

CHEESECAKE FACTORY INCORPORATED
Form 10-K/A
December 08, 2006

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

FORM 10-K/A

(Amendment No. 1)

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

For the fiscal year ended January 3, 2006

or

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

Commission File Number 0-20574

THE CHEESECAKE FACTORY INCORPORATED

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

51-0340466
(I.R.S Employer
Identification No.)

26901 Malibu Hills Road
Calabasas Hills, California
(Address of principal executive offices)

91301
(Zip Code)

Registrant's telephone number, including area code: **(818) 871-3000**

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

Common Stock, par value \$.01 per share

Preferred Stock Purchase Rights

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (Section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

The aggregate market value of the voting stock held by non-affiliates of the registrant as of the last business day of the second fiscal quarter, June 28, 2005, was \$2,509,398,435 (based on the last reported sales on the Nasdaq Stock Market on that date). As of February 15, 2006, 78,857,088 shares of the registrant's Common Stock, \$.01 par value per share, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Form 10-K incorporates by reference information from the registrant's Proxy Statement for the 2006 Annual Meeting of Stockholders to be held on May 31, 2006.

EXPLANATORY NOTE

The Cheesecake Factory Incorporated (referred to herein as the Company or in the first person notations we, us and our) is filing this Amendment No. 1 on Form 10-K/A to its Annual Report on Form 10-K for the fiscal year ended January 3, 2006 (the Original Filing) to restate the consolidated balance sheets at January 3, 2006 and December 28, 2004; the consolidated statements of operations, stockholders' equity and cash flows for the years ended January 3, 2006, December 28, 2004, and December 30, 2003; and related disclosures. The impact of the restatements on periods prior to 2003 has been reflected as an adjustment to retained earnings as of December 31, 2002 in the accompanying consolidated statements of stockholders' equity. This Form 10-K/A also includes the restatement of the selected consolidated financial data as of and for our 2001 through 2005 fiscal years, which are included in Part II, Item 6 of this Form 10-K/A, and the unaudited quarterly financial data for each of the fiscal quarters in the years ended January 3, 2006 and December 28, 2004, which are included in Part II, Item 8 of this Form 10-K/A. See Note 1 of Notes to Consolidated Financial Statements in Part II, Item 8 of this Form 10-K/A for information regarding the revisions to the previously issued financial statements.

The restatement arises from results of the voluntary review of our stock option grant practices conducted by the Audit Committee of our Board of Directors with the assistance of special legal counsel, as well as management's internal review. While the review resulted in a conclusion that until 2002, and in some cases after, we incorrectly followed date selection methodologies that were generally limited to 30-day time windows, the Audit Committee found no evidence that any person acted with an intent to deceive or mislead, and did not recommend termination of any current Company management or the resignation of any member of our Board of Directors. As part of the restatement process resulting from the review of our stock option granting practices, we assessed generally whether there were other matters, which should be corrected in our previously issued financial statements. We concluded that three additional errors should be corrected. The aggregate adjustments increased net income by \$0.4 million in fiscal year 2005 and reduced net income by \$1.2 million and \$1.6 million in fiscal years 2004 and 2003, respectively. Diluted net income per share increased by \$0.01 for the year ended January 3, 2006 and decreased by \$0.02 and \$0.03 for the years ended December 28, 2004 and December 30, 2003, respectively. The restatement also resulted in a \$5.2 million, or 2.8%, reduction in retained earnings as of December 31, 2002. The restatement adjustments were non-cash and had no impact on net cash flow. For more information on these matters, see Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations and Part II, Item 8, Note 1 of Notes to Consolidated Financial Statements.

We did not amend and do not intend to amend any other previously filed Annual Reports on Form 10-K or Quarterly Reports on Form 10-Q for the periods prior to January 1, 2003. As a result of the restatement of our consolidated financial statements, we are also restating the interim financial statements for the quarterly periods ended March 29, 2005 and April 4, 2006 and are filing an amended quarterly report on Form 10-Q/A for our fiscal quarter ended April 4, 2006. Additionally, we will restate the interim financial statements for the quarterly and year-to-date periods ended June 28, 2005 and September 27, 2005 that will be included in our quarterly reports on Form 10-Q for the comparable quarters and year-to-date periods in our current fiscal year.

All of the information in this Form 10-K/A is as of January 3, 2006 (unless explicitly identified as of another date) and does not reflect events or circumstances that may have occurred after the Original Filing or otherwise update disclosures (including the exhibits to the Original Filing other than Exhibits 31.1, 31.2, 32.1 and 32.2 described below) except with respect to the restatement and related matters in the following sections:

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PART IV

Item 15 Exhibits, Financial Statement Schedules

Pursuant to Rule 12b-15 under the Securities and Exchange Act of 1934, this Form 10-K/A includes new Rule 13(a)-14(a)/15d-14(a) certifications as Exhibits 31.1 and 31.2, and new certifications pursuant to Section 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 as Exhibits 32.1 and 32.2.

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PART I

Forward-Looking Statements

Certain information included in this Form 10-K/A and other materials filed or to be filed by us with the Securities and Exchange Commission (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 an estimate, project, may, 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).

In connection with the safe harbor provisions of the Act, we have identified and are filing important factors, risks and uncertainties that could cause our actual results to differ materially from those projected in forward-looking statements made by us, or on our behalf (see Item 1A, Risk Factors). 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 Securities and Exchange Commission. Because of these factors, risks and uncertainties, we caution against placing undue reliance on forward-looking statements. Although we believe that the assumptions underlying forward-looking statements are reasonable, any of the assumptions could be incorrect, and there can be no assurance that forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date on which they are made. Except for the forward looking statements included in Part, Item 1A, Risk Factors, Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations and Part II, Item 9A, Controls and Procedures, all forward looking statements made in this Form 10-K/A (unless they are explicitly stated to be made as of a different date) are made as of February 22, 2006, the date of filing of the Original Filing. We do not undertake any obligation to modify or revise any forward-looking statement to take into account or otherwise reflect subsequent events or circumstances arising after the date that the forward-looking statement was made.

ITEM 1: BUSINESS

General

As of February 21, 2006, The Cheesecake Factory Incorporated (referred to herein as the Company or in the first person notations we, us and our) operated 103 upscale, full-service, casual dining restaurants under The Cheesecake Factory® mark in 29 states and the District of Columbia. We also operated seven upscale, full-service, casual dining restaurants under the Grand Lux Cafe® mark in Sunrise, Florida; Garden City, New York; Houston, Texas; Dallas, Texas; Chicago, Illinois; Los Angeles, California and Las Vegas, Nevada; and one self-service, limited menu express foodservice operation under The Cheesecake Factory Express® mark inside the DisneyQuest® family entertainment center in Orlando, Florida. We also operated a bakery production facility in Calabasas Hills, California that produces baked desserts and other products for our restaurants and for other foodservice operators, retailers and distributors. We also licensed two bakery cafes under The Cheesecake Factory Bakery Cafe® mark to another foodservice operator. When referred to herein, the term restaurants includes both The Cheesecake Factory and Grand Lux Cafe full-service restaurant concepts, unless otherwise noted, and excludes the one express location, the two licensed bakery cafes and the bakery production facility, unless otherwise noted.

The Cheesecake Factory is an upscale, casual dining concept that offers approximately 200 menu items including appetizers, pizza, seafood, steaks, chicken, burgers, pasta, specialty items, salads, sandwiches, omelets and desserts, including approximately 40 varieties of cheesecake and other baked desserts (See The Cheesecake Factory Restaurant Concept and Menu). Grand Lux Cafe is also an upscale, casual dining concept offering approximately 150 menu items (See The Grand Lux Cafe Restaurant Concept and Menu). In contrast to many chain restaurant operations, substantially all of our menu items (except desserts manufactured at our bakery production facility) are prepared on the restaurant premises using high quality, fresh ingredients based on innovative and proprietary recipes. We believe our restaurants are recognized by consumers for offering exceptional value with generous food portions at moderate prices. Our restaurants' distinctive, contemporary design and decor create a high-energy ambiance in a casual setting. Our restaurants currently range in size from 5,400 to 21,000 interior square feet, provide full liquor service and are generally open seven days a week for lunch and dinner, as well as Sunday brunch. Restaurant sales represented 94.9%, 94.5% and 94.5% of revenues for fiscal 2005, 2004 and 2003, respectively.

We believe that our ability to select suitable locations and operate successful restaurants, coupled with the continuing popularity of our restaurant concepts with consumers, is reflected in our average food and beverage sales per restaurant, which we believe are among the highest of any publicly-held restaurant company. Average sales per restaurant open for the full year were approximately \$11.0 million, \$11.1 million and \$10.8 million for fiscal 2005, 2004 and 2003, respectively. Since each of our restaurants has a customized layout and differs in size, we believe an effective method to measure the unit economics of our concepts is by square foot. Average sales per productive square foot (defined as interior plus seasonally-adjusted patio square feet) for restaurants open for the full year were approximately \$970 for fiscal 2005, \$976 for fiscal 2004 and \$971 for fiscal 2003. Average sales per operating week for restaurants open for the full year were \$211,900, \$213,900 and \$208,100 for fiscal 2005, 2004 and 2003, respectively. Our average sales metrics for a given fiscal year can be impacted by a number of factors, including the average size of restaurants open during the year. The estimated average productive square feet for restaurants opened during fiscal 2005, 2004 and 2003 was 11,300, 11,600, and 12,400, respectively. The estimated average productive square feet for all restaurants open the full year were 12,500, 12,500 and 12,300 for fiscal 2005, 2004 and 2003, respectively.

We believe that the viability of The Cheesecake Factory concept has been successfully demonstrated in a variety of site layouts, trade areas and markets across the United States. Accordingly, we intend to continue developing Cheesecake Factory restaurants in high profile locations within densely populated areas in both existing and new markets. In addition to expanding The Cheesecake Factory concept, we plan to selectively pursue other opportunities to leverage the competitive strengths of our restaurant and bakery operations, which may include new restaurant concepts such as Grand Lux Cafe or other restaurant concepts that we may develop or acquire, as well as new bakery product lines and distribution channels. In order to facilitate our expansion strategy, we plan to continue building our operating and corporate support infrastructure to focus on achieving optimal leverage and efficiencies in all of our operations.

