

BJs RESTAURANTS INC  
Form 10-Q  
May 06, 2013  
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
**FORM 10-Q**

(Mark One)

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

For the Quarterly Period Ended April 2, 2013

OR

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

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

Commission file number 0-21423

**BJ S RESTAURANTS, INC.**

(Exact name of registrant as specified in its charter)

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

**33-0485615**  
(I.R.S. Employer  
Identification Number)

**7755 Center Avenue**

**Suite 300**

**Huntington Beach, California 92647**

**(714) 500-2400**

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every interactive data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or

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for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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

As of May 3, 2013, there were 28,162,908 shares of Common Stock of the Registrant outstanding.

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**BJ S RESTAURANTS, INC.**

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**For the thirteen weeks ended April 2, 2013**

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

	<b>April 2, 2013</b>	<b>January 1, 2013</b>
	<b>(Unaudited)</b>	<b>(Audited)</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$23,886	\$15,074
Marketable securities	16,560	18,316
Accounts and other receivables	11,045	18,929
Inventories	6,492	6,061
Prepays and other current assets	7,544	8,619
Deferred income taxes	15,612	15,721
<b>Total current assets</b>	<b>81,139</b>	<b>82,720</b>
Property and equipment, net	467,791	457,499
Long-term marketable securities	7,734	7,534
Goodwill	4,673	4,673
Notes receivable		110
Other assets, net	14,745	14,340
<b>Total assets</b>	<b>\$576,082</b>	<b>\$566,876</b>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable	\$21,287	\$25,665
Accrued expenses	56,404	56,819
<b>Total current liabilities</b>	<b>77,691</b>	<b>82,484</b>
Deferred income taxes	42,806	40,847
Deferred rent	19,555	18,645
Deferred lease incentives	49,465	48,422
Other liabilities	4,972	4,644
<b>Total liabilities</b>	<b>194,489</b>	<b>195,042</b>
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, 5,000 shares authorized, none issued or outstanding	181,091	180,940

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Common stock, no par value, 125,000 shares authorized and 28,149 and 28,072 shares issued and outstanding as of April 2, 2013 and January 1, 2013, respectively		
Capital surplus	40,147	38,812
Retained earnings	160,355	152,082
Total shareholders' equity	381,593	371,834
Total liabilities and shareholders' equity	\$576,082	\$566,876

See accompanying notes to unaudited consolidated financial statements.

**Table of Contents****BJ S RESTAURANTS, INC.****UNAUDITED CONSOLIDATED STATEMENTS OF INCOME****(In thousands, except per share data)**

	<b>For The Thirteen Weeks Ended</b>	
	<b>April 2, 2013</b>	<b>April 3, 2012</b>
Revenues	\$188,625	\$167,604
Costs and expenses:		
Cost of sales	46,294	41,191
Labor and benefits	65,933	58,516
Occupancy and operating	40,576	34,762
General and administrative	12,709	10,713
Depreciation and amortization	11,469	9,526
Restaurant opening	712	1,079
Loss on disposal of assets	100	54
Total costs and expenses	177,793	155,841
Income from operations	10,832	11,763
Other income (expense):		
Interest income	57	69
Interest expense	(10)	(24)
Other income, net	324	333
Total other income	371	378
Income before income taxes	11,203	12,141
Income tax expense	2,930	3,526
Net income	\$8,273	\$8,615
Net income per share:		
Basic	\$0.29	\$0.31
Diluted	\$0.29	\$0.30
Weighted average number of shares outstanding:		
Basic	28,139	27,908
Diluted	28,838	29,010

See accompanying notes to unaudited consolidated financial statements.



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

	<b>For The Thirteen Weeks Ended</b>	
	<b>April 2, 2013</b>	<b>April 3, 2012</b>
<b>Cash flows from operating activities:</b>		
Net income	\$8,273	\$8,615
<b>Adjustments to reconcile net income to net cash provided by (used in) operating activities:</b>		
Depreciation and amortization	11,469	9,526
Deferred income taxes	2,068	1,828
Stock-based compensation expense	1,167	1,075
Loss on disposal of assets	100	54
<b>Changes in assets and liabilities:</b>		
Accounts and other receivables	7,884	1,320
Inventories	(431)	515
Prepays and other current assets	1,075	1,455
Other assets, net	(410)	(893)
Accounts payable	4,064	(3,428)
Accrued expenses	(415)	(2,465)
Deferred rent	910	590
Deferred lease incentives	1,043	2,883
Other liabilities	328	452
<b>Net cash provided by operating activities</b>	<b>37,125</b>	<b>21,527</b>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(30,260)	(18,027)
Proceeds from sale of assets	14	
Proceeds from marketable securities sold	8,054	9,730
Purchases of marketable securities	(6,498)	(10,977)
Collection of notes receivable	110	27
<b>Net cash used in investing activities</b>	<b>(28,580)</b>	<b>(19,247)</b>
<b>Cash flows from financing activities:</b>		
Excess tax benefit from stock-based compensation	328	414
Taxes paid on vested stock units under employee plans	(212)	(15)
Proceeds from exercise of stock options	151	663
Landlord contribution for tenant improvements, net		(2,844)
<b>Net cash provided by (used in) financing activities</b>	<b>267</b>	<b>(1,782)</b>
<b>Net increase in cash and cash equivalents</b>	<b>8,812</b>	<b>498</b>
Cash and cash equivalents, beginning of period	15,074	22,391
Cash and cash equivalents, end of period	\$23,886	\$22,889

**Supplemental disclosure of cash flow information:**



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Cash paid for interest, net of capitalized interest	\$	\$
Cash paid for income taxes	\$1,423	\$383
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Fixed assets acquired by accounts payable	\$1,535	\$705
Stock-based compensation capitalized	\$52	\$52

See accompanying notes to unaudited consolidated financial statements.

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**BJ S RESTAURANTS, INC.**

**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**1. BASIS OF PRESENTATION**

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

Certain information and footnote disclosures normally included in consolidated financial statements in accordance with U.S. GAAP have been omitted pursuant to requirements of the U.S. Securities and Exchange Commission ( SEC ). A description of our accounting policies and other financial information is included in our audited consolidated financial statements as filed with the SEC on Form 10-K for the year ended January 1, 2013. We believe that the disclosures included in our accompanying interim financial statements and footnotes are adequate to make the information not misleading, but should be read in conjunction with our consolidated financial statements and notes thereto included in the Annual Report on Form 10-K. The accompanying consolidated balance sheet as of January 1, 2013, has been derived from our audited consolidated financial statements.

***Reclassifications***

Certain reclassifications of prior period s financial statement amounts have been made to conform to the current period s format.

**2. MARKETABLE SECURITIES**

Our investment policy restricts the investment of our excess cash balances to instruments with historically minimal volatility, such as money market funds, U.S. Treasury and direct agency obligations, municipal and bank securities, and investment-grade corporate debt securities. All highly liquid investments with maturities of three months or less at the date of purchase are classified as cash equivalents and included with cash and cash equivalents on our Consolidated Balance Sheets. Marketable securities, which we have the intent and ability to hold until maturity, are classified as held-to-maturity securities and reported at amortized cost, which approximates fair value. Marketable securities, in the form of variable rate demand notes with expected put dates prior to the contractual maturity of the underlying debt security and backed by financial institutions in the form of a letter of credit or liquidity facility, are classified as available-for-sale securities. These securities are reported at fair value and classified as Level 2 in the three-tier fair value hierarchy, as further described in Note 3. Any unrealized gains or losses on available-for-sale securities would be recorded in other comprehensive income. As of April 2, 2013 and January 1, 2013, there were no unrealized gains or losses with respect to available-for-sale securities.

