

Ruths Hospitality Group, Inc.  
Form 10-Q  
May 07, 2010  
Table of Contents

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 28, 2010

OR

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

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

Commission File Number 000-51485

**Ruth s Hospitality Group, Inc.**

(Exact name of registrant as specified in its charter)

Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

<b>Delaware</b> (State or other jurisdiction of incorporation or organization)	<b>72-1060618</b> (I.R.S. Employer Identification No.)
<b>400 International Parkway, Ste. 325, Heathrow, FL</b> (Address of principal executive offices)	<b>32746</b> (Zip code)
<b>(407) 333-7440</b>	

Registrant's telephone number, including area code

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 definition of "accelerated filer," "large accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act (check one):

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

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

The number of shares outstanding of the registrant's common stock as of May 5, 2010 was 34,324,473, which includes 313,000 unvested restricted stock shares.

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<b><u>Part I - Financial Information</u></b>	<b>3</b>
Item 1. <u>Financial Statements (unaudited):</u>	3
<u>Condensed Consolidated Balance Sheets as of December 27, 2009 and March 28, 2010</u>	3
<u>Condensed Consolidated Statements of Income for the Thirteen Week Periods ended March 29, 2009 and March 28, 2010</u>	4
<u>Condensed Consolidated Statements of Shareholders' Equity (Deficit) for the Thirteen Week Periods ended March 28, 2010</u>	5
<u>Condensed Consolidated Statements of Cash Flows for the Thirteen Week Periods ended March 29, 2009 and March 28, 2010</u>	6
<u>Notes to Condensed Consolidated Financial Statements</u>	7
Item 2. <u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	14
Item 3. <u>Quantitative and Qualitative Disclosures about Market Risk</u>	19
Item 4. <u>Controls and Procedures</u>	20
<b><u>Part II - Other Information</u></b>	<b>20</b>
Item 1. <u>Legal Proceedings</u>	20
Item 1A. <u>Risk Factors</u>	20
Item 2. <u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	21
Item 3. <u>Defaults Upon Senior Securities</u>	21
Item 4. <u>(Removed and Reserved)</u>	21
Item 5. <u>Other Information</u>	21
Item 6. <u>Exhibits</u>	21
<u>Signatures</u>	22

**Table of Contents****PART I FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****RUTH S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Condensed Consolidated Balance Sheets**

(dollar amounts in thousands, except share and per share data)

	December 27, 2009	March 28, 2010 (Unaudited)
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 1,681	\$ 4,289
Accounts receivable, less allowance for doubtful accounts 2009 - \$339; 2010 - \$327	10,079	7,928
Inventory	7,368	6,897
Prepaid expenses and other	1,346	3,631
Deferred income taxes	1,561	1,584
<b>Total current assets</b>	<b>22,035</b>	<b>24,329</b>
Property and equipment, net of accumulated depreciation 2009 - \$77,643; 2010 - \$81,458	114,204	110,934
Goodwill	22,097	22,097
Franchise rights	32,200	32,200
Trademarks	13,718	13,718
Other intangibles, net of accumulated amortization 2009 - \$1,263; 2010 - \$1,385	7,962	7,840
Deferred income taxes	38,246	38,404
Other assets	3,953	4,959
<b>Total assets</b>	<b>\$ 254,415</b>	<b>\$ 254,481</b>
<b>Liabilities and Shareholders Equity</b>		
Current liabilities:		
Accounts payable	\$ 6,871	\$ 10,728
Accrued payroll	10,286	9,979
Accrued expenses	5,995	5,470
Deferred revenue	27,835	22,867
Accrued restructuring	2,891	2,323
Other current liabilities	6,210	6,898
<b>Total current liabilities</b>	<b>60,088</b>	<b>58,265</b>
Long-term debt	125,500	74,000
Deferred rent	20,643	20,834
Other liabilities	6,419	6,321
<b>Total liabilities</b>	<b>212,650</b>	<b>159,420</b>
Commitments and contingencies (Note 13)		
Series A 10% Redeemable Convertible Preferred Stock, par value \$0.01 per share; 25,000 shares authorized, issued and outstanding, liquidation preference of \$25,000 at March 28, 2010		23,222
Shareholders' equity (deficit):		

## Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

Common stock, par value \$0.01 per share; 100,000,000 shares authorized, 23,606,943 shares issued and outstanding at December 27, 2009 33,932,041 shares issued and outstanding at March 28, 2010	236	339
Additional paid-in capital	173,590	197,110
Accumulated deficit	(132,061)	(125,610)
Treasury stock, at cost; 71,950 shares at December 27, 2009 and March 28, 2010		
<b>Total shareholders equity</b>	<b>41,765</b>	<b>71,839</b>
<b>Total liabilities and shareholders equity</b>	<b>\$ 254,415</b>	<b>\$ 254,481</b>

See accompanying notes to condensed consolidated financial statements.

