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

**FORM 10-Q/A**  
Amendment No. 1

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

For the quarterly period ended July 1, 2009

OR

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

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

Commission file number 0-8445

**THE STEAK N SHAKE COMPANY**

(Exact name of registrant as specified in its charter)

INDIANA  
(State or other jurisdiction  
of incorporation or organization)

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

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

46204  
(Zip code)

(317) 633-4100

(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

As of August 5, 2009 28,812,934 shares of the registrant's Common Stock, \$.50 par value, were outstanding.

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### **Explanatory Note**

The Steak n Shake Company (the "Company") is filing this Amendment No. 1 on Form 10-Q/A (this "Amendment") to the Company's Quarterly Report on Form 10-Q for the quarter ended July 1, 2009, originally filed with the Securities and Exchange Commission on August 10, 2009 (the "Original Filing").

Subsequent to the issuance of our Original Filing, we discovered a typographical error that incorrectly reported a net loss and basic and diluted loss per common and common equivalent share for the forty weeks ended July 1, 2009, instead of net earnings and basic and diluted earnings per common and common equivalent share for the forty weeks ended July 1, 2009.

Except as expressly noted herein, this Amendment does not amend any other information set forth in the Original Filing. However, for the convenience of the reader, this Amendment includes the entirety of the Quarterly Report on Form 10-Q for the twelve and forty weeks ended July 1, 2009.

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THE STEAK N SHAKE COMPANY

FORM 10-Q

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**PART I. FINANCIAL INFORMATION**  
**ITEM 1. FINANCIAL STATEMENTS**

**Condensed Consolidated Statements of Financial Position**

The Steak n Shake Company

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

	July 1, 2009	September 24, 2008
	(Unaudited)	
<b>Assets:</b>		
Current assets		
Cash and cash equivalents	\$ 37,843	\$ 6,855
Receivables, net of allowances of \$539 (2009) and \$341 (2008)	8,011	15,622
Inventories	7,131	6,795
Deferred income taxes	5,674	3,260
Assets held for sale	18,479	25,395
Other current assets	5,488	3,009
<b>Total current assets</b>	<b>82,626</b>	<b>60,936</b>
Net property and equipment	406,197	432,690
Goodwill	14,503	14,503
Other intangible assets, net	1,616	1,765
Other assets	8,180	10,242
<b>Total assets</b>	<b>\$ 513,122</b>	<b>\$ 520,136</b>
<b>Liabilities and shareholders' equity:</b>		
Current liabilities		
Accounts payable	\$ 25,495	\$ 25,302
Accrued expenses	32,018	31,685
Current portion of long-term debt	20	733
Revolving credit	13,680	14,180
Current portion of obligations under leases	4,424	4,417
<b>Total current liabilities</b>	<b>75,637</b>	<b>76,317</b>
Deferred income taxes	9,858	2,209
Other long-term liabilities	6,792	7,439
Obligations under leases	132,035	134,809
Long-term debt	53	15,783
Commitments and contingencies		
<b>Shareholders' equity:</b>		
Common stock - \$.50 stated value, 50,000,000 shares authorized - shares issued: 30,332,839	15,166	15,166
Additional paid-in capital	129,268	128,526
Retained earnings	164,349	161,733
Treasury stock - at cost: 1,519,905 shares as of July 1, 2009; 1,760,531 shares as of September 24, 2008	(20,036)	(21,846)
<b>Total shareholders' equity</b>	<b>288,747</b>	<b>283,579</b>
<b>Total liabilities and shareholders' equity</b>	<b>\$ 513,122</b>	<b>\$ 520,136</b>

See accompanying notes.

**Condensed Consolidated Statements of Operations (Unaudited)**

The Steak n Shake Company

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

	Twelve Weeks Ended		Forty Weeks Ended	
	July 1, 2009	July 2, 2008	July 1, 2009	July 2, 2008
<b>Revenues:</b>				
Net sales	\$ 145,648	\$ 143,303	\$ 464,342	\$ 468,071
Franchise fees	701	990	2,713	3,105
<b>Total revenues</b>	<b>146,349</b>	<b>144,293</b>	<b>467,055</b>	<b>471,176</b>
<b>Costs and expenses:</b>				
Cost of sales	34,814	35,527	112,456	115,658
Restaurant operating costs	76,880	79,241	253,088	259,090
General and administrative	7,886	11,056	27,330	35,546
Depreciation and amortization	6,913	7,812	23,842	25,925
Marketing	8,230	6,666	25,646	23,043
Interest	3,347	3,263	10,998	10,816
Rent	3,577	3,379	11,801	11,107
Pre-opening costs	7	112	7	1,243
Asset impairments and provision for restaurant closing	63	14,089	980	14,089
Gain on disposal of property	(85)	(385)	(97)	(372)
Other income, net	(630)	(288)	(968)	(1,263)
<b>Total costs and expenses</b>	<b>141,002</b>	<b>160,472</b>	<b>465,083</b>	<b>494,882</b>
<b>Earnings (loss) before income taxes</b>	<b>5,347</b>	<b>(16,179)</b>	<b>1,972</b>	<b>(23,706)</b>
Income taxes	1,544	(6,382)	(644)	(9,912)
<b>Net earnings (loss)</b>	<b>\$ 3,803</b>	<b>\$ (9,797)</b>	<b>\$ 2,616</b>	<b>\$ (13,794)</b>
<b>Basic earnings (loss) per common and common equivalent share</b>				
	\$ 0.13	\$ (0.35)	\$ 0.09	\$ (0.49)
<b>Diluted earnings (loss) per common and common equivalent share</b>				
	\$ 0.13	\$ (0.35)	\$ 0.09	\$ (0.49)
<b>Weighted average shares and equivalents:</b>				
Basic	28,551,669	28,288,330	28,447,380	28,274,193
Diluted	28,663,007	28,288,330	28,538,960	28,274,193

*See accompanying notes.*

**Condensed Consolidated Statements of Cash Flows (Unaudited)**

The Steak n Shake Company

*(Amounts in \$000s)*

	<b>Forty Weeks Ended</b>	
	<b>July 1, 2009</b>	<b>July 2, 2008</b>
<b>Operating activities:</b>		
Net earnings (loss)	\$ 2,616	\$ (13,794)
Adjustments to reconcile net earnings (loss) to net cash provided by operating activities:		
Depreciation and amortization	23,842	25,925
Provision for deferred income taxes	5,235	(4,714)
Asset impairments and provision for restaurant closing	980	14,089
Non-cash expense for stock-based compensation and deferred rent	2,422	2,676
Gain on disposal of property	(97)	(372)
Changes in receivables and inventories	7,581	1,720
Changes in other assets	(3,016)	(3,299)
Changes in accounts payable and accrued expenses	1,552	1,340
<b>Net cash provided by operating activities</b>	<b>41,115</b>	<b>23,571</b>
<b>Investing activities:</b>		
Additions of property and equipment	(3,145)	(28,512)
Proceeds from property and equipment disposals	9,277	11,531
<b>Net cash provided by (used in) investing activities</b>	<b>6,132</b>	<b>(16,981)</b>
<b>Financing activities:</b>		
Net proceeds from revolving credit facility	(500)	(18,005)
Principal payments on long-term debt	(16,443)	(1,080)
Proceeds from equipment and property sale-leasebacks	3,597	14,817
Principal payments on direct financing lease obligations	(3,606)	(3,336)
Proceeds from exercise of stock options	—	132
Excess tax benefits from stock-based awards	40	10
Repurchase of employee shares for tax withholding	(202)	(8)
Proceeds from employee stock purchase plan	855	1,004
<b>Net cash used in financing activities</b>	<b>(16,259)</b>	<b>(6,466)</b>
Increase in cash and cash equivalents	30,988	124
Cash and cash equivalents at beginning of period	6,855	1,497
<b>Cash and cash equivalents at end of period</b>	<b>\$ 37,843</b>	<b>\$ 1,621</b>

*See accompanying notes.*

## **Notes to Condensed Consolidated Financial Statements**

The Steak n Shake Company

(Unaudited)

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

### **1. Basis of Presentation**

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

In our opinion, all adjustments considered necessary to present fairly the condensed consolidated Statement of Financial Position as of July 1, 2009, the condensed consolidated Statements of Operations for the twelve and forty weeks ended July 1, 2009 and July 2, 2008, and the condensed consolidated Statements of Cash Flows for the forty weeks ended July 1, 2009 and July 2, 2008 have been included.

The condensed consolidated Statements of Operations for the twelve and forty weeks ended July 1, 2009 and July 2, 2008 are not necessarily indicative of the consolidated Statements of Operations for the entire fiscal years. For further information, refer to the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended September 24, 2008.

