed the carrying value as the balance sheet date, the Company completed Step 2 of the evaluation by comparing the implied fair value of goodwill with the net asset value of the reporting unit. The Company calculated the implied fair value by allocating the fair value of a reporting unit to all of its assets and liabilities as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the price paid to acquire the unit. For reporting units whose implied fair value did not exceed the net asset value of the restaurant as of the balance sheet date, the Company recorded an impairment charge for the difference, not to exceed the goodwill carrying value.

The Company's franchise rights, trademarks, and goodwill at December 27, 2009 were as follows:

	<u>Franchise Rights</u>	<u>Trademarks</u>
Balance as of December 28, 2008	\$37,323	\$ 13,918
Loss on impairment	(5,123)	(200)
Balance as of December 27, 2009	<u>\$32,200</u>	<u>\$ 13,718</u>

## RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements—(Continued)

(dollar amounts in thousands)

	Gross Goodwill	Accumulated Impairment Losses	Net Carrying Value of Goodwill
Balance as of December 31, 2006	\$30,533	—	\$ 30,533
Acquisitions	2,121	—	2,121
Balance as of December 30, 2007	<u>32,654</u>	<u>—</u>	<u>32,654</u>
Acquisitions	22,815	—	22,815
Loss on impairment	—	(31,149)	(31,149)
Balance as of December 28, 2008	<u>55,469</u>	<u>(31,149)</u>	<u>24,320</u>
Loss on impairment	—	(2,223)	(2,223)
Balance as of December 27, 2009	<u>\$55,469</u>	<u>\$ (33,372)</u>	<u>\$ 22,097</u>

These charges are included in "loss on impairment" in the accompanying consolidated statements of income (loss).

**(4) Property and Equipment, net**

Property and equipment consists of the following:

	December 28, 2008	December 27, 2009
Land	\$ 3,251	\$ 1,471
Building and building improvements	25,494	24,285
Equipment	29,639	29,046
Computer equipment	7,851	8,581
Furniture and fixtures	16,209	15,494
Automobiles	27	27
Leasehold improvements	110,719	111,070
Construction-in-progress	3,394	1,873
	<u>196,584</u>	<u>191,847</u>
Less accumulated depreciation	(66,204)	(77,643)
	<u>\$ 130,380</u>	<u>\$ 114,204</u>

During the fiscal year ended December 27, 2009, we recorded a loss on impairment of long-lived assets held for use in the amount of \$1.1 million. These charges were related to the impairment of fixtures and equipment and leasehold improvements at one Mitchell's Fish Market restaurant and two company-owned Ruth's Chris Steak House restaurants. During the fiscal year ended December 28, 2008, we recorded a loss on impairment of long-lived assets held for use of \$2.8 million, and \$3.3 million on assets held for sale. There was no loss on impairment in fiscal 2007.

On December 15, 2009, we completed the sale of our home office building in Heathrow, Florida. The sale generated net proceeds of approximately \$9.7 million, which were used to reduce borrowings under the credit facility. We recorded a loss of \$0.8 million related to the sale, which is included in "loss on disposal of property and equipment, net" in the accompanying consolidated statements of income (loss).

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements—(Continued)****(dollar amounts in thousands)**

The Company capitalizes interest as a component of the cost of construction in progress. In connection with assets under construction in 2007, 2008 and 2009, the Company has capitalized \$375, \$239 and \$0 of interest costs, respectively, in accordance with "Interest—Capitalization of Interest," FASB Accounting Standards Codification Topic 835-20 (Topic 835-20).

**(5) Long-term Debt**

Long-term debt consists of the following:

	<u>December 28, 2008</u>	<u>December 27, 2009</u>
<b>Senior Credit Facility:</b>		
Revolving credit facility	\$ 160,250	\$ 125,500
Less current maturities	—	—
	<u>\$ 160,250</u>	<u>\$ 125,500</u>

On February 19, 2008, the Company amended and restated its existing credit facility to increase the revolving loan commitment to \$250.0 million. The amended and restated credit extended the maturity date of the outstanding principal from March 11, 2010 to February 19, 2013, and changed the maximum Consolidated Leverage Ratio in the financial covenants to 3.50:1.00.

On February 26, 2009, the Company entered into a First Amendment to First Amended and Restated Credit Agreement. The amendment reduced the revolving loan commitment from \$250.0 million to \$175 million, with additional reductions scheduled beginning December 31, 2009 through the final maturity date of February 19, 2013. The amendment decreased the Company's Fixed Charge Coverage Ratio and increased its maximum Leverage Ratio, in each case beginning with the fourth quarter of 2008 and continuing through the second quarter of 2010, after which these two covenants reset to their original levels. The amendment also added two new covenants. The first is a minimum EBITDA test and the second placed new restrictions on capital expenditures. The amendment also increased the interest rates applicable to borrowings based on the Company's actual leverage ratio, ranging from 2.50% to 4.25% above the applicable LIBOR rate or, at the Company's option, from 1.25% to 3.00% above the applicable base rate.

During the fourth quarter of fiscal 2009, the Company negotiated an amendment to its senior credit facility. The Second Amendment to First Amended and Restated Credit Agreement became effective on February 12, 2010. The amendment to the credit agreement reduces the revolving loan commitment to \$129.6 million, extends the scheduled maturity of the credit agreement by two years, to February 2015, and provides the Company with a less restrictive set of covenants, which the Company believes will enhance its financial and operating flexibility. Specifically, the amendment provides for no financial covenant testing until the end of fiscal year 2010, provides less restrictive leverage and coverage covenants thereafter, and permanently eliminates the minimum EBITDA covenant. The amendment provides for higher interest rates under the credit facility, with interest rates based on the Company's actual leverage ratio, ranging from 3.25% to 5.00% above the applicable LIBOR rate or, at the Company's option, from 2.00% to 3.75% above the applicable base rate.

As of December 27, 2009, the Company had an aggregate of \$125.5 million of outstanding indebtedness under its senior credit facility at a weighted average interest rate of 4.22%. The Company had approximately \$41.0 million of borrowings available under its revolving credit facility, net of outstanding letters of credit of approximately \$3.5 million. As of the February 12, 2010 amendment date, the outstanding indebtedness under its

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

senior credit facility was \$78.8 million, at a weighted average interest rate of 4.48%. Under the amended revolving loan commitment as of this date, the Company had approximately \$47.3 million of borrowings available under its revolving credit facility, net of outstanding letters of credit of approximately \$3.5 million. The Company is required to maintain certain financial covenants and is also subject to several restrictive covenants under its borrowings. The restrictive covenants include, but are not limited to, covenants that, subject to exceptions: (1) prohibit the Company and its subsidiaries from incurring additional indebtedness and from guaranteeing obligations of others; (2) prohibit the Company and its subsidiaries from creating, incurring, assuming or permitting to exist any lien on or with respect to any property or asset; (3) limit the Company's ability and its subsidiaries' ability to enter into joint ventures, acquisitions, and other investments; (4) prohibit the Company and its subsidiaries from directly or indirectly creating or becoming liable with respect to any contingent liabilities; and (5) restrict the Company and its subsidiaries from directly or indirectly declaring, ordering, paying, or making any restricted junior payments in excess of the \$1.0 million in annual dividends permitted under the credit agreement.

The Company's obligations under the senior credit facility are guaranteed by each of its existing and future subsidiaries and are secured by substantially all of its assets and a pledge of the capital stock of its subsidiaries. See also Note 20.

**(6) Shareholders' Equity**

The holders of the Class A common stock are entitled to one vote per share on all matters to be voted on by the Company's shareholders. Holders of Class A common stock are entitled to convert, at any time and from time to time, any or all of the shares of Class A common stock held by such holder into the same number of shares of Class B common stock.

**(7) Employee Benefit Plan**

In 2000, the Company established a 401(k) plan. Eligible employees may contribute up to 99% of their annual compensation. The Company matches the employees' contributions at year end. Employees vest in the Company's contributions based upon their years of service. The Company's expenses relating to matching contributions were approximately \$226, \$272 and \$275 for fiscal 2007, 2008 and 2009, respectively. During 2005, the Company added a profit sharing component to the 401(k) plan that provided for a payment to all employees if the Company achieved certain predetermined financial targets. The Company did not record expenses related to profit sharing in fiscal 2007, 2008 or 2009.

**(8) Incentive and Stock Option Plans**

As of December 27, 2009, the Company had the following share-based compensation plans:

***2000 Stock Option Plan***

The Company established a stock option plan (the 2000 Stock Option Plan) which allows the Company's Board of Directors to grant stock options to directors, officers, key employees, and other key individuals performing services for the Company. The 2000 Stock Option Plan authorizes grants of options to purchase up to 1,765,981 shares of authorized but unissued Class A common stock. The Plan provides for granting of options to purchase shares of common stock at an exercise price not less than the fair value of the stock on the date of grant. Options are exercisable at various periods ranging from one to ten years from date of grant. Under the Company's 2000 Stock Option Plan there are 155,741 shares of common stock issuable upon exercise of currently outstanding options at December 27, 2009 and 647,231 shares available for future grants. No future grants are expected to be made under the 2000 Stock Option Plan.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

(dollar amounts in thousands)

**2005 Long-Term Equity Incentive Plan**

In connection with the initial public offering, the Company adopted the Ruth's Chris Steak House, Inc. 2005 Long-Term Equity Incentive Plan (the "2005 Equity Incentive Plan"), which allows the Company's Board of Directors to grant stock options, restricted stock, restricted stock units, deferred stock units and other equity-based awards to directors, officers, key employees and other key individuals performing services for the Company. The 2005 Equity Incentive Plan provides for granting of options to purchase shares of common stock at an exercise price not less than the fair value of the stock on the date of grant. Options are exercisable at various periods ranging from one to five years from date of grant. Effective May 22, 2008, the 2005 Equity Incentive Plan was amended, with stockholder approval, to increase the number of shares authorized for issuance under the plan by 1,500,000 shares.

Under the 2005 Equity Incentive Plan, as amended, there were 2,489,207 shares of common stock issuable upon exercise of currently outstanding options and restricted stock awards at December 27, 2009 and 1,069,798 shares available for future grants.

The following table summarizes stock option activity for fiscal 2009 under all plans:

	December 27, 2009			
	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value (\$000's)
Outstanding at beginning of year	2,229,494	\$ 8.76		
Granted	122,109	3.23		
Exercised	(32,957)	0.48		
Forfeited	(157,698)	15.13		
Outstanding at end of year	<u>2,160,948</u>	<u>\$ 8.11</u>	<u>7.68</u>	<u>\$ 504</u>
Options exercisable at year end	<u>770,939</u>	<u>\$ 10.18</u>	<u>6.27</u>	<u>\$ 322</u>

As of December 27, 2009, there was \$3.4 million of total unrecognized compensation cost related to non-vested stock options. This cost is expected to be recognized over a weighted-average period of approximately 2.79 years. As of December 27, 2009, there was \$2.7 million of total unrecognized compensation cost related to 484,000 shares of non-vested restricted stock. This cost is expected to be recognized over a weighted-average period of approximately 3.26 years. The total intrinsic value of options exercised in fiscal 2007, 2008 and 2009 was \$0.8, \$0.3 and \$0.1 million, respectively. The Company recorded \$1.7, \$2.8 and \$2.2 million in total stock option and restricted stock compensation cost during fiscal year 2007, 2008 and 2009, respectively, that was expensed primarily in general and administrative costs.

During fiscal 2007, 2008 and 2009, the Company received \$90, \$22 and \$24, respectively, in cash related to the exercise of options and tax benefits of \$0.3, \$0.1 and \$0.02 million, respectively. The exercise of shares were fulfilled from shares reserved for issue under the stock option plans and resulted in an increase in issued shares outstanding.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

A summary of the status of non-vested stock options and restricted stock as of December 27, 2009 and changes during fiscal 2009 is presented below.

	December 27, 2009			
	Stock Options		Restricted Stock	
	Shares	Weighted-Average Grant-Date Fair Value	Shares	Weighted-Average Grant-Date Fair Value
Non-vested shares at beginning of year	1,757,347	\$ 3.20	770,000	\$ 6.95
Granted	122,109	1.62	—	—
Vested	331,749	(6.22)	236,000	7.01
Canceled	157,698	5.81	50,000	6.86
Non-vested shares at end of period	<u>1,390,009</u>	<u>\$ 2.82</u>	<u>484,000</u>	<u>\$ 6.93</u>

The weighted-average grant-date per share fair value of options granted in fiscal 2009 was \$1.62. The weighted-average grant-date per share fair value of options granted in fiscal 2007 and 2008 was \$7.44 and \$1.87, respectively. The fair value of each option award is estimated on the date of grant using the Black-Scholes option valuation model with the weighted-average assumptions noted in the following table. The Black-Scholes option valuation model requires the input of highly subjective assumptions, including the expected life of the stock-based award. The assumptions listed below represent management's best estimates, but these estimates involve inherent uncertainties and the application of management's judgment. In addition, the Company is required to estimate the expected forfeiture rate and only recognizes expense for those shares expected to vest. If the actual forfeiture rate is materially different from the Company's estimate, the share-based compensation expense could be materially different.

The expected term of options granted is derived from historical data on employee exercise and post-vesting employment termination behavior. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury constant maturities rate in effect at the time of grant. The Company utilized a blended rate for expected volatility during 2009 based on the historical volatility of our stock and a representative peer group with a similar expected term of options granted. The following weighted-average assumptions were used for stock option grants in each year:

	2007	2008	2009
Expected life	6.3 yrs	5.7 yrs	5.2 yrs
Risk-free interest rate	4.60%	3.06%	2.90%
Volatility	31.13%	37.46%	53.49%
Expected dividend yield	0.0%	0.0%	0.0%

**(9) Earnings per share**

Basic earnings (loss) per common share were computed by dividing net income available to common shareholders by the weighted-average number of shares of common stock outstanding during the fiscal year. Diluted earnings (loss) per share for fiscal year 2007, 2008, and 2009 excludes 1,238,810 stock options at a weighted-average price of \$17.15, 1,051,852 stock options at a weighted-average price of \$16.15, and 2,425,707 stock options at a weighted-average price of \$2.80, respectively, which were outstanding during the period but were anti-dilutive.

## RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements—(Continued)

(dollar amounts in thousands)

The following table sets forth the computation of basic and diluted earnings per share:

	Fiscal Year Ended		
	2007	2008	2009
Net income	<u>\$18,146</u>	<u>\$(53,883)</u>	<u>\$2,419</u>
Basic earnings per share:			
Continuing operations	\$ 0.81	\$ (2.08)	\$ 0.11
Discontinued operations	(0.03)	(0.23)	(0.01)
Basic earnings per share	<u>\$ 0.78</u>	<u>\$ (2.31)</u>	<u>\$ 0.10</u>
Diluted earnings per share:			
Continuing operations	\$ 0.81	\$ (2.08)	\$ 0.11
Discontinued operations	(0.03)	(0.23)	(0.01)
Diluted earnings per share	<u>\$ 0.78</u>	<u>\$ (2.31)</u>	<u>\$ 0.10</u>

**(10) Income Taxes**

Total income tax expense (benefit) for fiscal 2007, 2008, and 2009 was allocated as follows:

	2007	2008	2009
Income (loss) from continuing operations	\$8,889	\$(27,203)	\$(1,668)
Loss from discontinued operations	(369)	(632)	(638)
Total consolidated income tax expense (benefit)	<u>\$8,520</u>	<u>\$(27,835)</u>	<u>\$(2,306)</u>

Income tax expense (benefit) from continuing operations consists of the following:

	Current	Deferred	Total
Year ended December 30, 2007:			
U.S. Federal	\$4,334	\$ 2,748	\$ 7,082
State	1,378	173	1,551
Foreign	256	—	256
	<u>\$5,968</u>	<u>\$ 2,921</u>	<u>\$ 8,889</u>
Year ended December 28, 2008:			
U.S. Federal	\$ 795	\$(28,647)	\$(27,852)
State	860	(458)	402
Foreign	247	—	247
	<u>\$1,902</u>	<u>\$(29,105)</u>	<u>\$(27,203)</u>
Year ended December 27, 2009:			
U.S. Federal	\$ 85	\$ (5,019)	\$ (4,934)
State	822	2,276	3,098
Foreign	168	—	168
	<u>\$1,075</u>	<u>\$( 2,743)</u>	<u>\$( 1,668)</u>

## RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements—(Continued)

(dollar amounts in thousands)

Income tax expense differs from amounts computed by applying the federal statutory income tax rate to income from continuing operations before income taxes as follows:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Income tax expense (benefit) at statutory rates	\$ 9,719	\$(26,470)	\$ 290
Increase (decrease) in income taxes resulting from:			
State income taxes, net of federal benefit	896	262	2,045
Stock compensation expense (benefit)	444	985	(462)
Employment tax credits	(2,694)	(3,425)	(2,345)
Cumulative impact of adjustment to deferred tax items	—	1,668	(1,194)
Other	523	(223)	(2)
	<u>\$ 8,889</u>	<u>\$(27,203)</u>	<u>\$(1,668)</u>

At December 27, 2009, the state income tax expense of \$2,045 includes \$1,367 expense attributable to the additional valuation allowance recorded against state deferred tax assets.

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

	<u>December 30, 2007</u>	<u>December 28, 2008</u>	<u>December 27, 2009</u>
<b>Deferred tax assets:</b>			
Accounts payable and accrued expenses	\$ 927	\$ 4,250	\$ 3,275
Deferred rent	2,710	3,761	4,457
Net state operating loss carryforwards	6,064	4,086	4,603
Tax credit carryforwards	—	2,761	5,683
Property and equipment	6,335	17,555	19,899
Intangible assets	—	9,846	7,592
Other	492	914	1,344
Total gross deferred tax assets	16,528	43,173	46,853
Less valuation allowance	(1,438)	(4,669)	(7,046)
Net deferred tax assets	15,090	38,504	39,807
<b>Deferred tax liabilities:</b>			
Intangible assets	(7,984)	—	—
Other	(122)	(1,995)	—
Total gross deferred tax liabilities	(8,106)	(1,995)	—
Net deferred tax assets	<u>\$ 6,984</u>	<u>\$ 36,509</u>	<u>\$ 39,807</u>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, management believes it is more likely than not that the Company will realize the benefits of the net deferred tax assets.



**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements—(Continued)****(dollar amounts in thousands)**

As of December 27, 2009, the Company has state net operating loss carry-forwards and tax credit carry-forwards of \$111 million and \$5.7 million, respectively, which are available to offset federal and state taxable income through 2029.

The Company adopted the provisions of "Income Taxes," FASB Accounting Standards Codification Topic 740 (Topic 740) on January 1, 2007. The implementation of Topic 740 did not result in any changes to the Company's unrecognized tax benefits for uncertain tax positions.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

Unrecognized tax benefits balance at December 28, 2008	\$696
Gross increases for tax positions of prior years	152
Settlements	(13)
Unrecognized tax benefits balance at December 27, 2009	<u>\$835</u>

As of December 27, 2009, the Company's gross unrecognized tax benefits totaled approximately \$835, of which \$543, if recognized, would impact the effective tax rate. The Company does not anticipate there will be any material changes in the unrecognized tax benefits within the next 12 months. Our continuing practice is to recognize interest and penalties related to uncertain tax positions in income tax expense. As of December 28, 2008 and December 27, 2009, the Company had accrued approximately \$140 and \$186, respectively, for the payment of interest, which is included as a component of the unrecognized tax benefit noted above.

The Company files consolidated and separate income tax returns in the United States Federal jurisdiction, many state jurisdictions and Puerto Rico. With few exceptions, the Company is no longer subject to U.S. Federal income tax examinations for years before 2007 and is no longer subject to state and local or Puerto Rico income tax examinations by tax authorities for years before 2005.

**(11) Leases**

All of the Company's Ruth's Chris Steak House owned restaurants operate in leased premises, with the exception of the locations in Houston, Columbus and Ft. Lauderdale, which are owned properties and the locations in Anaheim, Lake Mary, Princeton and South Barrington which operate on leased land. The Company's Mitchell's Fish Market and Mitchell's Steakhouse locations all operate in leased premises. Remaining lease terms range from approximately 4 to 30 years, including anticipated renewal options. The leases generally provide for minimum annual rental payments and are subject to escalations based, in some cases, upon increases in the Consumer Price Index, real estate taxes, and other costs. In addition, certain leases contain contingent rental provisions based upon the sales of the underlying restaurants. Certain leases also provide for rent deferral during the initial term of such lease and/or scheduled minimum rent increases during the terms of the leases. For financial reporting purposes, rent expense is recorded on a straight-line basis over the life of the lease. Accordingly, included in liabilities in the accompanying consolidated balance sheets at December 28, 2008 and December 29, 2009, are accruals related to such rent deferrals and the pro rata portion of scheduled rent increases of approximately \$21.0 million and \$20.6 million, respectively, net of the current portion included in other current liabilities \$1.5 million and \$1.6 million, respectively.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Consolidated Financial Statements—(Continued)****(dollar amounts in thousands)**

The Company leases certain restaurant related equipment under non-cancellable operating lease agreements with third parties, which are included in the future minimum annual rental commitments. Future minimum annual rental commitments under leases as of December 27, 2009 are as follows:

Lessee:	
2010	24,842
2011	24,710
2012	23,430
2013	21,476
2014	20,853
Thereafter	206,644
	<u>\$ 321,955</u>

Rental expense consists of the following and is included in restaurant operating expenses in the accompanying statements of income(loss):

	Fiscal Year		
	2007	2008	2009
Minimum rentals	\$ 11,562	\$ 21,711	\$ 24,583
Contingent rentals	3,802	3,121	1,363
	<u>\$15,364</u>	<u>\$24,832</u>	<u>\$25,946</u>

**(12) Commitments and Contingencies**

The Company currently buys most of its beef from one supplier. Although there are a limited number of beef suppliers, management believes that other suppliers could provide similar product on comparable terms. A change in suppliers, however, could cause supply shortages and a possible loss of sales, which would affect operating results adversely.

The Company is subject to various claims, possible legal actions, and other matters arising in the normal course of business. Management does not expect disposition of these other matters to have a material adverse effect on the financial position, results of operations or liquidity of the Company.

**(13) Discontinued Operations**

During the third quarter of fiscal 2007, we were notified that the replacement tenant in the Manhattan-UN, New York, location was placed in default by the landlord and as a result, we resumed lease payments with respect to this property during the third quarter of fiscal 2008. Payments will equal \$0.6 million in the aggregate per fiscal year through September 2016. We will attempt to sublease the property in order to recover some or all of the amounts paid with respect to the lease. As of December 27, 2009, we maintained a contingent lease liability of \$0.8 million related to this property. We accounted for our exit costs in accordance with the provisions of "Exit or Disposal Cost Obligations," FASB Accounting Standards Codification Topic 420 (Topic 420), which requires that such costs be expensed in the periods whereby such costs are incurred. All of the losses incurred are included in discontinued operations in the accompanying consolidated income statements.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

During the second quarter of fiscal 2009, we made the decision to close the company-owned Ruth's Chris Steak House restaurant in Naples, Florida. As of December 27, 2009, we maintain a liability for lease exit costs in accordance with the provisions of Topic 420. All of the losses incurred with respect to this location are included in discontinued operations in the accompanying consolidated income statements.

As discussed in Note 2 to the consolidated financial statements, the Company accounts for its closed restaurants in accordance with the provisions of Topic 360-10. Therefore, when a restaurant is closed, and the restaurant is either held for sale or abandoned, the restaurant's operations are eliminated from the ongoing operations. Accordingly, the operations of such restaurants, net of applicable income taxes, are presented as discontinued operations and prior period operations of such restaurants, net of applicable income taxes, are reclassified. Discontinued operations consist of the following:

	Fiscal Year		
	2007	2008	2009
Revenues	\$ 2,292	\$ 2,084	\$ 716
Income (loss) before income tax	\$(1,012)	\$(6,006)	\$(740)
Income (loss) from operations of discontinued restaurants, net of income tax benefit	\$ (643)	\$(5,374)	\$(102)

**(14) Fair Value Measurements**

Fair value is defined under "Fair Value Measurements and Disclosures," FASB Accounting Standards Codification Topic 820 (Topic 820) as the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date. Topic 820 also establishes a three-level hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels of inputs to the valuation methodology are:

- Level 1—quoted prices (unadjusted) for an identical asset or liability in an active market.
- Level 2—quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.
- Level 3—unobservable and significant to the fair value measurement of the asset or liability.

The Company's financial instruments measured at fair value on a recurring basis subject to the disclosure requirements of Topic 820 at December 27, 2009 were as follows:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Fair Value as of December 27, 2009
Interest rate swap liability	\$ —	\$ 797	\$ —	\$ 797

We believe that the carrying amount of our revolving credit facility approximates its fair value because interest rates are adjusted regularly to reflect current market rates.

## RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements—(Continued)

(dollar amounts in thousands)

The Company's non-financial assets measured at fair value on a non-recurring basis subject to the disclosure requirements of Topic 820 at December 27, 2009 were as follows:

	<u>Year ended 12/27/09</u>	<u>Significant Unobservable Inputs (Level 3)</u>	<u>Total Gains/ (Losses)</u>
Long-lived assets held and used	\$ 114,204	\$ 114,204	\$(1,088)
Goodwill	22,097	22,097	(2,223)
Franchise rights	32,200	32,200	(5,123)
Trademarks	13,718	13,718	(200)

Losses on these assets are recorded as loss on impairment in the accompanying statements of income (loss). See notes 2 and 3 for a description of the valuation techniques used to measure fair value, as well as inputs and information used to develop the inputs.