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

	<b>13 Weeks Ending</b>	
	<b>March 29, 2009</b>	<b>March 28, 2010</b>
<b>Revenues:</b>		
Restaurant sales	\$ 91,419	\$ 91,166
Franchise income	2,704	2,929
Other operating income	605	614
<b>Total revenues</b>	<b>94,728</b>	<b>94,709</b>
<b>Costs and expenses:</b>		
Food and beverage costs	27,528	26,749
Restaurant operating expenses	47,699	46,780
Marketing and advertising	2,818	2,524
General and administrative costs	5,536	5,566
Depreciation and amortization expenses	4,095	3,887
Pre-opening costs	16	4
Loss on impairment	136	
Restructuring benefit		(562)
Loss on the disposal of property and equipment, net	8	
<b>Operating income</b>	<b>6,892</b>	<b>9,761</b>
<b>Other income (expense):</b>		
Interest expense	(2,284)	(1,330)
Other	152	(100)
<b>Income from continuing operations before income tax expense</b>	<b>4,760</b>	<b>8,331</b>
Income tax expense	962	1,407
<b>Income from continuing operations</b>	<b>3,798</b>	<b>6,924</b>
Loss on discontinued operations, net of income tax benefit	53	165
<b>Net income</b>	<b>\$ 3,745</b>	<b>\$ 6,759</b>
<b>Preferred stock dividends</b>		<b>308</b>
<b>Net income available to preferred and common shareholders</b>	<b>\$ 3,745</b>	<b>\$ 6,451</b>
<b>Basic earnings per share:</b>		
Continuing operations	\$ 0.16	\$ 0.20
Discontinued operations		
<b>Basic earnings per share</b>	<b>\$ 0.16</b>	<b>\$ 0.20</b>
<b>Diluted earnings per share:</b>		
Continuing operations	\$ 0.16	\$ 0.20
Discontinued operations		

## Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

Diluted earnings per share	\$	0.16	\$	0.20
Shares used in computing earnings per share:				
Basic		23,484,200		28,156,360
Diluted		23,558,433		32,502,898

See accompanying notes to condensed consolidated financial statements.

**Table of Contents****RUTH S HOSPITALITY GROUP, INC AND SUBSIDIARIES****Condensed Consolidated Statements of Shareholders Equity (Deficit) Unaudited****(dollar and share amounts in thousands)**

	Common Stock		Additional	Accumulated	Treasury Stock		Shareholders
	Shares	Value	Paid-in Capital	Deficit	Shares	Value	Equity (Deficit)
Balance at December 27, 2009	23,607	\$ 236	\$ 173,590	\$ (132,061)	72	\$	\$ 41,765
Net income				6,759			6,759
Preferred stock dividends				(308)			(308)
Issuance of common stock from rights offering	10,147	102	25,267				25,369
Cost of stock issuance			(2,057)				(2,057)
Shares issued under stock option plan including tax effects	178	1	85				86
Compensation expense			225				225
Balance at March 28, 2010	33,932	\$ 339	\$ 197,110	\$ (125,610)	72	\$	\$ 71,839

See accompanying notes to condensed consolidated financial statements.

**Table of Contents****RUTH S HOSPITALITY GROUP, INC AND SUBSIDIARIES****Condensed Consolidated Statements of Cash Flows Unaudited**

(dollar amounts in thousands)