During fiscal 2005, we opened 16 restaurants under The Cheesecake Factory® mark and two restaurants under the Grand Lux Cafe® mark. We currently plan to open as many as 21 full-service restaurants during 2006, consisting of as many as 18 Cheesecake Factory and three Grand Lux Cafe locations. As in past years, most of our potential restaurant openings for fiscal 2006 will likely occur during the second half of the year. Based on information available as of February 21, 2006, we currently expect to open as many as two, two, five and twelve new restaurants during the first through fourth quarters of fiscal 2006, respectively. However, it is difficult for us to precisely predict the timing of our new restaurant openings due to many factors that are outside of our control (See New Restaurant Site Selection and Development). We have signed leases or letters of intent for most of our fiscal 2006 potential restaurant openings.

Our business operations originated in 1972 when Oscar and Evelyn Overton founded a small bakery in the Los Angeles area. Their son, David Overton, led the creation and opening of the first Cheesecake Factory restaurant in Beverly Hills, California in 1978. Although our restaurant operations have grown substantially during recent years, we remain in the business of creating and marketing branded and private-label bakery products to other foodservice operators, retailers and distributors (bakery sales) in order to leverage our brand identity with consumers and to take advantage of excess bakery production capacity. Bakery sales represented 5.1%, 5.5% and 5.5% of our revenues for fiscal 2005, 2004 and 2003, respectively.

In February 1992, our Company was incorporated in Delaware to consolidate the restaurant and bakery businesses of its predecessors operating under The Cheesecake Factory® mark. Our initial public offering of common stock was completed in September 1992. Follow-on public offerings were completed in January 1994 and November 1997. Our executive offices are located at 26901 Malibu Hills Road, Calabasas Hills, California 91301, and our telephone number is (818) 871-3000.

The Company maintains a website at *thecheesecakefactory.com*. We make available on our website, free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the Securities and Exchange Commission.

Restaurant Competitive Positioning

The restaurant industry is comprised of multiple segments, one of which is casual dining. The casual dining segment can be further sub-divided into representative casual and upscale casual. The upscale casual dining segment is differentiated by freshly prepared and innovative food, flavorful recipes with creative presentations, unique layouts, eye-catching design elements, and personalized service. Upscale casual dining is positioned higher than representative casual dining with standards that are much closer to fine dining. We believe that we are a leader in the upscale casual dining segment given our competitive positioning, the key elements of which are provided below.

Extensive, Creative and Contemporary Menu and Bakery Product Offerings. Our restaurants offer a wide variety of items, including appetizers, pizza, seafood, steaks, chicken, burgers, pasta, specialty items, salads, sandwiches, omelets and desserts. Our menus are generally updated twice each year to respond to changing consumer dining preferences and trends. Our bakery production facility produces over 50 varieties of quality cheesecake and other baked desserts, of which approximately 40 varieties are offered at any one time in Cheesecake Factory restaurants.

High Quality Products. Substantially all menu items (except the desserts manufactured at our bakery production facility) are prepared daily on the restaurant premises using high quality, fresh ingredients based on innovative and proprietary recipes. We use high quality dairy and other raw ingredients in our bakery products.

Exceptional Value. We believe our restaurants are recognized by consumers for offering exceptional value with generous food portions at moderate prices. The estimated average check per Cheesecake Factory restaurant guest, including beverages and desserts, was approximately \$17.00, \$16.60 and \$16.09 for fiscal 2005, 2004 and 2003, respectively.

Commitment to Excellent Service and Hospitality. Our goal is to consistently exceed the expectations of every restaurant guest in all facets of the dining experience. We believe that our restaurant-level employee recruitment, selection, training and incentive programs allow us to attract and retain qualified employees who are motivated to provide consistent excellence in guest hospitality.

Flexible Kitchen Capabilities and Operating Systems. Our restaurants have been strategically designed with sufficient capacity, equipment and operating systems to allow for the successful preparation and delivery of an extensive, contemporary and flexible menu, which requires multiple food preparation and cooking methods executed simultaneously.

Distinctive Restaurant Design and Decor. Our restaurants' distinctive contemporary design and decor create a high-energy, non-chain image and upscale ambiance in a casual setting. Whenever possible, outdoor patio seating is also incorporated in the design of the restaurants, thus allowing for additional restaurant capacity (weather permitting) at a comparatively low occupancy cost per seat.

High Profile Restaurant Locations and Flexible Site Layouts. We generally locate our restaurants in high profile locations within densely populated areas with a balanced mix of residences, businesses, and shopping and entertainment outlets. In contrast to many theme restaurant operations that rely heavily on tourist traffic, our restaurants principally rely on the visit frequency and loyalty of consumers who work, reside or shop near each of our restaurants. We have the flexibility to design our restaurants to accommodate a wide variety of urban and suburban site layouts, including multi-level locations.

Commitment to Selecting, Training, Rewarding, and Retaining High Quality Employees. We believe our employee recruitment and selection criteria are among the most rigorous in the restaurant industry. By providing extensive training and innovative compensation programs, we believe our employees develop a sense of personal commitment to our core values and culture of excellence in restauranting and guest hospitality. We believe these programs have resulted in employee turnover rates that are generally lower than the average for the restaurant industry.

The Cheesecake Factory Restaurant Concept and Menu

The Cheesecake Factory restaurant concept strives to provide a distinctive, high quality dining experience at moderate prices by offering an extensive, creative and evolving menu in an upscale, high-energy casual setting with efficient, attentive and friendly service. As a result, our Cheesecake Factory restaurants appeal to a diverse customer base. The Cheesecake Factory's extensive menu enables us to compete for substantially all dining preferences and occasions, including not only lunch and dinner, but also the mid-afternoon and late-night dayparts, which are traditionally weaker times for most casual dining restaurant operations. Cheesecake Factory restaurants are not open for breakfast, but do offer Sunday brunch. All of our restaurants are open seven days a week. All items on the menu, including approximately 40 varieties of cheesecake and other quality baked desserts, may be purchased for off-premise consumption, which represents approximately 8% of our current restaurant sales.

Our menu currently consists of approximately 19 pages and features approximately 200 items including appetizers, pizza, seafood, steaks, chicken, burgers, specialty items, pastas, salads, sandwiches, omelets and desserts, including approximately 40 varieties of cheesecake and other baked desserts. Examples of menu offerings include Crusted Chicken Romano, Shrimp Scampi, Cajun Jambalaya Pasta, Orange Chicken, Bang Bang Chicken & Shrimp, Herb Crusted Salmon, and Jamaican Pepper Shrimp. Menu items, except those desserts manufactured at our bakery production facility, are prepared daily on the restaurant premises with high quality, fresh ingredients using innovative and proprietary recipes. We consider the extensive selection of items on our menu to be an important factor in the differentiation of our restaurants from our competitors. In the majority of our Cheesecake Factory restaurants, menu entrees range in price from \$6.95 to \$27.95. Appetizers range in price from \$4.50 to \$11.50, and desserts range from \$4.50 to \$7.95.

One of our competitive strengths is the ability to anticipate consumer dining and taste preferences and adapt our menu to the latest trends in food consumption. We create new menu items to keep pace with changing consumer tastes and preferences, and regularly update our ingredients and cooking methods to improve the quality and consistency of our food offerings. Generally every six months, we review the appeal and pricing of our entire menu and typically update or replace as many as five to fifteen of the items.

All new menu items are tested and selected based on uniqueness, estimated sales popularity, preparation technique and profitability.

Our ability to create, promote and attractively display our unique line of baked desserts is also important to the competitive positioning and financial success of our restaurants. We believe that our brand identity and reputation for offering high quality desserts results in a higher percentage of dessert sales relative to that of most chain restaurant operators. Dessert sales represented approximately 15% of total Cheesecake Factory restaurant sales for fiscal 2005, 2004 and 2003.

Each restaurant maintains a full-service bar where appetizers or the full menu may be purchased. The sale of alcoholic beverages represented approximately 13% of total Cheesecake Factory restaurant sales for fiscal 2005, 2004 and 2003. We believe that most of our alcoholic beverage sales occur with meal purchases.

We place significant emphasis on the unique interior design and decor of our restaurants, which results in a higher investment per square foot of restaurant space than is typical for the restaurant industry. However, each of our restaurants has historically generated annual sales per square foot that is also typically higher than our competitors. We believe that our stylish restaurant design and decor package contributes to the distinctive dining experience enjoyed by our guests. Each restaurant features large, open dining areas and a contemporary kitchen design featuring exhibition cooking. Six restaurants offer banquet facilities. Approximately three-fourths of our restaurants offer outdoor patio seating (weather permitting). Approximately 18% of our total estimated productive seating capacity is located on outdoor patios, which can be subject to underutilization from time to time due to adverse or unseasonable weather conditions. The table and seating layouts of our restaurants are flexible, permitting tables and seats to be easily rearranged to accommodate large groups or parties, thus permitting more effective utilization of seating capacity.

The Grand Lux Cafe Restaurant Concept and Menu

Grand Lux Cafe is an upscale, casual dining concept that offers unique American and international cuisine selections in an elegant but relaxed atmosphere. The menu at Grand Lux Cafe offers approximately 150 items including appetizers, pasta, seafood, steaks, chicken, burgers, salads, specialty items and made-to-order desserts. Examples of menu offerings include Cedar Plank BBQ Salmon, Braised Yankee Pot Roast and Indochine Shrimp & Chicken. Menu entrees currently range in price from \$8.95 to \$29.95. Appetizers range in price from \$4.95 to \$12.95 and desserts range from \$5.95 to \$7.95. A full-service bar and bakery are also included in the concept. Our location in the Venetian Resort-Hotel-Casino is open 24 hours a day and also serves a breakfast menu with items priced from \$2.50 to \$16.95. The estimated average check per restaurant guest at our Grand Lux Cafe locations outside of Las Vegas was approximately \$18.20 during fiscal 2005.

