

MAIN STREET & MAIN INC  
Form 10-K/A  
July 06, 2004

## SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

### FORM 10-K/A

AMENDMENT NO. 1

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

For the Fiscal Year Ended December 29, 2003

Commission File Number: 0-18668

## MAIN STREET AND MAIN INCORPORATED

(Exact name of registrant as specified in its charter)

**DELAWARE**

(State or other jurisdiction of  
incorporation or organization)

**11-2948370**

(I.R.S. Employer  
Identification Number.)

**5050 NORTH 40TH STREET  
SUITE 200, PHOENIX, ARIZONA**  
(Address of principal executive offices)

**85018**  
(Zip Code)

**(602) 852-9000**

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

**None**

Securities registered pursuant to Section 12(g) of the Act:

**Common Stock, \$.001 par value**

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes  No.

At June 30, 2003, there were outstanding 14,129,928 shares of the registrant's common stock, \$.001 par value. The aggregate market value of common stock held by nonaffiliates of the registrant (8,304,305 shares) based on the closing sale price of the common stock as reported on the Nasdaq National Market on June 30, 2003 (\$2.12 per share) was \$17,605,513. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed an admission that such officers, directors, or 10% beneficial owners are, in fact, affiliates of the registrant.

Documents incorporated by reference: None.

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**MAIN STREET AND MAIN INCORPORATED**

**FORM 10-K/A AMENDMENT NO. 1**

**FISCAL YEAR ENDED DECEMBER 29, 2003**

**Explanatory Note**

This Amendment No. 1 to the Annual Report on Form 10-K of Main Street and Main Incorporated (the Company) amends the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 2003, originally filed on March 26, 2004 (the Original Filing). The Company is filing this Amendment No. 1 for the sole purpose of revising the Independent Auditors' Report in Item 8 to include the auditors signature, which signature was omitted from the report filed with the Original Filing due to a clerical error. In addition, in connection with the filing of this Amendment No. 1 and pursuant to the rules of the Securities and Exchange Commission, the Company is including with this Amendment No. 1 certain currently dated certifications.

Except as described above, no other changes have been made to the Original Filing. This Amendment No. 1 continues to speak as of the date of the Original Filing, and the registrant has not updated the disclosures contained therein to reflect any events that occurred at a date subsequent to the filing of the Original Filing. The filing of this Amendment No. 1 is not a representation that any statements contained in Form 10-K are true or complete as of any date subsequent to the date of the Original Filing.

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**PART II**

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

Reference is made to the consolidated financial statements, the reports thereon, the notes thereto, and the supplementary data commencing at page F-1 of this Form 10-K/A, which consolidated financial statements, reports, notes, and data are incorporated by reference.

**SIGNATURES**

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

MAIN STREET AND MAIN INCORPORATED

Date: July 2, 2004

By:

/s/William G. Shrader  
William G. Shrader  
Chief Executive Officer

**MAIN STREET AND MAIN INCORPORATED**  
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Independent Auditors Report - Mayer Hoffman McCann P.C.

Independent Auditors Report - KPMG LLP

Consolidated Balance Sheets as of December 29, 2003 and December 30, 2002

Consolidated Statements of Operations for the fiscal years ended December 29, 2003, December 30, 2002, and December 31, 2001

Consolidated Statements of Changes in Stockholders Equity and Comprehensive Income (Loss) for the fiscal years ended December 29, 2003, December 30, 2002, and December 31, 2001

Consolidated Statements of Cash Flows for the fiscal years ended December 29, 2003, December 30, 2002, and December 31, 2001

Notes to Consolidated Financial Statements

**INDEPENDENT AUDITORS REPORT**

To the Board of Directors of Main Street and Main Incorporated

We have audited the accompanying consolidated balance sheet of Main Street and Main Incorporated and subsidiaries as of December 29, 2003, and the related consolidated statements of operations, changes in stockholders' equity and comprehensive income (loss) and cash flows for the year then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit. The consolidated financial statements of the Company as of December 30, 2002, and for each of the two years in the period ended December 30, 2002, were audited by other auditors whose report dated March 4, 2003, expressed an unqualified opinion on those statements.

We conducted our audit in accordance with U.S. generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Main Street and Main Incorporated and subsidiaries at December 29, 2003, and the results of their operations and their cash flows for the year then ended in conformity with U.S. generally accepted accounting principles.

/s/ Mayer Hoffman McCann P.C.

MAYER HOFFMAN MCCANN P.C.  
Phoenix, Arizona  
March 9, 2004

**INDEPENDENT AUDITORS REPORT**

The Board of Directors  
Main Street and Main Incorporated:

We have audited the accompanying consolidated balance sheet of Main Street and Main Incorporated and subsidiaries as of December 30, 2002, and the related consolidated statements of operations, changes in stockholders' equity and comprehensive income (loss) and cash flows for the years ended December 30, 2002 and December 31, 2001. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Main Street and Main Incorporated and subsidiaries as of December 30, 2002 and the results of their operations and their cash flows for the years ended December 30, 2002 and December 31, 2001, in conformity with accounting principles generally accepted in United States of America.

As discussed in Note 2 to the consolidated financial statements, the Company adopted the provisions of SFAS No. 142, *Goodwill and Other Intangible Assets* which changed the Company's method of accounting for goodwill and other intangible assets effective January 1, 2002.