**(15) Supplemental Consolidated Financial Statement Information****(a) Accounts Receivable, net**

Accounts receivable, net consist of the following:

	<u>December 28, 2008</u>	<u>December 27, 2009</u>
Bank credit card receivables	\$ 4,590	\$ 6,736
Landlord contributions	1,426	343
Franchise fees	1,407	1,310
Trade	869	596
Net income tax refundable	3,563	913
Other	2,109	520
Allowance for doubtful accounts	(597)	(339)
	<u>\$ 13,367</u>	<u>\$ 10,079</u>

**(b) Other Assets**

Other assets consist of the following:

	<u>December 28, 2008</u>	<u>December 27, 2009</u>
Deposits	\$ 1,314	\$ 1,141
Deferred financing costs	1,362	2,568
Other	122	244
	<u>\$ 2,798</u>	<u>\$ 3,953</u>

RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements—(Continued)

(dollar amounts in thousands)

(c) Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following:

	December 28, 2008	December 27, 2009
Accounts payable & other accrued expenses	\$ 17,863	\$ 12,866
Accrued payroll & related benefits	9,524	10,286
Sales & use tax payable	2,579	2,315
Accrued interest payable	423	402
	<u>\$ 30,389</u>	<u>\$ 25,869</u>

(16) Quarterly Financial Data (Unaudited)

Summarized unaudited quarterly financial data (amounts in thousands, except per share information):

	Quarter Ended				Total
	March 30, 2008	June 29, 2008	September 28, 2008	December 28, 2008	
Total revenues	\$ 95,234	\$ 105,455	\$ 96,015	\$ 96,943	\$ 393,647
Cost and expenses	\$ (86,003)	\$ (100,513)	\$ (94,363)	\$ (179,016)	\$ (459,893)
Operating income (loss)	<u>\$ 9,231</u>	<u>\$ 4,941</u>	<u>\$ 1,653</u>	<u>\$ (82,073)</u>	<u>\$ (66,246)</u>
Interest expense, net	\$ (3,208)	\$ (1,182)	\$ (2,511)	\$ (3,433)	\$ (10,334)
Other	\$ 336	\$ 185	\$ 242	\$ 105	\$ 868
Income (loss) from continuing operations before income tax expense (benefit)	\$ 6,359	\$ 3,944	\$ (616)	\$ (85,401)	\$ (75,712)
Income tax expense (benefit)	\$ 1,855	\$ 1,048	\$ (348)	\$ (29,759)	\$ (27,203)
Income (loss) from continuing operations	\$ 4,504	\$ 2,896	\$ (268)	\$ (55,642)	\$ (48,509)
Discontinued operations, net of income tax benefit	\$ (27)	\$ 141	\$ 252	\$ 5,009	\$ 5,374
Net income (loss)	<u>\$ 4,532</u>	<u>\$ 2,756</u>	<u>\$ (519)</u>	<u>\$ (60,652)</u>	<u>\$ (53,883)</u>
Basic earnings (loss) per share:					
Continuing operations	\$ 0.20	\$ 0.13	\$ (0.01)	\$ (2.38)	\$ (2.08)
Discontinued operations	0.00	(0.01)	(0.01)	(0.21)	(0.23)
Basic earnings (loss) per share	<u>\$ 0.20</u>	<u>\$ 0.12</u>	<u>\$ (0.02)</u>	<u>\$ (2.59)</u>	<u>\$ (2.31)</u>
Diluted earnings (loss) per share:					
Continuing operations	\$ 0.19	\$ 0.13	\$ (0.01)	\$ (2.38)	\$ (2.08)
Discontinued operations	0.00	(0.01)	(0.01)	(0.21)	(0.23)
Diluted earnings (loss) per share	<u>\$ 0.19</u>	<u>\$ 0.12</u>	<u>\$ (0.02)</u>	<u>\$ (2.59)</u>	<u>\$ (2.31)</u>

## RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements—(Continued)

(dollar amounts in thousands)

	Quarter Ended				Total
	March 29, 2009	June 28, 2009	September 27, 2009	December 27, 2009	
Total revenues	\$ 94,728	\$ 86,387	\$ 76,140	\$ 87,374	\$ 344,630
Cost and expenses	\$(87,836)	\$(81,851)	\$(75,185)	\$(91,682)	\$(336,555)
Operating income (loss)	\$ 6,892	\$ 4,535	\$ 954	\$ (4,308)	\$ 8,075
Interest expense, net	\$ (2,284)	\$ (1,849)	\$ (1,926)	\$ (1,694)	\$ (7,754)
Other	\$ 152	\$ 267	\$ (59)	\$ 172	\$ 532
Income (loss) from continuing operations before income tax expense (benefit)	\$ 4,760	\$ 2,953	\$ (1,031)	\$ (5,830)	\$ 854
Income tax expense (benefit)	\$ 962	\$ 354	\$ (113)	\$ (2,871)	\$ (1,668)
Income (loss) from continuing operations	\$ 3,798	\$ 2,599	\$ (918)	\$ (2,959)	\$ 2,521
Discontinued operations, net of income tax benefit	\$ 53	\$ 275	\$ 36	\$ (262)	\$ 102
Net income (loss)	\$ 3,745	\$ 2,324	\$ (954)	\$ (2,697)	\$ 2,419
Basic earnings (loss) per share:					
Continuing operations	\$ 0.16	\$ 0.11	\$ (0.04)	\$ (0.12)	0.11
Discontinued operations	(0.00)	(0.01)	(0.00)	0.01	(0.01)
Basic earnings (loss) per share	\$ 0.16	\$ 0.10	\$ (0.04)	\$ (0.11)	\$ 0.10
Diluted earnings (loss) per share:					
Continuing operations	\$ 0.16	\$ 0.11	\$ (0.04)	\$ (0.12)	\$ 0.11
Discontinued operations	(0.00)	(0.01)	(0.00)	(0.01)	(0.01)
Diluted earnings (loss) per share	\$ 0.16	\$ 0.10	\$ (0.04)	\$ (0.11)	\$ 0.10

During the fiscal quarter ended December 27, 2009 the Company recorded a loss on the impairment of long-lived and intangible assets of \$8.3 million. Of the total loss on impairment recognized, \$0.8 million was related to the impairment of long-lived assets at two company-owned Ruth's Chris Steak House restaurants, three Mitchell's Fish Market restaurants and one Mitchell's Steakhouse restaurant, \$0.2 million was related to the impairment of the Mitchell's Fish Market and Mitchell's Steakhouse trademarks, \$5.1 million was related to the impairment of franchise rights for ten company-owned restaurants acquired in 2007 and \$2.2 million was related to the impairment of goodwill.

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

(dollar amounts in thousands)

**(17) Restructuring**

As financial markets experienced great volatility in late 2008, management undertook a corporate restructuring to better support the new strategy of little to moderate company-owned restaurant growth.

The details of the restructuring charges are as follows:

	One-time termination benefits	Lease Obligations	Total restructuring
Accrued restructuring as of December 28, 2008	\$ 1,455	\$ 4,978	\$ 6,433
Payments	(1,449)	(2,133)	(3,582)
Additional Accruals	—	417	417
Adjustments	—	(377)	(377)
Accrued restructuring as of December 27, 2009	<u>\$ 6</u>	<u>\$ 2,885</u>	<u>\$ 2,891</u>

The Company has accrued lease obligations related to certain locations for which a lease was signed and the Company subsequently decided not to build. The accrual of \$2.9 million is based on management's estimate of the most likely outcome of the lease exit negotiations. However, it is reasonably possible that factors could change in the near term that would result in a change in estimate.

**(18) Franchise Income**

The Company currently has 66 Ruth's Chris Steak House franchise locations, including 14 international locations. During the fourth quarter of fiscal 2009, the Company opened two franchise locations, Kennesaw, Georgia, and Carolina, Puerto Rico, and closed one franchise location, Aspen, Colorado. During fiscal 2009, the Company opened six franchise locations, Durham, North Carolina, Greenville, South Carolina, Kennesaw, Georgia, St. Louis, Missouri, Carolina, Puerto Rico, and Dubai, United Arab Emirates. No franchise locations were sold or purchased during fiscal 2009. Franchise income includes opening and development fees and income generated from existing franchise locations. The Company records franchise income separately in the condensed consolidated statements of income.

The following is a summary of franchise income:

	13 Weeks Ended		52 Weeks Ended	
	December 28, 2008	December 27, 2009	December 28, 2008	December 27, 2009
	(unaudited)		(unaudited)	
Franchise activity during the period:				
Opened	1	2	7	6
Closed	0	1	0	4
Franchise income:				
Income from existing franchise locations	\$ 2,952	\$ 2,758	\$ 12,166	\$ 10,108
Opening and development fee income	50	250	538	425
Total franchise income:	<u>\$ 3,002</u>	<u>\$ 3,008</u>	<u>\$ 12,703</u>	<u>\$ 10,533</u>

**(19) Correction to Previously Reported Amounts**

Certain corrections have been made for the reporting of the Company's classification of sales discounts within the consolidated statements of income (loss). The consolidated statements of income (loss) for fiscal years

**RUTH'S HOSPITALITY GROUP, INC. AND SUBSIDIARIES**

**Notes to Consolidated Financial Statements—(Continued)**

**(dollar amounts in thousands)**

2007 and 2008 have been revised to correct an immaterial error in the accounting for sales discounts, which should have been recorded as a reduction of sales instead of as operating expenses. When reviewing the previously reported annual consolidated statements of income (loss) in comparison to those reported in this Form 10-K, restaurant sales decreased by \$8.5 million and \$10.9 million, other operating income increased by \$0.6 million and \$0.7 million, restaurant operating expenses decreased by \$7.3 million and \$9.8 million, and general and administrative expenses decreased by \$0.6 million and \$0.4 million for the fiscal years ended December 30, 2007, and December 28, 2008, respectively. For all periods above, reclassifications had no impact on previously reported operating income (loss), net income (loss) or earnings (loss) per share amounts.

**(20) Subsequent Event**

On February 12, 2010, the Company completed its sale of \$25,000,000 of the Company's newly-created Series A 10% Convertible Preferred Stock (the "Preferred Stock") to Bruckmann, Rosser, Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P. (collectively, "BRS") in a private placement transaction. On February 12, 2010, the Company also closed its rights offering and sold 10,147,451 shares of the Company's common stock, at a subscription price of \$2.50 per share, for an aggregate purchase price of approximately \$25.4 million.

The Company applied approximately \$44.3 million of the net proceeds from the rights offering and the private placement, together with cash on hand, to reduce its outstanding borrowings under its existing credit facility. Upon the application of those net proceeds, and the satisfaction of other agreed-upon conditions, a credit agreement amendment that the Company entered into with the lenders under its existing credit facility became effective.

The amendment to the credit agreement reduces the revolving loan commitment to \$129.6 million, extends the scheduled maturity of the credit agreement by two years, to February 2015, and provides the Company with a less restrictive set of covenants. Specifically, the amendment provides for no financial covenant testing until the end of fiscal year 2010, provides less restrictive leverage and coverage covenants thereafter, and permanently eliminates the minimum EBITDA covenant. The amendment provides for higher interest rates under the credit facility, with interest rates based on the Company's actual leverage ratio, ranging from 3.25% to 5.00% above the applicable LIBOR rate or, at the Company's option, from 2.00% to 3.75% above the applicable base rate.

In connection with the closing of these transactions, the Company entered into a Registration Rights Agreement, dated February 12, 2010, with BRS (the "Registration Rights Agreement"). Under the Registration Rights Agreement, the Company has agreed to provide certain customary registration rights to BRS upon conversion of the Preferred Stock into common stock of the Company. The Company is required to file an initial shelf registration statement for the benefit of the Preferred Stock within nine months of the issuance of the Preferred Stock and such registration statement is required to be declared effective by the SEC prior to the first anniversary of the closing. In addition, following the first anniversary of the closing, BRS is entitled to three demand registration rights on Form S-3 and piggyback registration rights if the Company files a registration statement with respect to any shares of the Company's common stock on the Company's account or with respect to a public offering (subject to customary restrictions and exceptions). In addition, if the Company breaches certain of its obligations under the Registration Rights Agreement (including any of those related to the requirement to timely file registration statements and include the common stock issuable upon conversion of the Preferred Stock in any applicable registration statement), the dividend rate on the Preferred Stock will increase from 10% to 11% until the breach is cured.

The Company has evaluated subsequent events through the date the financial statements were issued.



## EXHIBITS

*In reviewing the agreements included as exhibits to this report, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about the Company, its subsidiaries or other parties to the agreements. The Agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:*

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;*
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;*
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and*
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.*

*Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about the Company may be found elsewhere in this report and the Company's other public files, which are available without charge through the SEC's website at <http://www.sec.gov>.*

<u>Exhibit</u>	<u>Description</u>
2.1	Asset Purchase Agreement dated as of November 6, 2007, between the Company and Cameron Mitchell Restaurants, LLC with M. Cameron Mitchell and 1245 Properties, LLC as interveners (incorporated by reference to Exhibit 2.1 to the Company's Form 10-K/A filed June 25, 2009).
2.2	Letter Agreement dated February 15, 2008 for Amendments to the Asset Purchase Agreement dated as of November 6, 2008, between the Company and Cameron Mitchell Restaurants, LLC with M. Cameron Mitchell and 1245 Properties, LLC as interveners (incorporated by reference to Exhibit 10.2 to the Company's current report on Form 8-K filed May 6, 2008).
3.1	Certificate of Amended and Restated Certificate of Incorporation of Ruth's Hospitality Group, Inc.
3.2	Certificate of Designations of the Series A 10% Convertible Preferred Stock.
3.3	Restated By-Laws of Ruth's Chris Steak House, Inc. (incorporated by reference to Exhibit 3.2 of the Company's Registration Statement on Form S-1 filed July 12, 2005).
4.1	Securities Purchase Agreement dated December 22, 2009, among Ruth's Hospitality Group, Inc., Bruckmann, Rosser Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P. (incorporated by reference to Exhibit 4.1 to the Company's current report on Form 8-K filed December 23, 2009).
4.2	Registration Rights Agreement dated February 12, 2010, by and among Ruth's Hospitality Group, Inc., Bruckmann, Rosser, Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P. (incorporated by reference to Exhibit 4.1 to the Company's current report on Form 8-K filed February 17, 2010).
4.3	Voting Agreement dated December 22, 2009, by and among the Company, Bruckmann, Rosser, Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P., Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P. and Special Advisors Fund I, LLC (incorporated by reference to Exhibit 10.2 to the Company's current report of Form 8-K filed December 23, 2009).
4.4	Form of Voting Agreement among the Company, Bruckmann, Rosser, Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P. and a schedule of certain stockholders of the Company signatory thereto (incorporated by reference to Exhibit 10.3 to the Company's current report of Form 8-K filed December 23, 2009).