We determine the appropriate classification of our marketable securities at the time of purchase and reevaluate the held-to-maturity or available-for-sale designations as of each balance sheet date. Marketable securities are classified as either short-term or long-term based on each instrument s underlying contractual maturity date or the expected put date. Marketable securities with maturities or expected put dates of 12 months or less are classified as short-term and marketable securities with maturities or expected put dates greater than 12 months are classified as long-term. Gains or losses are determined on the specific identification cost method and recorded in earnings when realized.

Investments in marketable securities consist of the following (in thousands):

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	April 2, 2013		January 1, 2013	
	Fair Value	Average Maturity (1)	Fair Value	Average Maturity (1)

**Available-for-sale**

Short-term marketable securities:

Municipal securities, U.S. Treasury and direct agency obligations	\$		\$650	<1 month
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	April 2, 2013		January 1, 2013	
	Amortized Cost	Average Maturity (1)	Amortized Cost	Average Maturity (1)

**Held-to-maturity**

Short-term marketable securities:

Municipal securities, U.S. Treasury and direct agency obligations	\$12,522	5 months	\$13,587	7 months
Domestic corporate obligations	4,038	3 months	4,079	6 months

	\$16,560		\$17,666	
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Long-term marketable securities:

Municipal securities and direct agency obligations	\$6,138	17 months	\$5,392	16 months
Domestic corporate obligations	1,596	19 months	2,142	22 months

	\$7,734		\$7,534	
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- (1) Average maturity is determined from the respective balance sheet dates and reported in the table as the lesser of the original maturity date or the expected put date for each investment type.

**3. FAIR VALUE MEASUREMENT**

In accordance with U.S. GAAP, a framework for using fair value to measure assets and liabilities was established by defining a three-tier fair value hierarchy, which prioritizes the inputs used to measure fair value. These tiers include:

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

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

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

At April 2, 2013, we had approximately \$48.2 million of cash and cash equivalents and marketable securities. Our marketable securities are held by institutional brokers, classified as held-to-maturity securities and reported at amortized cost, which approximates fair value, or variable rate demand notes classified as available-for-sale and reported at fair value, if any. We have placed a majority of our temporary excess cash with major financial institutions and institutional brokers that, in turn, invest in instruments with historically minimal volatility, such as money

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market funds, U.S. Treasury and direct agency obligations, municipal and bank securities, and investment-grade corporate debt securities. Our investment policy limits the amount of exposure to any one institution or investment. We have not experienced any losses on these marketable securities to date, and we believe that we are not exposed to significant risk of loss on these marketable securities.

### **4. LONG-TERM DEBT**

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On February 17, 2012, we entered into a \$75 million unsecured revolving line of credit ( Line of Credit ) with a major financial institution. The Line of Credit expires on January 31, 2017, and may be used for working capital and other general corporate purposes. We utilize the Line of Credit principally for letters of credit that are required to support certain of our self-insurance programs and for working capital and construction requirements as needed. As of April 2, 2013, there were no funded borrowings outstanding under the Line of Credit and there were outstanding letters of credit totaling approximately \$11.5 million. The Line of Credit bears interest at either LIBOR plus a percentage not to exceed 1.50%, or at a rate ranging from the financial institution's prime rate to 0.75% below the financial institution's prime rate based on a Lease Adjusted Leverage Ratio as defined in the Line of Credit agreement. The Line of Credit agreement requires compliance with a Fixed Charge Coverage Ratio, a Lease Adjusted Leverage Ratio and certain non-financial covenants. At April 2, 2013, we were in compliance with these covenants.

**5. NET INCOME PER SHARE**

Basic net income per share is computed by dividing the net income attributable to common shareholders by the weighted average number of common shares outstanding during the period. Diluted net income per share reflects the potential dilution that could occur if stock options issued by us to sell common stock at set prices were exercised and if restrictions on restricted stock units issued by us were to lapse (collectively equity awards). The consolidated financial statements present basic and diluted net income per share.

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

	<b>For the Thirteen Weeks Ended</b>	
	<b>April 2, 2013</b>	<b>April 3, 2012</b>
<b>Numerator:</b>		
Net income for basic and diluted net income per share	\$8,273	\$8,615
<b>Denominator:</b>		
Weighted-average shares outstanding - basic	28,139	27,908
Dilutive effect of equity awards	699	1,102
Weighted-average shares outstanding - diluted	28,838	29,010

For the thirteen weeks ended April 2, 2013 and April 3, 2012, there were approximately 0.7 million and 0.1 million shares of common stock equivalents, respectively, that have been excluded from the calculation of diluted net income per share because they are anti-dilutive.

**6. RELATED PARTY**

As of April 2, 2013, we believe that Jacmar Companies and their affiliates (collectively referred to herein as Jacmar ) owned approximately 11.2% of our outstanding common stock. Jacmar, through its affiliation with Distribution Market Advantage, Inc. ( DMA ), a national foodservice distribution consortium whose participants are prominent regional foodservice distributors, is currently our largest supplier of food, beverage, paper products and supplies. We began using DMA for our national foodservice distribution in July 2006 after an extensive competitive bidding process. In July 2012, we finalized a new five-year agreement with DMA, after conducting another extensive competitive bidding process. Jacmar services our restaurants in California and Nevada, while other DMA distributors service our restaurants in all other states. We also understand that Jacmar and its affiliates are the controlling shareholders of the Shakey's pizza parlor chain. We believe that Jacmar sells products to us at prices comparable to those offered by unrelated third parties based on our competitive bidding process. Jacmar supplied us with \$19.7 million and \$18.4 million of food, beverage, paper products and supplies for the thirteen weeks ended April 2, 2013 and April 3, 2012, respectively, which represents 22.7% and 24.2% of our total costs of sales and operating and occupancy costs, respectively. We had trade payables related to these products of \$5.1 million and \$3.7 million, at April 2, 2013 and January 1, 2013, respectively. Jacmar does not provide us with any produce, liquor, wine or beer products, all of which are provided by other vendors and are included in total cost of sales.

**Table of Contents****7. STOCK-BASED COMPENSATION**

We have two stock-based compensation plans – the 2005 Equity Incentive Plan and the 1996 Stock Option Plan – under which we may issue shares of our common stock to team members, officers, directors and consultants. Upon effectiveness of the 2005 Equity Incentive Plan (the Plan), the 1996 Stock Option Plan was closed for purposes of new grants. Both of these plans have been approved by our shareholders. Under the Plan, we have granted incentive stock options, non-qualified stock options, and restricted stock units (RSUs). Shares subject to stock options and stock appreciation rights are charged against the Plan share reserve on the basis of one share for each one share granted while shares subject to other types of awards, including restricted stock units, are currently charged against the Plan share reserve on the basis of 1.5 shares for each one share granted. The Plan also contains other limits with respect to the terms of different types of incentive awards and with respect to the number of shares subject to awards that can be granted to a team member during any fiscal year. All options granted under the Plan expire within 10 years of their date of grant.

Under the Plan, we issue RSUs as a component of the annual equity grant award to officers and other team members and in connection with the BJs Gold Standard Stock Ownership Program (the GSSOP). The GSSOP is a longer-term equity incentive program that utilizes Company RSUs or stock options and is dependent on each participant's extended service with us in their respective positions and remaining in good standing during that service period (i.e., five years).