/s/ KPMG LLP

Phoenix, Arizona  
March 4, 2003



## MAIN STREET AND MAIN INCORPORATED AND SUBSIDIARIES

## CONSOLIDATED BALANCE SHEETS

(In Thousands, Except Par Value and Share Data)

	December 29, 2003	December 30, 2002
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 4,600	\$ 5,621
Accounts receivable	1,494	1,997
Inventories	2,762	2,832
Prepaid expenses	971	2,104
Total current assets	9,827	12,554
Property and equipment, net	68,129	71,265
Other assets, net	2,218	2,449
Notes receivable, net	1,657	
Goodwill	21,685	22,995
Franchise area fees, net	2,691	3,132
Total assets	\$ 106,207	\$ 112,395
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 3,815	\$ 3,502
Accounts payable	6,408	8,073
Other accrued liabilities	16,577	16,007
Total current liabilities	26,801	27,582
Long-term debt, net of current portion	47,869	51,998
Other liabilities and deferred credits	2,441	3,205
Total liabilities	77,110	82,785
Commitments, contingencies and subsequent events (see notes 4, 7, 8, 9 and 10)		
Stockholders' equity:		
Preferred stock, \$.001 par value, 2,000,000 shares authorized, no shares issued and outstanding in 2003 and 2002		
Common stock, \$.001 par value, 25,000,000 shares authorized, 14,642,000 and 14,142,000 shares issued and outstanding in 2003 and 2002, respectively	15	14
Additional paid-in capital	54,927	53,927
Accumulated other comprehensive loss	(2,053)	(2,504)
Accumulated deficit	(23,792)	(21,827)
Total stockholders' equity	29,097	29,610
Total liabilities and stockholders' equity	\$ 106,207	\$ 112,395

*The accompanying notes are an integral part of these consolidated financial statements.*

## MAIN STREET AND MAIN INCORPORATED AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF OPERATIONS

(In Thousands, Except Per Share Amounts)

	December 29, 2003	Years Ended December 30, 2003	December 31, 2003
Revenue	\$ 224,494	\$ 220,151	\$ 211,823
Restaurant operating expenses			
Cost of sales	60,299	61,270	59,139
Payroll and benefits	70,415	68,997	65,784
Depreciation and amortization	8,386	7,895	7,845
Other operating expenses	70,079	65,912	61,285
Total restaurant operating expenses	209,179	204,074	194,053
Income from restaurant operations	15,315	16,077	17,770
Other operating expense and income:			
Amortization of intangible assets	606	461	1,831
General and administrative expenses	8,977	8,946	8,105
Pre-opening expenses	907	1,619	1,417
New manager training expenses	195	426	327
Impairment charges and other	5,906	7,943	3,453
Management fee income			(432)
Operating income (loss)	(1,276)	(3,318)	3,069
Gain on sale of assets	3,831		
Interest expense and other, net	4,521	3,950	3,825
Net income (loss) before income taxes	(1,966)	(7,268)	(756)
Income tax expense (benefit)		1,309	(645)
Net income (loss)	\$ (1,966)	\$ (8,577)	\$ (111)
Basic earnings per share:			
Net income (loss)	\$ (0.14)	\$ (0.61)	\$ (0.01)
Diluted earnings per share:			
Net income (loss)	\$ (0.14)	\$ (0.61)	\$ (0.01)
Weighted average number of shares outstanding:			
Basic	14,179	14,105	14,048
Diluted	14,179	14,105	14,048

*The accompanying notes are an integral part of these consolidated financial statements.*



**MAIN STREET AND MAIN INCORPORATED AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS EQUITY**  
**AND COMPREHENSIVE INCOME (LOSS)**

(In Thousands)

	Common Stock Shares	Par Value	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total
BALANCES, December 25, 2000	14,045	\$ 14	\$ 53,624	\$ (13,139)		\$ 40,499
Shares issued in connection with options exercised (net)	7		21			21
Shares issued to employees	1					
Comprehensive income (loss):						
Unrealized loss on hedging contract					(202)	(202)
Net loss				(111)		(111)
Comprehensive loss:						(313)
BALANCES, December 31, 2001	14,053	14	53,645	(13,250)	(202)	40,207
Shares issued in connection with options exercised (net)	89		282			282
Comprehensive income (loss):						
Unrealized loss on hedging contract					(2,302)	(2,302)
Net loss				(8,577)		(8,577)
Comprehensive loss:						(10,879)
BALANCES, December 30, 2002	14,142	14	53,927	(21,827)	(2,504)	29,610
Shares issued, common stock	500	1	1,000			1,001
Comprehensive income (loss):						
Unrealized loss on hedging contract					451	451
Net loss				(1,966)		(1,966)
Comprehensive (loss):						(1,515)
BALANCES, December 29, 2003	14,642	\$ 15	\$ 54,927	\$ (23,793)	\$ (2,053)	\$ 29,096

*The accompanying notes are an integral part of these consolidated financial statements.*

## MAIN STREET AND MAIN INCORPORATED AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF CASH FLOWS

(In Thousands)

	December 29, 2003	Years Ended December 30, 2002	December 31, 2001
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income (loss)	\$ (1,966)	\$ (8,577)	\$ (111)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	8,992	8,356	9,676
Amortization of note receivable discount	(22)		
Gain on sale of assets	(3,831)		
Impairment charges and other	5,906	5,674	3,453
Deferred income taxes		1,650	(1,048)
Changes in assets and liabilities:			
Accounts receivable	(390)	686	1,994
Inventories	(55)	(416)	(792)
Prepaid expenses	1,133	(849)	(511)
Other assets, net	56	(300)	(580)
Accounts payable	(1,665)	737	(1,892)
Other accrued liabilities	(891)	2,234	2,340
Cash provided by operating activities	7,267	9,195	12,529
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Additions to property and equipment	(10,253)	(18,548)	(14,013)
Cash received from notes receivable	325		
Cash paid to acquire franchise rights and goodwill	(50)	(30)	(330)
Cash received from the sale of assets	4,505		2,851
Cash used by investing activities	(5,473)	(18,578)	(11,492)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from sale of common stock	1,001		
Financing and offering costs paid			
Proceeds received from the exercise of stock options			
Proceeds received from the exercise of stock options		282	21
Long-term debt borrowings		9,465	6,583
Principal payments on long-term debt	(3,816)	(4,209)	(2,740)
Cash provided (used) by financing activities	(2,815)	5,538	3,864
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>(1,021)</b>	<b>(3,845)</b>	<b>4,901</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING</b>	<b>5,621</b>	<b>9,466</b>	<b>4,565</b>
<b>CASH AND CASH EQUIVALENTS, ENDING</b>	<b>\$ 4,600</b>	<b>\$ 5,621</b>	<b>\$ 9,466</b>

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SUPPLEMENTAL DISCLOSURE OF CASH FLOW  
INFORMATION

Cash paid during the year for interest	\$	4,629	\$	4,139	\$	4,259
Cash paid during the year for income taxes	\$	3	\$	118	\$	1,408

*The accompanying notes are an integral part of these consolidated financial statements.*

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**1. ORGANIZATION AND BASIS OF PRESENTATION**

Main Street and Main Incorporated is a Delaware corporation engaged in the business of acquiring, developing, and operating restaurants. We currently own 54 TGI Friday's restaurants, 12 Bamboo Club restaurants, four Redfish Grill and Bar restaurants, and one Alice Cooper's restaurant.