	13 Weeks Ending	
	March 29, 2009	March 28, 2010
Cash flows from operating activities:		
Net income	\$ 3,745	\$ 6,759
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	4,095	3,887
Deferred income taxes	(543)	(180)
Non-cash interest expense	518	198
Loss on impairment	138	
Loss on the disposal of property and equipment, net	6	
Amortization of below market lease	50	49
Restructuring benefit		(562)
Stock compensation expense	570	225
Changes in operating assets and liabilities:		
Accounts receivable	1,704	2,151
Inventories	1,390	471
Prepaid expenses and other	(286)	(2,285)
Other assets	89	185
Accounts payable and accrued expenses	258	3,496
Deferred revenue	(5,136)	(4,968)
Deferred rent	260	191
Other liabilities	(418)	(99)
<b>Net cash provided by operating activities</b>	<b>6,440</b>	<b>9,518</b>
Cash flows from investing activities:		
Acquisition of property and equipment	(1,442)	(641)
<b>Net cash used in investing activities</b>	<b>(1,442)</b>	<b>(641)</b>
Cash flows from financing activities:		
Principal repayments on long-term debt	(3,000)	(51,500)
Proceeds from the issuance of common stock		25,369
Proceeds from the issuance of Series A 10% redeemable convertible preferred stock		25,000
Income tax benefits credited to equity upon exercise of stock options	2	54
Proceeds from exercise of stock options	3	32
Equity offering costs		(3,835)
Deferred financing costs	(2,156)	(1,389)
<b>Net cash used in financing activities</b>	<b>(5,151)</b>	<b>(6,269)</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(153)</b>	<b>2,608</b>
<b>Cash and cash equivalents at beginning of period</b>	<b>3,876</b>	<b>1,681</b>

Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

Cash and cash equivalents at end of period	\$ 3,723	\$ 4,289
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest	\$ 2,092	\$ 1,453
Income taxes	15	276
	See accompanying notes to condensed consolidated financial statements.	

**Table of Contents**

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

**Notes to Condensed Consolidated Financial Statements Unaudited**

**(dollar amounts in thousands, except share and per share data)**

**(1) Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements of Ruth s Hospitality Group, Inc. and its subsidiaries (together, the Company ) as of March 28, 2010 and December 27, 2009 and for the quarters ended March 28, 2010 and March 29, 2009 have been prepared by the Company, pursuant to the rules and regulations of the Securities and Exchange Commission (the SEC ).

The information furnished herein reflects all adjustments (consisting of normal recurring accruals and adjustments), which are, in the opinion of management, necessary to fairly present the operating results for the respective periods. The interim results of operations for the fiscal quarters ended March 28, 2010 and March 29, 2009 are not necessarily indicative of the results that may be achieved for the full year. Certain information and footnote disclosures normally presented in annual financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. These financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company s Annual Report on Form 10-K for the fiscal year ended December 27, 2009.

The Company operates on a 52 or 53-week fiscal year ending on the last Sunday in December. The fiscal quarters ended March 28, 2010 and March 29, 2009 each contained 13 weeks and are referred to herein as the first quarter of fiscal 2010 and the first quarter of fiscal 2009, respectively.

***Estimates***

Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reporting of revenue and expenses during the period to prepare these condensed consolidated financial statements in conformity with U.S. generally accepted accounting principles. Significant items subject to such estimates and assumptions include the carrying amount of property and equipment, goodwill, franchise rights, trademarks, obligations related to workers compensation and medical insurance and lease obligations. Actual results could differ from those estimates.

***Principles of Consolidation***

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

***Reclassifications***

Certain prior year amounts have been reclassified to conform to the current year presentation including discontinued operations, loss on impairments and sales discounts (see Note 14). These reclassifications had no effect on previously reported net income.

***Newly Adopted Accounting Pronouncements***

Effective December 28, 2009, the Company adopted amendments in Accounting Standards Update 2010-06 ( ASU 2010-06 ) requiring new fair value disclosures. Entities will be required to separately disclose significant transfers into and out of Level 1 and Level 2 measurements in the fair value hierarchy and describe the reasons for the transfers. Entities will also be required to provide information on purchases, sales, issuances and settlements on a gross basis in the reconciliation of Level 3 fair value measurements. In addition, entities must provide fair value measurement disclosures for each class of assets and liabilities, and disclosures about the valuation techniques used in determining fair value for Level 2 or Level 3 measurements. ASU 2010-06 is effective for interim and annual reporting periods beginning after December 15, 2009, except for the gross basis reconciliation for the Level 3 fair value measurements, which is effective for fiscal years beginning after December 15, 2010. The adoption of ASU 2010-06 did not have a material impact on the Company s consolidated financial statements. There were no transfers between Level 1 and Level 2 measurements in the fair value hierarchy during the first fiscal quarter of 2010.