The Plan permits us to set the vesting terms and exercise period for awards at our discretion. Stock options generally vest at 20% per year or cliff vest, either ratably in years three through five or 100% in year five, and expire ten years from date of grant. RSUs generally vest at 20% per year for non-GSSOP RSU grantees and generally cliff vest either at 33% on the third anniversary and 67% on the fifth anniversary or at 100% after the fifth anniversary for GSSOP participants.

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

	<b>For The Thirteen Weeks Ended</b>	
	<b>April 2, 2013</b>	<b>April 3, 2012</b>
Labor and benefits stock-based compensation	\$328	\$303
General and administrative stock-based compensation	\$839	\$772
Capitalized stock-based compensation (1)	\$52	\$52

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

**Stock Options**

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

	<b>For the Thirteen Weeks Ended</b>	
	<b>April 2, 2013</b>	<b>April 3, 2012</b>
Expected volatility	36.9%	39.5%
Risk free interest rate	0.7%	0.9%
Expected option life	5 years	5 years
Dividend yield	0%	0%
Fair value of options granted	\$11.06	\$15.71

U.S. GAAP requires us to make certain assumptions and judgments regarding the grant date fair value. These judgments include expected volatility, risk free interest rate, expected option life, dividend yield and vesting percentage. These estimations and judgments are determined by us using many different variables that, in many cases, are outside of our control. The changes in these variables or trends, including stock price volatility and risk free interest rate, may significantly impact the grant date fair value resulting in a significant impact to our financial results.



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The exercise price of the stock options under our stock-based compensation plans shall be equal to or exceed 100% of the fair market value of the shares at the date of option grant. Stock option activity during the thirteen weeks ended April 2, 2013, was as follows:

	Options Outstanding		Options Exercisable	
	Weighted Average		Weighted Average	
	Shares	Exercise Price	Shares	Exercise Price
	(in thousands)		(in thousands)	
Outstanding options at January 1, 2013	2,025	\$22.08	1,403	\$17.76
Granted	171	\$33.47		
Exercised	(10)	\$15.89		
Forfeited	(16)	\$33.04		
Outstanding options at April 2, 2013	2,170	\$22.93	1,470	\$18.20

As of April 2, 2013, total unrecognized stock based compensation expense related to non-vested stock options was \$6.3 million, which is expected to be generally recognized over the next five years.

**Restricted Stock Units**

Restricted stock unit activity during the thirteen weeks ended April 2, 2013, was as follows:

	Weighted	
	Shares	Average Fair Value
	(in thousands)	
Outstanding RSUs at January 1, 2013	486	\$28.14
Granted	61	\$33.43
Vested or released	(53)	\$19.18
Forfeited	(21)	\$33.63
Outstanding RSUs at April 2, 2013	473	\$29.58

The fair value of the RSUs is the quoted market value of our common stock on the date of grant. The fair value of each RSU is expensed ratably over the period during which the restrictions are expected to lapse (i.e., five years). As of April 2, 2013, total unrecognized stock-based compensation expense related to non-vested restricted shares was approximately \$8.2 million, which is expected to be generally recognized over the next five years.

**8. INCOME TAXES**

As of April 2, 2013, unrecognized tax benefits recorded were approximately \$0.3 million, of which approximately \$0.2 million, if reversed, would impact our effective tax rate. We anticipate a decrease of \$0.2 million to our liability for unrecognized tax benefits within the next twelve-month period due to the settlement of potential outstanding liabilities. A reconciliation of the beginning and ending amount of



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unrecognized tax benefits is as follows (in thousands):

Balance at January 1, 2013	\$897
Reductions based on tax positions taken during the current period	(563)
Balance at April 2, 2013	\$334

Our uncertain tax positions are related to tax years that remain subject to examination by tax agencies. As of April 2, 2013, the earliest tax year still subject to examination by the Internal Revenue Service is 2009. The earliest year still subject to examination by a significant state or local taxing jurisdiction is 2008.

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**9. LEGAL PROCEEDINGS**

We are subject to private lawsuits, administrative proceedings and demands that arise in the ordinary course of our business and which typically involve claims from guests, employees and others related to operational, employment, real estate and intellectual property issues common to the foodservice industry. A number of these claims may exist at any given time. We are self-insured for a portion of our general liability insurance and our employee workers' compensation programs. We maintain coverage with a third party insurer to limit our total exposure for these programs. We believe that most of our guest claims will be covered by our general liability insurance, subject to coverage limits and the portion of such claims that are self-insured. Punitive damages awards and employee unfair practice claims, however, are not covered by our general liability insurance. To date, we have not been ordered to pay punitive damages with respect to any claims, but there can be no assurance that punitive damages will not be awarded with respect to any future claims. We could be affected by adverse publicity resulting from allegations in lawsuits, claims and proceedings, regardless of whether these allegations are valid or whether we are ultimately determined to be liable. We currently believe that the final disposition of these types of lawsuits, proceedings and claims will not have a material adverse effect on our financial position, results of operations or liquidity. It is possible, however, that our future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, proceedings or claims.

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

**STATEMENT REGARDING FORWARD-LOOKING DISCLOSURE**

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

The following discussion and analysis should be read in conjunction with our consolidated financial statements and notes thereto included elsewhere in this Form 10-Q. Except for the historical information contained herein, the discussion in this Form 10-Q contains certain forward-looking statements that involve known and unknown risks and uncertainties, such as statements of our plans, objectives, expectations and intentions. The risks described in this Form 10-Q, as well as the risks identified in Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 1, 2013, are not the only risks we face. These statements reflect our current perspectives and outlook with respect to the Company's future expansion plans, key business initiatives, expected operating conditions and other factors. Moreover, we operate in a very competitive and rapidly changing environment, and new risks emerge from time to time. Additional risks and uncertainties that we are currently unaware of, or that we currently deem immaterial, also may become important factors that affect us. It is not possible for us to predict the impact of all of these factors on our business, financial condition or results of operations or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given the volatility of the operating environment and its associated risks and uncertainties, investors should not rely on forward-looking statements as any prediction or guarantee of actual results.

Forward-looking statements include, among others, statements concerning:

- our restaurant concept, its competitive advantages and our strategies for its continued evolution and expansion;
- the rate and scope of our planned future restaurant development;
- the estimated total domestic capacity for our larger-format restaurants;
- anticipated dates on which we will commence or complete the development and opening of new restaurants;
- expectations as to the timing and success of any expansion of our contract brewing strategy for our proprietary craft beers and sodas;
- expectations for consumer spending on casual dining restaurant occasions;

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expectations as to the availability and costs of key commodities used in our restaurants and brewing operations;  
expectations as to our menu price increases and their effect, if any, on revenue and results of operations;  
expectations as to the effectiveness of our planned operational, menu, marketing and capital expenditure initiatives;  
expectations as to our capital requirements and actual or available borrowings on our line of credit;  
expectations as to our future revenues, operating costs and expenses; and  
other statements of expectations, beliefs, future plans and strategies, anticipated developments and other matters that are not historical facts.

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

Our success depends substantially on the favorable image, credibility and value of the BJ's brand and our reputation for offering guests a higher quality, more differentiated total dining experience at a good value.