*Principles of Consolidation*

The consolidated financial statements include the accounts of our company and our wholly owned subsidiaries. All material intercompany transactions have been eliminated in consolidation. All references herein refer to our company and our subsidiaries.

*Fiscal Year*

We operate on a fiscal year that ends on the Monday on or before December 31.

*Use of Estimates*

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires a company to make a number of estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Such estimates and assumptions affect the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, we evaluate estimates and assumptions based upon historical experience and various other factors and circumstances. We believe our estimates and assumptions are reasonable in the circumstances; however, actual results may differ from these estimates under different future conditions.

We believe that the estimates and assumptions that are most important to the portrayal of our financial condition and results of operations, in that they require our most difficult, subjective or complex judgments, form the basis for the accounting policies deemed to be most critical to our operations. These critical accounting policies relate to the valuation and amortizable lives of long-lived assets, goodwill, and other identifiable intangible assets, valuation of deferred tax assets, and reserves related to self-insurance for workers compensation and general liability:

(1) We periodically perform asset impairment analysis of long-lived assets related to our restaurant locations, goodwill, and other identifiable intangible assets. We perform these tests whenever we experience a triggering event, such as a decision to close a location or major change in a location's operating environment, or other event that might impact our ability to recover our asset investment. Also, we have a policy of reviewing the financial operations of our restaurant locations on at least a quarterly basis. Locations that are not meeting expectations are



identified and continue to be watched closely throughout the year. Primarily in the fourth quarter, we review actual results and analyze budgets for the ensuing year. If we deem that a location's results will continue to be below expectations, we analyze alternatives for its continued operation. At this time, we perform an asset impairment test. If we determined that the asset's fair value is less than book and we will be unable to recover the value through operations, we record an impairment charge. Upon an event such as a formal decision for abandonment (restaurant closure), we may record additional impairment of assets, including an allocation of goodwill. Any carryover basis of assets is depreciated over the respective remaining useful lives.

(2) Periodically, we record (or reduce) the valuation allowance against our deferred tax assets to the amount that is more likely than not to be realized based upon recent past financial performance, tax reporting positions, and expectations of future taxable income.

(3) We use an actuarial based methodology utilizing our historical experience factors to adjust periodically self-insurance reserves for workers compensation and general liability claims and settlements. These estimates are adjusted based upon annual information received in July of each year in connection with policy renewals. Estimated costs for the following year are accrued on a monthly basis, and progress against this estimate is re-evaluated based upon actual claim data each quarter.

(4) We use the method of accounting for employee stock options under Accounting Principles Board (APB Opinion 25) and have adopted the pro forma disclosure provisions of Statement of Financial Accounting Standards (SFAS No. 123), which require disclosure of the impact of using the fair value at date of grant method of recording stock-based employee compensation.

We believe estimates and assumptions related to these critical accounting policies are appropriate under the circumstances; however, should future events or occurrences result in unanticipated consequences, there could be a material impact on our future financial condition or results of operations.

#### *New Accounting Pronouncements*

During 2002, we adopted the provisions of SFAS No. 142, which eliminates the amortization of all existing and newly acquired goodwill on a prospective basis and requires companies to assess goodwill impairment, at least annually, based on the fair value of the reporting unit.

In December 2003, the Financial Accounting Standards Board (FASB) issued Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities, an interpretation of ARB No. 51 (FIN 46)*. FIN 46 replaces the earlier version of this interpretation issued in January 2003. FIN 46 addresses the consolidation by business enterprises of variable interest entities as defined. Application of FIN 46 is required in financial statements of public entities that have interests in variable interest entities or potential variable interest entities commonly referred to as special-purpose entities for periods ending after December 15, 2003. Application of FIN 46 to all other types of entities is required in financial statements for periods ending after March 15, 2004 with earlier application permitted if the original interpretation was previously adopted. We adopted the original interpretation and FIN 46 as of December 31, 2003 which did not have a material effect on the Company's financial statements.

In April 2003, the FASB issued SFAS No. 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities*, which is generally effective for contracts entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003. SFAS No. 149 clarifies under what circumstances a contract with an initial net investment meets the characteristic of a derivative as discussed in SFAS No. 133, clarifies when a derivative contains a financing component, amends the definition of an underlying to conform it to the language used in FASB Interpretation No. 45, *Guarantor Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* and amends certain other existing pronouncements. We do not anticipate that the adoption of SFAS No. 149 will have a material impact on our consolidated financial statements.

On May 15, 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*. The Statement requires issuers to classify as liabilities (or assets in some circumstance) three classes of freestanding financial instruments that embody obligations for the issuer. Generally, the Statement is effective for financial instruments entered into or modified after May 31, 2003 and is otherwise effective at the beginning of the first interim period beginning after June 15, 2003. We do not have any outstanding financial instruments within the scope of the Statement and therefore the adoption of this statement on July 1, 2003, did not have a material effect on our consolidated financial statements.

## **2. SIGNIFICANT ACCOUNTING POLICIES AND PROCEDURES**

The consolidated financial statements reflect the application of the following accounting policies:

*Cash and Cash Equivalents*

Cash and cash equivalents include funds on hand, short-term money market investments, and certificate of deposit accounts with original maturities of 90 days or less.

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*Revenue Recognition*

Our principal source of revenue is from customer dining transactions. Revenue is recognized at the time the meal is paid for by the customer, in the form of cash or credit card.