We continue to refine Grand Lux Cafe's menu and operations in order to further prepare the concept for future growth. We currently plan to open as many as three additional Grand Lux Cafes during fiscal 2006. While we are optimistic that Grand Lux Cafe has the opportunity to become a profitable second growth vehicle for our restaurant operations, there are inherent risks with expanding any new restaurant concept that has not yet proven its long-term financial viability. These risks include, but are not limited to, consumer acceptance, recruiting and training qualified staff members, and achieving an acceptable return on investment.

New Concepts

We continuously evaluate opportunities for new concepts, through both internal development and acquisition. We are currently developing an upscale, casual dining concept with broad-based Asian cuisine. We have not yet established a definitive menu, expected average check or growth expectations for this concept, nor have we signed a lease for the location of this concept.

Our targeted opening for this restaurant is no later than June 2007.

Existing Restaurant Locations

As of February 21, 2006, we operated 103 full-service restaurants under The Cheesecake Factory® mark in 29 states and the District of Columbia. We also operated seven full-service restaurants under the Grand Lux Cafe® and one self-service, limited menu express operation at DisneyQuest® in Orlando under The Cheesecake Factory Express® mark. Additionally, we licensed two bakery cafes under The Cheesecake Factory Bakery Cafe® mark to another foodservice operator. The following table sets forth information with respect to our Company-operated, full-service restaurant locations as of February 21, 2006:

Existing Company-Operated Full-Service Restaurant Locations by State

State	The Cheesecake Factory	Grand Lux Cafe	Total
Alabama	1		1
Arizona	4		4
California	23	1	24
Colorado	3		3
District of Columbia	1		1
Florida	13	1	14
Georgia	3		3
Hawaii	1		1
Illinois	5	1	6
Indiana	1		1
Iowa	1		1
Kansas	1		1
Kentucky	1		1
Maryland	3		3
Massachusetts	4		4
Minnesota	1		1
Missouri	2		2
Nevada	3	1	4
New Jersey	3		3
New York	3	1	4
North Carolina	3		3
Ohio	4		4
Oregon	1		1
Pennsylvania	2		2
Rhode Island	1		1
Tennessee	1		1
Texas	7	2	9
Virginia	4		4
Washington	2		2
Wisconsin	1		1
Total	103	7	110

New Restaurant Site Selection and Development

We believe the locations of our restaurants are critical to our long-term success and, accordingly, we devote significant time and resources to analyzing each prospective site. Since The Cheesecake Factory concept can be successfully executed within a variety of site locations (urban or suburban shopping malls, retail strip centers, office complexes and entertainment centers either freestanding or in-line) and layouts (single or multi-level, generally from 7,000 to 16,000 square feet), we can be highly selective and flexible in choosing suitable locations. In general, we currently prefer to open our restaurants at high profile sites within larger metropolitan areas with dense populations and above-average household incomes.

While our restaurants typically share common interior decor elements, the layout of each restaurant is customized to accommodate different types of buildings and different square feet of available space. In addition to carefully analyzing demographic information for each prospective site, we consider other factors such as visibility, traffic patterns and general accessibility; the availability of suitable parking; the proximity of residences and shopping areas, office parks and tourist attractions; the degree of competition within the trade area; and the general availability of restaurant-level employees. In contrast to many theme restaurant operations that rely heavily on tourist traffic, our restaurants principally rely on the visit frequency and loyalty of consumers who work, reside or shop in each of our trade areas.

Historically, our new restaurant development model has more closely resembled that of a retail business that occupies leased space in shopping malls, office complexes, strip centers, entertainment centers and other real estate developments. While we expect this retail lease development model to continue as our principal development approach, we also expect to open more freestanding restaurants. We generally lease our restaurant locations for primary periods of 15 to 20 years. Our rent structures vary from lease to lease, but generally provide for the payment of both minimum base rent and contingent (percentage) rent based on restaurant sales. We are also generally responsible for our proportionate share of common area maintenance (CAM), insurance, property tax and other occupancy-related expenses under our leases. Many of our leases provide for maximum allowable annual percentage or fixed dollar increases in CAM, insurance, and property tax expenses to enable us to better predict and control future variable lease costs. Our sales volumes generally have been in excess of the threshold for percentage rent payments at substantially all of our restaurant locations that are subject to leases with percentage rent payment provisions. We expend cash for leasehold improvements and furnishings, fixtures and equipment (FF&E) to build out our leased premises. We may also expend cash for structural additions that we make to leased premises. Generally, all or a portion of leasehold improvement costs are reimbursed to us by our landlords as construction contributions pursuant to agreed-upon terms in our leases. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against minimum or percentage rents otherwise payable by us, or a combination thereof. However, there can be no assurance that such contributions will be available for every potential location that we seek to develop into a new restaurant. We are also developing freestanding restaurant locations using both ground leases and built-to-suit leases, which are commonly used to finance freestanding locations in the restaurant industry. We own substantially all of the FF&E in our restaurants and currently plan to do so in the future.

We believe the relatively high and consistent sales productivity of our restaurants provides opportunities to obtain suitable leasing terms from landlords. Due to the uniquely flexible and customized nature of our restaurant operations and the complex design, construction and preopening processes for each new location, our lease negotiation and restaurant development timeframes vary. The development and opening process generally ranges from six to eighteen months after lease signing, depending largely on the availability of the leased space we intend to occupy, and can be subject to delays outside of our control. The number and timing of new restaurants actually opened during any given period, and their associated contribution to operating week growth for the period, will depend on a number of factors including, but not limited to, the identification and availability of suitable locations and leases; the availability of suitable financing to us and our landlords; the timing of the delivery of the leased premises to us from our landlords so that we can commence our build-out construction activities; the ability of our landlords and us to timely obtain all necessary governmental licenses and permits to construct and operate our restaurants; any labor shortages or disputes experienced by our landlords or our outside contractors; any unforeseen engineering or environmental problems with the leased premises; weather conditions that interfere with the construction process; our ability to successfully manage the design, construction and preopening processes for each restaurant; the availability of suitable restaurant management and hourly employees; and general economic conditions. While we attempt to manage those factors within our control, we have experienced unforeseen delays in restaurant openings from time to time in the past and could experience such delays in the future. Most other chain restaurant operations have a greater ability to predict the timing of their new openings as a result of their ability to acquire and control the underlying real estate for their locations and/or they have smaller, more standardized restaurant layouts that are less difficult and time consuming to construct and open as compared to our larger, more upscale and highly customized leased locations.

New Restaurant Sales and Investment Characteristics

Since each of our restaurants has a customized layout and differs in size, we believe an effective method to measure the unit economics of our concepts is by square foot. Average sales per productive square foot for our restaurants open during the entire period were approximately \$970 for fiscal 2005, \$976 for fiscal 2004 and \$971 for fiscal 2003. Our average sales per productive square foot for a given fiscal year can be impacted by a number of factors, including the average size of restaurants open during that year. Generally, our smaller restaurants are slightly more productive than our larger restaurants on a per square foot basis. The estimated average productive square feet for restaurants open the full year were 12,500, 12,500 and 12,300 for fiscal 2005, 2004 and 2003, respectively.

We currently lease space for each of our restaurants and are required to expend cash for leasehold improvements and FF&E to build out the leased premises which is targeted, on average, from \$575 to \$625 per square foot for Cheesecake Factory restaurants, excluding preopening costs. The construction costs to build out our leased spaces vary geographically. Additionally, our investment cost per square foot will also vary from restaurant to restaurant, depending on the complexity of our build-out of the leased space. We typically seek to obtain construction contributions from our landlords for structural additions and other leasehold improvements that we make to the leased premises. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against minimum or percentage rents otherwise payable by us, or a combination thereof. Such contributions vary from lease to lease, depending on the scope of construction activities and other factors. While we have been generally successful in obtaining landlord construction contributions in the past, there can be no assurance that such construction contributions will be available in similar amounts, if at all, for every potential location we seek to develop into a new restaurant. In addition, we may also seek lease arrangements that do not include construction contributions from our landlords in exchange for lower or zero percentage rent. However, there can be no assurance that such lease arrangements will be available for any potential locations we seek to develop into a new restaurant.

On average, we target a 2.0 to 1 sales-to-net cash investment ratio and an approximate 30% to 40% net cash-on-cash return for Cheesecake Factory restaurant locations when they reach their mature run-rate levels of sales and profitability. Maturation periods vary from restaurant to restaurant, but generally range from two to five years. The initial return on investment performance targets for new concepts such as Grand Lux Cafe will typically be lower than the average for an established, highly productive concept such as The Cheesecake Factory, since the first few locations for new concepts are typically in a refinement stage for a period of time. These cash-based performance targets for our restaurant operations do not consider field supervision and corporate support expenses; exclude non-cash items such as depreciation expense; exclude income taxes; and do not represent a targeted return on an investment in our common stock. If we select a potential restaurant location for acquisition and development, the actual performance of the location may differ from its originally targeted performance. There can be no assurance that any new restaurant opened will have similar operating results to those of established restaurants.

It is common in the restaurant industry for new locations to initially open with sales volumes well in excess of their sustainable run-rate levels. This initial honeymoon effect usually results from grand opening publicity, promotional and other consumer awareness activities that generate abnormally high customer traffic, particularly in new markets, for our concepts. During the several months following the opening of new restaurants, customer traffic generally settles into its normal pattern, resulting in sales volumes that gradually adjust downward to their expected sustained run-rate level.

Many Cheesecake Factory restaurant openings experience a honeymoon sales period where sales may initially be 20% to 40% higher than their expected run-rate level. Additionally, our new restaurants usually require a 90 to 120 day period after opening to reach their targeted restaurant-level operating margin due to cost of sales and labor inefficiencies commonly associated with new, complex casual dining restaurants. As a result, a significant number of restaurant openings in any single fiscal quarter, accompanied with their associated preopening costs, could have a significant impact on our consolidated results of operations for that period. Therefore, our results of operations for any single fiscal quarter are not necessarily indicative of the results to be expected for any other fiscal quarter nor for a full fiscal year.