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

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

Our ability to open new restaurants on schedule in accordance with our targeted capacity growth rate may be adversely affected by delays or problems associated with securing suitable restaurant locations and leases, recruiting and training qualified managers and hourly team members to correctly operate our new restaurants and by other factors, some of which are beyond our control and the timing of which is difficult to forecast accurately.

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

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

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

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

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

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

A significant number of our restaurants are concentrated in California, Texas and Florida, which makes us particularly sensitive to economic, regulatory, weather and other risk factors and conditions that are more prevalent in those states.

Our operations are susceptible to changes in our food, labor and related employee benefits (including, but not limited to, group health insurance coverage for our team members), energy and supply costs which could adversely affect our profitability.

Our costs to construct new restaurants are susceptible to both material and labor cost fluctuations which could adversely affect our return on investment results for new restaurants.

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

Government laws and regulations affecting the operation of our restaurants, including (but not limited to) those that apply to the acquisition and maintenance of our brewing and retail liquor licenses, minimum wages, consumer health and safety, group health insurance coverage, nutritional disclosures, and employment-related documentation requirements could increase our operating costs, cause unexpected disruptions to our operations and restrict our growth.

Our internal brewing, contract brewing and beer distribution arrangements are subject to periodic reviews and audits by various federal, state and local governmental and regulatory agencies and could be adversely affected either as a result of different interpretations of the laws and regulations that govern such arrangements or by new laws and regulations enacted to be promulgated by such governments or agencies.

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For a more detailed description of these risk factors and other considerations, see Part II, Item 1A Risk Factors of this Form 10-Q and the risk factors identified in Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 1, 2013.

### **GENERAL**

As of April 2, 2013, we owned and operated 131 restaurants located in the 15 states of California, Texas, Florida, Arizona, Nevada, Colorado, Ohio, Oregon, Oklahoma, Washington, Indiana, Kansas, Kentucky, Louisiana and New Mexico. Our restaurants operate under the BJ's Restaurant & Brewery®, BJ's Restaurant & Brewhouse®, BJ's Pizza & Grill®, or BJ's Grill® names. Our menu features our BJ's award-winning, signature deep-dish pizza, our hand-tossed style pizza, our proprietary craft beers and other beers, as well as a wide selection of appetizers, entrees, pastas, sandwiches, specialty salads and desserts, including our Pizookie® dessert. Our BJ's Restaurant & Brewery® restaurants feature on-premise brewing facilities where BJ's proprietary craft beers are produced for some of our restaurants. Currently, three of our restaurants have active brewing operations on-premise, while the remainder of our proprietary beer requirements is provided by third-party craft brewers (contract brewers) using our proprietary recipes. Our six BJ's Pizza & Grill® restaurants are a smaller-format, full-service restaurant when compared to our large format BJ's Restaurant & Brewhouse® and BJ's Restaurant & Brewery® locations and reflect the original format of the BJ's restaurant concept that was first introduced in 1978. Our BJ's Restaurant & Brewhouse® format currently represents our primary expansion vehicle. BJ's Grill® is a smaller footprint restaurant that is currently intended to serve as a live research and development restaurant, where certain food, beverage, facility, technological and operational enhancements will be tested for potential application to our larger restaurants.

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

Cost of sales is comprised of food and beverage costs. The components of cost of sales are variable and typically fluctuate directly with sales volumes. Labor and benefit costs include direct hourly and management wages, bonuses and payroll taxes and fringe benefits for restaurant employees, including stock-based compensation that is directly related to restaurant level team members.

Occupancy and operating expenses include restaurant supplies, credit card fees, marketing costs, fixed rent, percentage rent, common area maintenance charges, utilities, real estate taxes, repairs and maintenance and other related restaurant costs.

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

Depreciation and amortization principally include depreciation on capital expenditures for restaurants.

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

While we currently expect to pursue the renewal of substantially all of our expiring restaurant leases, no guarantee can be given that such leases will be renewed or, if renewed, that rents will not increase substantially.

In calculating comparable company-owned restaurant sales, we include a restaurant in the comparable base once it has been open for 18 months. Guest traffic for our restaurants is estimated based on values assigned to certain menu items or individual guest tickets.

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The following table sets forth, for the periods indicated, our unaudited Consolidated Statements of Income expressed as percentages of total revenues. The results of operations for the thirteen weeks ended April 2, 2013 and April 3, 2012, are not necessarily indicative of the results to be expected for the full fiscal year. Percentages reflected below may not reconcile due to rounding.

	<b>For The Thirteen Weeks Ended</b>	
	<b>April 2, 2013</b>	<b>April 3, 2012</b>
Revenues	100.0%	100.0%
Costs and expenses:		
Cost of sales	24.5	24.6
Labor and benefits	35.0	34.9
Occupancy and operating	21.5	20.7
General and administrative	6.7	6.4
Depreciation and amortization	6.1	5.7
Restaurant opening	0.4	0.6
Loss on disposal of fixed assets	0.1	-
Total costs and expenses	94.3	93.0
Income from operations	5.7	7.0
Other income (expense):		
Interest income	-	-
Interest expense	-	-
Gain on investment settlement	-	-
Other income, net	0.2	0.2
Total other income	0.2	0.2
Income before income taxes	5.9	7.2
Income tax expense	1.6	2.1
Net income	4.4%	5.1%

***Thirteen Weeks Ended April 2, 2013 (first quarter of 2013) Compared to Thirteen Weeks Ended April 3, 2012 (first quarter of 2012).***

**Revenues.** Total revenues increased by \$21.0 million, or 12.5%, to \$188.6 million during the thirteen weeks ended April 2, 2013, from \$167.6 million during the comparable thirteen week period of 2012. The increase in revenues consisted of an increase of approximately \$20.4 million in sales from new restaurants not yet in our comparable sales base and an approximate 0.4%, or \$0.6 million increase in comparable restaurant sales. The increase in comparable restaurant sales resulted from an effective menu price increase factor of approximately 3.1% coupled with a net favorable increase in menu mix and guest incident rates, partially offset by an approximate 3.0% reduction of guest traffic.

Our restaurants, like most in casual dining, are impacted by inflationary pressures for the costs of certain commodities, labor and other operating expenses. We attempt to offset the impact of inflation on our cost structure with purchasing economies of scale, productivity and efficiency improvements, menu merchandising and menu price increases. If our guests do not accept our menu price increases, either by reducing their visits to our restaurants or by changing their purchasing patterns at our restaurants, the expected benefit of any menu price increase could be negated and our operating margins could be adversely impacted. To help protect guest traffic and to respond to the actions of our competitors, we may consider the promotion of selective menu offerings or introduce new menu offerings at reduced or lower price points which could have the effect of further reducing any benefit from menu price increases. Additionally, other factors outside of our control, such as inclement weather, shifts in the holiday calendar, competitive restaurant intrusions into our trade areas, heavy promotional and discounting activities by our

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competitors, including the large national competitors that have the resources to spend significantly on marketing and advertising, general economic and competitive conditions and other factors, as described in the Risk Factors section in Part I, Item 1A of our Annual Report on Form 10-K for the year ended January 1, 2013, can impact comparable sales.

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*Cost of Sales.* Cost of sales increased by \$5.1 million, or 12.4%, to \$46.3 million during the thirteen weeks ended April 2, 2013, from \$41.2 million during the comparable thirteen week period of 2012. This increase was primarily due to the opening of 14 new restaurants since the thirteen weeks ended April 3, 2012. As a percentage of revenues, cost of sales decreased to 24.5% for the current thirteen week period from 24.6% for the prior year comparable thirteen week period. The percentage decrease was primarily related to increased menu pricing and improved kitchen productivity resulting in lower theoretical to actual food cost variances, offset by increased commodity costs.