## Table of Contents

<u>Exhibit</u>	<u>Description</u>
4.5	Amended and Restated Registration Agreement dated December 22, 2009, by and among Ruth's Hospitality Group, Inc. and Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P. and Special Advisors Fund I, LLC (incorporated by reference to Exhibit 4.2 to the Company's current report on Form 8-K filed December 23, 2009).
4.6	Shareholders Agreement dated September 17, 1999 among the Company, Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P., Special Advisors Fund I, LLC, First Union Investors, Inc., GS Mezzanine Partners, L.P., GS Messanine Partners Offshore and each of the stockholders of the Company identified as Investors therein (incorporated by reference to Exhibit 10.2 of the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.1	Transaction and Merger Agreement dated as of July 16, 1999, among the Company, RUF Merger Corp., Madison Dearborn Capital Partners III, L.P., Madison Dearborn Special Equity III, L.P. and Special Advisors Fund I, LLC (incorporated by reference to the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.2	License Agreement dated as of July 16, 1999, between Ruth U. Fertel and the Company (incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.3*	2005 Long-Term Equity Incentive Plan, as amended (incorporated by reference to Appendix A of the Company's Definitive Proxy Statement filed April 7, 2008).
10.4*	Form of Stock Option Agreement under the Company's 2005 Long-Term Equity Incentive Plan, as amended (incorporated by reference to Exhibit 10.22 of the Company's Registration Statement on Form S-1 filed August 8, 2005).
10.5*	2004 Restricted Stock Plan (incorporated by reference to Exhibit 10.14 of the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.6*	Amendment No. 1 to the Company's 2004 Restricted Stock Plan (incorporated by reference to Exhibit 10.15 of the Company's Registration Statement on Form S-1 filed June 7, 2005).
10.7*	Form of Restricted Stock Agreement (incorporated by reference to Exhibit 10.16 of the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.8*	2000 Stock Option Plan (incorporated by reference to Exhibit 10.17 of the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.9*	Form of Stock Option Agreement under 2000 Stock Option Plan (incorporated by reference to Exhibit 10.18 of the Company's Registration Statement on Form S-1 filed April 25, 2005).
10.10*	Amended and Restated Management Bonus Plan (incorporated by reference to Exhibit 10.1 of the Company's current report on Form 8-K filed August 7, 2006).
10.11*	Deferred Compensation Plan of the Company (incorporated by reference to Exhibits 10.1 and 10.2 of the Company's current report on Form 8-K filed November 2 2005).
10.12*	Deferred Compensation Plan of RCSH Management, Inc. (incorporated by reference to Exhibits 10.1 and 10.3 of the Company's current report on Form 8-K filed November 2 2005).
10.13	Asset Purchase Agreement dated as of April 24, 2006, by and among the Company, Thomas J. Moran, Jr., individually, and Prime Steak-Chicago, Inc., Prime Steak-Troy, LLC, Prime Steak-Jacksonville, LLC, Prime Steak-Northbrook, LLC, Prime Steak-Ponte Vedra, LLC, Prime Steak-Detroit, Inc., T.J. Moran and Associates, Inc., Prime Steak-Memphis, Inc. and Bekmet, Inc. and Capital City Restaurants, Inc., as Intervenor (incorporated by reference to Exhibit 10.1 of the Company's report on Form 10-Q filed March 3, 2006).

## Table of Contents

<u>Exhibit</u>	<u>Description</u>
10.14	Purchase and Sale Agreement between the Company and Colonial Realty Limited Partnership dated December 19, 2006 (incorporated by reference to Exhibit 99.1 of the Company's current report on Form 8-K filed December 22, 2006).
10.15	Asset Purchase Agreement dated as of April 16, 2007, by and among the Company, Steven Queyrouze, RCSH Bellevue, L.L.C. and Anne Queyrouze (incorporated by reference to Exhibit 10.1 of the Company's report on Form 10-Q filed May 9, 2007).
10.16	Asset Purchase Agreement dated as of April 16, 2007, by and among the Company, Steven Queyrouze, Bayou Investors Limited Liability Company and Anne Queyrouze (incorporated by reference to Exhibit 10.2 of the Company's report on Form 10-Q filed May 9, 2007).
10.17	Asset Purchase Agreement dated as of April 16, 2007, by and among the Company, Steven Queyrouze, New N.O. Crescent City Investors, L.L.C. and Anne Queyrouze (incorporated by reference to Exhibit 10.3 of the Company's report on Form 10-Q filed May 9, 2007).
10.18	Multi-Site Sale Leaseback Purchase Agreement dated as August 1, 2008 among the Company, RCSH Operations, LLC, RCSH Operations, Inc. and RHG Kingfish, LLC and Sovereign Investment Company (incorporated by reference to Exhibit 10.1 of the Company's current report on Form 8-K filed August 5, 2008).
10.19	First Amended and Restated Credit Agreement dated as of February 19, 2008 by and among the Company, the Lenders listed therein, Wells Fargo Bank, N.A. as Administrative Agent, Bank of America, N.A. as Syndication Agent and Wachovia Bank, National Association and JPMorgan Chase Bank, N.A. as Co-Documentation Agents and Banc of America Securities LLC and Wells Fargo Bank, National Association as Co-Lead Arrangers (incorporated by reference to Exhibit 10.27 to the Company's Form 10-K/A filed June 25, 2009).
10.20	First Amendment dated February 26, 2009 to First Amended and Restated Credit Agreement dated as of February 19, 2008 with the financial institutions from time to time party thereto, Wells Fargo Bank, National Association as Administrative Agent and the guarantors listed on the signature pages thereto (incorporated by reference to Exhibit 10.28 to the Company's Form 10-K/A filed June 25, 2009).
10.21	Second Amendment to First Amended and Restated Credit Agreement and Waiver, dated December 22, 2009, by and among the Company, Wells Fargo Bank, National Association as Administrative Agent, and the lenders from time to time party thereto (incorporated by reference to Exhibit 10.1 of the Company's current report on Form 8-K filed December 23, 2009).
10.22	Terms of Employment/Letter of Understanding and Salary Continuation Agreement dated March 17, 2008 between the company and Robert M. Vincent (incorporated by reference to Exhibit 99.1 of the Company's current report on Form 8-K filed March 21, 2008).
10.23	Terms of Employment/Letter of Understanding and Salary Continuation Agreement dated August 1, 2008 between the company and Michael P. O'Donnell (incorporated by reference to Exhibit 99.1 of the Company's current report on Form 8-K filed August 5, 2008).
10.24	Separation Agreement dated May 23, 2008 between the company and Craig S. Miller (incorporated by reference to Exhibit 99.1 of the Company's current report on Form 8-K filed May 30, 2008).
10.25	Separation Agreement and General Release dated December 31, 2008 between the company and Thomas E. O'Keefe (incorporated by reference to Exhibit 10.1 of the Company's current report on Form 8-K filed December 31, 2008).
10.26	Separation Agreement and General Release dated January 31, 2010 between the company and Sarah C. Jackson (incorporated by reference to Exhibit 99.1 of the Company's current report on Form 8-K filed February 2, 2010).

## Table of Contents

<u>Exhibit</u>	<u>Description</u>
21.1	Subsidiaries of the Company
23.1	Consent of KPMG, LLP
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Section 906 of the Sarbanes-Oxley Act of 2002 Certifications
	<i>The certifications in this exhibit are being furnished solely to accompany this report pursuant to 18 U.S.C. § 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any of the Company's filings, whether made before or after the date hereof, regardless of any general incorporation language in such filing.</i>
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Management contract or compensatory plan or arrangement.

**CERTIFICATE OF  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
RUTH'S HOSPITALITY GROUP, INC.**

\* \* \* \*

*Adopted in accordance with the provisions  
of §242 and §245 of the General Corporation Law  
of the State of Delaware*

\* \* \* \*

The undersigned, on behalf of Ruth's Hospitality Group, Inc., a corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY as follows:

**FIRST:** That the Corporation filed its original Certificate of Incorporation with the Delaware Secretary of State on May 11, 2005 under the name of RC Merger Sub, Inc., filed a Restated Certificate of Incorporation with the Delaware Secretary of State on May 19, 2005, filed an Amended and Restated Certificate to the Certificate of Incorporation with the Delaware Secretary of State on August 1, 2005, and filed a Certificate of Amendment to the Amended and Restated Certificate of Incorporation with the Delaware Secretary of State on May 23, 2008 (as so amended and restated, the "Certificate of Incorporation").

**SECOND:** That the Amended and Restated Certificate of Incorporation set forth in Exhibit A attached hereto and made a part hereof (the "Restated Certificate"), further amends, integrates and restates the Certificate of Incorporation in its entirety.

**THIRD:** That the Restated Certificate was duly adopted by the Board of Directors and the stockholders of the Corporation in accordance with Section 242 and Section 245 of the General Corporation Law of the State of Delaware.

\* \* \* \* \*

IN WITNESS WHEREOF, the undersigned on behalf of the Corporation for the purpose of restating the Certificate of Incorporation pursuant to the General Corporation Law of the State of Delaware, under penalties of perjury does hereby declare and certify that this is the act and deed of the Corporation and the facts stated herein are true, and accordingly has hereunto signed this Certificate of Amended and Restated Certificate of Incorporation this 9th day of February, 2010.

Ruth's Hospitality Group, Inc.,  
a Delaware corporation

By: /s/ Robert M. Vincent  
Name: Robert M. Vincent  
Title: Executive Vice President and  
Chief Financial Officer

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
RUTH'S HOSPITALITY GROUP, INC.  
ARTICLE ONE  
NAME**

The name of the Corporation is Ruth's Hospitality Group, Inc. (the "Corporation").

**ARTICLE TWO  
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office in the State of Delaware is The Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE THREE  
PURPOSE**

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

**ARTICLE FOUR  
CAPITAL STOCK**

Section 1. Authorized Shares. The total number of shares of capital stock which the Corporation has authority to issue is 110,000,000 consisting of:

- (a) 10,000,000 shares of initially undesignated Preferred Stock, par value \$0.01 per share ("Blank Check Preferred Stock"); and
- (b) 100,000,000 shares of Common Stock, par value \$0.01 per share (the "Common Stock").

Section 2. Blank Check Preferred Stock. The Blank Check Preferred Stock may be issued from time to time and in one or more series. The Board of Directors of the Corporation is authorized to determine or alter the powers, preferences and rights, and the qualifications, limitations and restrictions granted to or imposed upon any wholly unissued series of Blank Check Preferred Stock, and within the limitations or restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series of Blank Check Preferred Stock, to increase or decrease (but not below the number of shares of any such series of Preferred Stock then outstanding) the number of shares of any such series of Blank Check Preferred Stock, and to fix the number of shares of any series of Blank Check Preferred Stock. In the event that the number of shares of any series of Blank Check Preferred Stock shall be so decreased, the shares constituting such decrease shall resume the status which such shares had prior to the adoption of the resolution originally fixing the number of shares of such series of Blank Check Preferred Stock subject to the requirements of applicable law.

Section 3. Common Stock. Except as required by applicable law, the rights and privileges of the Common Stock shall be subject to the powers, preferences and rights of any shares of Blank Check Preferred Stock as authorized by the Board of Directors. Except as otherwise provided in this Section 3 or as otherwise required by applicable law, all shares of Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, and shall rank equally, share ratably and be identical in all respects as to all matters.

(a) Voting Rights. Except as otherwise provided in this Section 3 or as otherwise required by applicable law, the holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the Corporation's shareholders.

(b) Dividends. As and when dividends are declared or paid thereon, whether in cash, property or securities of the Corporation, the holders of Common Stock shall be entitled to participate in such dividends ratably on a per share basis.

(c) Liquidation. The holders of the Common Stock shall be entitled to participate ratably on a per share basis in all distributions to the holders of Common Stock in any liquidation, dissolution or winding up of the Corporation.

(d) Registration of Transfer. The Corporation shall keep at its principal office (or such other place as the Corporation reasonably designates) a register for the registration of shares of Common Stock. Upon the surrender at such place of any certificate representing shares of Common Stock, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of such stock represented by the surrendered certificate and the Corporation shall forthwith cancel such surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Common Stock as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such issuance.

(e) Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (provided, that an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of Common Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate of like kind representing the number of shares of such stock represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

(f) Notices. All notices referred to herein shall be in writing, and shall be delivered by registered or certified mail, return receipt requested, postage prepaid, and shall be deemed to have been given when so mailed (i) to the Corporation at its principal executive offices and (ii) to any shareholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

(g) Amendment and Waiver. No amendment or waiver of any provision of this Section 3 shall be effective without the prior written consent of the holders of a majority of the then outstanding shares of Common Stock voting as a single class. For purposes of votes on amendments and waivers to this Section 3, each share of Common Stock shall be entitled to one vote.

## **ARTICLE FIVE DURATION**

The Corporation is to have perpetual existence.

## **ARTICLE SIX BOARD OF DIRECTORS**

Section 1. Number of Directors. The number of directors which shall constitute the Board of Directors shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the total number of directors then in office.

Section 2. Election and Term of Office. The directors shall be elected by a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected and shall hold office only in this manner, except as provided in Section 3 of this Article Six. Each director shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.



Section 3. Newly-Created Directorships and Vacancies. Newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or any other cause may be filled, so long as there is at least one remaining director, only by the Board of Directors, provided that a quorum is then in office and present, or by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director. Directors elected to fill a newly created directorship or other vacancies shall hold office until such director's successor has been duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 4. Removal of Directors. Any director may be removed from office at any time for cause, at a meeting called for that purpose, but only by the affirmative vote of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 5. Bylaws. The Board of Directors is expressly authorized to adopt, amend or repeal the bylaws of the Corporation. Notwithstanding the foregoing and anything contained in this Amended and Restated Certificate of Incorporation to the contrary, the bylaws of the Corporation shall not be amended or repealed by the stockholders, and no provision inconsistent therewith shall be adopted by the stockholders, without the affirmative vote of the holders of 66<sup>2</sup>/<sub>3</sub>% of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors.

## **ARTICLE SEVEN LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **Section 1. Limitation of Liability.**

(a) To the fullest extent permitted by the Delaware General Corporation Law as it now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages arising from a breach of fiduciary duty owed to the Corporation or its stockholders.