Preopening Costs for New Restaurants

Preopening costs include incremental out-of-pocket costs that are directly related to the openings of new restaurants and are not otherwise capitalizable. As a result of the highly customized and operationally complex nature of our upscale, high-volume concepts, the preopening process for our new restaurants is more extensive, time consuming and costly relative to that of most chain restaurant operations. The preopening cost for one of our restaurants usually includes costs to relocate and compensate an average of 12 to 13 restaurant management employees prior to opening; costs to recruit and train an average of 250 to 300 hourly restaurant employees; wages, travel and lodging costs for our opening training team and other support employees; costs for practice service activities; and straight-line minimum base rent during the in-restaurant training period. For fiscal 2006, in accordance with FAS 13-1, Accounting for Rental Costs Incurred during a Construction Period, preopening costs will also include straight-line minimum base rent during the construction period. (See Note 1 of the Notes to Consolidated Financial Statements in Part II, Item 8 of this report). Preopening costs will vary from location to location depending on a number of factors, including the proximity of our existing restaurants; the size and physical layout of each location; the number of management and hourly employees required to operate each restaurant; the relative difficulty of the restaurant staffing process; the cost of travel and lodging for different metropolitan areas; and the extent of unexpected delays, if any, in obtaining final licenses and permits to open the restaurants, which may also be dependent upon our landlords obtaining their licenses and permits, as well as completing their construction activities, for the properties that our leased premises are located within.

Our direct preopening cost for a typical single-story Cheesecake Factory restaurant in an established market averages approximately \$785,000. There will also be other preopening costs allocated to each restaurant opening, including costs for corporate travel and support activities. Preopening costs will usually be higher for larger restaurants, our initial entry into new markets and for newer concepts such as the Grand Lux Cafe. During fiscal 2006, we plan to open as many as three Grand Lux Cafe restaurants that could experience direct preopening costs of approximately \$875,000 each. We usually incur the most significant portion of preopening costs within the two-month period immediately preceding and the month of a restaurant's opening. Preopening costs can fluctuate significantly from period to period, based on the number and timing of restaurant openings and the specific preopening costs incurred for each restaurant. We expense preopening costs as incurred.

Restaurant Expansion Objectives

We believe that the viability of The Cheesecake Factory restaurant concept has been successfully demonstrated in a variety of site layouts, trade areas and markets across the United States. Accordingly, we intend to continue developing Cheesecake Factory restaurants in high profile locations within densely populated areas in both existing and new markets. In addition to expanding The Cheesecake Factory concept, we plan to selectively pursue other opportunities to leverage the competitive strengths of our restaurant operations, which may include new restaurant concepts such as Grand Lux Cafe or other concepts that we may develop or acquire.

We currently expect to open as many as 21 new restaurants during fiscal 2006. As in past years, most of our potential restaurant openings for fiscal 2006 will likely occur during the second half of the year. Based on information currently available, we expect to open as many as two, two, five, and twelve new restaurants during the first through fourth quarters of fiscal 2006, respectively. However, it is difficult for us to precisely predict the timing of our new restaurant openings due to many factors that are outside of our control (See New Restaurant Site Selection and Development). We have signed leases or letters of intent for most of our fiscal 2006 potential restaurant openings. The following table sets forth information with respect to future restaurant locations under development as of February 21, 2006 for which leases have been signed:

Future Restaurants with Signed Leases

Chesterfield, Missouri
Southlake, Texas
Cherry Hill, New Jersey

Albany, New York
Chula Vista, California

We are currently negotiating additional leases for potential future locations that could open during fiscal 2006 and 2007. From time to time, we will evaluate opportunities to acquire and convert other restaurant locations to The Cheesecake Factory and Grand Lux Cafe concepts. However, we currently have no binding commitments (other than the signed leases set forth in the table above) or agreements to acquire or convert any other restaurant locations to our concepts.

We generally select high profile locations for our upscale, highly customized casual dining restaurants. We believe that our large, highly customized restaurants that are usually located in high profile sites generally draw their guests from a much larger geographical area compared to most casual dining chain restaurants. The sizes of our restaurant trade areas vary from location to location, depending on a number of factors such as population density, retail traffic generators and geography. As a result, the opening of a new restaurant could impact the sales of one or more of our nearby restaurants. It is not our intention to open new restaurants that materially cannibalize the sales of our existing restaurants. However, as with most growing retail and restaurant chain operations, there can be no assurance that sales cannibalization will not inadvertently occur or become more significant in the future as we gradually increase our presence in existing markets over time to maximize our competitive position and financial performance in each market.

We developed a bakery cafe format during fiscal 1997 to extend The Cheesecake Factory brand and provide a potential additional source of operating leverage for our bakery production facility. As of January 3, 2006, there were two licensed bakery cafe outlets in operation that feature many of our unique desserts and a limited selection of beverages, sandwiches and salads in a self-service format. Both bakery cafes are currently operated by HMSHost, formerly known as Host Marriott Services Corporation, under licensing agreements with us. The Cheesecake Factory Express is currently the exclusive foodservice operator for the DisneyQuest® family entertainment center located in Orlando, Florida. DisneyQuest® features innovative, interactive technologies together with Disney characters to create an entertainment adventure for families and guests of all ages. Our Company-operated foodservice operation in DisneyQuest® consists of a limited selection of The Cheesecake Factory's quality menu items and desserts in a self-service format. We have no current plans to develop and operate any additional bakery cafe or express operations, as we are currently focused on expanding our full-service restaurant concepts.

Restaurant Operations and Management

Our ability to consistently and correctly execute a made-from-scratch, complex menu in an upscale, high-volume casual dining environment is critical to our overall success. Detailed operating procedures, standards, controls, food line management systems, and cooking methods and processes are utilized at our restaurants to accommodate our extensive menu and facilitate our sales productivity. However, the successful day-to-day operation of our restaurants remains critically dependent on the quality, ability, dedication and enthusiasm of the general manager, executive kitchen manager and all other management and hourly employees working at each restaurant.

Excluding The Cheesecake Factory restaurant in the Forum Shops and the Grand Lux Cafe restaurant located in Las Vegas, which are both open 365 days a year, our restaurants are open every day of the year except Thanksgiving and Christmas. Hours of operation are generally from 11:00 a.m. to 11:00 p.m., except on weekends when most of our restaurants stay open past midnight, and on Sunday when our restaurants open at 10:00 a.m. for brunch. Our Grand Lux Cafe restaurant located in Las Vegas is open 24 hours a day. Outdoor patio seating is available (weather permitting) at approximately three-fourths of our restaurants.

We believe that the high average sales volumes and popularity of our restaurants allow us to attract and retain higher quality, experienced restaurant-level management and other operational personnel. We also believe our restaurants have experienced a lower level of employee turnover than the restaurant industry in general. Each full-service restaurant is typically staffed with one general manager, one executive kitchen manager and from eight to twelve additional kitchen and front-of-the-house management personnel, depending on the size and sales volume of each restaurant. On average, general managers possess approximately five years of experience with us and typically have at least five additional years of management experience with other foodservice operators. All newly recruited restaurant management personnel complete an extensive 12-week training program during which they receive both classroom and on-the-job instruction in food quality and preparation, customer service, alcoholic beverage service, liquor liability avoidance, financial management and cost controls, risk management, employee relations, and our core values and culture of superior guest hospitality. We also provide our restaurant managers with detailed manuals covering food and beverage standards and the proper operation of our restaurants. We are committed to operational excellence in every component of our restaurant operations.

Efficient, attentive and friendly guest service is integral to our overall concept and brand identity. Each restaurant is staffed, on average, with approximately 200-250 hourly employees. We require each hourly employee to participate in a formal training program for his or her respective position in the restaurant. For example, new servers at each restaurant currently participate in approximately three weeks of training during which each new server works under the supervision of other experienced servers and restaurant management. We strive to instill enthusiasm and dedication in our employees and regularly solicit suggestions concerning restaurant operations and all aspects of our business.

Our future growth and financial success will be highly dependent upon our ability to attract, develop and retain qualified employees who are capable of successfully managing upscale, high-volume casual dining restaurants, and consistently executing our extensive and complex menu. The availability and retention of qualified restaurant management employees continues to be a significant industry-wide challenge facing restaurant operators. To enable us to more effectively compete for and retain the highest quality restaurant management personnel available, we maintain an innovative and comprehensive compensation program for our restaurant general managers and executive kitchen managers. Each participant in the program receives a competitive base salary and has the opportunity to earn an annual cash bonus (calculated and paid quarterly) based on the performance of his or her restaurant. Participating restaurant general managers also are eligible to utilize a Company-leased vehicle, for which all non-business use thereof is valued and added to the participants' taxable income pursuant to income tax regulations. A longer-term, wealth-building program, currently based on Company stock options, is also available to participating restaurant general managers and executive kitchen managers that is dependent upon the participants' extended service with us in their respective positions (at least five years) and their achievement of certain agreed-upon performance objectives during that five-year period. Additionally, all other qualified salaried restaurant management employees are eligible to receive annual performance-based Company stock option grants, based on their compensation and tenure with us and our consolidated results of operations.

Our restaurant general managers are responsible for selecting and training the hourly employees for their respective restaurants. Restaurant general managers report to area directors of operations, who typically supervise the operations of six to seven restaurants depending upon geographical and management experience factors. In turn, each area director of operations currently reports to one of four regional vice presidents of restaurant operations. Our restaurant field supervision organization also includes an executive vice president for kitchen operations, area kitchen operations managers and performance development (training) professionals who are responsible for managing new restaurant openings and training for all operational employees. As we open new restaurants, our field supervision and performance development staffs will also expand appropriately.

We prepare a detailed monthly operating budget for each restaurant and compare our actual results to the budget. We also measure the productivity and efficiency of our restaurant operations using a variety of statistical indicators such as daily table turns, guests served per labor hour worked, operating costs incurred per guest served and other activity measures.

Bakery Operations

Our bakery operations originated in 1972 when Oscar and Evelyn Overton founded a small bakery in the Los Angeles area that produced and distributed high quality cheesecakes and other baked desserts. As their business grew, the Overtons leased additional space to expand their production capacity. In 1996, all production operations were transferred to a newly constructed, highly automated production facility in Calabasas Hills, California owned by the Company. We produce approximately 50 varieties of cheesecake in our production facility based on proprietary recipes. Some of our popular cheesecakes include the Original Cheesecake, White Chocolate Raspberry Truffle®, Godiva® Chocolate, Dulce De Leche, Fresh Banana Cream and Fresh Strawberry. Other popular baked desserts include chocolate fudge cake, carrot cake, blackout cake and apple dumplings. In the aggregate, our bakery production facility currently produces approximately 250 product SKUs (stock keeping units).