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

We provide our guests a large variety of menu items and, as a result, we are not overly dependent on a single group of commodities. However, based on current trends and expectations, we believe the overall cost environment for food commodities will likely continue to be subject to upward pressure during 2013, primarily due to domestic and worldwide agricultural, supply/demand and other macroeconomic factors that are outside of our control. While we continue to work with our suppliers to control food costs, and while we have taken steps to enter into agreements for some of the commodities used in our restaurant operations, there can be no assurance that future supplies and costs for such commodities will not significantly increase due to weather and other market conditions outside of our control. Additionally, there are some commodities that we are unable to contract for long periods of time, such as fluid dairy items, fresh seafood and many produce items, or where we have currently chosen not to contract for long periods of time, such as our ground beef. There are also certain commodity items, such as certain produce items and certain seafood items, in which the contracts principally consist of collar agreements whereby the costs are subject to floors and ceilings. It is our current intention to attempt to offset our expected commodity cost increases through cost savings and productivity/efficiency initiatives and menu mix shifts, coupled with selective menu price increases. However, there can be no assurance that we will be entirely successful in this respect.

The cost to produce and distribute our proprietary craft beer is included in our cost of sales. We currently have qualified three contract brewers to produce our high-quality craft beer. During fiscal 2013, we anticipate that our qualified contract brewers will produce approximately 75% of our estimated requirement of approximately 70,000 barrels of our proprietary craft beer. Our longer-term objective is to have large contract brewers produce substantially all of our larger-volume beers. We currently expect to continue to create and brew our smaller-volume, seasonal, research and development and specialty beers. Once these beers reach higher volumes, we may eventually decide to also move the majority of this production to contract brewers as we continue to grow our restaurant base and therefore increase our demand for our proprietary craft beer. We believe the larger-scale contract brewers have greater economies of scale, stronger quality control systems and more effective, leverageable supply chain relationships. Additionally, this allows our brewery department to focus on creating and developing distinctive and unique beer flavors for us as opposed to focusing on the production and logistics of large scale brewing. The cost to produce our craft beers is subject to the same inflationary pressures that affect food commodities. We also use craft brewers to produce substantially all of our craft soda and cider products, the costs of which are also included in our cost of sales.

*Labor and Benefits.* Labor and benefit costs for our restaurants increased by \$7.4 million, or 12.7%, to \$65.9 million during the thirteen weeks ended April 2, 2013, from \$58.5 million during the comparable thirteen week period of 2012. This increase was primarily due to the opening of 14 new restaurants since the thirteen weeks ended April 3, 2012. As a percentage of revenues, labor and benefit costs increased to 35.0% for the current thirteen week period from 34.9% for the prior year comparable thirteen week period. This percentage increase was principally due to higher management labor, workers compensation insurance and federal unemployment tax rates in California and Florida, offset by increased hourly labor productivity. Included in labor and benefits for each of the thirteen weeks ended April 2, 2013 and April 3, 2012, was approximately \$0.3 million, or 0.2% of revenues of stock-based compensation expense related to equity awards granted in accordance with our Gold Standard Stock Ownership Program for certain restaurant management team members.

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Our restaurants can be affected by increases in federal and state minimum wages, state unemployment insurance taxes and other government regulations including overtime laws and mandated health insurance requirements. Additionally, some states have annual minimum wage increases correlated with either state or federal increases in the consumer price index. In the past, we have been able to react to changes in our key operating costs, including minimum wage increases, by gradually increasing our menu prices and improving our productivity in our restaurants. However, we cannot guarantee that all or any future cost increases can be offset by increased menu prices or that increased menu prices will be accepted by our restaurant guests without any resulting changes in their visit frequencies or purchasing patterns.

For new restaurants, labor expenses will typically be higher than normal during the first several months of operations, if not longer in some cases, until our restaurant management team at each new restaurant becomes more accustomed to optimally predicting, managing and servicing the sales volumes expected at our new restaurants. Accordingly, a comparatively large number of new restaurant openings in any single quarter may significantly impact labor cost comparisons for the entire Company.

*Occupancy and Operating.* Occupancy and operating expenses increased by \$5.8 million, or 16.7%, to \$40.6 million during the thirteen weeks ended April 2, 2013, from \$34.8 million during the comparable thirteen week period of 2012. This increase was primarily due to the opening of 14 new restaurants since the thirteen weeks ended April 3, 2012. As a percentage of revenues, occupancy and operating expenses increased to 21.5% for the current thirteen week period from 20.7% for the prior year comparable thirteen week period. This percentage increase was principally due to planned additional marketing, including expanded television testing in select markets, coupled with increased facilities and general liability insurance costs.

*General and Administrative.* General and administrative expenses increased by \$2.0 million, or 18.6%, to \$12.7 million during the thirteen weeks ended April 2, 2013, from \$10.7 million during the comparable thirteen week period of 2012. The increase in general and administrative costs was primarily due to higher field supervision and restaurant support costs. Also included in general and administrative costs in each of the thirteen weeks ended April 2, 2013 and April 3, 2012, was approximately \$0.8 million of stock-based compensation expense. As a percentage of revenues, general and administrative expenses increased to 6.7% for the current thirteen week period from 6.4% for the prior year comparable thirteen week period. This percentage increase was primarily due to increased field supervision and restaurant support costs.

*Depreciation and Amortization.* Depreciation and amortization increased by \$1.9 million, or 20.4%, to \$11.5 million during the thirteen weeks ended April 2, 2013, compared to \$9.5 million during the comparable thirteen week period of 2012. As a percentage of revenues, depreciation and amortization increased to 6.1% for the current thirteen week period from 5.7% for the prior year period. This percentage increase was principally a result of increased construction costs for new restaurants and depreciation on our new operating toolsets, restaurant remodels and initiatives.

*Restaurant Opening.* Restaurant opening expense was \$0.7 million during the thirteen weeks ended April 2, 2013, compared to \$1.1 million during the comparable thirteen week period of 2012. This decrease is primarily due to opening costs related to one restaurant opening during the thirteen weeks ended April 2, 2013, compared to two restaurant openings during the thirteen weeks ended April 3, 2012. Our opening costs will fluctuate from period to period, depending upon, but not limited to, the number of restaurant openings, the size and concept of the restaurants being opened, the location of the restaurants and the complexity of the staff hiring and training process. Restaurant opening expenses for any given quarter will typically include expenses associated with restaurants opened during the quarter as well as expenses related to restaurants opened towards the end of the prior quarter and restaurants opening in subsequent quarters.

*Loss on Disposal of Assets.* The loss on disposal of assets of approximately \$0.1 million, or 0.1% of revenues, during the thirteen weeks ended April 2, 2013, primarily relates to the disposal of certain unproductive restaurant assets in connection with our ongoing productivity/efficiency initiatives and facility image enhancement activities.

*Interest Income.* Interest income was \$0.06 million during the thirteen weeks ended April 2, 2013, compared to \$0.07 million during the comparable thirteen week period of 2012.



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*Interest Expense.* Interest expense was \$0.01 million during the thirteen weeks ended April 2, 2013, compared to \$0.02 million during the comparable thirteen week period of 2012.

*Other Income, Net.* Other income, net, was \$0.3 million for each of the thirteen weeks ended April 2, 2013 and April 3, 2012.