*Deferred Gains*

Deferred gains on sale-leaseback transactions are accreted to income as a reduction of rent expense over the related lease terms in accordance with SFAS No. 98, Accounting for Leases.

**CONSIDERATION RECEIVED FROM VENDORS**

In November 2003, the Emerging Issues Task Force (EITF) issued EITF Issue 03-10, Application of Issue No. 02-16 by *Resellers to Sales Incentives Offered to Consumers by Manufacturers* (EITF 03-10). Sales incentives covered by EITF 03-10 include coupons and other similar instruments for which the reseller receives a direct reimbursement from the vendor. Application of EITF 03-10 to new arrangements, including modifications to existing arrangements, entered into in fiscal periods beginning after November 25, 2003 is required. Application of EITF 03-10 is not expected to have a material effect on the Company's financial statements. In accordance with Issue No. 02-16, we record vendor rebates as a reduction of cost of sales when the rebates are received.

*Inventories*

Inventories consist primarily of food, beverages, and supplies and are stated at the lower of cost, determined on a first-in, first-out basis (FIFO), or net realizable value.

*Fair Market Value of Financial Instruments*

The carrying value of cash equivalents, accounts receivable, other assets, accounts payable, accrued liabilities, and other liabilities approximate fair value due to the short-term nature of these instruments. The revolving line of credit approximate fair value, as they bear interest at indexed rates. Fixed rate long-term debt is currently at rates similar to current quotations for similar debt.

*Property and Equipment*

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Property and equipment are stated at cost and depreciated on a straight-line basis over the estimated useful lives, while leaseholds are amortized over the shorter of 20 years or the lease term including option periods, which have economic penalties, and consist of the following (in thousands): \*\*START HERE

	Useful Lives (years)	December 29, 2003	December 30, 2002
Land		\$ 534	\$ 534
Land held for sale		853	1,203
Building and leasehold improvements	5-20	64,100	58,599
Kitchen equipment	5-7	23,556	22,913
Restaurant equipment	5-10	9,210	10,183
Smallwares and décor	5-10	7,932	7,677
Office equipment, software, and furniture	5-7	6,660	6,445
		112,845	107,554
Less: Accumulated depreciation and amortization		(44,736)	(39,854)
		68,109	67,700
Construction in progress		20	3,565
Total		\$ 68,129	\$ 71,265

Depreciation expense was \$8,651,000 for 2003, \$8,038,000 for 2002, and \$7,912,000 for 2001.

Construction in progress (CIP) represents costs incurred by us during the development of future restaurant sites for fixtures and building improvements. As a result of lease cancellations of not yet built Bamboo Club locations (Fairfax, Virginia, San Antonio, Texas, and Fort Worth, Texas), we wrote off construction in progress costs of \$415,000 during 2002.

#### *Franchise Fees*

Franchise fees represent the value assigned to the franchise agreements in the regions acquired and to the licenses to operate the restaurants. These agreements provide for an initial term of 20 to 30 years, with two renewal terms of 10 years each. Franchise area goodwill represents goodwill allocated to the geographic area for developing TGI Friday's restaurant purchased, and it qualifies as an intangible asset with a determinable life. These costs are being amortized on a straight-line basis over the life of the agreement and consist of the following (in thousands):

	Amortization Period (years)	December 29, 2003	December 30, 2002
Franchise area goodwill	20	\$ 769	\$ 994
Franchise fees and license costs	20-30	3,099	3,173
Less: Accumulated amortization		(1,177)	(1,035)
Total		\$ 2,691	\$ 3,132

#### *Goodwill*

We have recorded significant goodwill in conjunction with major acquisitions. During 2002, we adopted SFAS No. 142, Goodwill and Other Intangible Assets. SFAS 142 eliminates the amortization of all existing and newly acquired goodwill on a prospective basis and requires companies to assess goodwill impairment, at least annually, based on the fair value of the reporting unit. We no longer amortize goodwill.

As of the date of adoption, January 2002, we had unamortized goodwill of \$25,149,000 that was subject to the transition provisions of SFAS Nos. 141 and 142. Accumulated amortization related to goodwill was \$5,914,000 as of the date of adoption.

During 2002, we wrote off \$1,160,000 of allocated goodwill associated with one closed location (Kansas City, Missouri) and two impaired locations (Palm Desert, California and Citrus Heights, California). After this goodwill write-off, at December 30, 2002, we performed a valuation in accordance with SFAS No. 142 for the purpose of determining the amount of goodwill impairment. Based on the results of the valuation, no additional impairment was required. Additionally, during 2002, we reclassified \$994,000 of goodwill to franchise area goodwill, which is classified as an intangible asset that requires amortization under SFAS No. 142. Franchise area goodwill represents the estimated value we paid to acquire the franchise rights to develop restaurants in certain locations, at the date of original purchase. As a result of these transactions, goodwill was \$22,995,000 at the end of 2002.

During 2003, we wrote off \$1,310,000 in allocated goodwill associated with one closed Redfish Grill and Bar (Denver, CO), one closed TGI Friday's location (sale of Sacramento, CA), one impaired Bamboo Club location (Newport, KY), and one TGI Friday's location that will close in

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early 2004 (Salinas, CA). As a result of these transactions, goodwill was \$21,685,000 at the end of 2003. At December 29, 2003, we performed a valuation in accordance with SFAS No.142 for the purpose of determining the amount of goodwill impairment. Based on the results of the valuation, no additional impairment was required.