***Recent Accounting Pronouncements for Future Application***

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

**(2) Private Placement and Rights Offering**

On February 12, 2010, the Company completed its sale of \$25.0 million of the Company's newly-created Series A 10% Redeemable Convertible Preferred Stock (the "Preferred Stock") to Bruckmann, Rosser, Sherrill & Co. III, L.P. and BRS Coinvestor III, L.P. (collectively, "BRS") in a private placement transaction. The Company received proceeds of \$23.2 million, net of approximately \$1.8 million in closing and issuance costs. On February 12, 2010, the Company also closed its rights offering and sold 10,147,451 shares of the Company's common stock, at a subscription price of \$2.50 per share, for an aggregate purchase price of

---

**Table of Contents**

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

**Notes to Condensed Consolidated Financial Statements Unaudited (Continued)**

**(dollar amounts in thousands, except share and per share data)**

approximately \$25.4 million. The Company received proceeds of \$23.3 million, net of approximately \$2.1 million in closing and issuance costs.

The Company applied approximately \$44.3 million of the net proceeds from the rights offering and the private placement, together with cash on hand, to reduce its outstanding borrowings under its existing credit facility. Upon the application of those net proceeds, and the satisfaction of other agreed-upon conditions, a credit agreement amendment that the Company entered into with the lenders under its existing credit facility became effective (see Note 4).

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

**(3) Fair Value Measurements**

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

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

Level 1 quoted prices (unadjusted) for an identical asset or liability in an active market.

Level 2 quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.

Level 3 unobservable and significant to the fair value measurement of the asset or liability.

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

The carrying amount of cash and cash equivalents, receivables, prepaid expenses, accounts payable and accrued expenses and other current liabilities are a reasonable estimate of their fair values due to their short duration.

## Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

Borrowings under the senior credit facility as of March 28, 2010 have variable interest rates that reflect currently available terms and conditions for similar debt. The carrying amount of this debt is a reasonable estimate of its fair value.

The fair values of interest rate swap assets and liabilities were estimated by the Company based on information provided by the bank counterparties that is model-driven and whose inputs include the net present value of a series of cash flows on both the fixed and floating legs of the swap.

The Company's financial instruments measured at fair value on a recurring basis subject to the disclosure requirements of Topic 820 at March 28, 2010 were as follows:

	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>	<b>Fair Value as of March 28, 2010 (unaudited)</b>
Interest rate swap liability	\$	\$ 537	\$	\$ 537

In accordance with Property, Plant and Equipment Impairment or Disposal of Long-Lived Assets, FASB Accounting Standards Codification Topic 360-10 (Topic 360-10), long lived assets, such as property, plant and equipment and purchased intangibles subject to amortization are reviewed for impairment on a restaurant-by-restaurant basis whenever events or changes in

**Table of Contents****RUTH S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Condensed Consolidated Financial Statements Unaudited (Continued)****(dollar amounts in thousands, except share and per share data)**

circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset. Fair value of long-lived assets is generally determined based on the discounted future cash flows generated by these assets.

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

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

Based upon the Company's review, no impairment charges were required in the first fiscal quarter of 2010 for long-lived assets, goodwill, franchise rights and trademarks.

**(4) Long-term Debt**

On February 26, 2009, the Company signed an amendment to its amended and restated credit facility reducing the revolving loan commitment from \$250.0 million to \$175.0 million, with additional reductions scheduled through the final maturity date of February 19, 2013. The amendment decreased the Fixed Charge Coverage Ratio and increased the maximum Consolidated Leverage Ratio, in each case beginning with the fourth quarter of 2008 and continuing through the second quarter of 2010, after which these two covenants reset to their original levels. The amendment increased the interest rates applicable to borrowings based on the Company's actual leverage ratio, ranging from 2.50% to 4.25% above the applicable LIBOR rate or, at the Company's option, from 1.25% to 3.00% above the applicable base rate. At the time of the amendment, unamortized deferred costs related to the Company's credit agreement of \$0.4 million were written off.