Steak n Shake now operates as a holding company with its primary business activities conducted through Steak n Shake Operations, Inc. The Company’s prime objective centers on achieving above-average returns on capital in pursuit of maximizing the eventual net worth of its stockholders. Thus, the Company may pursue investments in the form of acquisitions, joint ventures, and partnerships either related or unrelated to its ongoing business activities. All investment and capital allocation decisions are made by Sardar Biglari, the Company’s Chairman and Chief Executive Officer.

### **2. Seasonal Aspects**

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

### **3. New Accounting Standards**

In June 2009, the FASB issued FAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles – a replacement of FASB Statement No. 162" (“SFAS 168”). The *FASB Accounting Standards Codification*, or Codification, will become the source of authoritative U.S. generally accepted accounting principles, or GAAP, recognized by the FASB to be applied by nongovernmental entities. Rules and interpretive releases of the U.S. Securities and Exchange Commission, or SEC, under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On the effective date of this Statement, the Codification will supersede all then-existing non-SEC accounting and reporting standards. All other non-grandfathered non-SEC accounting literature not included in the Codification will become non-authoritative. SFAS 168 is effective for interim and annual periods ending after September 15, 2009. We do not expect the adoption of SFAS 168 to have a material impact on our consolidated financial position or results of operations.

In June 2009, the FASB issued FAS No. 166, "Accounting for Transfers of Financial Assets – an amendment of FASB Statement No. 140" ("SFAS 166"). SFAS 166 is intended to improve the relevance, representational faithfulness, and comparability of the information that an entity provides in its financial statements about a transfer of financial assets; the effects of a transfer on its financial position, financial performance, and cash flows; and a transferor's continuing involvement, if any, in transferred financial assets. SFAS 166 is effective for us at the beginning of fiscal year 2011. We are in the process of determining the effect, if any, that the adoption of SFAS 166 will have on our financial statements.

In May 2009, the FASB issued FAS No. 165, "Subsequent Events" ("SFAS 165"), which establishes standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued. Entities are required to disclose the date through which subsequent events have been evaluated and the basis for that date. SFAS 165 is effective on a prospective basis for interim and annual periods ending after June 15, 2009. We adopted SFAS 165 on July 1, 2009. The adoption of SFAS 165 did not have a material impact on our consolidated financial statements and required disclosures.

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

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

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

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



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

#### 4. Earnings (Loss) Per Share

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

	Twelve Weeks Ended		Forty Weeks Ended	
	July 1, 2009	July 2, 2008	July 1, 2009	July 2, 2008
Basic earnings (loss) per share:				
Weighted average common shares	<b>28,551,669</b>	28,288,330	<b>28,447,380</b>	28,274,193
Diluted earnings (loss) per share:				
Weighted average common shares	<b>28,551,669</b>	28,288,330	<b>28,447,380</b>	28,274,193
Dilutive effect of stock awards	<b>111,338</b>	—	<b>91,580</b>	—
Weighted average common and incremental shares	<b>28,663,007</b>	28,288,330	<b>28,538,960</b>	28,274,193
Number of share-based awards excluded from the calculation of diluted earnings (loss) per share because the awards' exercise prices were greater than the average market price of the Company's common stock, or because they were antidilutive due to the Company's net losses for the twelve and forty weeks ended July 2, 2008.	<b>577,537</b>	1,947,310	<b>830,307</b>	1,576,327

#### 5. Restaurant Closings

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

The assets of three restaurants closed in fiscal year 2008 were not located near other Company-owned stores, and we do not expect to have significant continuing involvement in the operations after disposal. Although these restaurants meet the definition of “discontinued operations,” as defined in SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (“SFAS 144”), we have not segregated the results of operations as the amounts are immaterial. Net loss after tax related to the three restaurants was \$55 and \$200 for the twelve and forty weeks ended July 2, 2008, respectively.

## 6. Net Property and Equipment

Net property and equipment consists of the following:

	July 1, 2009	September 24, 2008
Land	\$ 151,677	\$ 151,006
Buildings	149,823	156,695
Land and leasehold improvements	154,859	157,738
Equipment	200,384	204,116
Construction in progress	1,428	2,423
	<u>658,171</u>	<u>671,978</u>
Less accumulated depreciation and amortization	(251,974)	(239,288)
Net property and equipment	<u>\$ 406,197</u>	<u>\$ 432,690</u>

## 7. Assets Held for Sale

Assets held for sale is comprised of the following:

	July 1, 2009	September 24, 2008
Land and buildings	\$ 15,819	\$ 21,726
Land and leasehold improvements	2,652	3,388
Equipment	8	281
Total assets held for sale	<u>\$ 18,479</u>	<u>\$ 25,395</u>

Assets held for sale consists of property and equipment related to closed restaurants and parcels of land that are currently being marketed for disposal. The July 1, 2009 balances include assets related to 12 restaurants closed during prior years and 16 parcels of land. During the forty weeks ended July 1, 2009, we sold two restaurant and five parcels of land that were held for sale as of September 24, 2008, and we classified one additional parcel of land as held for sale. The current year-to-date pre-tax loss on the sale of these properties was \$116.

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

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

We continue to actively market properties held for sale and routinely evaluate the reasonableness of the estimated selling price in response to current market conditions. As a result of this analysis, during the quarter and year-to-date periods ended July 1, 2009, we recorded \$63 and \$875, respectively, relating to the loss on disposal of held for sale assets and adjustments to the carrying value of held for sale properties we continue to own. The charges have been recorded as asset impairment charges in the condensed consolidated Statement of Operations.

## 8. Goodwill and Other Intangibles

### *Goodwill*

Our condensed consolidated Statements of Financial Position as of July 1, 2009 and September 24, 2008 include goodwill of acquired businesses of \$14,503. Goodwill consists of the excess of the purchase price over the fair value of the net assets acquired in connection with the acquisitions of Creative Restaurants, Inc. (“CRI”) and Kelley Restaurants, Inc. (“KRI”) on July 6, 2006 and December 29, 2004, respectively. The related goodwill is allocated to reporting units that benefited from the acquisition using a relative fair value methodology.

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

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

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

### *Other Intangibles*

Other intangibles are comprised of the following:

	July 1, 2009	September 24, 2008
Gross value of intangible assets subject to amortization	\$ 2,291	\$ 2,291
Accumulated amortization	(1,175)	(1,026)
Intangible assets subject to amortization, net	1,116	1,265
Intangible assets with indefinite lives	500	500
Total intangible assets	\$ 1,616	\$ 1,765

Intangible assets subject to amortization consist of a right to operate and favorable leases acquired in connection with prior acquisitions, and are being amortized over their estimated weighted average useful lives of 12 years and 8 years, respectively. Amortization expense for the twelve weeks ended July 1, 2009 and July 2, 2008 was \$44 and \$45, respectively. Amortization expense for the forty weeks ended July 1, 2009 and July 2, 2008 was \$149 and \$105, respectively. Total annual amortization for each of the next five years is approximately \$190.

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

## **9. Borrowings**

### *Senior Note Agreement*

As of September 24, 2008, we had outstanding borrowings under the Senior Note Agreement and Private Shelf Facility (the "Senior Note Agreement") totaling \$16,429.

During the first quarter of fiscal year 2009, we made a principal prepayment of \$4,471 on the Senior Note Agreement. As a result of this prepayment, we incurred a \$506 prepayment penalty which is included in interest expense in the condensed consolidated Statement of Operations.

During the third quarter of fiscal year 2009, we made a principal prepayment of \$11,958 on the Senior Note Agreement. As a result of this prepayment, we incurred a \$536 prepayment penalty which is included in interest expense in the condensed consolidated Statement of Operations. As of July 1, 2009, we have satisfied in full all outstanding borrowings under the Senior Note Agreement.

### *Revolving Credit Facility*

Effective June 19, 2009, the capacity to borrow under our Revolving Credit Facility ("Facility") was adjusted from \$25,000 to \$20,000. In accordance with the November 21, 2008 amendment, our capacity to borrow under the Facility would be reduced by a like amount of any principal prepayment under the Senior Note Agreement, but not to be reduced below \$20,000. Interest is based on the One Month LIBOR plus 350 basis points and the Facility expires January 30, 2010. We intend to either renew the Facility or negotiate a new facility prior to its maturity. At July 1, 2009, outstanding borrowings under the Facility were \$13,680 at an interest rate of 3.8%.

Our Facility contains restrictions and covenants which, among other things, requires us to maintain certain financial ratios. The amendments executed on November 21, 2008 include revised financial covenants. We were in compliance with all covenants under the amended agreement as of July 1, 2009.

The Facility is secured with the deposit accounts, accounts receivable, inventory, equipment, general intangibles, fixtures, and all other personal property.

We also have one note in the amount of \$73 outstanding as of July 1, 2009.