<b>Goodwill Allocated to Areas</b>	<b>December 29, 2003</b>		<b>December 30, 2002</b>	
Acquisition of California TGI Friday s	\$	9,890	\$	10,750
Acquisition of Midwest and Arizona TGI Friday s		1,495		1,495
Acquisition of Redfish		300		450
Acquisition of Bamboo Club		10,000		10,300
Total	\$	21,685	\$	22,995

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The following table presents reported net loss and loss per share exclusive of goodwill amortization expense for the years ended December 29, 2003, December 30, 2002, and December 31, 2001 (in thousands except per share amounts):

	2003	2002	2001
Reported net income (loss)	\$ (1,966)	\$ (8,577)	\$ (111)
Add back goodwill amortization			1,455
Adjusted net income (loss)	\$ (1,966)	\$ (8,577)	\$ 1,344
<b>Basic Income (loss) Per Share:</b>			
Reported net income (loss) per common share	\$ (0.14)	\$ (0.61)	\$ (0.01)
Add back goodwill amortization			0.11
Adjusted net income (loss) per share	\$ (0.14)	\$ (0.61)	\$ 0.10
<b>Diluted Income (loss) Per Share:</b>			
Reported net income (loss) per common share	\$ (0.14)	\$ (0.61)	\$ (0.01)
Add back goodwill amortization			0.11
Adjusted net income (loss) per share	\$ (0.14)	\$ (0.61)	\$ 0.10

### *Other Accrued Liabilities*

Other accrued liabilities consisted of the following (in thousands):

	December 29, 2003	December 30, 2002
Accrued payroll	\$ 4,033	\$ 3,736
Accrued property and sales tax	1,968	1,912
Accrued insurance		1,415
Accrued rent	4,199	3,142
Gift certificate liability	1,504	1,249
Other accrued liabilities	4,873	4,553
Total	\$ 16,577	\$ 16,007

### *Income Taxes*

We utilize the asset and liability method of accounting for income taxes. Under the asset and liability method, deferred taxes are provided based on temporary differences between the financial reporting basis and the tax basis of our assets and liabilities, using enacted tax rates in the years in which the differences are expected to reverse. Deferred tax assets are reviewed periodically for recoverability and valuation allowances are provided as necessary.



*Earnings (Loss) Per Share*

Basic earnings (loss) per share ( EPS ) is computed by dividing earnings (loss) available to common stockholders by the weighted-average number of shares outstanding for the period. Diluted earnings (loss) per share reflects the potential dilution that could occur if securities or contracts to issue common stock were exercised or converted to stock or resulted in the issuance of stock that then shared in our earnings or losses.

The assumed exercise of outstanding stock options and warrants has been excluded from the calculations of diluted net loss per share as their effect is anti-dilutive.

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We have calculated EPS in accordance with SFAS No. 128, Earnings Per Share. The following table sets forth basic and diluted EPS computations for the years ended December 29, 2003, December 30, 2002, and December 31, 2001 (in thousands, except per share amounts):

	2003			2002			2001		
	Net Loss	Shares	Per Share Amount	Net Income	Shares	Per Share Amount	Net Income	Shares	Per Share Amount
Basic EPS	\$ (1,966)	14,179	\$ (0.14)	\$ (8,577)	14,105	\$ (0.61)	\$ (111)	14,048	\$ (0.01)
Effect of stock options and warrants		1			594			533	
Anti-dilutive stock options and warrants		(1)			(594)			(533)	
Diluted EPS	\$ (1,966)	14,179	\$ (0.14)	\$ (8,577)	14,105	\$ (0.61)	\$ (111)	14,048	\$ (0.01)

*Segment Reporting*

We have three operating segments that are managed based on our restaurant concepts, TGI Friday's, Bamboo Club, Redfish, and Alice Cooperstown. SFAS No. 131 allows for aggregation of similar operating segments into a single reportable operating segment if the components are considered similar under certain criteria. As a result of the foregoing, we believe that our restaurants meet the criteria supporting aggregation of all restaurants into one reporting unit. Accordingly, we have not presented separate financial information for each of our operating segments, as our consolidated financial statements present our one reporting unit.

*Stock-Based Compensation Plans*

SFAS No.123, *Accounting for Stock-Based Compensation*, was issued by the FASB in 1995 and, if fully adopted, changed the methods for recognition of cost on plans similar to those of our company. Adoption of SFAS No. 123 was optional; however, pro forma disclosures as if we had adopted the cost recognition method are required. Had compensation cost for stock options awarded under these plans been determined consistent with SFAS No. 123, our net income (loss) and EPS would have reflected the following pro forma amounts:

	December 29, 2003	December 30, 2002	December 31, 2001
(In Thousands, Except Per Share Amounts)			
Net Income (loss):			
As Reported	\$ (1,966)	\$ (8,577)	\$ (111)
Compensation Expense	\$ (944)	\$ (1,047)	\$ (850)
Pro Forma	\$ (2,910)	\$ (9,624)	\$ (961)
Earnings (loss) per share:			

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Shares		14,179		14,105		14,048
As Reported-basic and diluted	\$	(0.14)	\$	(0.61)	\$	(0.01)
Pro Forma-basic and diluted	\$	(0.21)	\$	(0.68)	\$	(0.07)

The weighted average fair value at the date of grant for options granted during fiscal 2003, 2002, and 2001 were estimated using the Black-Scholes option pricing model with the following assumptions: weighted average risk-free interest rate of 3.00%, 2.73%, and 5.22%, respectively; weighted average volatility of 65.6%, 53.7%, and

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50.0%, respectively; average life of the option of three years, four and four years, respectively; and weighted average dividend yield of 0.0% in all years.

Details regarding the options outstanding as of December 29, 2003 are as follows:

Range of Exercise Price	Number of Shares	Outstanding		Exercisable	
		Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
\$1.67 - \$2.75	1,652,000	5.53 years	\$ 2.24	1,039,000	\$ 2.29
\$3.00 - \$3.65	1,550,004	5.72 years	\$ 3.34	1,447,337	\$ 3.32
\$4.00 - \$6.01	655,750	6.82 years	\$ 4.74	341,917	\$ 4.77
Total	3,857,754			2,828,254	

*Derivative Financial Instruments*

We have only limited involvement with derivative financial instruments and do not use them for trading purposes. We utilize an interest rate swap agreement to hedge the effects of fluctuations in interest rates related to one of our long-term debt instruments. The interest rate swap agreement meets the criteria for cash flow hedge accounting. Amounts receivable or payable due to settlement of the interest rate swap agreement are recognized as interest expense on a monthly basis. A mark-to-market adjustment is recorded as a component of stockholders equity, net of taxes, to reflect the fair value of the interest rate swap agreement. We discontinue hedge accounting prospectively if it is determined that the derivative is no longer effective.