On February 12, 2010, the Company entered into a Second Amendment to First Amended and Restated Credit Agreement. The amendment to the credit agreement reduced the revolving loan commitment to \$129.6 million, extended the scheduled maturity of the credit agreement by two years, to February 2015, and provided the Company with a less restrictive set of covenants. Specifically, the amendment provided for no financial covenant testing until the end of fiscal year 2010, provided less restrictive leverage and coverage covenants thereafter, and permanently eliminated the minimum EBITDA covenant. The amendment provided for higher interest rates under the credit facility, with interest rates based on the Company's actual leverage ratio, ranging from 3.25% to 5.00% above the applicable LIBOR rate or, at the Company's option, from 2.00% to 3.75% above the applicable base rate.

As of March 28, 2010, the Company had an aggregate of \$74 million of outstanding indebtedness under its senior credit facility at a weighted average interest rate of 4.64%. Under the amended revolving loan commitment, the Company had approximately \$52.1 million of borrowings available under its revolving credit facility, net of outstanding letters of credit of approximately \$3.5 million. The Company is required to maintain certain financial covenants and is also subject to several restrictive covenants under its borrowings. The restrictive covenants include, but are not limited to, covenants that, subject to exceptions: (1) prohibit the Company and its subsidiaries from incurring additional indebtedness and from guaranteeing obligations of others; (2) prohibit the Company and its subsidiaries from creating, incurring, assuming or permitting to exist any lien on or with respect to any property or asset; (3) limit the Company's ability and its subsidiaries' ability to enter into joint ventures,

## Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

acquisitions, and other investments; (4) prohibit the Company and its subsidiaries from directly or indirectly creating or becoming liable with respect to any contingent liabilities; and (5) restrict the Company and its subsidiaries from directly or indirectly declaring, ordering, paying, or making any restricted junior payments. The Company's obligations under the senior credit facility are guaranteed by each of its existing and future subsidiaries and are secured by substantially all of its assets and a pledge of the capital stock of its subsidiaries. Under this amendment, the Company is not required to submit a certificate of compliance until the fourth quarter of fiscal 2010. As of March 28, 2010, if financial covenant testing were required, the Company would be in compliance with the covenants under its senior credit facility.

### **(5) Redeemable Convertible Preferred Stock**

The Company issued 25,000 shares of Preferred Stock in the private placement transaction described in Note 2 for \$23.2 million, net of approximately \$1.8 million in closing and issuance costs. The Preferred Stock is classified on the balance sheet as

**Table of Contents**

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

**Notes to Condensed Consolidated Financial Statements Unaudited (Continued)**

**(dollar amounts in thousands, except share and per share data)**

temporary shareholders' equity at March 28, 2010 since the shares have certain conditions that allow the holder to redeem the Preferred Stock for cash and for which redemption is not solely within the control of the Company. During the first fiscal quarter of 2010, Preferred Stock dividends of \$0.3 million were accrued as a reduction of net income available to common shareholders. The Preferred Stock cash dividend was paid on April 1, 2010.

Each share of the Preferred Stock had an initial liquidation preference of \$1,000. The holders of the Preferred Stock are entitled to quarterly dividends accruing at a 10% annual rate payable on the following dates: January 1, April 1, July 1 and October 1. Any unpaid dividends are added to the liquidation preference and compound on the subsequent dividend payment dates. The Preferred Stock also has certain participation features that require additional Preferred Stock dividends in the event a cash dividend or other distribution in cash has been declared on the Company's common stock. The Company's credit agreement limits the amount of dividends the Company may pay annually to \$1.0 million.

The Preferred Stock is also convertible, under certain circumstances, into the number of shares of the Company's common stock equal to the quotient of the liquidation preference, including accrued dividends, divided by the conversion price. The conversion price was initially set at \$2.90 per share, and is subject to change based on certain customary anti-dilution provisions. Using the liquidation preference of \$25.0 million as of March 28, 2010, a conversion of Preferred Stock into the Company's common stock would result in the issuance of 8,620,690 additional common shares. The Preferred Stock is convertible at any time, at the option of the holders. The Company has the option to convert the Preferred Stock, in whole or in part, after February 12, 2012 if the closing price of the Company's common stock equals or exceeds 225% of the then applicable conversion price for a period of 20 trading days over any 30 consecutive trading day period.

At the option of the Company, the Preferred Stock may be redeemed on or after February 12, 2015 without regard to the Company's stock price. The Company shall not be permitted to redeem less than all of the outstanding shares of the Preferred Stock if such partial redemption would result in the holder holding more than 0% and less than 5% of the Company's voting securities. At the option of the holders, the Preferred Stock may be redeemed on or after February 12, 2017. The redemption price per share will equal the liquidation preference, including any accrued dividends.