## **10. Income Taxes**

Our effective income tax rate for the current year-to-date period is (32.7%). The effective income tax rate for the same year-to-date period in the prior year was 41.8%. The negative effective income tax rate for the current year-to-date period is primarily due to our total income tax credits exceeding the amount of total income tax expense calculated before considering these income tax credits. This results in recording a current year-to-date income tax benefit which, when divided by pre-tax income, results in a negative effective income tax rate percentage. The amount of our income tax credits remains relatively constant regardless of the amount of pre-tax income or loss. Our two most significant income tax credits are the Work Opportunity Tax Credit and the Employer's FICA Tip Credit.

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

As of July 1, 2009, we had approximately \$1,009 of unrecognized tax benefits, including approximately \$245 of interest and penalties, which are included in other long-term liabilities in the condensed consolidated Statement of Financial Position. During the twelve and forty weeks ended July 1, 2009, we recognized \$22 and \$67, respectively in potential interest and penalties associated with uncertain tax positions. Our continuing practice is to recognize interest expense and penalties related to income tax matters in income tax expense. Of the \$1,009 of unrecognized tax benefits, \$873 would impact the effective income tax rate if recognized.

We file income tax returns which are periodically audited by various federal, state, and local jurisdictions. With few exceptions, we are no longer subject to federal, state, and local tax examinations for fiscal years prior to 2005. We believe we have certain income tax exposures related to fiscal years 2004 through 2006. Due to the expiration of the various statutes of limitations for these fiscal years, it is possible that the total amount of unrecognized tax benefits will decrease by approximately \$247 within 12 months.

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

## **11. Common Stock Plans**

*Employee Stock Options* - During the forty weeks ended July 1, 2009, we granted 110,000 options to employees under plans approved by our shareholders. Employees and non-employee directors forfeited 363,594 options during the year-to-date period. Pre-tax stock-based compensation expense recorded during the forty weeks ended July 1, 2009 for the stock option plans totaled \$620.

*Restricted Shares* - During the forty weeks ended July 1, 2009, we granted 119,116 non-vested restricted shares to employees and non-employee directors under plans approved by our shareholders at a weighted average grant date fair value per share of \$6.21. During the same period, 55,800 restricted shares were forfeited and 120,220 restricted shares vested. Pre-tax stock-based compensation expense recorded during the forty weeks ended July 1, 2009 for the plan totaled \$973.

*Employee Stock Purchase Plan* - During the forty weeks ended July 1, 2009, we issued 150,790 shares to employees under our Employee Stock Purchase Plan. Pre-tax stock-based compensation expense recorded during the forty weeks ended July 1, 2009 for the Employee Stock Purchase Plan totaled \$153.

During the second quarter of fiscal year 2009, the compensation philosophy was revised to match the Company's objective of maximizing intrinsic business value on a per-share basis. As a consequence, we no longer routinely issue stock grants and stock options.

## **12. Restructuring**

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

The table below summarizes all restructuring-related severance accruals and payments during fiscal year 2009:

September 24, 2008 accrual balance	\$ 372
Year-to-date fiscal year 2009 accruals	121
Year-to-date fiscal year 2009 payments	(479)
July 1, 2009 accrual balance	<u>\$ 14</u>

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

In addition to severance related to restructuring, during fiscal years 2008 and 2009 we also incurred severance expense related to the departure of former executives. The severance is being paid out according to the terms of the executives' agreements. During 2009, we paid all of the September 24, 2008 executive severance accrual balance of \$474. We accrued an additional \$223 of executive severance during the second quarter of fiscal year 2009, \$71 of which was paid as of July 1, 2009. The remaining \$152 will be paid during the rest of fiscal year 2009 and during the first and second quarters of fiscal year 2010.

### 13. Fair Value of Financial Assets and Liabilities

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

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

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

As of July 1, 2009, the fair values of financial assets were as follows:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Cash equivalents	\$ —	\$ 33,457	\$ —	\$ 33,457
Non-qualified deferred compensation plan investments	335	—	—	335
Total assets at fair value	<u>\$ 335</u>	<u>\$ 33,457</u>	<u>\$ —</u>	<u>\$ 33,792</u>

There were no financial liabilities measured at fair value as of July 1, 2009. There were no changes in our valuation techniques used to measure fair values on a recurring basis as a result of adopting SFAS 157.

#### **14. Supplemental Cash Flow Information**

During the forty weeks ended July 1, 2009, we issued a total of 169,393 shares with a market value of \$1,005, which were primarily restricted shares and were predominantly issued to employees and non-employee directors; we recorded notes receivable of \$100 as a result of refranchising seven restaurants to a franchisee; and we had \$360 of capital expenditures in accounts payable as of July 1, 2009. During the forty weeks ended July 2, 2008, we issued 238,500 restricted shares with a market value of \$1,785, and we had \$385 of capital expenditures in accounts payable as of July 2, 2008.

#### **15. Commitments and Contingencies**

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

#### **16. Subsequent Events**

In May 2009, the FASB issued SFAS No. 165, "Subsequent Events", which establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued. We have evaluated subsequent events for recognition or disclosure through the time of filing these consolidated financial statements on Form 10-Q with the U.S. Securities and Exchange Commission on August 10, 2009.

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

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

### **Overview**

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

### **Fiscal Third Quarter 2009 Results**

Net earnings for the third quarter of fiscal year 2009 were \$3,803, or \$0.13 per diluted share, contrasted to a net loss of (\$9,797), or (\$0.35) per diluted share in the third quarter of fiscal year 2008. Last year's third quarter loss included \$8,735, or \$0.31 per diluted share, net of tax impairment charges related to underperforming restaurants. Quarterly same-store sales increased 5.0% due to an increase in guest traffic of 13.4%, offset by an 8.4% contraction in the average guest check. Net sales increased 1.6% from \$143,303 to \$145,648 in the current quarter.

### **Fiscal Year 2009 Results (Year-to-date)**

Year-to-date net earnings through the third quarter of fiscal year 2009 were \$2,616, or \$0.09 per diluted share, contrasted to a net loss of (\$13,794), or (\$0.49) per diluted share for the same period a year ago. Last year's third quarter loss included \$8,735, or \$0.31 per diluted share, net of tax impairment charges related to underperforming restaurants. Year-to-date same-store sales increased 2.2%. Net sales decreased 0.8% from \$468,071 to \$464,342 in the current year because we operated 21 fewer Company-owned restaurants following the closure and refranchising of certain units during the second quarter of the previous year.

During the first three quarters of fiscal year 2009, we closed one Company-owned restaurant and refranchised seven Company-owned restaurants to franchisees, bringing the total number of Company-owned restaurants to 415. Franchisees also closed two restaurants, bringing the total number of franchised units to 73.

### **Management Direction**

New management, during the fourth quarter of fiscal year 2008, enacted a change in strategic direction under which we began to operate in a manner designed to generate cash. Our long-term objective is to maximize intrinsic business value per share of the Company. (Intrinsic value is computed by taking all future cash flows into and out of the business and then discounting the resultant number at an appropriate interest rate.) Thus, our financial goal is to maximize free cash flow and return on invested capital. We regard capital allocation as immensely important to creating shareholder value. Steak n Shake is transforming into a holding company. Its basic premise is to reinvest cash generated from its operating subsidiaries into any investments with the objective of achieving high risk-adjusted returns. Pursuant to a resolution of the Company's Board of Directors on June 17, 2009, all investment and other capital allocation decisions are made for the Company by Sardar Biglari, Chairman and Chief Executive Officer.

### **Critical Accounting Estimates**

Management's discussion and analysis of financial condition and results of operations is based upon our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of our financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, expenses and related disclosure of contingent assets and liabilities. Critical accounting policies are those we believe are most important to portraying our financial condition and results of operations and also require the most subjective or complex judgments by management. Judgments and uncertainties regarding the application of these policies may result in materially different amounts being reported under various conditions or using different assumptions. On an ongoing



basis, we evaluate our estimates and assumptions based on historical experience and other factors that are believed to be relevant under the circumstances. There have been no material changes to the critical accounting policies previously disclosed in our Annual Report on Form 10-K for the fiscal year ended September 24, 2008.