(b) Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Section 2. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in

Section 3 of this Article Seven with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 2 of this Article Seven shall be a contract right and shall include the obligation of the Corporation to pay the expenses incurred in defending any such proceeding in advance of its final disposition (an “advance of expenses”); provided, however, that an advance of expenses incurred by an indemnitee shall be made only upon delivery to the Corporation of an undertaking (an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same or lesser scope and effect as the foregoing indemnification of directors and officers.

Section 3. Procedure for Indemnification. Any indemnification of a director or officer of the Corporation or advance of expenses under Section 2 of this Article Seven shall be made promptly, and in any event within forty-five days (or, in the case of an advance of expenses, twenty days, provided that the director or officer has delivered the undertaking contemplated by Section 2 of this Article Seven), upon the written request of the director or officer. If a determination by the Corporation that the director or officer is entitled to indemnification pursuant to this Article Seven is required, and the Corporation fails to respond within sixty days to a written request for indemnity, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within forty-five days (or, in the case of an advance of expenses, twenty days, provided that the director or officer has delivered the undertaking contemplated by Section 2 of this Article Seven), the right to indemnification or advances as granted by this Article Seven shall be enforceable by the director or officer in any court of competent jurisdiction. Such person’s costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses where the undertaking required pursuant to Section 2 of this Article Seven, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. The procedure for indemnification of other employees and agents for whom indemnification is provided pursuant to Section 2 of this Article Seven shall be the same procedure set forth in this Section 3 for directors or officers, unless otherwise set forth in the action of the Board of Directors providing indemnification for such employee or agent.

Section 4. Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee or agent of the Corporation or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the Delaware General Corporation Law.

Section 5. Service for Subsidiaries. Any person serving as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture or other enterprise, at least 50% of whose equity interests are owned by the Corporation (a “subsidiary” for this Article Seven) shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

Section 6. Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity,

advance of expenses and other rights contained in this Article Seven in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this Article Seven shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

Section 7. Non-Exclusivity of Rights. The rights to indemnification and to the advance of expenses conferred in this Article Seven shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation or under any statute, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Section 8. Merger or Consolidation. For purposes of this Article Seven, references to the "Corporation" shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article Seven with respect to the resulting or surviving Corporation as he or she would have with respect to such constituent Corporation if its separate existence had continued.

Section 9. Savings Clause. If this Article Seven or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each person entitled to indemnification under Section 2 of this Article Seven as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification is available to such person pursuant to this Article Seven to the full extent permitted by any applicable portion of this Article Seven that shall not have been invalidated and to the full extent permitted by applicable law.

## **ARTICLE EIGHT ACTION BY WRITTEN CONSENT/SPECIAL MEETINGS OF STOCKHOLDERS**

If the Corporation's Common Stock is registered under Section 12 of the Securities Exchange Act of 1934, as amended: (i) the stockholders of the Corporation may not take any action by written consent in lieu of a meeting, and must take any actions at a duly called annual or special meeting of stockholders and the power of stockholders to consent in writing without a meeting is specifically denied and (ii) special meetings of stockholders of the Corporation may be called only by either the Board of Directors pursuant to a resolution adopted by the affirmative vote of the majority of the total number of directors then in office or by the chairman of the Board of Directors.

## **ARTICLE NINE CERTAIN TRANSACTIONS**

Section 1. Certain Acknowledgments. In recognition and anticipation that, (i) the directors, officers, members, managers and/or employees of Madison Dearborn Capital Partners III, LP and Madison Dearborn Partners, LLC or affiliates and investment funds of such entities (collectively, "Madison Dearborn") may serve as directors and/or officers of the Corporation, (ii) Madison Dearborn may engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, (iii) non-employee directors of the Corporation may engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly may engage, and (iv) the Corporation and its subsidiaries may engage in material business transactions with Madison Dearborn and that the Corporation is expected to benefit therefrom, the provisions of this Article Nine are set forth to regulate and define the conduct of certain affairs of the Corporation as they may involve either any non-employee director or Madison Dearborn and its directors, officers, members, managers and/or employees, and the powers, rights, duties and liabilities of the Corporation and its officers, directors and stockholders in connection therewith.

Section 2. Competition and Corporate Opportunities. Neither Madison Dearborn nor any non-employee director shall have any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries. In the event that Madison Dearborn or any non-employee director acquires knowledge of a potential transaction or matter which may be a corporate opportunity for themselves and the Corporation or any of its subsidiaries, neither the Corporation nor any of its subsidiaries shall have any expectancy in such corporate opportunity, and neither Madison Dearborn nor any non-employee director shall have any duty to communicate or offer such corporate opportunity to the Corporation or any of its subsidiaries and may pursue or acquire such corporate opportunity for themselves or direct such corporate opportunity to another person.

Section 3. Allocation of Corporate Opportunities. In the event that a director of the Corporation who is not an employee of the Corporation acquires knowledge of a potential transaction or matter which may be a corporate opportunity for the Corporation or any of its subsidiaries and such non-employee director, neither the Corporation nor any of its subsidiaries shall have any expectancy in such corporate opportunity unless such corporate opportunity is expressly offered to such non-employee director solely in his or her capacity as a director of the Corporation.

Section 4. Agreements and Transactions with Madison Dearborn. In the event that Madison Dearborn enters into an agreement or transaction with the Corporation or any of its subsidiaries, a director or officer of the Corporation who is also a director, officer, member, manager and/or employee of Madison Dearborn shall have fully satisfied and fulfilled the fiduciary duty of such director or officer to the Corporation and its stockholders with respect to such agreement or transaction, if:

(a) The agreement or transaction was approved, after being made aware of the material facts of the relationship between each of the Corporation or subsidiary thereof and Madison Dearborn and the material terms and facts of the agreement or transaction, by (i) an affirmative vote of a majority of the members of the Board of Directors of the Corporation who are not persons or entities with a material financial interest in the agreement or transaction (“Interested Persons”) or (ii) an affirmative vote of a majority of the members of a committee of the Board of Directors of the Corporation consisting of members who are not Interested Persons;

(b) The agreement or transaction was fair to the Corporation at the time the agreement or transaction was entered into by the Corporation; or

(c) The agreement or transaction was approved by an affirmative vote of a majority of the shares of the Corporation’s Common Stock entitled to vote, excluding Madison Dearborn and any Interested Person; provided that if no Common Stock is then outstanding a majority of the voting power of the Corporation’s capital stock entitled to vote, excluding Madison Dearborn and any Interested Person.

Section 5. Amendment of this Article. Notwithstanding anything to the contrary elsewhere contained in this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least 80% of the voting power of all shares of Common Stock then outstanding, shall be required to alter, amend or repeal, or to adopt any provision inconsistent with, this Article Nine.

Section 6. Deemed Notice. Any person or entity purchasing or otherwise acquiring any interest in any shares of the Corporation shall be deemed to have notice or and to have consented to the provisions of this Article Nine.

## **ARTICLE TEN AMENDMENT**

Subject to Article Four hereof, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed herein and by the laws of the state of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage or separate

class vote may be specified by law, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation or otherwise, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock set forth in Articles Four or Nine or as required by law, this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation or otherwise, the affirmative vote of the holders of at least 66<sup>2/3</sup>% of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, shall be required to adopt any provision inconsistent with, to amend or repeal any provision of, or to adopt a bylaw inconsistent with, Articles Six, Seven, Eight and Ten of this Amended and Restated Certificate of Incorporation.

**ARTICLE ELEVEN**  
**SECTION 203 OF THE DELAWARE GENERAL CORPORATION LAW**

The Corporation expressly elects to be governed by Section 203 of the Delaware General Corporation Law.

**CERTIFICATE OF DESIGNATIONS OF  
THE SERIES A 10% CONVERTIBLE PREFERRED STOCK  
(Par Value \$0.01)**

**OF**

**RUTH'S HOSPITALITY GROUP, INC.**

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Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

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Ruth's Hospitality Group, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Company"), in accordance with the provisions of Section 151 thereof, DOES HEREBY CERTIFY:

That pursuant to the authority conferred upon the Board of Directors of the Company (the "Board") in accordance with the Amended and Restated Certificate of Incorporation of the Company and the Restated Bylaws of the Company, the Board on December 18, 2009 adopted the following resolution creating a series of Preferred Stock, par value \$0.01 per share, of the Company designated as Series A 10% Convertible Preferred Stock:

RESOLVED, that pursuant to the authority vested in the Board in accordance with the Amended and Restated Certificate of Incorporation of the Company and out of the Preferred Stock, par value \$0.01 per share, authorized therein, the Board hereby authorizes, designates and creates a series of 25,000 shares of Preferred Stock, and states that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof be, and hereby are, as follows:

**Section 1. Designation.**

The designation of the series of Preferred Stock created by this resolution shall be "Series A 10% Convertible Preferred Stock" (the "Series A Preferred Stock"). Each share of the Series A Preferred Stock shall be identical in all respects to every other share of the Series A Preferred Stock. The Series A Preferred Stock shall be perpetual, subject to the provisions of Section 6.

**Section 2. Number of Shares.**

The authorized number of shares of Series A Preferred Stock shall be 25,000. Such number of shares may be increased or decreased by resolution of the Board; *provided*, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding or may be required to be issued pursuant to Section 4. Shares of Series A Preferred Stock that are redeemed, purchased or otherwise acquired by the Company, or converted into Common Stock or another series of Preferred Stock, shall revert to authorized but unissued shares of Preferred Stock.

**Section 3. Definitions.** As used herein with respect to the Series A Preferred Stock:

- (a) “Accumulated Dividends” shall mean with respect to any share of Series A Preferred Stock, as of any date, the aggregate accumulated and unpaid dividends on such share for Dividend Periods ending on or prior to such date.
- (b) “Affiliate” of any Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For purposes of this definition, “control” when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.
- (c) “Board” shall mean the Board of Directors of the Company.
- (d) “Business Day” shall mean a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York generally are authorized or obligated by law, regulation or executive order to close.
- (e) “Bylaws” shall mean the Restated By-Laws of the Company in effect on the date hereof, as may be amended from time to time.
- (f) “Capital Stock” shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (in each case however designated) Common Stock, Preferred Stock or other equity interests issued by the Company, any Subsidiary of the Company or any other Person, as applicable.
- (g) “Certificate of Designations” shall mean this Certificate of Designations relating to the Series A Preferred Stock, as it may be amended from time to time.
- (h) “Certificate of Incorporation” shall mean the Amended and Restated Certificate of Incorporation of the Company.
- (i) “Change of Control” shall mean the occurrence of any of the following:
- (1) any Person other than one or more Permitted Holders shall Beneficially Own, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, shares of the Company’s Capital Stock entitling such Person to exercise 50% or more of the Total Voting Power of Voting Stock of the Company (for purposes of this clause (1), “Person” shall include any syndicate or group that would be deemed to be a “person” under Section 13(d)(3) of the Exchange Act);
  - (2) the Company (i) merges or consolidates with or into any other Person or another Person merges with or into the Company or (ii) engages in any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, in each case; *provided*, that the stockholders of the Company immediately prior to the consummation of such transaction (including a series of related transactions) shall own less than 50% of the Voting Stock (or have the right to appoint less than 50% of the members of the Board) of the surviving person (or the parent of the surviving person where the surviving person is wholly owned by the parent person) immediately following the consummation of such transaction (including a series of related transactions); or
  - (3) the Company conveys, sells, transfers or leases all or substantially all of the Company’s consolidated assets to another Person in one or a series of transactions.

(j) “Close of Business” shall mean 5:00 p.m., New York City time, on any Business Day.

(k) “Closing Price” shall mean the price per share of the final trade of the Common Stock, other Capital Stock or similar equity interest, as applicable, on the applicable Trading Day (or the last trade of the Capital Stock or similar equity interest preceding the applicable Trading Day if no trades of such securities were made on the applicable Trading Day) on the principal national securities exchange or over-the-counter securities market on which the Common Stock, other Capital Stock or similar equity interest is listed or admitted to trading; *provided* that if the Capital Stock is not so listed or traded, the Closing Price shall be equal to the fair market value, as reasonably determined in good faith by the Board.

(l) “Common Stock” shall mean the common stock, par value \$0.01 per share, of the Company.

(m) “Company” shall mean Ruth’s Hospitality Group, Inc., a Delaware corporation.

(n) “Conversion Price” shall mean \$1,000 divided by the Conversion Rate in effect on the date of determination.

(o) “Conversion Rate” shall mean 344.828, subject to adjustment as set forth in Section 8.

(p) “Conversion Shares” shall have the meaning ascribed to it in Section 7(a).

(q) “Credit Agreement” means the First Amended and Restated Credit Facility dated February 19, 2008, as amended, among the Company, Wells Fargo Bank, National Association, as administrative agent, and various lenders, as the same may be amended, restated, supplemented, modified, renewed, refunded, replaced or refinanced from time to time in one or more agreements.

(r) “Current Market Price” shall mean the average Closing Price for the ten (10) consecutive Business Days immediately preceding, but not including, the date as of which the Current Market Price is to be determined.

(s) “Current Market Value” shall mean the average consolidated closing bid price of the Common Stock for the ten (10) consecutive Business Days immediately preceding, but not including, the date as of which the Current Market Value is to be determined.

(t) “Distributed Property” shall have the meaning ascribed to it in Section 8(c).

(u) “Dividend Payment Date” shall mean January 1, April 1, July 1 and October 1 of each year, commencing on April 1, 2010; *provided*, that if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be (and any dividend payable on Series A Preferred Stock on such Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day.

(v) “Dividend Period” shall mean the period commencing on and including a Dividend Payment Date (other than the initial Dividend Period, which shall commence on and include the Original Issue Date of the Series A Preferred Stock) and shall end on and include the calendar day immediately preceding the next Dividend Payment Date.