In the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, holders of the Preferred Stock are entitled to receive for each share, out of the assets of the Company or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Company, and after satisfaction of all liabilities and obligations to creditors of the Company, before any distribution of such assets or proceeds is made to or set aside for the holders of common stock, an amount equal to the greater of (1) the liquidation preference per share of the Preferred Stock plus accrued dividends and (2) the per share amount of all cash and other property to be distributed in respect of the common stock such holder would have been entitled to had it converted such Preferred Stock immediately prior to the date fixed for such liquidation, dissolution or winding up of the Company.

The holders of shares of Preferred Stock are entitled to vote with the holders of the common stock on all matters submitted to a vote of shareholders of the Company, except as otherwise provided herein or by applicable law. Each holder of shares of Preferred Stock is entitled to the number of votes equal to the product (rounded down to the nearest number of whole shares) of one times the largest number of whole shares of common stock into which all shares of Preferred Stock held of record by such holder could then be converted at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed. In any case in which the holders of shares of Preferred Stock are entitled to vote as a separate series to the exclusion of the holders of the common stock, each holder of shares of Preferred Stock is entitled to one vote for each share of Preferred Stock held at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed. The holders of Preferred Stock have the right to veto certain actions of the Company that might dilute, or alter the rights of, the Preferred Stock.

In addition, for so long as BRS owns shares of Preferred Stock representing at least 5% of the total voting securities of the Company: (1) BRS, voting as a separate class to the exclusion of the holders of common stock, shall be entitled to elect a director to serve on the Company's Board, provided that such director is a current employee (and remains a current employee) of BRS and (2) the Company shall not, without the consent of BRS, increase the size of the Board of Directors to more than eight (8) persons.

**(6) Stock-Based Employee Compensation**

Under the 2000 Stock Option Plan, there are 68,341 shares of common stock issuable upon exercise of currently outstanding options at March 28, 2010 and 667,984 shares available for future grants. No future grants are expected to be made under the 2000 Stock Option Plan. Under the 2005 Equity Incentive Plan, as amended, there were 1,877,817 shares of common stock issuable upon exercise of currently outstanding options awards, as well as 313,000 of unvested restricted stock awards, at March 28, 2010, and 1,257,188 shares available for future grants. Total stock compensation expense recognized for the thirteen weeks ended March 29, 2009 and March 28, 2010 was \$0.6 million and \$0.2 million, respectively.

**Table of Contents****RUTH S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Condensed Consolidated Financial Statements Unaudited (Continued)****(dollar amounts in thousands, except share and per share data)****(7) Earnings Per Share**

For the fiscal quarter ended March 28, 2010 basic earnings per common share is computed under the two-class method as provided in ASC 260-10. Under the two-class method a portion of net income is allocated to participating securities, such as the Company's Preferred Stock, and therefore is excluded from the calculation of earnings per share allocated to common shares. Diluted earnings per common share for the fiscal quarter ended March 28, 2010 is computed by dividing the net income available to common shareholders for the period by the weighted average number of common and potential common shares outstanding during the period. There were no participating securities for the fiscal quarter ended March 29, 2009. Basic earnings per share was calculated by dividing net income by the weighted average number of common shares outstanding during the period, while diluted earnings per share was computed by dividing the net income for the period by the weighted average number of common and potential shares outstanding during the period.

For the thirteen weeks ended March 29, 2009 and March 28, 2010, options to purchase 1,805,013 and 1,518,317 shares, respectively, of the Company's common stock at weighted average exercise prices of \$9.61 and \$9.65 per share, respectively, were not included in the calculation of weighted average shares for diluted earnings per share because their effects were anti-dilutive.