## Results of Operations

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

	Twelve Weeks Ended		Forty Weeks Ended	
	July 1, 2009	July 2, 2008	July 1, 2009	July 2, 2008
<b>Revenues:</b>				
Net sales	99.5%	99.3%	99.4%	99.3%
Franchise fees	0.5%	0.7%	0.6%	0.7%
<b>Total revenues</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Costs and expenses:</b>				
Cost of sales <sup>(1)</sup>	23.9%	24.8%	24.2%	24.7%
Restaurant operating costs <sup>(1)</sup>	52.8%	55.3%	54.5%	55.4%
General and administrative	5.4%	7.7%	5.9%	7.5%
Depreciation and amortization	4.7%	5.4%	5.1%	5.5%
Marketing	5.6%	4.6%	5.5%	4.9%
Interest	2.3%	2.3%	2.4%	2.3%
Rent	2.4%	2.3%	2.5%	2.4%
Pre-opening costs	0.0%	0.1%	0.0%	0.3%
Asset impairments and provision for restaurant closing	0.0%	9.8%	0.2%	3.0%
Gain on disposal of property	(0.1)%	(0.3)%	(0.0)%	(0.1)%
Other income, net	(0.4)%	(0.2)%	(0.2)%	(0.3)%
<b>Earnings (loss) before income taxes</b>	<b>3.7%</b>	<b>(11.2)%</b>	<b>0.4%</b>	<b>(5.0)%</b>
Income taxes	1.1%	(4.4)%	(0.1)%	(2.1)%
<b>Net earnings (loss)</b>	<b>2.6%</b>	<b>(6.8)%</b>	<b>0.6%</b>	<b>(2.9)%</b>

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

## Comparison of Twelve Weeks Ended July 1, 2009 to Twelve Weeks Ended July 2, 2008

### *Net earnings (loss)*

We recorded net earnings of \$3,803, or \$0.13 per diluted share, for the current quarter as compared with a net loss of (\$9,797) or (\$0.35) per diluted share for the third quarter of fiscal year 2008. Last year's third quarter loss included \$8,735, or \$0.31 per diluted share, net of tax impairment charges related to underperforming restaurants.

### *Revenues*

Net sales increased 1.6% from \$143,303 to \$145,648 in the current quarter compared to the third quarter of fiscal year 2008. We operated 21 fewer Company-owned restaurants in the current quarter following the closure and refranchising of

certain units since the same period of the prior year. However, third quarter same-store sales increased 5.0% compared with the same quarter in the prior year, which more than offset the decrease in sales resulting from the closure and refranchising of units. The increase in same-store sales was driven by an increase in guest traffic of 13.4%, partially offset by an 8.4% contraction in average guest check.

Franchise fees decreased slightly in the current fiscal quarter due to a decrease in franchisee same store-sales of 2.1%, resulting in lower royalty fees accrued. The decrease in franchise fees was partially offset by the growth in the number of franchised units from 69 at the end of the third quarter of fiscal year 2008 to 73 at the end of the current quarter.

#### *Costs and expenses*

Cost of sales was \$34,814 or 23.9% of net sales, compared with \$35,527 or 24.8% of net sales in the third quarter of fiscal year 2008 primarily due to favorable shifts in the sales mix.

Restaurant operating costs were \$76,880 or 52.8% of net sales, compared with \$79,241 or 55.3% of net sales in the third quarter of fiscal year 2008. Labor and benefit costs declined by \$1,760 due primarily to improvements in productivity and wage and benefit management.

As part of our focus to reduce our cost structure, general and administrative expenses decreased \$3,170 (28.7%) to \$7,886 and decreased as a percentage of total revenues from 7.7% to 5.4%. Wages, payroll taxes, and related benefits declined by approximately \$920 due to reductions in staffing that occurred during the third and fourth quarters of fiscal year 2008. Legal and professional fees, travel, and outside services declined \$700.

Marketing expense increased \$1,564 (23.5%) to \$8,230 and increased as a percentage of total revenues from 4.6% to 5.6%.

Interest expense in the third quarter of fiscal year 2009 included a \$536 prepayment penalty paid to The Prudential Insurance Company of America as a part of the repayment and termination of the Company's Senior Note Agreement and Private Shelf Facility. Interest expense related to obligations under leases decreased \$189.

Rent expense increased \$198 primarily due to sale-leaseback transactions entered into during the second half of fiscal year 2008.

Asset impairments and provision for restaurant closing decreased to \$63 in the current quarter compared to \$14,089, or 9.8% of total revenue in the third quarter of fiscal year 2008. The decrease was due to prior year impairment charges including \$8,794 related to 18 restaurants with low operating performances, \$4,818 related to 12 stores that were planned to and did close in fourth quarter of fiscal year 2008, and \$477 related to three stores involved in sale-leaseback transactions.

#### *Income taxes*

Our effective income tax rate decreased from 39.4% to 28.9% for the same period in the prior year primarily due to the change from a pre-tax loss to pre-tax earnings. Federal income tax credits will decrease the effective income tax rate in conjunction with pre-tax earnings while increasing the effective income tax rate in conjunction with a pre-tax loss.

### **Comparison of Forty Weeks Ended July 1, 2009 to Forty Weeks Ended July 2, 2008**

#### *Net earnings (loss)*

We recorded net earnings of \$2,616, or \$0.09 per diluted share, for the current year-to-date period as compared with a net loss of (\$13,794) or (\$0.49) per diluted share for the same period of fiscal year 2008. Last year's third quarter loss included \$8,735, or \$0.31 per diluted share, net of tax impairment charges related to underperforming restaurants.

### *Revenues*

Net sales decreased 0.8% from \$468,071 to \$464,342 in the current year-to-date period because we operated 21 fewer Company-owned restaurants following the closure and refranchising of certain units during the second quarter of the previous year. This decrease was offset by year-to-date same-store sales increase of 2.2% compared with the same period of fiscal year 2008. The increase in same-store sales was driven by an increase in guest traffic of 7.1%, partially offset by a 4.9% contraction in average guest check.

Franchise fees decreased \$392 (12.6%) to \$2,713 in the current year-to-date period. This is due to a decrease in franchisee same store sales of 1.5%, which resulted in lower royalty fees accrued. The decrease in franchise fees was partially offset by the growth in the number of franchised units from 69 at the end of the third quarter of fiscal year 2008 to 73 at the end of the current quarter.

### *Costs and expenses*

Year-to-date cost of sales was \$112,456 or 24.2% of net sales, compared with \$115,658 or 24.7% of net sales in the same period of fiscal year 2008 primarily due to favorable shifts in the sales mix.

Year-to-date restaurant operating costs were \$253,088 or 54.5% of net sales, compared with \$259,090 or 55.4% of net sales in the same period of fiscal year 2008. Labor and benefit costs declined by \$4,740 due primarily to improvements in productivity and wage and benefit management.

As part of our plan to reduce our cost structure, general and administrative expenses decreased \$8,216 (23.1%) to \$27,330 and decreased as a percentage of total revenues from 7.5% to 5.9%. Wages, payroll taxes, and related benefits declined by approximately \$3,880 due to reductions in staffing that occurred during the third and fourth quarters of fiscal year 2008. Legal and professional fees, travel, and outside services declined \$2,300.

Marketing expense increased \$2,603 (11.3%) to \$25,646 and increased as a percentage of total revenues from 4.9% to 5.5%.

Year-to-date interest expense included a \$536 prepayment penalty paid to The Prudential Insurance Company of America as a part of the repayment and termination of the Company's Senior Note Agreement and Private Shelf Facility during the third quarter of fiscal year 2009. A prepayment penalty of \$506 was also paid during the first quarter of fiscal year 2009. Interest expense related to obligations under leases decreased \$469.

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

Year-to-date pre-opening costs recorded during fiscal year 2008 reflect the opening of nine new units. We did not open any new units in the current year-to-date period.

Asset impairments and provision for restaurant closing was \$980, or 0.2% of total revenues in the current year-to-date period, which related primarily to the loss on disposal of held for sale assets and adjustments to the carrying value of held for sale properties we continue to own. For the third quarter of fiscal year 2008, we incurred asset impairment charges of \$14,089, or 3.0% of total revenues. The decrease period over period was due to prior year impairment charges including \$8,794 related to 18 restaurants with low operating performances, \$4,818 related to 12 stores that were planned to and did close in fourth quarter of fiscal year 2008, and \$477 related to three stores involved in sale-leaseback transactions.

### *Income taxes*

Our effective income tax rate for the current year-to-date period is (32.7%). The effective income tax rate for the same year-to-date period in the prior year was 41.8%. The negative effective income tax rate for the current year-to-date period is primarily due to our total income tax credits exceeding the amount of total income tax expense calculated before considering these

income tax credits. This results in recording a current year-to-date income tax benefit which, when divided by pre-tax income, results in a negative effective income tax rate percentage. The amount of our income tax credits remains relatively constant regardless of the amount of pre-tax income or loss. Our two most significant income tax credits are the Work Opportunity Tax Credit and the Employer's FICA Tip Credit.

## **Liquidity and Capital Resources**

We generated \$41,115 in cash flows from operations during the forty weeks ended July 1, 2009 as compared to \$23,571 during the forty weeks ended July 2, 2008. The increase resulted primarily from \$13,157 related to income tax refunds, net of the year-to-date tax provision.

Net cash provided by investing activities of \$6,132 during the forty weeks ended July 1, 2009 resulted primarily from proceeds of \$9,277 related to the sale of five parcels of land, two restaurant properties, and the transfer of two Company-owned buildings to a franchisee. We closed one Company-owned restaurant and refranchised seven Company-owned restaurants to a franchisee during the current year-to-date period.