High quality, wholesome baked desserts and other products are essential to the successful execution of our restaurant and bakery operations. Our bakery operates under an ongoing comprehensive food safety and quality assurance program. This program includes, among other things, supplier qualification and plant inspections, inbound raw material testing, microbiological testing of the production environment, safety and sanitation monitoring, and finished goods testing. Our in-house food safety and quality assurance staff constantly audits and monitors our manufacturing practices during operation and closely monitors our compliance with the industry standard Hazard Analysis Critical Control Points (HACCP) program. We use both internal and external quality control laboratory resources to test raw ingredients and finished products for safety. We believe that our production facility and manufacturing practices comply with all material government regulations.

The commissary role of our bakery operations is to produce innovative, high quality cheesecakes and other baked desserts for sale at our restaurants. Dessert sales represented approximately 15% of our restaurant sales for fiscal 2005, 2004 and 2003 and are important to restaurant-level profitability. We also market some of our more popular cheesecakes and other baked products on a wholesale basis to other foodservice operators, retailers and distributors. Approximately two-thirds of the bakery's production activities are currently devoted to our outside customers, with the remaining one-third devoted to supplying our restaurants. Cheesecakes and other items produced for outside accounts are marketed under The Cheesecake Factory® mark, The Dream Factory® mark, The Cheesecake Factory Bakery® mark and private labels. Current large-account customers include the leading national warehouse club operators, institutional foodservice distributors, supermarkets and other restaurant and foodservice operators. Sales to warehouse clubs, which represented approximately 70%, 64% and 62% of our total outside bakery sales for fiscal 2005, 2004 and 2003, respectively, are concentrated with the two largest warehouse club operators in the United States. Bakery products are shipped to our restaurants and other customers throughout the United States by common carrier. We also contract with an outside fulfillment company to process mail order and internet-based sales. Frozen bakery products are also shipped to international customers.

We strive to develop and maintain long-term, growing relationships with our bakery customers, based largely on our 33-year reputation for producing high quality, creative baked desserts. However, bakery sales volumes will always be less predictable than our restaurant sales. It is difficult to predict the timing of bakery product shipments and contribution margins on a quarterly basis. Additionally, the purchasing plans of our large-account customers may fluctuate from quarter to quarter. Due to the highly competitive nature of the bakery business, we are unable to enter into long-term contracts with our large-account bakery customers, who may discontinue purchasing our products without advance notice at any time for any reason.

Our bakery production facility in Calabasas Hills, California contains approximately 60,000 square feet, of which approximately 45,000 square feet is devoted to production operations and the remainder is utilized for corporate support activities. During fiscal 2005, the production facility operated at approximately 80% of its estimated practical capacity. We are near completion of a second bakery facility in Rocky Mount, North Carolina, which is scheduled to open during the first quarter of fiscal 2006. The facility contains approximately 100,000 square feet, of which approximately 25% will be used as a distribution center for our restaurants and customers located in the eastern United States. The remaining space will be built out in stages as additional capacity is needed and used to produce cheesecakes and other bakery products for our restaurants and other foodservice wholesalers, retailers and distributors. We expect to incur approximately \$15 million in capital expenditures and \$1 million in preopening costs in building this facility, of which \$11.0 million in capital expenditures and \$0.3 million in preopening costs were incurred in fiscal 2005.

We currently maintain a full-time staff of ten sales and marketing employees and four product development employees in the Calabasas, California facility and are in the process of completing our hiring for the Rocky Mount, North Carolina facility. Additionally, we utilize the services of professional foodservice brokers from time to time for certain bakery products and distribution channels.

Information Technology

We maintain financial and accounting controls in our restaurants through the use of a sophisticated point-of-sale (POS) cash register system and personal computer network in each restaurant that interfaces with the computer network in the corporate office using a frame relay communication system. We also utilize an automated front desk management system that enables us to better optimize our seating capacity and increase our speed of operations. The POS system is also utilized to authorize and transmit credit card sales transactions. The POS system and personal computer network provide our restaurant management with daily and weekly information regarding sales, cash receipts, inventory, food and beverage costs, labor costs and other controllable operating expenses. Each restaurant also has an onsite accounting technician who assists in the accumulation and processing of financial and administrative information. Field supervision employees also make extensive use of laptop computers that interface with the restaurant and corporate computer networks and handheld wireless devices to insure prompt communication.

We began testing a Kitchen Management System (KMS) in one of our restaurants in fiscal 2005. The KMS allows for automated routing and cookline balancing, improves cookline productivity, synchronizes order completion, and provides valuable ticket time and cook time data. We expect to install the KMS in two additional existing restaurants and all new restaurants that we open in fiscal 2006 and beyond.

Advertising and Promotion

Our restaurants compete in the upscale, casual dining segment of the restaurant industry. This segment is generally positioned between easily replicated casual dining operations and expensive fine dining or dinner house operations. We believe our commitment to providing consistent, exceptional value to consumers in an upscale, casual dining environment continues to be the most effective approach to attracting and retaining customers. Accordingly, we have historically relied on our high profile locations, operational excellence, media interest, and word of mouth to attract and retain restaurant guests instead of using paid advertising or discounting. We would consider more traditional forms of paid advertising if the need arose. During fiscal 2005, our restaurant-level expenditures for advertising were less than 1% of restaurant sales.

We believe our commitment to deliver exceptional value to consumers has enabled our newer restaurants to benefit from the brand recognition and reputation developed by our existing restaurants. We also attempt to build awareness and relationships with local hotel concierges. For restaurant openings in new markets, we generally host a high profile event for a local charity as part of our preopening practice activities that also serves to introduce our concept to the market. In new markets, we also arrange for local television and radio stations to cover our restaurant openings and thereby provide us with free publicity. During fiscal 2001, the Company sponsored the formation of The Cheesecake Factory Oscar and Evelyn Overton Charitable Foundation that, among its other intended activities, provides a vehicle for employee participation in qualified local community service and charitable programs.

Purchasing and Distribution

We strive to obtain quality menu ingredients, raw materials and other supplies and services for our operations from reliable sources at competitive prices. We continually research and evaluate various ingredients and products in an effort to maintain high quality and to be responsive to changing consumer tastes. Other than for cheesecakes and other baked products, our restaurants do not utilize a central food commissary. Substantially all menu items are prepared on each restaurant's premises daily from scratch using fresh ingredients. In order to maximize purchasing efficiencies and to provide the freshest ingredients for our menu items while obtaining the lowest possible prices for the required quality and consistency, each restaurant's management determines the quantities of food and supplies required and orders the items from local, regional and national suppliers on terms negotiated by our central purchasing staff. Restaurant-level inventories are maintained at a minimum dollar-value level in relation to sales due to the high concentration and relatively rapid turnover of the perishable produce, poultry, meat, fish and dairy commodities that we use in our operations, coupled with limited storage space at our restaurants.

We attempt to negotiate short-term and long-term agreements for our principal commodity, supply and equipment requirements, depending on market conditions and expected demand. However, we are currently unable to contract for long periods of time for certain of our fresh commodities such as fish and dairy items (except for cream cheese used in our bakery operations) and, consequently, such commodities can be subject to unforeseen supply and cost fluctuations. Dairy costs can also fluctuate due to government regulation. We believe that all essential food and beverage products are available from several qualified suppliers in all cities in which our operations are located. Independent foodservice distributors, including the largest foodservice distributor in North America, deliver most food and supply items daily to our restaurants.

Seasonality and Quarterly Results

Our business is subject to seasonal fluctuations. Historically, our highest levels of revenues and net income for our established restaurants have occurred in the second and third quarters of the fiscal year. Approximately two-thirds of our restaurants are located in or near shopping centers and malls that typically experience seasonal fluctuations in sales. Patio seating represents approximately 18% of the total available productive seating for all restaurants open as of January 3, 2006 and can be subject to disruption from inclement weather.

Holidays, severe winter weather, hurricanes, thunderstorms and similar conditions may impact restaurant sales volumes seasonally in some of the markets where we operate. Our bakery operations are seasonal to the extent that the fourth quarter's sales are typically higher due to holiday business. Additionally, bakery sales comparisons may fluctuate significantly from quarter to quarter due to the timing and size of orders from our larger bakery customers. Quarterly results have been and will continue to be significantly impacted by the timing of new restaurant openings and their associated preopening costs. 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.

Competition

The restaurant industry is highly competitive. There are a substantial number of restaurant operations that compete directly and indirectly with us, many of which have significantly greater financial resources, higher revenues and greater economies of scale. The restaurant business is often affected by changes in consumer tastes and discretionary spending patterns; national and regional economic and public safety conditions; demographic trends; weather conditions; the cost and availability of raw materials, labor and energy; purchasing power; governmental regulations; and local competitive factors. Any change in these or other related factors could adversely affect our restaurant operations. Accordingly, we must constantly evolve and refine the critical elements of our restaurant concepts over time to protect their longer-term competitiveness. Additionally, there is competition for highly qualified restaurant management employees and for attractive locations suitable for upscale, high-volume restaurants.

The competitiveness of multi-unit foodservice operations such as ours can also be substantially affected by adverse publicity resulting from food quality, illness, injury, health concerns or operating issues stemming from a single restaurant or, with respect to our bakery operations, a single production run of bakery products. In particular, since we depend heavily on The Cheesecake Factory® mark for a majority of our revenues, unfavorable publicity relating to our bakery operations could have a material adverse effect on our restaurant operations, and vice versa. To minimize the risk of food borne illness, we have implemented a HACCP system for managing food safety and quality. Nevertheless, the risk of food borne illness cannot be completely eliminated. We attempt to manage risks of this nature, but the occurrence of any one of these factors in any one of our restaurants or our bakery production facility, or elsewhere within the foodservice industry, could cause our entire company to be adversely affected. With regard to our bakery operations, competition within the premium baked dessert market has historically been regional and fragmented. However, overall competition within that market remains intense. We believe that our restaurant and bakery operations compete favorably with consumers on the critical attributes of quality, variety, taste, service, consistency and overall value.