*Income Tax Expense.* Our effective income tax rate for the thirteen weeks ended April 2, 2013, was 26.2% compared to 29.0% for the comparable thirteen week period of 2012. The effective income tax rate for the thirteen weeks ended April 2, 2013, differed from the statutory income tax rate primarily due to the expiration of statutes related to certain expenses that were previously reserved. We currently estimate our effective tax rate to be approximately 29% for fiscal 2013. However, our actual effective tax rate for fiscal 2013 may be different than our current estimate due to actual revenues, pre-tax income and tax credits achieved during the year and the deductibility of any subsequent disqualified dispositions related to incentive stock options.

**LIQUIDITY AND CAPITAL RESOURCES**

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

	April 2, 2013	January 1, 2013
Cash and cash equivalents	\$23,886	\$15,074
Total marketable securities	\$24,294	\$25,850
Net working capital	\$3,448	\$236
Current ratio	1.0:1.0	1.0:1.0

	For The Thirteen Weeks Ended	
	April 2, 2013	April 3, 2012
Cash provided by operating activities	\$37,125	\$21,527
Capital expenditures	\$30,260	\$18,027

Our fundamental corporate finance philosophy is to maintain a conservative balance sheet in order to support our long-term restaurant expansion plan with sufficient financial flexibility; to provide the financial resources necessary to protect and enhance the competitiveness of our restaurant and brewing operations; to provide our restaurant landlords with confidence as to our intent and ability to honor all of our financial obligations under our restaurant leases; and to provide a prudent level of financial capacity to manage the risks and uncertainties of conducting our business operations on a larger-scale. We obtain financial resources principally from our ongoing operations, supplemented by our cash and investment balances on hand, employee stock option exercises and tenant improvement allowances from our landlords. Additionally, in the past we have obtained capital resources from public stock offerings. As an additional source of liquidity, we have a \$75 million credit facility in place that expires on January 31, 2017.

Our capital requirements are principally related to our restaurant expansion plans and restaurant enhancements and initiatives. While our ability to achieve our growth plans is dependent on a variety of factors, some of which are outside of our control, our primary growth objective is to achieve an approximate 12% increase in total restaurant operating weeks during fiscal 2013 from the development and opening of new restaurants, coupled with the carryover impact of partial-year 2012 openings. Depending on the expected level of future new restaurant development and expected tenant improvement allowances that we receive from our landlords, as well as our other planned capital investments including ongoing maintenance capital expenditures, our base of established restaurant operations may not yet be large enough to generate enough cash flow from operations to totally fund our planned expansion over the longer run. We currently estimate the total domestic capacity to be at least 425 BJs restaurants. Accordingly, we will continue to actively monitor overall conditions in the capital markets with respect to the potential sources and timing of additional financing for our planned future expansion. However, there can be no assurance that such financing will be available when required or available on terms acceptable to us. If we are unable to secure additional capital resources, we may be required to reduce our longer-term planned rate of expansion.

Similar to many restaurant chains, we typically utilize operating lease arrangements (principally ground leases) for the majority of our restaurant locations. We believe our operating lease arrangements continue to provide appropriate leverage for our capital structure in a financially efficient manner. However, we are not limited to the use of lease arrangements as our only method of opening new



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restaurants and from time to time have purchased the underlying land for new restaurants. While our operating lease obligations are not currently required to be reflected as indebtedness on our Consolidated Balance Sheets, the minimum rents and other related lease obligations, such as common area expenses, under our lease agreements must be satisfied by cash flows from our ongoing operations. Accordingly, our lease arrangements reduce, to some extent, our capacity to utilize funded indebtedness in our capital structure.

We also require capital resources to evolve, maintain and increase the productive capacity of our existing base of restaurants and brewery operations and to further expand and strengthen the capabilities of our corporate and information technology infrastructures. Our requirement for working capital is not significant since our restaurant guests pay for their food and beverage purchases in cash or credit cards at the time of the sale. Thus, we are able to sell many of our inventory items before we have to pay our suppliers for such items.

We typically seek to lease our restaurant locations for primary periods of 15 to 20 years under operating lease arrangements. Our rent structures vary from lease to lease, but generally provide for the payment of both minimum and contingent (percentage) rent based on sales, as well as other expenses related to the leases (for example, our pro-rata share of common area maintenance, property tax and insurance expenses). Many of our lease arrangements include the opportunity to secure tenant improvement allowances to partially offset the cost of developing and opening the related restaurants. Generally, landlords recover the cost of such allowances from increased minimum rents. However, there can be no assurance that such allowances will be available to us on each project. From time to time, we may also decide to purchase the underlying land for a new restaurant if that is the only way to secure a highly desirable site. Currently, we own the land that underlies four of our operating restaurants and we have purchased the land for three more properties scheduled for restaurant openings in fiscal 2013. It is not our current strategy to own a large number of land parcels that underlie our restaurants. Therefore, in many cases we subsequently enter into sale-leaseback arrangements for land parcels that we may purchase. We disburse cash for certain site-related work, buildings, leasehold improvements, furnishings, fixtures and equipment to build our leased and owned premises. We own substantially all of the equipment, furniture and trade fixtures in our restaurants and currently plan to do so in the future.

Our cash flows from operating activities, as detailed in the Consolidated Statements of Cash Flows, provided \$37.1 million during the thirteen weeks ended April 2, 2013, representing a \$15.6 million increase from the \$21.5 million provided by during the comparable thirteen week period of 2012. The increase in cash from operating activities for the thirteen weeks ended April 2, 2013, in comparison to the thirteen weeks ended April 3, 2012, is primarily due to higher number of restaurant operating weeks and greater depreciation expense as a result of more restaurants in operation coupled with the timing of accounts payable and receivables.

For the thirteen weeks ended April 2, 2013, total capital expenditures were approximately \$30.3 million, of which expenditures for the acquisition of restaurant and brewery equipment and leasehold improvements to construct new restaurants were \$23.9 million. These expenditures were primarily related to the construction of our new restaurant that opened during the thirteen weeks ended April 2, 2013, as well as expenditures related to restaurants expected to open in the second quarter of fiscal 2013. In addition, total capital expenditures related to the maintenance and key productivity initiatives of existing restaurants and expenditures for restaurant and corporate systems were \$5.0 million and \$1.4 million, respectively.

We have a \$75 million unsecured revolving line of credit ( Line of Credit ) that expires on January 31, 2017, and may be used for working capital and other general corporate purposes. We utilize the Line of Credit principally for letters of credit that are required to support certain of our self-insurance programs and for working capital and construction requirements as needed. Borrowings under the Line of Credit will bear interest at either LIBOR plus a percentage not to exceed 1.50%, or at a rate ranging from the financial institution's prime rate to 0.75% below the financial institution's prime rate based on a Lease Adjusted Leverage Ratio as defined in the Line of Credit agreement. The Line of Credit agreement also requires compliance with a Fixed Charge Coverage Ratio, a Lease Adjusted Leverage Ratio and certain non-financial covenants. While we have the Line of Credit in place and it can be currently drawn upon, it is possible that creditors could place limitations or restrictions on our ability to borrow from the Line of Credit.