Net cash used in investing activities of \$16,981 during the forty weeks ended July 2, 2008 resulted primarily from capital expenditures of \$28,512. During that year-to-date period, we opened nine new Company-owned restaurants and refranchised eight Company-owned restaurants to franchisees. We received proceeds of \$11,531 from the sale of eight parcels of land and from the transfer of three Company-owned buildings and various equipment to franchisees during the same period of fiscal year 2008.

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

### *Senior Note Agreement*

As of September 24, 2008 we had outstanding borrowings under the Senior Note Agreement and Private Shelf Facility (the "Senior Note Agreement") totaling \$16,429.

During the first quarter of fiscal year 2009, we made a principal prepayment of \$4,471 on the Senior Note Agreement. As a result of this prepayment, we incurred a \$506 prepayment penalty which is included in interest expense in the condensed consolidated Statement of Operations.

During the third quarter of fiscal year 2009, we made a principal prepayment of \$11,958 on the Senior Note Agreement. As a result of this prepayment, we incurred a \$536 prepayment penalty which is included in interest expense in the condensed consolidated Statement of Operations. As of July 1, 2009 we have satisfied in full all outstanding borrowings under the Senior Note Agreement.

### *Revolving Credit Facility*

Effective June 19, 2009, the capacity to borrow under our Revolving Credit Facility ("Facility") was adjusted from \$25,000 to \$20,000. In accordance with the November 21, 2008 amendment, our capacity to borrow under the Facility would be reduced by a like amount of any principal prepayment under the Senior Note Agreement, but not to be reduced below \$20,000. Interest is based on the One Month LIBOR plus 350 basis points and the Facility expires January 30, 2010. We intend to either renew the Facility or negotiate a new facility prior to its maturity. At July 1, 2009, outstanding borrowings under the Facility were \$13,680 at an interest rate of 3.8%.

Our Facility contains restrictions and covenants customary for credit agreements of this type which, among other things, require us to maintain certain financial ratios. The amendments executed on November 21, 2008 include revised financial covenants. These covenants include, among others, requirements to limit the ratio of total liabilities to tangible net worth (as defined in the amendments) to a maximum of 1.10 and to maintain a minimum fixed charge coverage ratio (as defined in the amendments) of 1.20. On July 1, 2009, our ratio of total liabilities to tangible net worth was 0.82 and our fixed charge coverage ratio was 2.23. We were in compliance with all covenants under the amended agreement as of July 1, 2009.

The Facility is secured with the deposit accounts, accounts receivable, inventory, equipment, general intangibles, fixtures, and all other personal property.

We also have one note in the amount of \$73 outstanding as of July 1, 2009.

### **New Accounting Standards**

See Note 3 to the Condensed Consolidated Financial Statements (Unaudited) on page 6 of this report.

### **Effects of Governmental Regulations and Inflation**

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

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

## **Risks Associated with Forward-Looking Statements**

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

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

Refer to our Annual Report on Form 10-K for the fiscal year ended September 24, 2008 for a detailed discussion of each of the risks identified above. In addition, refer to Part II, Item 1A, "Risk Factors" on page 23 of this report.

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

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Our primary market risk exposure with regard to financial instruments is to changes in interest rates. Historically, we have invested excess cash primarily in cash equivalents due to their relatively low credit risk, and our excess cash was primarily invested in cash equivalents as of July 1, 2009. Interest rates on these securities are based upon market rates at the time of purchase and remain fixed until maturity. On June 17, 2009, our Board of Directors approved resolutions granting our Chairman and Chief Executive Officer, Sardar Biglari, full power and authority to make all investment and capital allocation decisions on behalf of the Company, which could affect the investment of excess cash going forward. Further, effective July 8, 2009, we amended the Revolving Credit Facility to permit us to use up to \$10,000 of surplus cash to make investments of any lawful nature, so long as no event of default exists under the Revolving Credit Facility.

The Revolving Credit Facility bears interest at a rate based upon the One Month LIBOR plus 350 basis points. Historically we have not used derivative financial instruments to manage exposure to interest rate changes. At July 1, 2009, a hypothetical 100 basis point increase in short-term interest rates would have an impact of (\$21) and (\$85) on our quarterly and year-to-date net earnings, respectively.

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

### **ITEM 4. CONTROLS AND PROCEDURES**

Based on an evaluation of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15 (c)), our Chief Executive Officer and Interim Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of July 1, 2009.

On June 17, 2009, our Board of Directors approved resolutions granting our Chairman and Chief Executive Officer, Sardar Biglari, full power and authority to make all investment and capital allocation decisions on behalf of the Company. As a result, our internal controls have been updated as necessary to accommodate the modifications to our business processes and accounting procedures. There have been no other changes in our internal control over financial reporting that occurred during the current quarter ended July 1, 2009 that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

See Note 15 to the Condensed Consolidated Financial Statements (Unaudited) on page 14 of this report.

### ITEM 1A. RISK FACTORS

#### We are dependent on key personnel.

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

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

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

At the Annual Meeting of the Steak n Shake Company held April 24, 2009, the following actions were undertaken:

1. Five directors were elected to serve until the next annual meeting and their successors are duly elected and qualified. The results of the vote are as follows:

<b>Name</b>	<b>Votes For</b>	<b>Votes Withheld</b>
Sardar Biglari	24,266,009	605,969
Philip Cooley	24,340,198	531,780
Ruth J. Person	24,237,539	634,439
William J. Regan, Jr.	24,365,262	506,716
John W. Ryan	24,351,945	520,033

2. Deloitte & Touche, LLP, was ratified as the Company's independent registered public accounting firm for the current fiscal year as follows:

<b>Votes For</b>	<b>Votes Against/Withheld</b>	<b>Abstentions/Brokers Non-Votes</b>
24,644,170	159,849	67,959

3. The 2009 Employee Stock Purchase Plan was approved as follows:

<b>Votes For</b>	<b>Votes Against/Withheld</b>	<b>Abstentions/Brokers Non-Votes</b>
15,546,672	177,634	9,147,672



**ITEM 6. EXHIBITS**

<u>Exhibit Number</u>	<u>Description</u>
3.01	By-laws of the Company, amended effective July 1, 2009
4.01	Eleventh Amendment to Credit Agreement by and between The Steak n Shake Company and Fifth Third Bank, Indiana (Central) dated November 21, 2008. (Incorporated by reference to Exhibit 10.1 to Registrant's Current Report on Form 8-k dated July 8, 2009).
31.01	Rule 13(a)-14(a)/15d-14(a) Certification of Chief Executive Officer
31.02	Rule 13(a)-14(a)/15d-14(a) Certification of Chief Financial Officer
32.01	Section 1350 Certifications

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

## **SIGNATURES**

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

Date: August 10, 2009

**THE STEAK N SHAKE COMPANY**

By: /s/ Duane E. Geiger

Duane E. Geiger

Interim Chief Financial Officer, Vice President and Controller

**RESTATED BY-LAWS  
OF  
THE STEAK N SHAKE COMPANY**

**(As amended through June 17, 2009)**

**Article I**

**Section 1. Name.** The name of the corporation is The Steak n Shake Company (“Corporation”).

**Section 2. Principal Office and Resident Agent.** The post-office address of the principal office of the Corporation is 500 Century Building, 36 South Pennsylvania Street, Indianapolis, Indiana 46204, and the name and post-office address of its Resident Agent in charge of such office is C T Corporation System, 36 South Pennsylvania Street, Suite 700, Indianapolis, Indiana 46204.

**Section 3. Seal.** The seal of the Corporation shall be circular in form and mounted upon a metal die, suitable for impressing the same upon paper. About the upper periphery of the seal shall appear the words “The Steak n Shake Company” and about the lower periphery thereof the word “Indiana”. In the center of the seal shall appear the word “Seal”.

**Article II**

The fiscal year of the Corporation shall end on the last Wednesday in September of each calendar year.

**Article III**  
**Capital Stock**

**Section 1. Number of Shares and Classes of Capital Stock.** The total number of shares of common stock which the Corporation shall have authority to issue is 50,000,000 shares, which shall consist of 50,000,000 common shares without par value. In addition, the Corporation shall have the authority to issue 10,000,000 shares of Preferred Stock on the terms and conditions set forth in the amendment to the Articles of Incorporation adopted May 16, 2001.

**Section 2. Consideration for No Par Shares.** The shares of stock of the Corporation without par value shall be issued or sold in such manner and for such amount of consideration as may be fixed from time to time by the Board of Directors; such shares of stock shall be fully paid and nonassessable.

**Section 3. Consideration for Treasury Shares.** Treasury shares may be disposed of by the Corporation for such consideration as may be determined from time to time by the Board of Directors.