Government Regulation

We are subject to numerous federal, state and local laws affecting our business. Each of our restaurants is subject to licensing and regulation by a number of governmental authorities, which may include alcoholic beverage control, health, sanitation, environmental, zoning and public safety agencies in the state or municipality in which the restaurant is located. Difficulties in obtaining or failures to obtain the required licenses or approvals could delay or prevent the development and openings of new restaurants, or could disrupt the operations of existing restaurants. However, we believe that we are in compliance in all material respects with all relevant governmental regulations, and we have not experienced abnormal difficulties or delays in obtaining the licenses or approvals required to open or operate any restaurant to date.

During fiscal 2005, approximately 13% of our restaurant sales were attributable to alcoholic beverages. Alcoholic beverage control regulations require each of our restaurants to apply to a state authority and, in certain locations, county and municipal authorities for licenses and permits to sell alcoholic beverages on the premises. Typically, licenses must be renewed annually and may be subject to penalties, temporary suspension or revocation for cause at any time.

The failure of a restaurant to obtain or retain its licenses would adversely affect that restaurant's operations and profitability. Alcoholic beverage control regulations impact many aspects of the daily operations of our restaurants, including the minimum ages of patrons and employees consuming or serving such beverages, respectively; employee alcoholic beverage training and certification requirements; hours of operation; advertising; wholesale purchasing and inventory control of such beverages; seating of minors and the service of food within our bar areas; and the storage and dispensing of alcoholic beverages. State and local authorities in many jurisdictions routinely monitor compliance with alcoholic beverage laws. We have not encountered any material problems relating to alcoholic beverage licenses to date. The failure to receive or retain, or a delay in obtaining, a liquor license for a particular restaurant could adversely affect our ability to obtain such licenses elsewhere.

We are subject to dram shop statutes in most of the states in which we have operations, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to such person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance that we believe is consistent with coverage carried by other entities in the restaurant industry of similar size and scope of operations. Even though we are covered by general liability insurance, a settlement or judgment against us under a dram shop statute in excess of our liability coverage could have a material adverse effect on our operations.

Various federal and state labor laws govern our operations and our relationships with our employees, including such matters as minimum wages, breaks, overtime, fringe benefits, safety, working conditions and citizenship requirements. We are also subject to the regulations of the Bureau of Citizenship and Immigration Services (BCIS). Even if we operate our restaurants in strict compliance with BCIS requirements, some of our employees may not meet federal citizenship or residency requirements, which could lead to a disruption in our work force. Significant government-imposed increases in minimum wages, paid or unpaid leaves of absence and mandated health benefits, or increased tax reporting, assessment or payment requirements related to our employees who receive gratuities could be detrimental to the profitability of our restaurants and bakery operations. Various proposals that would require employers to provide health insurance for all of their employees are considered from time to time in Congress and various states. The imposition of any requirement that we provide health insurance to all employees could have an adverse effect on our results of operations and financial position, as well as the restaurant industry in general. Our suppliers may also be affected by higher minimum wage and benefit standards, which could result in higher costs for goods and services supplied to us. While we carry employment practices insurance, a settlement or judgment against us in excess of our coverage limitations could have a material adverse effect on our results of operations, liquidity, financial position or business.

As a manufacturer and distributor of food products, we are subject to a number of food safety regulations, including the Federal Food, Drug and Cosmetic Act and regulations promulgated thereunder by the U.S. Food and Drug Administration. This comprehensive regulatory framework governs the manufacture (including composition and ingredients), labeling, packaging and safety of food in the United States.

We are subject to federal and state environmental regulations, but these rules have not had a material effect on our operations. Various laws concerning the handling, storage, and disposal of hazardous materials, such as cleaning solvents, and the operation of restaurants in environmentally sensitive locations may impact aspects of our operations. During fiscal 2005, there were no material capital expenditures for environmental control facilities and no such expenditures are anticipated.

Our facilities must comply with the applicable requirements of the Americans With Disabilities Act of 1990 (ADA) and related state statutes. The ADA prohibits discrimination on the basis of disability with respect to public accommodations and employment. Under the ADA and related state laws, when constructing new restaurants or undertaking significant remodeling of existing restaurants, we must make them more readily accessible to disabled persons.

We must also make reasonable accommodations for the employment of disabled persons.

We have a significant number of hourly restaurant employees that receive tip income. We have elected to voluntarily participate in a Tip Reporting Alternative Commitment (TRAC) agreement with the Internal Revenue Service. By complying with the educational and other requirements of the TRAC agreement, we reduce the likelihood of potential employer-only FICA assessments for unreported or underreported tips.

Employees

As of January 3, 2006, we employed approximately 24,700 persons, of which approximately 23,800 employees worked in our restaurants, approximately 650 worked in our bakery operations and approximately 250 employees worked in our corporate center and restaurant field supervision organization. None of our employees are currently covered by collective bargaining agreements, and we have never experienced an organized work stoppage, strike or labor dispute. We believe our working conditions and compensation packages are generally comparable with those offered by our competitors and consider overall relations with our employees to be favorable.

Trademarks

We have registered, among other marks, The Cheesecake Factory, Grand Lux Cafe, The Cheesecake Factory Bakery, The Cheesecake Factory Express, The Dream Factory, and The Cheesecake Factory Bakery Cafe as trademarks with the United States Patent and Trademark Office. Additional trademark applications are pending. We have also registered our ownership of the Internet domain name thecheesecakefactory.com and other Internet domain names. We regard our trademarks as having substantial value and as important factors in the marketing of our restaurants and bakery products. We have registered, or have pending applications to register, one or more of our trademarks in more than 79 foreign countries, although there can be no assurance that our name and marks are registerable in every country for which registration is being sought. The duration of trademark registrations varies from country to country. However, trademarks are generally valid and may be renewed indefinitely as long as they are in use and/or their registrations are properly maintained, and they have not been found to become generic.

Executive Officers

David Overton, age 59, serves as our Chairman of the Board and Chief Executive Officer. Mr. Overton co-founded our predecessor company in 1972 with his parents.

Peter J. D. Amelio, age 44, was appointed President and Chief Operating Officer of our restaurant concepts in April 2004. Mr. D. Amelio joined our Company in 1990 as a restaurant manager and has steadily advanced through our restaurant operations organization. He previously served as President and Chief Operating Officer of our Grand Lux Cafe restaurant operations.

Max S. Byfuglin, age 60, serves as President of The Cheesecake Factory Bakery Incorporated, our bakery subsidiary. Mr. Byfuglin joined our bakery operations in 1982 and worked closely with our founders, serving in nearly every capacity in our bakery over the past 23 years.

Debby R. Zurzolo, age 49, was appointed Executive Vice President, Secretary and General Counsel in December 2003. Ms. Zurzolo joined our Company as Senior Vice President and General Counsel in April 1999. From 1982 until joining the Company, she practiced law at Greenberg Glusker Fields Claman & Machtinger LLP in Los Angeles, California. As a partner with that firm, Ms. Zurzolo represented us on various real estate and other business matters.

Michael J. Dixon, age 43, was appointed Senior Vice President, Finance and Chief Financial Officer in December 2003. Mr. Dixon joined our Company in September 2000 as Vice President, Finance and Controller after several years in finance and business development with The Walt Disney Company and nine years with the public accounting firm of Coopers & Lybrand LLP.

ITEM 1A: RISK FACTORS

The risk factors presented below may affect our future operating results, financial position and cash flows. In addition to the risk factors presented below, changes in general economic conditions, consumer tastes and discretionary spending patterns, demographic trends and consumer confidence in the economy, which affect consumer behavior and spending for restaurant dining occasions in general, may have a material impact on us. Our actual results could vary significantly from any results expressed or implied by forward-looking statements depending upon a variety of factors, including, but not limited to, the following risks and uncertainties:

Changes in consumer eating habits as a result of new information regarding diet, nutrition and health could impact demand for our menu and bakery product offerings.

Our success in creating demand for our restaurant menu and bakery product offerings is dependent on our ability to continue to accurately predict consumer dining and taste preferences, and adapt our menu to trends in food consumption. If consumer eating habits change significantly and we are unable to respond with appropriate menu and bakery product offerings, it could materially affect demand for our menu and bakery product offerings resulting in lost customers and an adverse impact on our results of operations.

Increasing competition in the restaurant industry in general, and specifically within the upscale, casual dining segment of the restaurant industry, may adversely affect customer traffic at our restaurants.

The restaurant industry is highly competitive with respect to price, service, location and food quality. There are a substantial number of restaurant operations that compete directly and indirectly with us, some of which may have significantly greater financial resources, higher revenues, and greater economies of scale than we do. In addition, increasing competition specifically within the upscale, casual dining segment could negatively impact customer traffic at our restaurants, as dining options increase for the consumer segment we target.

Adverse weather conditions could unfavorably affect our restaurant sales.

Adverse weather conditions can impact customer traffic at our restaurants, cause the temporary underutilization of outdoor patio seating, and, in more severe cases, cause restaurant closures. Outdoor patio seating is available at most of our restaurants and accounts for approximately 18% of our seating capacity.

Seasonality of our business and the timing of new restaurant openings could result in fluctuations in our financial performance from quarter-to-quarter within a fiscal year.

Our business is subject to seasonal fluctuations. Historically, our restaurant sales have typically been higher during the second and third quarters of the fiscal year. Our bakery operation is seasonal to the extent that the fourth quarter's sales are typically higher due to holiday business and may also significantly vary from quarter to quarter due to the timing and/or size of orders from large-account bakery customers. As a result of these factors, results of operations for any single quarter are not necessarily indicative of the results that may be achieved for a full fiscal year. Quarterly results have been, and in the future will continue to be, significantly impacted by the timing of new restaurant openings and their respective preopening costs.

Inflation may increase our operating expenses.

Our profitability is dependent, among other things, upon our ability to anticipate and react to changes in the costs of key operating resources, including food and other raw materials, labor, energy, insurance (including health, liability and workers compensation), and other supplies and services. To the extent that price increases cannot be passed along to our restaurant and bakery customers, those increases could impact our financial results.