Our capital expenditures during fiscal 2013 will continue to be significant as we currently plan to open as many as 17 new restaurants, including one relocation of an existing restaurant, in addition to our necessary restaurant-level maintenance and key initiative-related capital expenditures. As of May 6, 2013, we have entered into 14 signed leases and purchased the land for three properties for new restaurant locations expected to open in fiscal 2013, three of which have already opened. We expect to enter into additional leases or purchase agreements for locations to be opened in future years. We currently anticipate our total capital expenditure for fiscal 2013,

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including all expenditure categories to be approximately \$115 million to \$120 million. We expect to fund our anticipated capital expenditures for fiscal 2013 with current cash and investment balances on hand, expected cash flow from operations, proceeds from sales/leaseback transactions and expected tenant improvement allowances. Our future cash requirements will depend on many factors, including the pace of our expansion, conditions in the retail property development market, construction costs, the nature of the specific sites selected for new restaurants, and the nature of the specific leases and associated tenant improvement allowances available, if any, as negotiated with landlords.

From time to time, we will evaluate opportunities to acquire and convert other restaurant locations or entire restaurant chains to the BJ's restaurant concept. In the future we may consider joint venture arrangements to augment BJ's expansion into new markets, or a more rapid expansion of our BJ's Grill® concept, or may evaluate non-controlling investments in other emerging restaurant concepts that offer complementary growth opportunities to our BJ's restaurant operations. Currently, we have no binding commitments or agreements to acquire or convert any other restaurant locations or chains to our concept, or to enter into any joint ventures or non-controlling investments. However, we would likely require additional capital resources to take advantage of any of these growth opportunities should they become feasible.

We significantly depend on our expected cash flow from operations, coupled with agreed-upon landlord tenant improvement allowances and sales leaseback proceeds, to fund the majority of our planned capital expenditures for 2013. If our business does not generate enough cash flow from operations as expected, or if our landlords are unable to honor their agreements with us, or we are unable to successfully enter in a sales leaseback transaction and replacement funding sources are not otherwise available to us from borrowings under our credit facility or other alternatives, we may not be able to expand our operations at the pace currently planned.

## **OFF-BALANCE SHEET ARRANGEMENTS**

We do not participate in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or variable interest entities ( VIEs ), which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow limited purposes. As of April 2, 2013, we are not involved in any off-balance sheet arrangements.

## **IMPACT OF INFLATION**

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

Many of our restaurant team members are paid hourly rates related to the federal or state minimum wage. In addition, numerous state and local governments have their own minimum wage requirements that are generally greater than the federal minimum wage and are subject to annual increases based on changes in their local consumer price indices. Additionally, a general shortage in the availability of qualified restaurant management and hourly workers in certain geographical areas in which we operate has caused related increases in the costs of recruiting and compensating such team members. Certain operating and other costs, such as health benefits, the impact from the Patient Protection and Affordable Care Act, taxes, insurance and other outside services, continue to increase with the general level of inflation and may also be subject to other cost and supply fluctuations outside of our control.

While we have been able to partially offset inflation and other changes in the costs of key operating resources by gradually increasing prices for our menu items, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale, there can be no assurance that we will be able to continue to do so in the future. From time to time, competitive conditions will limit our menu pricing flexibility. In addition, macroeconomic conditions that impact consumer discretionary spending for food away from home could make additional menu price increases imprudent. There can be no assurance that all of our future cost increases can

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be offset by higher menu prices or that higher menu prices will be accepted by our restaurant guests without any resulting changes in their visit frequencies or purchasing patterns. Many of the leases for our restaurants provide for contingent rent obligations based on a percentage of sales. As a result, rent expense will absorb a proportionate share of any menu price increases in our restaurants. There can be no assurance that we will continue to generate increases in comparable restaurant sales in amounts sufficient to offset inflationary or other cost pressures.

### **SEASONALITY AND ADVERSE WEATHER**

Our business is subject to seasonal fluctuations. The summer months (June through August) have traditionally been higher volume periods than other periods of the year. Additionally, our restaurants in the Midwest and Eastern states, including Florida, will be impacted by weather and other seasonal factors that typically impact other restaurant operations in those regions. Holidays (and shifts in the holiday calendar), severe winter weather, hurricanes, tornados, thunderstorms and similar conditions may impact restaurant sales volumes seasonally in some of the markets where we operate. Many of our restaurants are located in or near shopping centers and malls that typically experience seasonal fluctuations in sales. Quarterly results have been and will continue to be significantly impacted by the timing of new restaurant openings and their associated restaurant opening expenses. As a result of these and other factors, our financial results for any given quarter may not be indicative of the results that may be achieved for a full fiscal year.

### **CRITICAL ACCOUNTING POLICIES**

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

#### ***Fair Value of Marketable Securities and Cash Equivalents***

We measure the fair value of our marketable securities using quoted market prices in active markets. All of our marketable securities are currently classified as held-to-maturity or available for sale, included as short-term and long-term marketable securities in the Consolidated Balance Sheets. Held-to-maturity securities are reported at amortized cost, which approximates fair value, with related gains and losses reflected in earnings once realized; and available-for sale securities are reported at their fair value, with unrealized gains and losses excluded from net income and reported as a separate component of shareholders' equity (net of related tax effect) until realized. We believe that the fair value of our marketable securities equaled the quoted market price of our marketable securities at April 2, 2013.

We believe the carrying value of cash equivalents approximates fair value due to the short-term nature of those instruments.

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

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

#### ***Guest Loyalty Program***

In July 2012, we introduced BJ's Premier Rewards' guest loyalty program to all of our restaurants. This program enables participants to earn points for each qualifying purchase. The points can then be redeemed for rewards including foods discounts, trips, events and other items. We measure our total rewards obligation based on the estimated number of guests that will ultimately earn and claim

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rewards under the program, and record the estimated related expense as reward points accumulate. These expenses are accrued for and recorded as marketing expenses and are included in Occupancy and Operating expenses on our Consolidated Statements of Income.

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

We assess potential impairments of our long-lived assets whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. The assets are generally reviewed for impairment in total as well as on a restaurant by restaurant basis. Factors considered include, but are not limited to, significant underperformance by the restaurant relative to expected historical or projected future operating results; significant changes in the manner of use of the acquired assets or the strategy for the overall business; and significant negative industry or economic trends. The recoverability is assessed in most cases by comparing the carrying value of the asset to the undiscounted cash flows expected to be generated by the asset. This assessment process requires the use of estimates and assumptions regarding future restaurant cash flows and estimated useful lives, which are subject to a significant degree of judgment. If these assumptions change in the future, we may be required to record impairment charges for these assets or for the entire restaurant.

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

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

### ***Income Taxes***

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

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

We recognize the impact of a tax position in our financial statements if that position is more likely than not of being sustained on audit, based on the technical merits of the position. Interest and penalties related to uncertain tax positions are included in income tax expense.

### ***Leases***

We lease the majority of our restaurant locations. We account for our leases in accordance with U.S. GAAP, which require that our leases be evaluated and classified as operating or capital leases for financial reporting purposes. The term used for this evaluation includes renewal option periods only in instances in which the exercise of the renewal option can be reasonably assured and failure to exercise such option would result in an economic penalty. All of our restaurant leases are classified as operating leases. We disburse cash for leasehold improvements, furniture and fixtures and equipment to build out and equip our leased premises. Tenant improvement allowance incentives may be available to partially offset the cost of developing and opening the related restaurants, pursuant to agreed-upon terms in our leases. Tenant improvement allowances can take the form of cash payments upon the opening of

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the related restaurants, full or partial credits against minimum or percentage rents otherwise payable by us or a combination thereof. All tenant improvement allowances received by us are recorded as a deferred lease incentive and amortized over the term of the lease. The related cash received from the landlord is reflected as Landlord contribution for tenant improvements, net within financing activities of our Consolidated Statements of Cash Flows.