(w) “Dividend Rate” shall mean 10% per annum.



(x) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(y) “Exchange Property” shall have the meaning ascribed to it in Section 10(a).

(z) “Excluded Issuance” shall mean, any issuances of (1) Capital Stock to any employee, officer or director of the Company pursuant to a stock option, incentive compensation, stock purchase or similar plan outstanding as of the Original Issue Date or, subsequent to the Original Issue Date, approved by the Board or a duly authorized committee of the Board, (2) Capital Stock by the Company pursuant to any merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination or similar transaction or any other direct or indirect acquisition by the Company approved by the Board, whereby the Company’s Capital Stock comprises, in whole or in part, the consideration paid by the Company in such transaction, (3) securities pursuant to a broadly-marketed underwritten public offering, to be offered and sold to the public at an issue price of not less than 95% of the Closing Price of the Common Stock immediately prior to the pricing of such offering, (4) Capital Stock by the Company pursuant to options, warrants, notes or other rights to acquire Capital Stock of the Company outstanding on the Original Issue Date or issued pursuant to an Excluded Issuance under clauses (1) and (2) above, and (5) Common Stock issued by the Company upon conversion of the Series A Preferred Stock.

(aa) “Expiration Date” shall have the meaning ascribed to it in Section 8(d).

(bb) “Internal Reorganization Event” shall have the meaning ascribed to it in Section 10(d).

(cc) “Junior Stock” shall mean the Common Stock and any other class or series of Capital Stock of the Company that ranks junior to the Series A Preferred Stock (1) as to the payment of dividends or (2) as to the distribution of assets on any liquidation, dissolution or winding up of the Company, or both.

(dd) “Liquidation Preference” shall mean, on any specific date, with respect to any share of Series A Preferred Stock, (1) \$1,000 plus (2) the Accumulated Dividends with respect to such share.

(ee) “Notice of Change of Control” shall have the meaning ascribed to it in Section 6(c).

(ff) “Original Issue Date” shall mean February 12, 2010.

(gg) “Parity Stock” shall mean any class or series of Capital Stock of the Company (other than the Series A Preferred Stock) that ranks equally with the Series A Preferred Stock both (1) in the priority of payment of dividends and (2) in the distribution of assets upon any liquidation, dissolution or winding up of the Company (in each case, without regard to whether dividends accrue cumulatively or non-cumulatively).

(hh) “Pending COC Event” shall mean the earlier of (1) the date on which the Board (A) publicly recommends that the stockholders tender their shares to any Person who has publicly announced a tender or exchange offer which, if consummated, would result in a Change of Control, or (B) fails to recommend that stockholders reject such an offer within 10 business days after the commencement of such tender or exchange offer or in the alternative fails to make a “stop-look-and-listen” communication to the stockholders of the Company within such time period, (2) the execution by the Company of a definitive agreement which if consummated will result in a Change of Control, or (3) the public announcement by the Company that it recommends any transaction that, if consummated, would result in a Change of Control.

(ii) “Permitted Holders” shall mean, collectively, (1) BRS Coinvestor III, L.P., a Delaware limited partnership (“Co-Invest Fund”), (2) Bruckmann, Rosser, Sherrill & Co. III, L.P., a Delaware limited partnership (“BRS”), (3) any general partner of BRS or BRS Co-Invest Fund and (4) any of their commonly controlled or commonly managed investment funds.

(jj) “Person” shall mean any individual, company, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

(kk) “Preferred Director” shall have the meaning ascribed to it in Section 9(b).

(ll) “Preferred Stock” shall mean any and all series of preferred stock of the Company, including the Series A Preferred Stock.

(mm) “Purchase Agreement” shall mean the Securities Purchase Agreement by and among the Company, BRS and Co-Invest Fund, dated as of December 22, 2009.

(nn) “Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board or by statute, contract, this Certificate of Designations or otherwise).

(oo) “Redemption Amount” shall have the meaning ascribed to it in Section 6(a).

(pp) “Reorganization Event” shall have the meaning ascribed to it in Section 10(a).

(qq) “Series A Parity Payment Date” shall have the meaning ascribed to it in Section 4(c)(3).

(rr) “Series A Preferred Stock” shall have the meaning ascribed to it in Section 1.

(ss) “Spin-Off” shall have the meaning ascribed to it in Section 8(c).

(tt) “Subsidiary” shall mean any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity for which the Company owns, directly or indirectly, at least 50% of the Voting Stock of such entity.

(uu) “Total Voting Power” means the total number of votes that may be cast in the election of directors of the Company if all Voting Stock treated as outstanding pursuant to this definition were present and voted at a meeting held for such purpose. The percentage of the Total Voting Power Beneficially Owned by any Person is the percentage of the Total Voting Power that is represented by the total number of votes that may be cast in the election of directors of the Company by Voting Stock Beneficially Owned by such Person. In calculating such percentage, the Voting Stock Beneficially Owned by any Person that are not outstanding but are subject to issuance upon exercise or exchange of rights of conversion or any options, warrants or other rights Beneficially Owned by such Person shall be deemed to be outstanding for the purpose of computing the percentage of the Total Voting Power represented by Voting Stock Beneficially Owned by such Person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the Total Voting Power represented by Voting Stock Beneficially Owned by any other Person. Any Person shall be deemed to “Beneficially Own,” to have “Beneficial Ownership” of, or to be “Beneficially Owning” any securities (which securities shall

also be deemed “Beneficially Owned” by such Person) that such Person is deemed to “beneficially own” within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act; *provided*, that any Person shall be deemed to Beneficially Own any securities that such Person has the right to acquire, whether or not such right is exercisable immediately.

(vv) “Trading Day” shall mean any Business Day on which the Common Stock is traded, or able to be traded, on the principal national securities exchange or over-the-counter securities market on which the Common Stock is listed or admitted to trading.

(ww) “Trigger Event” shall have the meaning ascribed to it in Section 8(c).

(xx) “Voting Stock” shall mean, with respect to the Company or any other Person, Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect one or more members of the board of directors or other governing body thereof (it being understood that the Series A Preferred Stock shall be considered Voting Stock for all purposes under this Certificate of Designations).

#### **Section 4. Dividends.**

(a) **Rate.** Holders of the Series A Preferred Stock shall be entitled to receive, on each share of Series A Preferred Stock, when, as and if declared by the Board, out of funds legally available therefor, dividends with respect to each Dividend Period (1) in an amount equal to the Dividend Rate on the then applicable Liquidation Preference and (2) in the event a cash dividend or other distribution in cash has been declared on the Common Stock during such Dividend Period, an additional amount in cash equal to the product of (A) the quotient of (i) the Liquidation Preference in effect on the Record Date for such dividend or other distribution divided by (ii) the Conversion Price in effect on the Record Date for such dividend or other distribution, multiplied by (B) the cash amount per share distributed or to be distributed in respect of the Common Stock. Dividends payable at the Dividend Rate on the then applicable Liquidation Preference shall accrue daily and begin to accrue and be cumulative from the Original Issue Date, whether or not the Company has funds legally available for such dividends or such dividends are declared. Dividends that are payable on the Series A Preferred Stock on any Dividend Payment Date shall be payable to holders of record of the Series A Preferred Stock as they appear on the stock register of the Company on the record date for such dividend, which record date shall be the date that is 15 days prior to the applicable Dividend Payment Date; *provided*, that dividends on account of arrears for any past Dividend Period may be declared and paid at any time, without reference to any regular Dividend Payment Date, to the holders of record of the Series A Preferred Stock on any date as may be fixed by the Board, which date is not more than 30 days prior to the payment of such dividends. Notwithstanding anything to the contrary set forth above, unless and until such dividends are declared by the Board, there shall be no obligation to pay such dividends; *provided, however*, that such dividends shall compound on each Dividend Payment Date if not otherwise paid in cash on such date and shall be added to the then applicable Liquidation Preference. Dividends payable at the Dividend Rate on the Series A Preferred Stock shall be computed on the basis of a 365-day year and the actual number of days elapsed.

(b) **Partial Payment of Dividends.** All dividends paid with respect to shares of Series A Preferred Stock pursuant to Section 4(a) above shall be paid *pro rata* to the holders of record of the Series A Preferred Stock entitled thereto.

(c) **Priority.** Without the vote or consent of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding pursuant to Section 9(c) hereof, so long as any shares of Series A Preferred Stock are outstanding:

(1) no dividends shall be declared by the Board or paid or funds set apart for the payment of dividends or other distributions on any Junior Stock for any period;

(2) no payment in cash or otherwise on account of the purchase, redemption, retirement or other acquisition of Junior Stock shall be made, and no sum shall be set aside for or applied by the Company to any Junior Stock (either pursuant to any applicable sinking fund requirement or otherwise); *provided* that the foregoing limitations shall not apply to redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock by the Company in accordance with the provisions of any employee benefit plan or other equity agreement with the employees, officers and directors of the Company that has been approved by the Board, so long as such redemptions, purchases or other acquisitions do not exceed an aggregate of one percent (1%) of the outstanding shares of Common Stock in any twelve month period;

(3) no dividends shall be declared by the Board or paid or funds set apart for the payment of dividends or other distributions on any Parity Stock for any period unless (A) full Accumulated Dividends have been paid or set apart for payment on the Series A Preferred Stock for all Dividend Periods terminating on or prior to the date of payment of such dividends or distributions on such Parity Stock (the "Series A Parity Payment Date") and (B) an amount equal to accrued and unpaid dividends on the Series A Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the Series A Parity Payment Date have been paid or set apart for payment on the Series A Preferred Stock; and

(4) no payment in cash or otherwise on account of the purchase, redemption, retirement or other acquisition of Parity Stock shall be made, and no sum shall be set aside for or applied by the Company to any Parity Stock (either pursuant to any applicable sinking fund requirement or otherwise).

#### **Section 5. Liquidation Rights.**

(a) **Voluntary or Involuntary Liquidation.** In the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, holders of the Series A Preferred Stock shall be entitled to receive for each share of Series A Preferred Stock, out of the assets of the Company or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Company, and after satisfaction of all liabilities and obligations to creditors of the Company, on par with each share of Parity Stock but before any distribution of such assets or proceeds is made to or set aside for the holders of Junior Stock, an amount equal to the greater of (1) the sum of (A) the then applicable Liquidation Preference per share of the Series A Preferred Stock plus (B) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the date fixed for such liquidation, dissolution or winding up of the Company and (2) the proportionate amount of all cash, securities and other property (such securities or other property having a value equal to its fair market value as reasonably determined in good faith by the Board) to be distributed in respect of the Common Stock that such holder would have been entitled to had it converted such Series A Preferred Stock into Common Stock immediately prior to the date fixed for such liquidation, dissolution or winding up of the Company. To the extent such amount is paid in full to all holders of Series A Preferred Stock, the holders of other Capital Stock of the Company shall be entitled to receive all remaining assets of the Company (or proceeds thereof) according to their respective rights and preferences.

(b) **Partial Payment.** If in connection with any distribution described in Section 5(a) above the assets of the Company or proceeds thereof are not sufficient to pay the then applicable Liquidation Preferences in full to all holders of Series A Preferred Stock and all holders of Parity Stock, the amounts

paid to the holders of Series A Preferred Stock and to the holders of all such other Parity Stock shall be paid *pro rata* in accordance with the respective aggregate Liquidation Preferences of the holders of Series A Preferred Stock and the holders of all such other Parity Stock.

(c) **Merger, Consolidation and Sale of Assets Not Liquidation.** For purposes of this Section 5, the merger or consolidation of the Company with any other corporation or other entity, including a merger or consolidation in which the holders of Series A Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Company, shall not constitute a liquidation, dissolution or winding up of the Company, but instead shall be subject to the provisions of Section 10.

#### **Section 6. Redemption.**

(a) **Redemption at the Option of the Company.** The Series A Preferred Stock may be called for redemption, in whole or in part, at the option of the Company, at any time on or after the fifth (5th) anniversary of the date on which the Company issues the first share of Series A Preferred Stock, upon giving of notice of redemption as provided below, at a redemption price per share in cash equal to the sum of (1) the then applicable Liquidation Preference per share of the Series A Preferred Stock plus (2) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference from and including the immediately preceding Dividend Payment Date to but excluding the date of redemption (the "Redemption Amount"); *provided, however*, that the Company shall not be permitted to redeem less than all of the outstanding shares of Series A Preferred Stock if such partial redemption would result in the Permitted Holders holding more than 0% and less than 5% of the Total Voting Power of the Company.

Notice of every redemption of outstanding shares of Series A Preferred Stock pursuant to this Section 6(a) shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Company. Such mailing shall be made at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(a) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Series A Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the Redemption Amount; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(b) **Redemption at the Option of the Holder.** At any time on or after the seventh (7th) anniversary of the date on which the Company issues the first share of Series A Preferred Stock, each holder of Series A Preferred Stock shall have the right to require the Company to repurchase all or any part of such holder's Series A Preferred Stock at a purchase price per share in cash equal to the Redemption Amount.

The right of redemption provided in this Section 6(b) may be exercised by a holder of Series A Preferred Stock by (1) providing written notice to the Company stating the holder's determination to redeem its shares of Series A Preferred Stock and the address to which payment for such shares is to be sent and (2) tendering the certificate or certificates representing the shares to be redeemed.

(c) **Redemption Upon a Change of Control.** Within ten (10) days after a Pending COC Event and at least twenty (20) days prior to the Company effecting a Change of Control, the Company shall notify each holder of Series A Preferred Stock in writing of the Pending COC Event or the Change of Control. Such notice (the “Notice of Change of Control”) shall set forth in reasonable detail all material terms and conditions of the Pending COC Event or the Change of Control. Each holder of Series A Preferred Stock may elect (by delivery of written notice to the Company within ten (10) days of receipt of the Notice of Change of Control) to require the Company, as part of the proposed Change of Control and contemporaneously with the consummation thereof, to repurchase all or any part of such holder’s Series A Preferred Stock at a purchase price per share in cash equal to the Redemption Amount; *provided* that in any case, the Company shall not be required to purchase any shares of Series A Preferred Stock until the consummation of such Pending COC Event or Change of Control.