There can be no assurance that future supplies and costs for the commodities that we purchase will not fluctuate due to weather and other market conditions outside of our control. In addition, our suppliers may be affected by higher minimum wage and benefit standards, fuel costs, and other expenses that they pass through to their customers, which could result in higher costs for goods and services supplied to us.

Our inability to successfully and sufficiently raise menu prices could result in a decline in margins.

We utilize menu price increases to help offset cost increases, including increased costs for minimum wages, employee benefits, insurance arrangements, construction, fuel, and other costs. If we are unsuccessful at raising prices, our business and results could be harmed.

Changes in, or any failure to comply with, applicable laws or regulations could adversely affect our business, financial position and results.

Our business is subject to extensive state and local government regulation in the various jurisdictions in which our restaurants and bakeries are located, including regulations relating to alcoholic beverage control, public health and safety, and food safety. The failure to obtain and/or retain licenses, permits or other regulatory approvals could delay or prevent the opening and/or continued operation of a restaurant in a particular area. In addition, our failure to comply with applicable laws and regulations could subject us to fines or legal actions that could adversely affect our business, financial position and results.

- *Alcoholic beverage control.* Alcoholic beverage control regulations require each of our restaurants to obtain licenses and permits to sell alcoholic beverages on the premises. The failure of a restaurant to obtain or retain its licenses would adversely affect that restaurant's operations and profitability, and could adversely affect our ability to obtain these licenses elsewhere.
- *Public health and safety.* We may also be subject to dram shop statutes in certain states, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Even though we are covered by general liability insurance, a settlement or judgment against us under a dram shop statute in excess of liability coverage could have a material adverse effect on our operations.
- *Food safety.* As a manufacturer and distributor of food products, we are subject to a number of food safety regulations, including the Federal Food, Drug and Cosmetic Act. Failure to comply with these regulations could adversely affect our business, financial position and results.

Changes in, or any failure to comply with, applicable labor laws or regulations could adversely affect our business, financial position and results.

Various federal and state labor laws and regulations govern our operations and relationships with employees, including minimum wages, breaks, overtime, fringe benefits, safety, working conditions and citizenship requirements.

Changes in, or any failure to comply with, these laws and regulations could subject us to fines or legal actions. Settlements or judgments that are not insured or in excess of our coverage limitations could have a material adverse affect on our business. Even if we operate our facilities in strict compliance with Bureau of Citizenship and Immigration Services requirements, some of our employees may not meet federal citizenship or residency requirements. This could result in a disruption in our work force and adverse publicity. Significant government-imposed increases in minimum wages, paid or unpaid leaves of absence and mandated health benefits, or increased tax reporting, assessment or payment requirements related to our employees who receive gratuities could be detrimental to the profitability of our restaurants and bakery operations.

Adverse publicity about us, our restaurants or bakery products could negatively affect public perception of the brand.

Multi-unit foodservice operations such as ours can be substantially affected by adverse publicity resulting from food quality, illness, injury, health concerns, or operating issues stemming from a single restaurant or limited number of restaurants or, with respect to our bakery operations, a single production run of bakery products.

The need for advertising may arise, which could increase our operating expenses.

We have historically relied on our high profile locations, operational excellence, media interest, and word of mouth to attract and retain restaurant guests instead of using paid advertising or discounting. Should we conclude that paid advertising is necessary to attract and retain guests, our operating expenses could increase and our financial results could be adversely affected.

If we are unable to realize our long-term growth plan and successfully implement our business strategy, our growth rate could slow.

Our long-term growth is dependent on the success of strategic and operating initiatives, including new restaurant concepts and new bakery product lines. If we are unable to successfully implement operating initiatives, develop new bakery product lines, and/or develop additional concepts to meet our growth objectives, we could experience a lower growth rate than we have in the past. In addition, should we decide to undertake an acquisition as part of our growth plan, the unsuccessful completion of the transaction and/or the failure of the acquired concept could result in material costs incurred by us.

Our growth rate depends primarily on new restaurant openings and is subject to various factors that may increase the cost to develop and/or affect the number and timing of the openings of new restaurants.

Future growth in sales and profits will depend to a substantial extent on our ability to increase the number of our restaurants. Due to the highly customized nature of our restaurant concept and the complex design, construction, and preopening processes for each new location, the lease negotiation and restaurant development timeframes vary from location to location and can be subject to unforeseen delays. The number and timing of new restaurants actually opened during any given period, and their associated contribution to operating week growth for the period, will depend on a number of factors including, but not limited, to:

- The identification and availability of suitable locations and leases;
- The availability of suitable financing to us and our landlords;
- The timing of the delivery of the leased premises to us from our landlords in order to commence build-out construction activities;

- The ability of us and our landlords to obtain all necessary governmental licenses and permits to construct and operate our restaurants on a timely basis;
- Our ability to manage the construction and development costs of new restaurants, and the availability and/or cost of raw materials;
- The rectification of any unforeseen engineering or environmental problems with the leased premises;
- Adverse weather during the construction period; and
- The hiring and training of qualified operating personnel in the local market.

Our ability to successfully operate our bakery business will have an impact on our ability to grow bakery sales and profits.

A downturn or limited future growth of bakery sales will have an adverse impact on our business, financial position and results. Our bakery operations are dependent upon a number of factors including, but not limited, to:

- The completion of construction of our second bakery production facility and, subsequently, our ability to operate it efficiently and effectively;
- Our ability to obtain and retain large-account customers for our bakery operations and our inability to enter into long-term contracts with those customers; and
- Our reliance on two major warehouse customers for a substantial percentage of our third party bakery sales.

New restaurant openings may negatively impact sales at our existing restaurants.

We generally select high profile locations for our large, upscale and highly customized restaurants, and believe that we draw guests from a much larger geographical area compared to most casual dining chain restaurants. The sizes of our restaurant trade areas vary from location to location, depending on a number of factors such as population density, retail traffic generators and geography. As a result, the opening of a new restaurant could impact the sales of one or more of our nearby restaurants. It is not our intention to open new restaurants that materially cannibalize the sales of our existing restaurants. However, as with most growing retail and restaurant chain operations, there can be no assurance that sales cannibalization will not inadvertently occur or become more significant in the future as we gradually increase our presence in existing markets over time to maximize our competitive position and financial performance in each market.

Litigation could have a material adverse impact on our business.

We are subject to lawsuits, administrative proceedings and claims that arise in the course of our business. The claims typically involve claims by guests, employees and others regarding such matters as food borne illness, compliance with wage and hour requirements, and other operational issues common to the foodservice industry. We could be adversely affected by negative publicity resulting from these claims, regardless of their validity. An adverse judgment that is not insured or in excess of insurance coverage could have a material adverse affect on our business and financial position and results of operations. We are self-insured for a significant portion of our risks and associated liabilities with respect to workers compensation, general liability, health benefits and other insurable risks. We accrue liabilities for these programs based on our estimate of the ultimate costs to settle known claims as well as claims that are incurred but not reported. Significant judgment is required to estimate claims that have been incurred but not reported. If actual claims trends, including the severity or frequency of claims, differ from our estimates, our financial results could be negatively impacted.

We may be unable to scale our infrastructure to support our growing operations.

If we are unable to grow or manage the growth of our corporate and field supervision infrastructure to support our expanding operations, it could have an adverse impact on our ability to open new restaurants at our targeted rate.

Our business and future development could be hurt if we are unable to retain key personnel.

The success of our business will continue to be highly dependent upon the services of David Overton, our co-founder and current Chairman of the Board and Chief Executive Officer (CEO), and certain other senior executives of the Company. The loss of the services of the CEO or other senior executives could have a material adverse effect upon our business and plans for future development.

Our failure to establish, maintain and apply adequate internal control over our financial reporting.

We are subject to the ongoing internal control provisions of Section 404 of the Sarbanes-Oxley Act of 2002. These provisions provide for the identification of material weaknesses in internal control over financial reporting, which is a process to provide reasonable assurance regarding the reliability of financial reporting for external purposes in accordance with accounting principles generally accepted in the United States of America. Should we identify a material weakness in internal control, there can be no assurance that we will be able to remediate any future material weaknesses that may be identified in a timely manner or maintain all of the controls necessary to remain in compliance. Any failure to maintain an effective system of internal control over financial reporting could limit our ability to report our financial results accurately and timely or to detect and prevent fraud.

Changes in financial accounting standards or interpretations of existing standards could affect our reported results of operations.

Changes in accounting standards, new accounting pronouncements and interpretations may occur that could adversely affect our reported financial position, results of operations and/or cash flows.

The Staff of the Securities and Exchange Commission has notified us that it is conducting an informal inquiry concerning our stock option practices and this inquiry could require us to expend significant resources and result in an unfavorable outcome.

Following the announcement on July 18, 2006 of the Audit Committee of our Board of Directors' initiation of a review of our historical stock option grant practices, the staff of the Securities and Exchange Commission (SEC) notified us that it is conducting an informal inquiry concerning these practices. We do not know when this inquiry will be resolved or what, if any, actions the SEC may take as a result of this inquiry. Response to this inquiry could require the expenditure of significant financial resources. An unfavorable outcome could require us to pay damages or penalties, or result in other remedies imposed upon us, any of which could have a material adverse affect on our business, results of operations, financial position and cash flows.

Our common stock is subject to potential delisting from the Nasdaq Stock Market as a result of our inability to timely file our Quarterly Reports on Form 10-Q with the Securities and Exchange Commission.

On August 17, 2006 the Nasdaq Stock Market staff advised us that we are not in compliance with the filing requirements for continued listing under Marketplace Rule 4310(c)(14) due to the failure to timely file our Quarterly Report on Form 10-Q for the quarter ended July 4, 2006. We appealed the staff determination and a hearing was held before the Nasdaq Listing Qualifications Panel. No decision has been rendered to date. On November 15, 2006, we received an additional staff determination letter stating that our failure to file our Quarterly Report on Form 10-Q for the quarter ended October 3, 2006 is an additional basis for delisting. While our common stock will remain listed on The Nasdaq Global Select Market until the Panel reaches a decision, there can be no assurance that the Panel will grant our request for continued listing. If the request for continued listing is not granted, the delisting of our common stock would likely make the market for trading of our common stock less liquid.