In conjunction with the Bank of America development facility, we have an interest rate swap agreement with Bank of America, which fixes our base interest rate at 6.26% per annum on a notional amount of \$12,500,000 from July 2002 through June 2014. The swap qualifies as a cash flow hedge in accordance with SFAS No. 133. On a periodic basis, we adjust the fair market value of the swap on the balance sheet and offset the amount of the change to other comprehensive income (loss). As of December 29, 2003 and December 30, 2002, the fair value of the hedge resulted in a liability of \$1,471,893, and \$1,884,919 respectively

We also have an interest rate swap agreement with Bank of America on a note held by CNL Funding with a remaining unpaid balance of \$5,516,000. The interest rate on the note, 9.457%, is the same as the interest rate to be received under the interest rate swap agreement. The swap effectively floats the 9.457% note to a 30-day LIBOR base plus a spread of 4.34% on a notional amount of \$5,516,000. On a quarterly basis, we adjust the fair market value of the swap on the balance sheet and offset the amount of the change to other comprehensive income (loss). As of December 29, 2003 and December 30, 2002, the fair value of the hedge resulted in an asset of \$330,582 and \$450,114, respectively.

We also have an additional interest rate swap agreement with Bank of America. This swap agreement effectively fixes our interest rate at 5.65% per annum (plus credit spread) on a notional amount of \$10,700,000 from May 2002 through May 2012. The swap qualifies as a cash flow hedge in accordance with SFAS No. 133. On a periodic basis, we adjust the fair market value of the swap on the balance sheet and offset the

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amount of the change to other comprehensive income (loss). As of December 29, 2003 and December 30, 2002, the fair value of the hedge resulted in a liability of \$911,798 and \$1,203,299, respectively.

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Comprehensive Income (Loss)	December 29, 2003	December 30, 2002
Net Income (loss)	\$ (1,966)	\$ (8,577)
Other comprehensive income (loss), for the periods ended December 29, 2003 and December 30, 2002, respectively	451	(2,302)
Comprehensive income (loss)	\$ (1,515)	\$ (10,879)

*Reclassifications*

Certain prior year amounts have been reclassified to conform to the current year presentation. Effective January 1, 2003, we began charging the costs of training new managers related to the replacement of existing managers to the payroll and benefits account. In previous years, this expense was included in the new manager training account. The reclassifications made during 2002 and 2001 were approximately \$1,394,000 and \$1,349,000, respectively.

*Accounting for Long-Lived Assets and Impairment Charges*

Long-lived assets are reviewed for impairment whenever events or circumstances indicate that the carrying amount of the asset may not be recoverable. If the sum of the expected future cash flows (undiscounted and without interest charges) from an asset to be held and used in operations is less than the carrying value of the asset, an impairment loss must be recognized in the amount of the difference between the carrying value and the fair value of the assets.

We have a policy of reviewing the financial operations of our restaurant locations on at least a quarterly basis. Locations that are not meeting expectations are identified and continue to be monitored closely throughout the year. Primarily in the fourth quarter, we review actual results and budgets for the ensuing year are analyzed. If we deem that a location's results will continue to be below expectations, we consider alternatives for its continued operation. At that time, we perform asset impairment testing. If it is determined that the fair value of an asset is greater than its carrying value, an impairment charge is recorded. Upon a triggering event such as a formal decision for abandonment (restaurant closure), we may record additional impairment of assets, including an allocation of goodwill. Any carryover basis of assets is depreciated over the respective remaining useful lives.

Fair value of assets is determined primarily on the likelihood of future use of the assets through operations or by the value that could be received for the asset if sold.

Other charges include write-offs of allocated goodwill, severance costs, lease and contract termination fees, professional service costs, and settlement of litigation. During fiscal years ended 2003, 2002, and 2001, we recorded asset impairment charges and other as follows (in thousands):

December 29, 2003	December 30, 2002	December 31, 2001
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Long-lived asset impairments and other	\$	3,051	\$	4,323	\$	1,838
Write-off of goodwill allocated to closed or impaired stores		905		1,160		
Provision for Severance		300				
Lease cancellation charges		500		2,060		
Impairment of receivables (Mngmt. Agreement)		800				1,615
Write-down of land (El Paso, Texas)		350		400		
Total impairment charges and other	\$	5,906	\$	7,943	\$	3,453

The long-lived asset impairment amount in the table above represents the net book value of the fixed assets which will not be recovered through regular operations, computed on a discounted cash flow basis. The amount in

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2003 is attributable primarily of impairment of two Bamboo Club locations and the closure of one Redfish location. The amount in 2002 is attributable primarily of impairments related to six TGI Friday s locations; three not yet built Bamboo Club locations; and one Redfish location. The amount in 2001 is primarily attributable to the impairment of assets at four TGI Friday s locations, and two Redfish locations.

*Valuation Reserves*

Valuation reserves for the years ended December 29, 2003, December 30, 2002, and December 31, 2001, consist of the following:

	Balance at Beginning of Period	Expense Recorded	Payments Made	Balance at End of Period
<b>Reserve for legal settlement losses:</b>				
Year ended December 29, 2003	\$	\$	\$	\$
Year ended December 30, 2002	\$ 34,000	\$ (30,000)	\$ (4,000)	\$
Year ended December 31, 2001	\$ 149,000		\$ (115,000)	\$ 34,000
<b>Insurance and claims reserves (prepaids):</b>				
Year ended December 29, 2003	\$ 1,415,300	\$ 6,694,400	\$ (8,182,808)	\$ (73,108)
Year ended December 30, 2002	\$ 2,616,300	\$ 9,629,935	\$ (10,830,935)	\$ 1,415,300
Year ended December 31, 2001	\$ 1,668,700	\$ 5,258,539	\$ (4,310,939)	\$ 2,616,300