(d) **Partial Redemption.** In case of any redemption of part of the shares of Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be selected *pro rata*. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) **Effectiveness of Redemption.** If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Company, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$5.0 billion and selected by the Board, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest (it being understood that notwithstanding the foregoing, any share so called for redemption may be converted pursuant to Section 7 prior to the redemption date). Any funds unclaimed at the end of three (3) years from the redemption date shall, to the extent permitted by law, be released to the Company, after which time the holders of the shares shall look only to the Company for payment of the Redemption Amount of such shares.

### **Section 7. Conversion.**

(a) **Permissive Conversion.** Each share of Series A Preferred Stock may be converted on any date, from time to time, at the option of the holder thereof, into the number of shares of Common Stock equal to the quotient of (1) the sum of (A) the then applicable Liquidation Preference plus (B) an amount per share equal to accrued but unpaid dividends not previously added to the Liquidation Preference on such share of Series A Preferred Stock from and including the immediately preceding Dividend Payment Date to but excluding the conversion date divided by (2) the Conversion Price in effect at such time (such number of shares of Common Stock, the “Conversion Shares”).

The right of conversion attaching to any shares of Series A Preferred Stock may be exercised by the holders thereof by delivering the shares to be converted to the office of the Company, accompanied by a duly signed and completed notice of conversion in form reasonably satisfactory to the Company. The conversion date shall be the date on which the shares of Series A Preferred Stock and the duly signed and completed notice of conversion are received by the Company. The Person entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of such conversion date, and such Person or Persons shall cease to be a record holder of the Series A Preferred Stock on that date. As promptly as practicable on or after the

conversion date (and in any event no later than three Trading Days thereafter), the Company shall issue the number of whole shares of Common Stock issuable upon conversion, with any fractional shares (after aggregating all Series A Preferred Stock being converted on such date) rounded down to the nearest whole share. Such delivery shall be made, at the option of the applicable holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate holder on a book-entry basis or by mailing certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice. From and after the date of conversion, the shares of Series A Preferred Stock converted on such date will no longer be deemed to be outstanding, and all rights of the holder thereof as a holder of Series A Preferred Stock (except the right to receive from the Company the Common Stock and any other property receivable upon conversion) shall cease and terminate with respect to such shares.

(b) **Automatic Conversion.** If, at any time after the second anniversary of the date on which the Company issues the first share of Series A Preferred Stock, the Closing Price equals or exceeds 225% of the then applicable Conversion Price for a period of 20 Trading Days over any consecutive 30 Trading Day period occurring completely after the second anniversary of the date on which the Company issues the first share of Series A Preferred Stock, then upon the fifteenth (15th) day following receipt of written notice from the Company of automatic conversion sent in accordance with Section 7(c) and Section 12 hereof, the Series A Preferred Stock shall automatically be converted into shares of Common Stock to the extent specified in the notice from the Company (i.e., in whole or in part, at the option of the Company) without any action on the part of the holder, with each share of Series A Preferred Stock being converted into the then applicable number of Conversion Shares.

(c) **Notice of Automatic Conversion.** Notice of the automatic conversion of shares of Series A Preferred Stock pursuant to Section 7(b) shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be converted at their respective last addresses appearing on the books of the Company. Any notice mailed as provided in this Section 7(c) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure to duly give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for conversion shall not affect the validity of the proceedings for the conversion of any other shares of Series A Preferred Stock. Each notice of conversion given to a holder shall state: (1) the conversion date; (2) the number of shares of the Series A Preferred Stock to be converted and, if less than all the shares held by such holder are to be converted, the number of such holder's shares to be converted; (3) the Conversion Shares to be received by such holder; and (4) the place or places where certificates for such shares of Series A Preferred Stock are to be surrendered for conversion.

(d) **Partial Conversion.** In case of any conversion of part of the shares of Series A Preferred Stock at the time outstanding, the shares to be converted shall be selected *pro rata*. If fewer than all the shares represented by any certificate are converted, a new certificate shall be issued representing the shares that were not converted without charge to the holder thereof.

(e) **Common Stock Reserved for Issuance.** The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series A Preferred Stock then outstanding. Any shares of Common Stock issued upon conversion of Series A Preferred Stock shall be (1) duly authorized, validly issued and fully paid and nonassessable, (2) shall rank *pari passu* with the other shares of Common Stock outstanding from time to time and (3) shall be approved for listing on the principal national securities exchange or over-the-counter securities market on which the Common Stock is listed or admitted to trading.

(f) **Taxes.** The Company shall pay any and all transfer taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Series A Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

**Section 8. Dilution Adjustments.**

The Conversion Rate shall be adjusted from time to time (successively and for each event described) by the Company as follows:

(a) If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, issue shares of Common Stock as a dividend or distribution on shares of Common Stock, to the extent the holders of the Series A Preferred Stock are not entitled to receive such dividend or distribution, or if the Company effects a share split or share combination in respect of the Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

Where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable;
- CR' = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable; and
- OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable.

(b) Except as otherwise provided for by Section 8(c) and except for Excluded Issuances, if the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, issue or distribute any options, rights or warrants entitling the holder to subscribe for or purchase shares of Common Stock at a price per share less than the Closing Price of the Common Stock on the Trading Day immediately preceding the date of issuance or the Record Date of such distribution, to



the extent the holders of the Series A Preferred Stock are not entitled to subscribe for or purchase such shares of Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

Where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the date of such issuance or the Record Date for such distribution;
- CR' = the new Conversion Rate in effect immediately after the Close of Business on the date of such issuance or the Record Date for such distribution;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Close of Business on the date of such issuance or the Record Date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such options, rights or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such options, rights or warrants divided by the average Closing Price over the 10 consecutive Trading Day period ending on the Record Date.

To the extent that shares of Common Stock are not delivered pursuant to any such options, rights or warrants upon the expiration or termination of such options, rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate which would then be in effect had the adjustments made upon the issuance or distribution of such options, rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

In determining the aggregate price payable to exercise such options, rights or warrants, there shall be taken into account any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board.

(c) If the Company, at any time or from time to time while any of the Series A Preferred Stock is outstanding, shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock of the Company (other than Common Stock as covered by Section 8(a)), evidences of its indebtedness, assets, property or rights or warrants to acquire Capital Stock or other securities, but excluding (1) dividends, distributions or issuances as to which an adjustment under Section 8(a) or Section 8(b) shall apply, (2) dividends or distributions paid exclusively in cash (which shall be payable to the holders of the Series A Preferred Stock to the extent set forth in Section 4(a)) and (3) Spin-Offs to which the provision set forth below in this Section 8(c) shall apply (any of such shares of Capital Stock, indebtedness, assets, property or rights or warrants to acquire Capital Stock or other securities, hereinafter in this Section 8(c) called the “Distributed Property”), to the extent

the holders of the Series A Preferred Stock are not entitled to participate in any such distribution, then, in each such case the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

Where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;
- CR = the new Conversion Rate in effect immediately after the Close of Business on the Record Date for such distribution;
- SP<sub>0</sub> = the Current Market Price of the Common Stock on the Record Date for such distribution; and
- FMV = the fair market value (as determined in good faith by the Board) of the portion of Distributed Property with respect to each outstanding share of Common Stock on the Record Date for such distribution.

Notwithstanding the foregoing, if the then fair market value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than SP<sub>0</sub> as set forth above, then in lieu of the foregoing adjustment, the Company shall distribute to each holder of Series A Preferred Stock on the date such Distributed Property is distributed to holders of Common Stock, but without requiring such holder to convert its shares of Series A Preferred Stock, the amount of Distributed Property such holder would have received per share of Series A Preferred Stock had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date fixed for determination of stockholders entitled to receive such distribution. If the Board determines the fair market value of any distribution for purposes of this [Section 8\(c\)](#) by reference to the actual or when issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock for purposes of calculating SP<sub>0</sub> in the formula in this [Section 8\(c\)](#).

With respect to an adjustment pursuant to this [Section 8\(c\)](#) where there has been a payment of a dividend or other distribution on the Common Stock consisting of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a "[Spin-Off](#)"), to the extent the holders of the Series A Preferred Stock are not entitled to participate in any such Spin-Off, the Conversion Rate in effect immediately before the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

Where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off;
- CR' = the new Conversion Rate in effect from and after the Close of Business on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off;
- FMV = the average of the Closing Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the 10 consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off; and
- MP<sub>0</sub> = the average Closing Price of the Common Stock over the 10 consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off.

Such adjustment shall occur on the 10<sup>th</sup> Trading Day immediately following, and including, the effective date of the Spin-Off.

For purposes of this Section 8(c), Section 8(a) and Section 8(b) hereof, any dividend or distribution to which this Section 8(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 8(a) or Section 8(b) hereof applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants to which Section 8(a) or Section 8(b) hereof applies (and any Conversion Rate adjustment required by this Section 8(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such options, rights or warrants to which Section 8(a) or Section 8(b) hereof applies (and any further Conversion Rate adjustment required by Section 8(a) and Section 8(b) hereof with respect to such dividend or distribution shall then be made), except (A) “the Close of Business on the Record Date of such dividend or distribution” shall be substituted for “such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable,” “after the Close of Business on the Record Date for such dividend or distribution, or the Close of Business on the effective date of such share split or share combination, as applicable” and “the Close of Business on the date of such issuance or the Record Date for such distribution” within the meaning of Section 8(a) and Section 8(b) hereof and (B) for the avoidance of doubt any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Close of Business on the Record Date or the Close of Business on the effective date” within the meaning of Section 8(a) hereof.

If the Company shall, at any time or from time to time while any of the Series A Preferred Stock is outstanding, distribute options, rights or warrants to all or substantially all holders of Common Stock entitling the holders thereof to subscribe for, purchase or convert into shares of Capital Stock (either initially or under certain circumstances), which options, rights or warrants, until the occurrence of a specified event or events (“Trigger Event”): (x) are deemed to be transferred with such shares of Common Stock; (y) are not exercisable; and (z) are also issued in respect of future issuances of Common Stock, then such options, rights or warrants shall be deemed not to have been distributed for purposes of this Section 8(c) (and no adjustment to the Conversion Rate under this Section 8(c) shall be required), until the occurrence of the earliest Trigger Event and a distribution or deemed distribution under the terms of such options, rights or warrants at which time an appropriate adjustment (if any is required) to the

Conversion Rate shall be made in the same manner as provided for under this Section 8(c). If any such options, rights or warrants are subject to events, upon the occurrence of which such options, rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new options, rights or warrants for purposes of this Section 8(c) (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of options, rights or warrants (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 8(c) was made, (1) in the case of any such options, rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution under this Section 8(c), equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such options, rights or warrants (assuming such holder had retained such options, rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such options, rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such options, rights or warrants had not been issued.

(d) If the Company or any of its Subsidiaries makes a payment of cash or other consideration in respect of a tender offer or exchange offer for all or any portion of the Common Stock, where such cash and the value of any such other consideration included in the payment per share of Common Stock validly tendered or exchanged exceeds the Closing Price of the Common Stock on the Trading Day next succeeding the last date (the "Expiration Date") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (OS' \times SP')}{OS_0 \times SP'}$$

Where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the Close of Business on the Expiration Date;
- CR' = the new Conversion Rate in effect immediately after the Close of Business on the Expiration Date;
- AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;
- OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and
- SP' = the average Closing Price of the Common Stock over the ten consecutive Trading Days ending on the Trading Day succeeding the Expiration Date.

If the Company or any Subsidiary is obligated to purchase shares of Common Stock pursuant to any such tender or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases or all or any portion of such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had only been made in respect of the purchases that were effected.

(e) If the Company, at any time or from time to time while any of the Series A Preferred Stock is outstanding, shall issue shares of Common Stock for a consideration per share less than the Current Market Price of the Common Stock, or, if the Common Stock is listed on the Nasdaq Stock Market, less than the Current Market Value of the Common Stock, on the date the Company fixes the offering price of such additional shares, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0 + (AC / SP')}$$

Where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the issuance of such additional shares of Common Stock;
- CR' = the new Conversion Rate in effect immediately after the issuance of such additional shares of Common Stock;
- AC = the aggregate consideration paid or payable for such additional shares of Common Stock;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock;
- OS' = the number of shares of Common Stock outstanding immediately after the issuance of such additional shares of Common Stock; and
- SP' = the Closing Price of the Common Stock on the date of issuance of such additional shares of Common Stock.

The adjustment shall become effective immediately after such issuance.

This Section 8(e) does not apply to: (a) dividends, distributions or issuances as to which an adjustment under Sections 8(a), 8(b) or 8(c) shall apply, or any shares of Common Stock issued upon the exercise of rights, options, warrants or other securities so distributed; and (b) Excluded Issuances.

(f) Upon the occurrence of each adjustment of the Conversion Rate pursuant to this Section 8, the Company at its expense shall, as promptly as reasonably practicable but in any event not later than thirty (30) days thereafter, compute such adjustment in accordance with the terms hereof and furnish or make available to each holder of Series A Preferred Stock a certificate setting forth such adjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment is based. The Company shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than thirty (30) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth the Conversion Rate then in effect or, if applicable, the amount of other securities, cash or property that then would be received upon the conversion of a share of Series A Preferred Stock.