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

	13 Weeks Ending	
	March 29, 2009	March 28, 2010
Net Income	\$ 3,745	\$ 6,759
Preferred stock dividends		308
Undistributed net income	\$ 3,745	\$ 6,451
Undistributed net income allocated to preferred shareholders		832
Net income available to common shareholders	\$ 3,745	\$ 5,619
Shares:		
Weighted average number of common shares outstanding - basic	23,484,200	28,156,360
Basic earnings per common share:		
Continuing operations	\$ 0.16	\$ 0.20
Discontinued operations		
Basic earnings per common share	\$ 0.16	\$ 0.20

**Table of Contents****RUTH S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Condensed Consolidated Financial Statements Unaudited (Continued)**

(dollar amounts in thousands, except share and per share data)

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

	13 Weeks Ending	
	March 29, 2009	March 28, 2010
Net Income	\$ 3,745	\$ 6,759
Preferred stock dividends		308
Net income available to preferred and common shareholders	\$ 3,745	\$ 6,451
Shares:		
Weighted average number of common shares outstanding - basic	23,484,200	28,156,360
Dilutive stock options	74,233	178,292
Dilutive convertible preferred stock		4,168,246
Weighted-average number of common shares outstanding - diluted	23,558,433	32,502,898
Diluted earnings per common share:		
Continuing operations	\$ 0.16	\$ 0.20
Discontinued operations		
Diluted earnings per common share	\$ 0.16	\$ 0.20

**(8) Franchise Income**

The Company currently has 66 Ruth's Chris Steak House franchise locations, including 14 international locations. No franchise locations were opened, sold or purchased during the first quarter of fiscal 2010. Franchise income includes opening and development fees and income generated from existing franchise locations. The Company records franchise income separately in the condensed consolidated statements of income.

	13 Weeks Ending	
	March 29, 2009	March 28, 2010
Franchise activity during the period:		
Opened	2	0
Closed	1	0
Franchise income:		
Income from existing franchise locations	\$ 2,604	\$ 2,929
Opening and development fee income	100	
Total franchise income:	\$ 2,704	\$ 2,929

**(9) Marketing and Advertising**

## Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

Marketing and advertising expenses in the condensed consolidated statements of income included advertising expenses of approximately \$1.9 million and \$1.7 million for the first quarter of fiscal 2009 and the first quarter of fiscal 2010, respectively. Ruth's Chris Steak House continued to promote its value promotion, Ruth's Classics, a three course prix fixe meal. Mitchell's Fish Markets promoted the Lobster Duo promotional plate via radio and print advertisement. All advertising expenses are expensed as incurred.

**Table of Contents****RUTH S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Condensed Consolidated Financial Statements Unaudited (Continued)****(dollar amounts in thousands, except share and per share data)****(10) Restructuring**

The details of the restructuring charges are as follows:

	<b>One-time termination benefits</b>	<b>Lease obligations</b>	<b>Total restructuring</b>
Accrued restructuring as of December 27, 2009	\$ 6	\$ 2,885	\$ 2,891
Payments	(6)		(6)
Adjustments		(562)	(562)
Accrued restructuring as of March 28, 2010 (unaudited)	\$	\$ 2,323	\$ 2,323

The Company has accrued lease exit costs related to locations for which a lease was signed and the Company subsequently decided not to build. The reduction in accrued restructuring of \$0.6 million in the first fiscal quarter of 2010 was due to a correction of an immaterial prior year error in estimating lease exit costs. The remaining accrued restructuring of \$2.3 million is based on management's estimate of the most likely outcome of the lease exit costs. However, it is reasonably possible that factors could change in the near term that would result in a change in estimate.

**(11) Income Taxes**

The annual effective income tax rate for the quarter ended March 28, 2010 was 26% compared to an annual effective income tax rate of 20% for the quarter ended March 29, 2009. The increase in the effective rate during the current fiscal quarter is primarily attributable to a decrease in the impact of certain tax credits and deductions. Income tax expense for the quarter ended March 28, 2010 also includes a \$0.7 million income tax benefit for the correction of an immaterial error related to certain prior year tax credits.

The Company accounts for unrecognized tax benefits in accordance with the provisions of Income Taxes, FASB Accounting Standards Codification Topic 740 (Topic 740). As of December 27, 2009, the Company's gross unrecognized tax benefits totaled approximately \$0.8 million, of which \$0.5 million, if recognized, would impact the effective tax rate. As of March 28, 2010, the Company's gross unrecognized tax benefits totaled approximately \$0.9 million, of which \$0.6 million, if recognized, would impact the effective tax rate. The Company does not anticipate there will be any material changes in the Company's unrecognized tax benefits within the next 12 months. The Company's continuing practice is to recognize interest and penalties related to uncertain tax positions in income tax expense. As of December 27, 2009 and March 28, 2010, the Company had accrued approximately \$0.2 million for the payment of interest, which is included as a component of the unrecognized tax benefit noted above.