**Section 4. Payment for Shares.** The consideration for the issuance of shares of capital stock of the Corporation may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor actually performed for, or services actually rendered to the Corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares. When payment of the consideration for which a share was authorized to be issued shall have been received by the Corporation, or when surplus shall have been transferred to stated capital upon the issuance of a share dividend, such share shall be declared and taken to be fully paid and not liable to any further call or assessment, and the holder thereof shall not be liable for any further payments thereon. In the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the value of such property, labor or services received as consideration, or the value placed by the Board of Directors upon the corporate assets in the event of a share dividend, shall be conclusive. Promissory notes, uncertified checks, or future services shall not be accepted in payment or part payment of the capital stock of the Corporation, except as permitted by The Indiana Business Corporation Law.

**Section 5. Certificates for Shares.** Shares of stock of each class of the Corporation may be issued in book-entry form or evidenced by certificates. However, every holder of capital stock of the Corporation shall be entitled upon request to have a stock certificate evidencing the shares owned by the shareholder, signed by the Chairman of the Board or a Vice President and the Secretary or any Assistant Secretary of the Corporation, with the seal of the Corporation thereto affixed, certifying the number of shares owned by the shareholder in the Corporation. Every certificate shall state on its face (or in the case of book-entry shares, the statements evidencing ownership of such shares shall state, the name of the Corporation) the name of the registered holder, the number of shares represented by such certificate (or book-entry statement), the par value of each share of stock or that such shares of stock are without par value, and that such shares are not fully paid and nonassessable. If such shares are not fully paid, and as further payments are made, the certificate shall be stamped (or the book-entry statement updated) accordingly.

If the Corporation is authorized to issue shares of more than one class, every certificate (or book-entry statement) shall state the kind and class of shares represented thereby, and the relative rights, interests, preferences and restrictions of such class, or a summary thereof, provided, that such statement may be omitted from the certificate if it shall be set forth upon the face or back of the certificate that such statement, in full, will be furnished by the Corporation to any shareholder upon written request and without charge.

**Section 6. Facsimile Signatures.** If a certificate is countersigned by the written signature of a transfer agent other than the Corporation or its employee, the signatures of the officers of the Corporation may be facsimiles. If a certificate is countersigned by the written signature of a registrar other than the Corporation or its employee, the signatures of the transfer agent and the officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

**Section 7. Transfer of Shares.** The shares of capital stock of the Corporation shall be transferable only on the books of the Corporation upon surrender of the certificate or certificates, if any, representing the same, properly endorsed by the registered holder or by his duly authorized attorney or accompanied by proper evidence of succession, assignment or authority to transfer.

**Section 8. Cancellation.** Every certificate surrendered to the Corporation for exchange or transfer shall be canceled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so canceled, except in cases provided for in Section 10 of this Article III.

**Section 9. Transfer Agent and Registrar.** The Board of Directors may appoint a transfer agent and a registrar for each class of capital stock of the Corporation and may require all certificates representing such shares to bear the signature of such transfer agent and registrar. Shareholders shall be responsible for notifying the transfer agent and registrar for the class of stock held by such shareholder in writing of any changes in their addresses from time to time, and failure so to do shall relieve the Corporation, its shareholders, directors, officers, transfer agent and registrar of liability for failure to direct notices, dividends, or other documents or property to an address other than the one appearing upon the records of the transfer agent and registrar of the Corporation.

**Section 10. Lost, Stolen or Destroyed Certificates.** The Board of Directors may authorize the transfer agent and a registrar to issue replacement shares for Corporation stock alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation may, in its discretion and as a condition of precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond in such sum and in such form as it may direct to indemnify against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate. The Corporation, at its discretion, may authorize the issuance of such new certificates without any bond when in its judgment it is proper to do so.

**Section 11. Registered Shareholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of such shares to receive dividends, to vote as such owner, to hold liable for calls and assessments, and to treat as owner in all other respects, and shall not be bound to recognize any equitable or other claims to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Indiana.

**Section 12. Options to Officers and Employees.** The issuance, including the consideration of rights or options to officers or employees of the Corporation, and not to the shareholders generally, to purchase from the Corporation shares of its capital stock shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved by such a vote of the shareholders. The price to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options shall not be less than the par value thereof.

#### **Article IV** **Meetings of Shareholders**

**Section 1. Place of Meeting.** Meetings of shareholders of the Corporation shall be held at such place, within or without the State of Indiana, as may from time to time be designated by the Board of Directors, or as may be specified in the notices or waivers of notice of such meetings.

**Section 2. Annual Meeting.** The annual meeting of shareholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held on the second Wednesday of February of each year, unless in any year the Board of Directors establishes a different date as the date of the annual meeting. Failure to hold the annual meeting at the designated time shall not work any forfeiture or dissolution of the Corporation, and shall not affect otherwise valid corporate acts.

**Section 3. Special Meetings.** Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called by the Board of Directors or the Chairman and shall be called by the Chairman or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of shareholders of record holding not less than twenty five percent (25%) of all the shares outstanding and entitled by the Articles of Incorporation to vote on the business for which the meeting is being called.

**Section 4. Notice of Meetings.** A written or printed notice, stating the place, day and hour of the meeting, and in case of a special meeting, or when required by any other provision of the Indiana Business Corporation Law, or of the Articles of Incorporation, as now or hereafter amended, or these By-Laws, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary, or by the officers or persons calling the meeting, to each shareholder of record entitled by the Articles of Incorporation, as now or hereafter amended, and by The Indiana Business Corporation Law to vote at such meeting, at such address as appears upon the records of the Corporation, at least ten (10) days before the date of the meeting. Notice of any such meeting may be waived in writing by any shareholder, if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called, and the time and place thereof. Attendance at any meeting in person, or by proxy, shall constitute a waiver of notice of such meeting. Each shareholder, who has in the manner above provided waived notice of shareholders' meeting, or who personally attends a shareholders' meeting, or is conclusively presumed to have been given due notice of such meeting. Notice of any adjourned meeting of shareholders shall not be required to be given if the time and place thereof are announced at the meeting at which the adjournment is taken, except as may be expressly required by law.

**Section 5. Addresses of Shareholders.** The address of any shareholder appearing upon the records of the Corporation shall be deemed to be the latest address of such shareholder for the class of stock held by such shareholder.

## **Section 6. Voting at Meetings.**

- (a) **Quorum.** The holders of record of a majority of the issued and outstanding stock of the Corporation entitled to vote at such meeting, present in person or by proxy, shall constitute a quorum at all meetings of shareholders for the transaction of business, except where otherwise provided by law, the Articles of Incorporation or these By-Laws. In the absence of a quorum, any officer entitled to preside at, or act as Secretary of, such meeting shall have the power to adjourn the meeting from time to time until a quorum shall be constituted. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting, but only those shareholders entitled to vote at the original meeting shall be entitled to vote at any adjournment or adjournments thereof unless a new record date is fixed by the Board of Directors for the adjourned meeting.
- (b) **Voting Rights.** Except as otherwise provided by law or by the provisions of the Articles of Incorporation, every shareholder shall have the right at every shareholders' meeting to one vote for each share of stock having voting power, registered in his name on the books of the Corporation on the date for the determination of shareholders entitled to vote, on all matters coming before the meeting including the election of directors. At any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person, or by proxy executed in writing by the shareholder or a duly authorized attorney in fact and bearing a date not more than eleven months prior to its execution, unless a longer time is expressly provided therein.
- (c) **Required Vote.** When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of The Indiana Business Corporation Law or the Articles of Incorporation or by these By-Laws, a greater vote is required, in which case such express provision shall govern and control the decision of such question.

**Section 7. Voting List.** The Transfer Agent of the Corporation shall make, at least five days before each election of directors, a complete list of the shareholders entitled by the Articles of Incorporation, as now or hereafter amended, to vote at such election, arranged in alphabetical order, with the address and number of shares so entitled to vote held by each, which list shall be on file at the principal office of the Corporation and subject to inspection by any shareholder. Such list shall be produced and kept open at the time and place of election and subject to the inspection of any shareholder during the holding of such election. The original stock registrar or transfer book, or a duplicate thereof kept in the State of Indiana, shall be the only evidence as to who are the shareholders entitled to examine such list or the stock ledger or transfer book or to vote at any meeting of the shareholders.

**Section 8. Fixing of Record Date to Determine Shareholders Entitled to Vote.** The Board of Directors may prescribe a period not exceeding 70 days prior to meetings of the shareholders, during which stock on the books of the Corporation may not be transferred; or, in lieu of prohibiting the transfer of stock may set a date and time as the time at which shareholders entitled to notice of, and to vote at, such meeting shall be determined, and all persons who are holders of record of voting stock at such time, and no others, shall be entitled to notice of, and to vote at, such meeting. Said date and time shall not be more than 70 days prior to any shareholders' meeting. In the absence of such determination, such date shall be 10 days prior to the date of such meeting.