**Section 9. Voting Rights of the Series A Preferred Stock.**

(a) **General.** The holders of shares of Series A Preferred Stock shall be entitled to vote with the holders of the Common Stock on all matters submitted to a vote of stockholders of the Company, except as otherwise provided herein or by applicable law. Each holder of shares of Series A Preferred Stock shall be entitled to the number of votes equal to the product (rounded down to the nearest number of whole shares) of one times the largest number of whole shares of Common Stock into which all shares of Series A Preferred Stock held of record by such holder could then be converted pursuant to Section 7 at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is first executed. In any case in which the holders of shares of Series A Preferred Stock shall be entitled to vote as a separate series to the exclusion of the holders of the Common Stock, each holder of shares of Series A Preferred Stock shall be entitled to one vote for each share of Series A Preferred Stock held at the Record Date for the determination of the stockholders entitled to vote on such matters or, if no such Record Date is established, at the date such vote is taken or any written consent of shareholders is first executed. The holders of shares of Series A Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws.

**(b) Election of Directors.**

(1) Effective as of the date on which the Company issues the first share of Series A Preferred Stock, the number of directors constituting the Board shall be increased by one person, to seven (7) persons (such additional director, the "Preferred Director"). For so long as the Permitted Holders Beneficially Own shares of Series A Preferred Stock representing at least 5% of the Total Voting Power of the Company, (A) the Permitted Holders, voting as a separate class to the exclusion of the holders of Common Stock, shall be entitled to elect the Preferred Director, provided that such Preferred Director is a current employee (and remains a current employee) of BRS Management LP, and (B) the Company shall not, without the consent of the Permitted Holders, increase the size of the Board to more than eight (8) persons.

(2) **Term.** The Preferred Director shall serve until the next annual meeting of the stockholders of the Company and until his or her successor is elected and qualifies in accordance with this Section 9(b) and the Bylaws, unless the Preferred Director is earlier removed in accordance with the Certificate of Incorporation or Bylaws, resigns, ceases to be an employee of BRS Management LP or is otherwise unable to serve. In the event the Preferred Director is removed, resigns or is unable to serve as a member of the Board, the Permitted Holders, voting as a separate class to the exclusion of the holders of Common Stock, shall have the right to fill such vacancy. The Preferred Director may only be elected to the Board by the Permitted Holders in accordance with this Section 9(b), and such director's seat shall otherwise remain vacant.

(3) **Removal.** At such time as the Permitted Holders Beneficially Own shares of Series A Preferred Stock representing less than 5% of the Total Voting Power of the Company, the Permitted Holders shall, except as otherwise set forth in the Purchase Agreement, automatically and immediately, without any further action on the part of the stockholders or the Board, lose the right to elect the Preferred Director. Subject to the right of the Permitted Holders to remove the Preferred Director, no loss of the right to elect the Preferred Director shall have the effect of shortening the term of the incumbent Preferred Director.

(4) **Non-Limitation of Voting Rights.** For the avoidance of doubt, the right of the Series A Preferred Stock to vote for the election of the Preferred Director shall be in addition to the right of the holders of the Series A Preferred Stock to vote together with the holders of Common Stock for the election of the other members of the Board.

(c) **Class Voting Rights as to Particular Matters.** So long as any shares of Series A Preferred Stock are outstanding, the Company shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote or consent of stockholders required by law or by the Certificate of Incorporation) the vote or consent of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose:

(1) amend the Certificate of Incorporation or Bylaws in a manner that would adversely affect the relative rights, preferences, privileges or voting powers of the Series A Preferred Stock;

(2) amend, alter or change the relative rights, preferences, privileges or voting powers of the Series A Preferred Stock;

(3) declare or pay any dividend or distribution on or in respect of Common Stock, other Junior Stock or Parity Stock (other than a dividend payable solely in Junior Stock);

(4) purchase, redeem or otherwise acquire for consideration, directly or indirectly, any Common Stock, other Junior Stock or Parity Stock or capital stock of any of the Company's Subsidiaries (except as necessary to effect (A) a reclassification of Junior Stock for or into other Junior Stock, (B) a reclassification of Parity Stock for or into other Parity Stock with the same or lesser aggregate liquidation preference, (C) a reclassification of Parity Stock into Junior Stock, (D) the exchange or conversion of one share of Junior Stock for or into another share of Junior Stock, (E) the exchange or conversion of one share of Parity Stock for or into another share of Parity Stock with the same or lesser per share liquidation amount, (F) the exchange or conversion of one share of Parity Stock into Junior Stock and (G) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock by the Company in accordance with the provisions of any employee benefit plan or other equity agreement with the employees, officers and directors of the Company that has been approved by the Board, so long as such redemptions, purchases or other acquisitions do not exceed an aggregate of one percent (1%) of the outstanding shares of Common Stock in any twelve month period); and

(5) authorize, issue, or reclassify into, Parity Stock (including additional shares of the Series A Preferred Stock), Capital Stock that would rank senior to the Series A Preferred Stock or debt securities that are convertible into Capital Stock by their terms.

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

**Section 10. Reorganization Events.**

(a) In the event of:

- (1) any consolidation or merger of the Company with or into another Person or of another Person with or into the Company;
- (2) any sale, transfer, lease or conveyance to another Person of all or substantially all of the assets of the Company in one or a series of transactions;
- (3) any statutory share exchange of the Company with another Person (other than in connection with a consolidation or merger),

or

in each case in which holders of Common Stock would be entitled to receive cash, securities or other property for their shares of Common Stock (any such event specified in this Section 10(a), a “Reorganization Event”), each share of Series A Preferred Stock outstanding immediately prior to such Reorganization Event shall remain outstanding but shall thereafter (subject to prior redemption, including pursuant to Section 6(a), or conversion), without the consent of the holder thereof, become convertible into the cash, securities and other property that the holder would have received in such Reorganization Event had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date fixed for determination of stockholders entitled to receive such cash, securities or other property (such cash, securities and other property having a value equal to its fair market value as reasonably determined in good faith by the Board and referenced to herein as the “Exchange Property”); *provided, however*, that in the case of a Reorganization Event in the form of a consolidation or merger, the surviving corporation shall exchange in such transaction for each share of Series A Preferred Stock outstanding immediately prior to such Reorganization Event, preferred shares of the surviving corporation with substantially the same terms and conditions as the Series A Preferred Stock, which terms are no less beneficial to the holders thereof, except that such preferred shares shall, upon conversion, be converted into, in lieu of the Common Stock, the Exchange Property. Any consideration to be paid to or received by holders of Common Stock pursuant to any employment, consulting, severance, non-competition or other similar arrangement approved by the Board or a duly authorized committee of the Board, shall not be considered to be “Exchange Property” for purposes of the foregoing provision, regardless of whether such consideration is paid in connection with, or conditioned upon the completion of, the Reorganization Event.

(b) In the event that holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in the Reorganization Event, the “Exchange Property” that holders of the Series A Preferred Stock shall be entitled to receive shall be determined by the holders of a majority of the outstanding shares of Series A Preferred Stock, who shall make such determination from among the choices made available to the holders of the Common Stock.

(c) The above provisions of this Section 10 shall similarly apply to successive Reorganization Events.

(d) Notwithstanding anything to the contrary in this Section 10, Section 10(a) shall not apply in the case of, and a Reorganization Event shall not be deemed to be, a merger, consolidation, reorganization or statutory share exchange (1) among the Company and its direct and indirect wholly owned Subsidiaries to the extent such merger, consolidation, reorganization or statutory share exchange



does not change or effect the outstanding classes of Capital Stock of the Company or (2) between the Company and any Person for the sole purpose of changing the domicile of the Company (an “Internal Reorganization Event”). Without limiting the rights of the holders of the Series A Preferred Stock set forth in Section 9(c)(2), the Company shall not effectuate an Internal Reorganization Event unless (A) the Series A Preferred Stock shall be outstanding as a class of preferred stock of the surviving company having the same rights, terms, preferences, liquidation preference and accrued and unpaid dividends as the Series A Preferred Stock in effect immediately prior to such Internal Reorganization Event, as adjusted for such Internal Reorganization Event pursuant to this Certificate of Designations after giving effect to any such Internal Reorganization Event and (B) no holder of the Series A Preferred Stock recognizes taxable income as a result of such Internal Reorganization Event. The Company (or any successor) shall, within twenty (20) days of the occurrence of any Internal Reorganization Event, provide written notice to the holders of the Series A Preferred Stock of the occurrence of such event. Assuming compliance with Section 9(c)(2) hereof, failure to deliver such notice shall not affect the operation of this Section 10(d) or the validity of any Internal Reorganization Event.

**Section 11. Record Holders.**

To the fullest extent permitted by applicable law, the Company may deem and treat the record holder of any share of the Series A Preferred Stock as the true and lawful owner thereof for all purposes, and the Company shall not be affected by any notice to the contrary.

**Section 12. Notices.**

(a) **General.** All notices or communications in respect of the Series A Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Certificate of Incorporation or the Bylaws or by applicable law or regulation, and shall be deemed received (1) three (3) Business Days after being sent by certified or registered mail, return receipt requested, postage prepaid. (2) one (1) Business Day after being deposited with a next-day courier or (3) upon confirmation of receipt, if made by facsimile. Notwithstanding the foregoing, if the Series A Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of the Series A Preferred Stock in any manner permitted by such facility and such notice shall be deemed to be received by the holders on the date such notice is appropriately given to such facility.

(b) **Notice of Certain Events.** The Company shall to the extent not included in the Exchange Act reports of the Company, provide reasonable written notice to each holder of the Series A Preferred Stock of any event that is reasonably likely to result in (1) a Reorganization Event, (2) an event the occurrence of which would result in an adjustment to the Conversion Rate, (3) the voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company or (4) a Change of Control.

**Section 13. Replacement Certificates.**

The Company shall replace any mutilated certificate at the holder’s expense upon surrender of that certificate to the Company. The Company shall replace certificates that become destroyed, stolen or lost at the holder’s expense upon delivery to the Company of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Company.

**Section 14. Other Rights.**

The shares of Series A Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

**Section 15. Descriptive Headings and Governing Law.**

The descriptive headings of the several Sections and paragraphs of this Certificate of Designations are inserted for convenience only and do not constitute a part of this Certificate of Designations.

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IN WITNESS WHEREOF, Ruth's Hospitality Group, Inc. has caused this Certificate of Designations to be signed and duly authorized as of the date first above written.

RUTH'S HOSPITALITY GROUP, INC.

By: /s/ Robert M. Vincent

Name: Robert M. Vincent

Title: Executive Vice President and  
Chief Financial Officer

## List of Subsidiaries of the Registrant

<u>Entity</u>	<u>Jurisdiction</u>
Ruth's Chris Steak House Franchise, Inc.	Louisiana
R.F., Inc.	Louisiana
R.C. Equipment, Inc.	Louisiana
RCSH Promotions, LLC	Louisiana
RCSH Management, Inc.	Louisiana
RCSH Holdings, Inc.	Louisiana
RCSH Millwork, LLC	Florida
RCSH Operations, LLC	Louisiana
RCSH Operations, Inc.	California
Ruth's Chris Steak House #15, Inc.	Louisiana
Ruth's Chris Steak House Texas, L.P.	Texas
Ruth's Chris Steak House Dallas, L.P.	Texas
Ruth's Chris Steak House Boston, LLC	Louisiana
RCSH Utah, Inc.	Utah
RHG Kingfish, LLC	Florida
RHG Fish Market, Inc.	Florida

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Ruth's Hospitality Group, Inc.:

We consent to the incorporation by reference in the registration statement (No. 333-127681) on Form S-8 of Ruth's Hospitality Group, Inc. of our reports dated March 5, 2010, with respect to the consolidated balance sheets of Ruth's Hospitality Group, Inc. and subsidiaries as of December 28, 2008 and December 27, 2009, and the related consolidated statements of income (loss), stockholders' equity and cash flows for the fifty-two weeks ended December 30, 2007, December 28, 2008, and December 27, 2009, and the effectiveness of internal control over financial reporting as of December 27, 2009, which reports appear in the December 27, 2009, annual report on Form 10-K of Ruth's Hospitality Group, Inc.

/s/ KPMG LLP

Orlando, Florida  
March 5, 2010  
Certified Public Accountants

**CERTIFICATION PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Michael P. O'Donnell, certify that:

1. I have reviewed this annual report on Form 10-K of Ruth's Hospitality Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 5, 2010

By \_\_\_\_\_ /s/ Michael P. O'Donnell  
Michael P. O'Donnell  
President and Chief Executive Officer of  
Ruth's Hospitality Group, Inc.

**CERTIFICATION PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Robert M. Vincent, certify that:

1. I have reviewed this annual report on Form 10-K of Ruth's Hospitality Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of this annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 5, 2010

By \_\_\_\_\_ /s/ Robert M. Vincent  
Robert M. Vincent  
Executive Vice President and Chief Financial Officer of  
Ruth's Hospitality Group, Inc.

**CERTIFICATION PURSUANT TO SECTION 906 OF  
THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report on Form 10-K of Ruth's Hospitality Group, Inc. (the "Company") for the year ended December 27, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the President and Chief Executive Officer of the Company, certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 5, 2010

By \_\_\_\_\_ /s/ Michael P. O'Donnell  
Michael P. O'Donnell  
President and Chief Executive Officer of  
Ruth's Hospitality Group, Inc.



**CERTIFICATION PURSUANT TO SECTION 906 OF  
THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report on Form 10-K of Ruth's Hospitality Group, Inc. (the "Company") for the year ended December 27, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the Executive Vice President and Chief Financial Officer of the Company, certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 5, 2010

By \_\_\_\_\_ /s/ Robert M. Vincent  
**Robert M. Vincent**  
**Executive Vice President and Chief Financial Officer of**  
**Ruth's Hospitality Group, Inc.**