**3. INCOME TAXES**

Income tax expense (benefit) consists of the following (in thousands):

	Current	Deferred	Total
<b>Year ended December 29, 2003:</b>			
U.S. Federal	\$	\$	\$
State and local			
	\$	\$	\$
<b>Year ended December 30, 2002:</b>			
U.S. Federal	\$ (341)	\$ 1,536	\$ 1,195
State and local		114	114
	\$ (341)	\$ 1,650	\$ 1,309
<b>Year ended December 31, 2001:</b>			
U.S. Federal	\$ 228	\$ (913)	\$ (685)
State and local	175	(135)	40
	\$ 403	\$ (1,048)	\$ (645)



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Deferred income taxes arise due to differences in the treatment of income and expense items for financial reporting and income tax purposes. In the current year, we generated a net operating loss. The effect of temporary differences and carryforwards that gave rise to deferred tax balances at December 29, 2003 and December 30, 2002, were as follows (in thousands):

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Net Deferred Tax Assets/(Liabilities)	December 29, 2003	December 30, 2002
	(In Thousands)	
Temporary differences:		
Basis differences in investments	\$ 558	\$ 366
Basis differences in depreciable and amortizable assets	(4,709)	(4,942)
Provision for estimated expenses	1,986	3,403
Revenue recognition	36	50
Interest rate swap	821	921
Tax carryforwards:		
General business and AMT credits	5,791	5,791
Charitable Contribution	7	
Net operating loss and capital loss carryforwards	5,471	3,621
Valuation reserve	(9,961)	(9,210)
<b>Total</b>	<b>\$</b>	<b>\$</b>

At December 29, 2003, we had approximately \$13,988,000 federal net operating and tax credit carryforwards to be used to offset future income for federal income tax purposes. These carryforwards expire in the years 2004 to 2021. The net change in the total valuation allowance for the year ended December 29, 2003 and December 30, 2002, is the result of providing a full valuation allowance against all deferred tax assets because of the significant loss in 2002 and 2003.

We believe that our ability to utilize our net operating loss carryforwards and certain of our general business and AMT credits to offset future taxable income within the carryforward periods under existing tax laws and regulations is subject to future profitability. However, because we have suffered significant net losses in the last three years, we have concluded that a 100% valuation allowance against our net deferred tax assets continues to be warranted. Reconciliations of the federal income tax rate to our effective tax rate were as follows:

	December 29, 2003	December 30, 2002	December 31, 2001
Statutory federal rate	(34.0)%	(34.0)%	(34.0)%
State taxes, net of federal benefit		1.3	51.4
Non deductible expenses	0.66	0.23	4.4
Expiration of capital loss		13.3	
Change in valuation allowance	33.34	37.17	(107.1)
	0.0%	18.0%	(85.3)%

At December 29, 2003 and December 30, 2002, \$384,000 and \$1,216,000, respectively, of estimated income tax payments are included in prepaid expenses.

#### 4. LINE OF CREDIT

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During 2003, we entered into a \$2.5 million, one-year revolving line of credit with a bank. At December 29, 2003, \$7,000 was outstanding on this line.

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## 5. LONG-TERM DEBT

Long-term debt consists of the following (in thousands):

	Maturity Dates	Interest Rates as of December 29, 2003	Annual Principal Payments	December 29, 2003	December 30, 2002
CNL Term Loan II, secured by assets of 16 TGI Friday's Restaurants	2012-2013	9.457%	\$ 1,200	\$ 14,375	\$ 16,535
Bank of America	2013	3.75%	900	16,046	15,738
Merrill Lynch	2007-15	3.96%	470	5,029	5,485
FFCA	2002-16	10.5%	32		32
GE Capital	2002-14	4.81%	1,000	12,792	2,774
GMAC	2010-15	10.56%	253	3,442	14,936
Total			\$ 3,823	51,684	55,500
Less current portion				(3,815)	(3,502)
Total				\$ 47,869	\$ 51,998

We have a \$15 million financing commitment through GE Franchise Finance. The terms include \$6 million for financing of equipment and leasehold improvements for the seven Bamboo Clubs already open and approximately \$9 million for new Bamboo Club development. At December 29, 2003, there were no borrowings outstanding under this commitment.

In July 2002, we amended our Bank of America development facility to provide for an additional \$1,000,000 in financing. During 2002, we borrowed an additional \$9,465,000 to fund construction on two locations (TGI Friday's San Tan, Chandler, Arizona and Porter Ranch, California) and to refinance two existing locations (TGI Friday's Cerritos, California and Oxnard, California) for which we paid off higher rate debt. By September 30, 2002, we had fully utilized our development facility with Bank of America.

All of our loan agreements contain various financial covenants that are generally measured at the end of each calendar quarter. There are two key covenants we must meet. One loan agreement requires a cash flow coverage test, which requires us to produce a level of earnings before interest, taxes, depreciation, and amortization and other unusual gains or losses (EBITDA) in excess of the next 12 months amount of the principal and interest under our debt obligations. Other loan agreements modify this covenant for items such as pre-opening costs and rent expense, making it more of a fixed charge coverage test.

Another covenant restricts the aggregate amount of total senior debt we can have to a multiple of EBITDA.

At December 29, 2003, we met all of the financial covenants, as amended, for all debt agreements. All long-term debt is secured by certain assets of various restaurant locations.

Maturities of long-term debt, giving effect to the borrowings discussed above, were as follows at December 29, 2003 (in thousands):

2003	\$	3,815
2004		4,190
2005		4,416
2006		4,762
2007		4,991
Thereafter		29,510
Total	\$	51,684

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## 6. STOCKHOLDERS EQUITY

### *Stock Options*

We have an Incentive Stock Option Plan (the 2002 Plan ) that provides for the issuance of options to acquire up to 1,000,000 shares of our common stock. The options are intended to qualify as incentive stock options within the meaning of Section 422A of the Internal Revenue Code or as options which are not intended to meet the requirements of such section ( non-qualified stock options ). Awards granted under the 2002 Plan also may include stock appreciation rights and restricted stock awards.