**Section 9. Shareholder Proposals and Nominations.** For any shareholder proposal to be presented in connection with an annual meeting of shareholders, including any proposal relating to the nomination of a director to be elected to the Board of Directors of the Corporation, the shareholder must have given timely notice thereof in writing to the Secretary of the Corporation ("Notice") and must have been a shareholder of record entitled to vote at the meetings at the time of giving of such notice. To be timely, Notice must be delivered to or, if mailed, received at the principal executive offices of the Corporation not less than one hundred twenty (120) calendar days in advance of the date the Corporation's proxy statement was released to shareholders in connection with the annual meeting of shareholders; provided, however, that in the event that no annual meeting

was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date of the previous year's annual meeting, to be timely, Notice must be received by the Corporation's Secretary at the principal office of the Corporation not later than the close of business on the later of one hundred twenty (120) calendar days in advance of such annual meeting or ten (10) calendar days following the date on which public announcement of the date of the annual meeting is first made. Such Notice shall set forth (a) as to each person whom the shareholder proposes to nominate for election or reelection as a director, (i) a statement of the qualifications of such person, (ii) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (iii) a description of all arrangements or understandings among the shareholder and such person and (iv) the written consent of such person to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and of the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the shareholder giving the Notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (i) the name and address of such shareholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of stock of the Corporation which are owned beneficially and of record by such shareholders and such beneficial owner. Notwithstanding the foregoing, in order to include information with respect to a shareholder proposal in the proxy statement and form of proxy for a shareholders' meeting, shareholders must also provide notice as required by the regulations promulgated under the Exchange Act.

## **Article V** **Board of Directors**

**Section 1. Number and Term of Office.** The Board of Directors currently consists of nine (9) directors, which number may be hereafter increased or reduced by resolution adopted by not less than a majority of the directors then in office; provided that no reduction in number shall have the effect of shortening the term of any incumbent director.

All directors, except in the case of earlier resignation, removal or death, shall hold office until their respective successors are chosen and qualified. Directors need not be shareholders of the Corporation.

**Section 2. Vacancies.** Any vacancy occurring in the Board of Directors caused by resignation, death or other incapacity shall be filled by a majority vote of the remaining members of the Board of Directors, until the next annual meeting of shareholders. If the vote of the remaining members of the Board shall result in a tie, such vacancy, at the discretion of the Board of Directors, may be filled by vote of the shareholders at a special meeting for that purpose.

**Section 3. Annual Meeting of Directors.** The Board of Directors shall meet each year, at the place where such meeting of the shareholders has been held either within or without the State of Indiana, for the purpose of organization, election of officers, and consideration of any other business that may properly come before the meeting. No notice of any kind to either old or new members of the Board of Directors for such meeting shall be necessary.

**Section 4. Regular Meetings.** Regular meetings of the Board of Directors shall be held at such times and places, either within or without the State of Indiana, as may be fixed by the directors. Such regular meetings of the Board of Directors may be held without notice or upon such notice as may be fixed by the directors.

**Section 5. Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman of the Board, the President, or by not less than a majority of the members of the Board of Directors. Notice of the time and place, either within or without the State of Indiana, of a special meeting shall be served upon or telephoned to each director at least twenty-four hours, or mailed, telegraphed or cabled to each director at his usual place of business or residence at least forty-eight hours, prior to the time of the meeting. Directors, in lieu of such notice, may sign a written waiver of notice either before the time of the meeting, at the meeting or after the meeting. Attendance by a director in person at any such special meeting shall constitute a waiver of notice.

**Section 6. Quorum.** A majority of the actual number of directors elected and qualified, from time to time, shall be necessary to constitute a quorum for the transaction of any business except the filing of vacancies, and the act of a majority of the directors present at the meeting, at which a quorum is present, shall be the act of the Board of Directors, unless the act of a greater number is required by The Indiana Business Corporation Law, by the Articles of Incorporation, or these By-Laws. A director, who is present at a meeting of the Board of Directors, at which action on any corporate matter is taken, shall be deemed to have voted in favor of the action, unless (a) his dissent shall be affirmatively stated by him at and before the adjournment of such meeting (in which event the fact of such dissent shall be entered by the secretary of the meeting in the minutes of the meeting), or (b) he shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. The right of dissent provided for by either clause (a) or clause (b) of the immediately preceding sentence shall not be available, in respect of any matter, if the director did not change his vote prior to the time the result of the vote on such matter was announced by the Chairman of such meeting.

**Section 7. Consent Action by Directors.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all members of the Board of Directors or such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board of Directors or committee.

**Section 8. Removal of Directors.** Any or all members of the Board of Directors may be removed, with or without cause, at a meeting of shareholders called expressly for that purpose by a vote of the holders of not less than a majority of the outstanding shares of capital stock then entitled to vote in the election of directors.

**Section 9. Dividends.** The Board of Directors shall have power, subject to any restrictions contained in The Indiana Business Corporation Law or in the Articles of Incorporation and out of funds legally available therefor, to declare and pay dividends upon the outstanding capital stock of the Corporation as and when they deem expedient. Before declaring any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time in their absolute discretion deem proper for working capital, or as a reserve or reserves to meet contingencies or for such other purposes as the Board of Directors shall deem conducive to the interests of the Corporation and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

**Section 10. Fixing of Record Date to Determine Shareholders Entitled to Receive Corporate Benefits.** The Board of Directors may fix a day and hour not exceeding 50 days preceding the date fixed for payment of any dividend or for the delivery of evidence of rights, or for the distribution or other corporate benefits, or for a determination of shareholders entitled to receive any such dividend, rights or distribution, and in such case only shareholders of record at the time so fixed shall be entitled to receive such dividend, rights or distribution. If no record date is fixed for the determination of shareholders entitled to receive payment of a dividend, the end of the day on which the resolution of the Board of Directors declaring such dividend is adopted shall be the record date for such determination.

**Section 11. Interest of Directors in Contracts.** Any contract or other transaction between the Corporation of any corporation which this Corporation owns a majority of the capital stock shall be valid and binding, notwithstanding that the directors and officers of this Corporation are identical or that some or all of the directors or officers, or both, are also directors or officers of such other corporation.

Any contract or other transaction between the Corporation and one or more of its directors or members or employees, or between the Corporation and any firm of which one or more of its directors are members or employees or in which they are interested, or between the Corporation and any corporation or association of which one or more of its directors are shareholders, members, directors, officers or employees or in which they are interested, shall be valid for all purposes, notwithstanding the presence of such director or directors at the meeting of the Board of Directors of the Corporation which acts upon, or in reference to, such contract or transaction and notwithstanding his or their participation in such action, if the fact of such interest shall be disclosed or known to the Board of Directors and the Boards of Directors shall authorize, approve and ratify such contract or transaction by a vote of a majority of the directors present, such interested director or directors to be counted in



determining whether a quorum is present, but not to be counted in calculating the majority of such quorum necessary to carry such vote. This Section shall not be construed to invalidate any contract or other transaction, which would otherwise be valid under the common and statutory law applicable thereto.

**Section 12. Committees.** The Board of Directors may, by resolution adopted by a majority of the actual number of directors elected and qualified, from time to time designate from among its members, an executive committee and one or more other committees and may delegate to each such committee such authority and power of the Board of Directors as shall be specified in such resolution, but no such committee shall have the authority of the Board of Directors in reference to amending the Articles of Incorporation, adopting an agreement or plan of merger or consolidation proposing a special corporate transaction, recommending to the shareholders a voluntary dissolution of the Corporation or a revocation thereof, or amending these By - Laws. No member of any such committee shall continue to be a member thereof after he ceases to be a director of the Corporation. The calling and holding of meetings of such committee and its method of procedure shall be as determined by the Board of Directors.

**Section 13. Mandatory Classified Board Structure Not Applicable.** The Corporation shall not be governed by any of the provisions set forth in Section 23-1-33-6(c) of The Indiana Business Corporation Law, as amended.

## **Article VI** **Officers**

**Section 1. Principal Officers.** The principal officers of the Corporation shall be a Chairman, a Chief Executive Officer, a President, one or more Vice Presidents, a Treasurer and a Secretary. The Corporation may also have, at the discretion of the Board of Directors; such other subordinate officers as may be appointed in accordance with the provisions of these By - Laws. Any two or more offices may be held by the same person, except the office of Chairman shall not be given to an individual who is not a director of the Corporation.

**Section 2. Chief Executive Officer.** The Board of Directors shall designate a Chief Executive Officer. The Chief Executive Officer shall hold those powers and authorities normally accorded such position and shall be the senior officer accountable to the Chairman and Board for the principles and policies of the Corporation.