The Company files consolidated and separate income tax returns in the United States Federal jurisdiction, many state jurisdictions and Puerto Rico. With few exceptions, the Company is no longer subject to U.S. Federal income tax examinations for years before 2007 and is no longer subject to state and local or Puerto Rico income tax examinations by tax authorities for years before 2004.

**(12) Discontinued Operations**

During the third quarter of fiscal 2007, the Company was notified that the replacement tenant in the Manhattan-UN, New York location was placed in default by the landlord and as a result, the Company resumed lease payments with respect to this property during the third quarter of fiscal 2008. Payments will range from \$0.1 million to \$0.2 million in the aggregate per fiscal quarter through September 2016. The Company will attempt to sublease the property in order to recover some or all of the amounts paid with respect to the lease. As of March 28, 2010, the Company maintained a contingent lease liability related to this property. The Company accounted for the exit costs in accordance with the

## Edgar Filing: Ruths Hospitality Group, Inc. - Form 10-Q

provisions of Exit or Disposal Cost Obligations, FASB Accounting Standards Codification Topic 420 (Topic 420), which requires that such costs be expensed in the periods whereby such costs are incurred. All of the losses incurred with respect to this location are included in discontinued operations in the accompanying condensed consolidated statements of income.

During the second quarter of fiscal 2009, the Company made the decision to close the company-owned Ruth's Chris Steak House restaurant in Naples, Florida. As of March 28, 2010, the Company maintain a liability for lease exit costs in accordance with the provisions of Topic 420. All of the losses incurred with respect to this location are included in discontinued operations in the accompanying condensed consolidated statements of income.

The Company accounts for its closed restaurants in accordance with the provisions of Topic 360-10. Therefore, when a restaurant is closed, and the restaurant is either held for sale or abandoned, the restaurant's operations are eliminated from the ongoing operations. Accordingly, the operations of such restaurants, net of applicable income taxes, are presented as discontinued operations and prior period operations of such restaurants, net of applicable income taxes, are reclassified.

**Table of Contents****RUTH S HOSPITALITY GROUP, INC. AND SUBSIDIARIES****Notes to Condensed Consolidated Financial Statements Unaudited (Continued)****(dollar amounts in thousands, except share and per share data)**

Discontinued operations consist of the following:

	<b>13 Weeks Ending</b>	
	<b>March 29, 2009</b>	<b>March 28, 2010</b>
Loss before income tax	\$ (75)	\$ (207)
Loss on discontinued operations, net of income tax benefit	(53)	(165)

**(13) Commitments and Contingencies**

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

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

The condensed consolidated statement of income for the fiscal quarter ended March 29, 2009, has been revised to correct an immaterial error in the accounting for sales discounts, which should have been recorded as a reduction of sales instead of as operating expenses. In addition, the condensed consolidated statement of income for the fiscal quarter ended March 29, 2009, has been revised to correct an immaterial error in the accounting for the closure of the Ruth s Chris Steak House location in San Juan, Puerto Rico, on February 28, 2009, which should have been recorded as a loss on impairment instead of a loss on the disposal of property and equipment.

When reviewing the previously reported quarterly condensed consolidated statement of income in comparison to those reported in the condensed consolidated statements of income for the first quarter ended March 29, 2009, restaurant sales decreased by \$2.7 million, other operating income increased by \$0.4 million, restaurant operating expenses decreased by \$2.2 million, general and administrative expenses decreased by \$0.1 million, loss on impairment increased by \$0.1 million and loss on the disposal of property and equipment decreased by \$0.1 million for the fiscal quarter ended March 29, 2009. The reclassifications had no impact on previously reported operating income, net income or earnings per share amounts for the fiscal quarter ended March 29, 2009.

**(15) Subsequent Event**

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

**ITEM 2. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS*****Forward-Looking Statements***

This Quarterly Report on Form 10-Q contains forward-looking statements that reflect, when made, the Company s expectations or beliefs concerning future events that involve risks and uncertainties. Forward-looking statements frequently are identified by the words believe, anticipate, expect, estimate, intend, project, will be, will continue, will likely result or other similar words and phrases. Similarly, statements herein that describe the Company s objectives, plans or goals also are forward-looking statements. Actual results could differ materially from those projected, implied or anticipated by the Company s forward-looking statements. Some of the factors that could cause actual results to differ include: changes in economic conditions and general trends, including turmoil in the financ