The exercise price of all incentive stock options granted under the 2002 Plan must be at least equal to the fair market value of such shares as of the date of grant or, in the case of incentive stock options granted to the holder of 10% or more of the our common stock, at least 110% of the fair market value of such shares on the date of grant. The plan administrator (currently the Board of Directors) sets the term of each stock option, but no incentive stock option may be exercisable more than 10 years after the date such option is granted. We also have granted options under the 1990, 1995, and 1999 Incentive Stock option Plans, all of which contain similar terms to the 2002 Incentive Stock Option Plan.

On June 17, 2003, we issued approximately 291,250 options to directors, management, and key employees with an exercise price of \$2.17 per share, the fair market value of our common stock on the date of grant.

We are also authorized to issue or have outstanding options under all of our unexpired stock option plans. In addition, our Board of Directors approved the issuance of 50,000 non-statutory stock options to one of our officers during 2000 and 150,000 non-statutory stock options to one of our officers in 2001.

A summary of the status of our stock option plans at December 29, 2003, December 30, 2002, and December 31, 2001 and changes during the years then ended is presented in the table and narrative below:

	2003		2002		2001	
	Shares	Wtd. Avg. Price	Shares	Wtd. Avg. Price	Shares	Wtd. Avg. Price
Options outstanding at beginning of period	3,487,420	\$ 3.30	3,234,497	\$ 3.14	2,733,000	\$ 3.05
Granted	630,250	2.15	444,250	2.87	644,000	3.79
Exercised			(117,664)	3.26	(6,999)	3.02
Cancelled	(259,916)	3.64	(73,663)	3.43	(135,504)	3.47
Options outstanding at end of period	3,857,754	3.10	3,487,420	3.30	3,234,497	3.14
Exercisable at end of period	2,828,254	3.12	2,624,780	3.03	2,112,332	2.96
Weighted average fair value of options granted		\$ 1.50		\$ 3.04		\$ 2.56

*Common Stock Warrants*

As of December 29, 2003 and December 30, 2002, we had 231,277 outstanding warrants to acquire our common stock with our lenders in connection with the issuances of previously paid-off debt. The warrants are exercisable at \$9.08 per share and expire in March 2004.

**7. COMMITMENTS AND CONTINGENCIES**

*Development Agreements*

We are obligated under separate development agreements with TGI Friday's Inc. to open 16 new TGI Friday's restaurants through 2009. The development agreements give TGI Friday's Inc. certain remedies in the event

we fail to timely comply with the development agreements, including the right, under certain circumstances, to terminate our exclusive rights to develop restaurants in the related franchised territory. Our development territories include most of Arizona, Nevada, New Mexico, Southern California, and the El Paso metropolitan areas. We currently are negotiating for one new TGI Friday's restaurant site and do not anticipate building any additional TGI Friday's during 2004.

*Franchise, License, and Marketing Agreements*

In accordance with the terms of the TGI Friday's restaurant franchise agreements, we are required to pay franchise fees of \$50,000 for each restaurant opened. We also are required to pay a royalty of up to 4% of gross sales. Royalty expense was approximately \$7,510,000, \$7,476,000, and \$7,444,000 under these agreements during 2003, 2002, and 2001, respectively. In addition, we could be required to spend up to 4% of gross sales on marketing. Marketing expense for TGI Friday's restaurant locations under these agreements was approximately \$6,195,000, \$5,250,000, and \$4,772,000 during 2003, 2002, and 2001, respectively.

*Operating Leases*

We lease land and restaurant facilities under operating leases having terms expiring at various dates through January 2020. The restaurant leases have from two to three renewal clauses of five years each at our option, and have provisions for contingent rentals based upon a percentage of gross sales. Our minimum future lease payments as of December 29, 2003, were as follows (in thousands):

2004	\$	12,019
2005		11,891
2006		11,493
2007		11,043
2008		10,797
Thereafter		74,331
Total	\$	131,574

Rent expense during 2003, 2002, and 2001 was approximately \$12.4 million, \$11.9 million, and \$10.8 million, respectively. In addition, we paid contingent rentals of \$958,000, \$1,061,000, and \$1,060,000 during 2003, 2002, and 2001, respectively. The difference between rent expense and rent paid due to recording expenses on the straight-line method is included in other liabilities and deferred credits in the accompanying consolidated balance sheets.

*Contingencies*

In the normal course of business, we are named as a defendant in various claims and litigation matters. From time to time, we are subject to routine contract, negligence, employment related, and other litigation in the ordinary course of business. In January 2002, we were served with a lawsuit filed on behalf of a current employee, seeking damages, under California law, for both missed breaks and missed meal breaks the employee alleges she did not receive. This lawsuit seeks to establish a class action relating to our California operations. We intend to vigorously



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defend this lawsuit, both on the merits of the employee's case and the issues relating to class action status. Other than the preceding, we are not subject to any pending litigation that we believe will have a material adverse effect on our business or financial condition, results of operations, or liquidity.

The state of California initiated a sales tax audit of our restaurants and determined that the optional 15% gratuity added to checks for parties of eight or more should have been subject to sales tax and as such has assessed taxes and related penalties of approximately \$900,000. We have vigorously contested this assessment. The first of various appeal conferences was held on November 13, 2003. In February 2004, we were notified that our appeal was denied by the appeals officer. We are in the process of preparing a second appeal to the full state of California Franchise Tax Board. We are unable to predict the outcome of this proceeding and have provided no amounts for this contingency.

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We are also subject, from time to time, to audit by various taxing authorities reviewing our income, property, sales, use, and payroll taxes. We believe that any finding from such audits will not have a material impact on our financial position, results of operations, or liquidity.

**8. BENEFIT PLANS**

We maintain a 401(k) Savings Plan for all of our employees. We currently match 50% of the participants' contributions for the first 4% of the participants' compensation. Contributions made by us were approximately \$235,000, \$257,000, and \$248,000 during 2003, 2002, and 2001, respectively.

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**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Exhibit</b>
31.1	Certification of President and Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended
31.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended
32.1	Certification of President and Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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