The lease term used for straight-line rent expense is calculated from the date we obtain possession of the leased premises through the lease termination date. We expense rent from possession date through restaurant open date as preopening expense. Once a restaurant opens for business, we record straight-line rent over the lease term plus contingent rent to the extent it exceeded the minimum rent obligation per the lease agreement.

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

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

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

In an exposure draft issued in 2010, the FASB, together with the International Accounting Standards Board, has proposed a comprehensive set of changes in accounting for leases. While the Exposure Draft addresses new financial accounting rules for both lessors and lessees, the primary focus will likely be on changes affecting lessees. The lease accounting model contemplated by the new standard is a right of use model that assumes that each lease creates an asset (the lessee's right to use the leased asset) and a liability (the future rent payment obligations) which should be reflected on a lessee's balance sheet to fairly represent the lease transaction and the lessee's related financial obligations. Currently, all of our restaurant leases and our restaurant support center lease are accounted for as operating leases, with no related assets and liabilities on our balance sheet. The FASB has reopened the Exposure Draft for comments and has therefore not identified a proposed effective date for the issuance of the final standard. A second exposure draft is expected in the second quarter of 2013. Changes in these accounting rules or their interpretation, or changes in underlying assumptions, estimates or judgments by us could significantly change our reported or expected financial performance. See Item 1A, Risk Factors, Future changes in financial accounting standards may significantly change our reported results of operations of our Annual Report on Form 10-K for the fiscal year ended January 1, 2013.

### ***Stock-Based Compensation***

Under shareholder approved stock-based compensation plans, we have granted incentive stock options, non-qualified stock options, and restricted stock units that generally vest over five years and expire ten years from the date of grant. Stock-based compensation is measured in accordance with U.S. GAAP based on the underlying fair value of the awards granted. In valuing stock options, we are required to make certain assumptions and judgments regarding the grant date fair value utilizing the Black-Scholes option-pricing model. These judgments include expected volatility, risk free interest rate, expected option life, dividend yield and vesting percentage. These estimations and judgments are determined by us using many different variables that, in many cases, are outside of our control. The changes in these variables or trends, including stock price volatility and risk free interest rate, may significantly impact the grant date fair value resulting in a significant impact to our financial results. The cash flow tax benefits resulting from tax deductions in excess of the compensation cost recognized for those options (excess tax benefits) are required to be classified as financing cash flows.

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***Dividend Policy and Stock Repurchases***

The continued operation and expansion of our business will require substantial funding. Accordingly, we have not paid any dividends since our inception and have currently not allocated any funds for the payment of dividends. Rather, it is our current policy to retain earnings, if any, for expansion of our operations, remodeling and investing in our existing restaurants and other general corporate purposes. We have no plans to pay any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our Board of Directors and will depend upon our financial condition, operating results and other factors our Board of Directors deem relevant. Our credit facility contains, and debt instruments that we enter into in the future may contain, covenants that place limitations on the amount of dividends we may pay. We did not have any stock repurchases during the thirteen weeks ended April 2, 2013, and we currently do not have any plan to repurchase our common stock.

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

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

Our market risk exposures are related to cash and cash equivalents and marketable securities. We invest our excess cash in highly liquid short-term marketable securities with maturities of two years or less as of the date of purchase. These investments are not held for trading or other speculative purposes. Changes in interest rates affect the investment income we earn on our marketable securities and, therefore, impact our cash flows and results of operations. For the thirteen weeks ended April 2, 2013, the average interest rate earned on cash and cash equivalents and marketable securities was approximately 0.7%. As of April 2, 2013, our cash and cash equivalents and marketable securities consisted of money market funds, treasury bills, agency bonds, municipal and bank securities and domestic corporate obligations with a cost or fair value of approximately \$48.2 million. Cash may be in excess of FDIC insurance limits. We believe we are not exposed to significant risk on cash and cash equivalents and marketable securities. The fair market value of our marketable securities is subject to interest rate risk and would decline in value if market interest rates increased. If market interest rates were to increase immediately and uniformly by 10% from the levels existing as of April 2, 2013, the decline in the fair value of the portfolio would not be material to our financial position, results of operations and cash flows.

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

**Item 4. CONTROLS AND PROCEDURES**

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

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures pursuant to Rules 13a-15 and 15d-15 promulgated under the Securities Exchange Act of 1934 as amended, as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of April 2, 2013, our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our



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management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

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

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

**PART II. OTHER INFORMATION**

**Item 1. LEGAL PROCEEDINGS**

See Note 9 of Notes to Unaudited Consolidated Financial Statements in Part I, Item 1 of this report for a summary of legal proceedings.

**Item 1A. RISK FACTORS**

A discussion of the significant risks associated with investments in our securities, as well as other matters, is set forth in Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 1, 2013. There have been no material changes in the risks related to us from those disclosed in such Annual Report. These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC. The risks described in this Form 10-Q and in our Annual Report on Form 10-K are not the only risks we face. New risks and uncertainties arise from time to time and we cannot predict those events or how they may affect us. There may be other risks and uncertainties that are not currently known or that are currently deemed by us to be immaterial; however, they may ultimately adversely affect our business, financial condition and/or operating results.

**Item 6. EXHIBITS**

<b>Exhibit Number</b>	<b>Description</b>
3.1	Amended and Restated Articles of Incorporation of the Company, as amended, incorporated by reference to Exhibit 3.1 to the Registration Statement on Form SB-2 filed with the Securities and Exchange Commission on June 28, 1996, as amended by the Company's Registration Statement on Form SB-2/A filed with the Commission on August 1, 1996, and the Company's Registration Statement on Form SB-2A filed with the Commission on August 22, 1996, (File No. 3335182-LA) (as amended, the Registration Statement).
3.2	Amended and Restated Bylaws of the Company, incorporated by reference to Exhibits 3.1 of the Form 8-K filed on June 4, 2007.
3.3	Certificate of Amendment of Articles of Incorporation, incorporated by reference to Exhibit 3.3 of the Annual Report on Form 10-K for fiscal 2004.
3.4	Certificate of Amendment of Articles of Incorporation, incorporated by reference to Exhibit 3.4 of the Annual Report on Form 10-K for fiscal 2010.
4.1	Specimen Common Stock Certificate of the Company, incorporated by reference to Exhibit 4.1 of the Registration Statement.
10.1	Employment Agreement dated January 28, 2013, between the Company and Brian S. Krakower, employed as Senior Vice President and Chief Information Officer.
10.2	Consulting Agreement, dated February 1, 2013, between the Company and Gerald W. Deitchle.
31	Section 302 Certifications of Chief Executive Officer and Chief Financial Officer.

32 Section 906 Certification of Chief Executive Officer and Chief Financial Officer.

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101 The following materials from BJ's Restaurants, Inc.'s Quarterly Report on Form 10-Q for the quarter ended April 2, 2013, formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Balance Sheets; (ii) Unaudited Consolidated Statements of Income; (iii) Unaudited Consolidated Statements of Cash Flows; and (iv) Notes to Unaudited Consolidated Financial Statements.

SIGNATURES

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

BJ'S RESTAURANTS, INC.  
(Registrant)

May 6, 2013

By: /s/ GREGORY A. TROJAN  
Gregory A. Trojan  
President and Chief Executive Officer  
(Principal Executive Officer)

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