**Section 3. Election and Term of Office.** The principal officers of the Corporation shall be chosen annually by the Board of Directors at the annual meeting thereof. Each such officer shall hold office until his successor shall have been duly chosen and qualified, or until his death, or he shall resign, or shall have been removed in the manner hereinafter provided.

**Section 4. Removal.** Any principal officer may be removed either with or without cause, at any time by resolution adopted at any meeting of the Board of Directors elected and qualified from time to time.

**Section 5. Subordinate Officers.** In addition to the principal officers enumerated in Section 1 of this Article VI, the Corporation may have a Controller, one or more Assistant Controllers, one or more Assistant Secretaries and such other officers, agents and employees as the Board of Directors may deem necessary, each of whom shall hold office for such period, may be removed with or without cause, have such authority and perform such duties as Chairman, the Chief Executive Officer, the President, or the Board of Directors may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

**Section 6. Resignations.** Any officer may resign at any time by giving written notice to the Chairman, the Board of Directors, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 7. Vacancies.** Any vacancy in any office for any cause may be filled for the unexpired portion of the term in the manner prescribed in these By-Laws for election or appointment to such office for such term.

**Section 8. Chairman.** The Chairman, who shall be chosen from among the directors, shall have general supervision of the affairs of the Corporation, subject to the control of the Board of Directors. He shall be an ex officio member of all standing committees. The Chairman shall preside at all meetings of the shareholders and at all meetings of the Board of Directors. Subject to the control and direction of the Board of Directors, the Chairman may enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. In general, he shall perform all duties and have all powers as, from time to time may be herein defined, and all such other duties and powers as, from time to time may be assigned to him by the Board of Directors.

**Section 9. President.** The President shall be responsible to the Chief Executive Officer and Chairman in the performance of his duties, and shall, in the absence or disability of the Chief Executive Officer, perform the duties and exercise the power of the Chief Executive Officer. The President shall perform such duties and have such powers as the Chairman, Chief Executive Officer or Board of Directors may, from time to time assign.

**Section 10. Vice Presidents.** The other Vice Presidents in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. They shall perform such other duties and have such other powers as the Chairman, Chief Executive Officer, the President, or the Board of Directors may, from time to time assign.

**Section 11. Treasurer.** The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation and shall deposit all such funds and securities of the Corporation in such banks or other depositories as shall be selected by the Board of Directors. He shall, upon request, exhibit at all reasonable times, his books of account and records to any of the directors of the Corporation where such books and records shall be kept; shall render upon request by the Board of Directors, a statement of the condition of the finances of the Corporation at any time requested by the Board of Directors or at the annual meeting of shareholders; shall receive, and give receipt for moneys due and payable to the Corporation from any source whatsoever; and in general, shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Chairman, the Chief Executive Officer, the President or the Board of Directors.

**Section 12. Secretary.** The Secretary shall keep or cause to be kept in the books provided for that purpose, the minutes of the meetings of the Shareholders and of the Board of Directors; shall duly give and serve all notices required to be given in accordance with the provisions of these By-Laws and by The Indiana Business Corporation Law; shall be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all documents, the executing of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-Laws; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Chairman, the Chief Executive Officer, the President or the Board of Directors.

**Section 13. Salaries.** The salaries of the principal officers shall be fixed from time to time by the Board of Directors and the salaries of any subordinate officers may be fixed by the Chairman, the Chief Executive Officer or the President.

**Section 14. General Powers of Officers.** The Chairman, the Chief Executive Officer and the President and each are authorized and empowered for and on behalf of the Corporation and in its name, singly and without the joinder of any other officer, to execute and deliver any and all contracts, leases, notes, mortgages, receipts, deeds, commitments, power of attorney, authorizations and any and all documents in addition to, but not limited to the ones therefore described which said offices, or any of them believe to be necessary and advisable in carrying on the business of the Corporation. The Treasurer and the Secretary of the Corporation are hereby authorized to execute and deliver any and all documents which relate to the routine discharge of the responsibilities of each of said offices and such other documents as either the Chairman, the Chief Executive Officer or the President shall specifically authorize said officers to execute or deliver only such documents, or general types of classes of documents, with respect to which they have received specific authorization from either the Chairman, the Chief Executive Officer, the President or the Board of Directors.

**Section 15. Voting Corporation's Securities.** Unless otherwise ordered by the Board of Directors, the Chairman, the Chief Executive Officer, the President and Secretary and each of them, are appointed attorneys and agents of the Corporation, and shall have full power and authority in the securities entitled to be voted at any meetings of security holders of corporations, or associations in which the Corporation may hold securities, in person, or by proxy, as a stockholder or otherwise and at such meetings shall possess and may exercise any and all rights and powers incident to the ownership of such securities, and which as the owner thereof of the Corporation might have possessed and exercised, if present, or to consent in writing to any action by and such other corporation or association. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

**Article VII**  
**Indemnification**

**Section 1. Rights to Indemnification and Advancement of Expenses.**

- (a) The Corporation shall indemnify as a matter of right every person made a party to a proceeding because such person is or was
- (i) a member of the Board of Directors of the Corporation,
  - (ii) an officer of the Corporation, or
  - (iii) while a director or officer of the Corporation, serving at the Corporation's request as a director, officer, partner, member, manager, trustee, employee, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not, (each an "Indemnitee") against all liability incurred by such person in connection with the proceeding; provided that it is determined in the specific case that indemnification of such person is permissible in the circumstances because such person has met the standard of conduct for indemnification specified in The Indiana Business Corporation Law. The Corporation shall pay for or reimburse the reasonable expenses incurred by an Indemnitee in connection with any such proceeding in advance of final disposition thereof in accordance with the procedures and subject to the conditions specified in The Indiana Business Corporation Law. The Corporation shall indemnify as a matter of right an Indemnitee who is wholly successful, on the merits or otherwise, in the defense of any such proceeding, against reasonable expenses incurred by the Indemnitee in connection with the proceeding without the requirement of a determination as set forth in the first sentence of this paragraph
- (b) Upon demand by a person for indemnification or advancement of expenses, as the case may be, the Corporation shall expeditiously determine whether the person is entitled thereto in accordance with this Article and the procedures specified in The Indiana Business Corporation Law.
- (c) The indemnification provided under this Article shall apply to any proceeding arising from acts or omissions occurring before or after the adoption of this Article.

**Section 2. Other Rights Not Affected.** Nothing contained in this Article shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was a director, officer, employee or agent of the Corporation, or the ability of the Corporation to otherwise indemnify or advance expenses to any such individual. It is the intent of this Article to provide indemnification to directors and officers to the fullest extent now or hereafter permitted by law consistent with the terms and conditions of this Article. Therefore, indemnification shall be provided in accordance with this Article irrespective of the nature of the legal or equitable theory upon which a claim is made, including without limitation negligence, breach of duty, mismanagement, corporate waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities laws, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal laws.

**Section 3. Definitions.** For purposes of this Article:

The term “director” means an individual who is or was a member of the Board of Directors of the Corporation or an individual who, while a director of the Corporation, is or was serving at the Corporation’s request as a director, officer, partner, member, manager, trustee, employee, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not. A director is considered to be serving an employee benefit plan at the Corporation’s request if the director’s duties to the Corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. The term “director” includes, unless the context requires otherwise, the estate or personal representative of a director.

The term “expenses” includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement or appeal of a proceeding or establishing or enforcing a right to indemnification under this Article, applicable law or otherwise.

The term “liability” means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

The term “party” includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

The term “proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

**Article VIII**  
**Amendments**

The power to make, alter, amend or repeal these By-Laws is invested in the Board of Directors, but the affirmative vote of a majority of the actual number of directors elected and qualified, from time to time, shall be necessary to effect any alteration, amendment or repeal of the By-Laws.

## EXHIBIT 31.1

### CERTIFICATION PURSUANT TO RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Sardar Biglari, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Steak n Shake Company;
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 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 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: August 10, 2009

/s/ Sardar Biglari

Sardar Biglari

*Chairman, Chief Executive Officer and President*

## EXHIBIT 31.2

### CERTIFICATION PURSUANT TO RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Duane E. Geiger, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Steak n Shake Company;
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 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 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: August 10, 2009

/s/ Duane E. Geiger

Duane E. Geiger

*Interim Chief Financial Officer, Vice President and Controller*

**EXHIBIT 32.1**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The Steak n Shake Company (the "Company") on Form 10-Q for the period ended July 1, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certify, pursuant to 18 U.S.C. Sec. 1350, as adopted pursuant to Sec. 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.

/s/ Sardar Biglari

Sardar Biglari, Chairman, Chief Executive Officer and President  
August 10, 2009

/s/ Duane E. Geiger

Duane E. Geiger, Interim Chief Financial Officer, Vice President and Controller  
August 10, 2009