Pending civil litigation relating to our stock option granting practices could have a material adverse effect on the Company.

We and certain of our directors and current and former officers are defendants in eight shareholder derivative actions relating to our stock option granting practices. See Part I, Item 3, Legal Proceedings for a more detailed description of these proceedings. These actions are in their preliminary stages, and we intend to vigorously defend these actions. These lawsuits could divert management time and attention from day-to-day operations, result in significant legal expenses, and result in an outcome that could have a material adverse effect on our business, financial condition, results of operations and cash flows.

ITEM 1B: UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2: PROPERTIES

All of our 110 existing Company-operated, full-service restaurants and one express location are located on leased properties, and we have no current plans to own the real estate underlying our restaurants. See Part I, Item 1 Business Existing Restaurant Locations for information regarding the location of our restaurants. We own substantially all of the equipment, furnishings and trade fixtures in our restaurants. Existing restaurant leases have primary terms with expiration dates ranging from October 31, 2007 to January 31, 2030 (excluding existing renewal options). There can be no assurance that we will be able to renew expiring leases after the expiration of all remaining renewal options. Most of our restaurant leases provide for contingent rent based on a percentage of restaurant sales (to the extent this amount exceeds a minimum base rental) and payment of certain lease-related expenses. See Note 7 of the Notes to Consolidated Financial Statements in Part II, Item 8 of this report for information regarding the aggregate straight-line minimum and percentage rent expense for the last three fiscal years and information regarding our obligation to pay minimum base rentals in future years.

Our corporate support center and a bakery production facility are located in Calabasas Hills, California. The corporate support center is an 88,000 square-foot facility on an approximate 5-acre parcel of land. The bakery production facility is a 60,000 square-foot facility on a 3.3-acre parcel of land. We currently own both properties (land, building and equipment) in fee simple. The corporate support center is a two-story building contiguous to our bakery production facility which we purchased in June 2004 to accommodate our eventual need for additional support personnel and space for those personnel as we continue to grow our company. The purchase price of \$21 million was funded with available cash and investments. We will incur additional expenditures to finish out the interior of the building, as space is needed.

We are near completion of a second bakery facility in Rocky Mount, North Carolina, which is scheduled to open during our first quarter of fiscal 2006. The second bakery facility is a 100,000 square-foot facility on a 15.82-acre parcel of land. We currently own the property in fee simple.

ITEM 3: LEGAL PROCEEDINGS

We recently received approval by the Superior Court of the State of California of a negotiated settlement of consolidated class action wage and hour lawsuits originally filed in December 2002 by two former hourly restaurant employees in California alleging violations of California labor laws with respect to providing meal and rest breaks. Notices of the settlement were sent to all class members, the claims period has expired, and the administration of claims is currently in process. A number of former and current employees also filed individual wage and hour claims, based upon alleged similar violations, directly with various offices of the California Division of Labor Standards Enforcement (DLSE).

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The DLSE claims filed by employees who joined the approved settlement also will be resolved by such settlement. In the third quarter of 2004, we recorded a \$4.5 million reserve based on an estimate of the ultimate costs, expenses and fees that may be incurred in connection with these matters. We believe this accrual is sufficient to cover the final settlement.

Following our announcement on July 18, 2006 of the Audit Committee of our Board of Directors' review of our historical stock option granting practices, a number of purported Company shareholders brought eight separate putative shareholder derivative actions (the Options Derivative Actions) against the Company, our entire Board of Directors, and certain of our current and former officers alleging that the defendants improperly dated certain historical stock option grants. The plaintiffs in these cases, filed in Los Angeles County Superior Court and styled as Siebles v. Deitchle et al. (Case No. BC355872) (subsequently re-filed in federal court), McGee v. Overton et al. (Case No. BC355953); Rigotti v. Overton, et al. (Case No. BC356850), Cullen v. Overton, et al. (Case No. BC356851), Sachs v. Overton et al. (Case No. BC357065), and filed in United States District Court for the Central District and styled as Siebles v. Deitchle et.al. (Case No. CV06 6234), Kuhns v. Deitchle et al. (Case No. SACV06917) and Freed v. Overton et al. (Case No. CV 06 06486) contend, among other things, that the defendants' conduct violated the California and/or federal securities laws, breached defendants' fiduciary duties, wasted corporate assets, unjustly enriched the defendants, and caused errors in the Company's financial statements. The plaintiffs seek, among other things, unspecified damages and disgorgement of profits from the alleged conduct to be paid to the Company. The plaintiffs also seek attorneys' fees for themselves. The Options Derivative Actions are in the preliminary stages of litigation. We intend to vigorously defend these actions.

We are also subject to other private lawsuits, administrative proceedings and claims that arise in the ordinary course of our business. Such claims typically involve claims from guests, employees and others related to operational issues common to the foodservice industry. A number of such claims may exist at any given time. We could be affected by adverse publicity resulting from such allegations, regardless of whether such allegations are valid or whether we are determined to be liable. From time to time, we are also involved in lawsuits with respect to infringements of, or challenges to, our registered trademarks. We believe that the final disposition of such 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.

In accordance with our articles of incorporation and bylaws, we have entered into indemnification agreements with each of our present and former directors and officers. Under these agreements, we are required to indemnify each director and officer against expenses, including attorneys' fees, judgments, fines and settlements, paid by such individual in connection with the Option Derivative Actions (other than liabilities excluded from indemnification under our bylaws and Delaware law).

Defense of these lawsuits could result in significant legal expenses that may not be recoverable under the Company's liability insurance coverage and divert management time and attention from day-to-day operations. An unfavorable outcome could have a material adverse effect on our business, financial condition, results of operations and cash flows.

ITEM 4: SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matter was submitted to a vote of our stockholders during the fourth quarter of the fiscal year ended January 3, 2006.

PART II

ITEM 5: MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is listed on the Nasdaq Stock Market® under the symbol CAKE. The following table sets forth, for the periods indicated, the high and low sales prices as reported on the Nasdaq Stock Market.

	High*	Low*
Fiscal 2004:		
First Quarter	\$ 32.75	\$ 27.03
Second Quarter	32.25	25.01
Third Quarter	29.13	25.18
Fourth Quarter	33.50	27.58
Fiscal 2005:		
First Quarter	\$ 37.36	\$ 29.88
Second Quarter	36.81	30.15
Third Quarter	36.75	29.29
Fourth Quarter	38.49	30.55

* Prices have been adjusted to reflect a three-for-two stock split effected in the form of a 50% stock dividend payable December 8, 2004.

Since our initial public offering in September 1992, we have not declared or paid any cash dividends on our common stock. We currently intend to retain all earnings for the operation and expansion of our business. Although we have the financial capacity to consider paying a cash dividend and remain compliant with the covenants of our revolving credit and term loan facility, we have no current plans to do so. There were approximately 875 holders of record of our common stock at February 15, 2006 and we estimate there were approximately 52,000 beneficial stockholders on that date.

During the quarterly period ended January 3, 2006, we made no purchases of equity securities that are registered by us pursuant to Section 12 of the Exchange Act.

On August 17, 2006, the Nasdaq Stock Market staff advised us that we are not in compliance with the filing requirements for continued listing under Marketplace Rule 4310(c)(14) due to the failure to timely file our quarterly report for the second quarter of fiscal 2006. We appealed the staff determination and a hearing was held before the Nasdaq Listing Qualifications Panel. No decision has been rendered to date. On November 15, 2006, we received an additional staff determination letter stating that our failure to file our quarterly report for the third fiscal quarter is an additional basis for delisting. While our common stock will remain listed on The Nasdaq Global Select Market until the Panel reaches a decision, there can be no assurance that the Panel will grant our request for continued listing. If the request for continued listing is not granted, the delisting of our common stock would likely make the market for trading of our common stock less liquid.

ITEM 6: SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth, for the periods indicated, selected consolidated financial data that has been derived from our consolidated financial statements including the audited consolidated balance sheets for fiscal years 2005 and 2004 and the audited consolidated statements of operations for fiscal 2005, 2004 and 2003 and the notes thereto appearing elsewhere herein and should be read in conjunction with our consolidated financial statements and related notes thereto, and with Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations. The statement of operations data set forth below for fiscal years 2005, 2004 and 2003 and the balance sheet data set forth below for fiscal years 2005 and 2004 has been restated to conform to the financial statements included in this Form 10-K/A. The statement of operations data set forth below for fiscal years 2002 and 2001 and the balance sheet data set forth below for fiscal years 2003, 2002 and 2001 has been restated to reflect the impact of the accounting errors. Such restated data has been derived from our books and records and is presented herein on an unaudited basis.

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Historical results for the years presented should not be considered indicative of future performance. Refer to Note 1 of Notes to Consolidated Financial Statements in Part II, Item 8 of this report for more detailed information regarding the restatement.

(In thousands, except per share data)	Fiscal Year (1)		
	2005 (restated)	2004 (restated)	2003 (restated)
Statement of Operations Data:			
Revenues	\$ 1,182,053	\$ 969,232	\$ 773,835
Costs and expenses:			
Cost of sales	302,889	257,076	195,370
Labor expenses	364,173	298,787	239,824
Other operating costs and expenses	268,253	223,682	181,113
General and administrative expenses	53,527	41,964	37,761
Depreciation and amortization expenses	45,177	35,981	28,262
Preopening costs	18,293	14,787	12,174
Total costs and expenses	1,052,312	872,277	694,504
Income from operations	129,741	96,955	79,331
Interest income, net	3,918	2,234	3,354
Other income, net	557	966	2,944
Income before income taxes	134,216	100,155	85,629
Income tax provision	46,268	34,819	30,044
Net income	\$ 87,948	\$ 65,336	\$ 55,585
Net income per share (2):			
Basic	\$ 1.12	\$ 0.84	\$ 0.73
Diluted	\$ 1.10	\$ 0.82	\$ 0.71
Weighted average shares outstanding (2):			
Basic	78,354	77,613	75,633
Diluted	80,176	79,395	77,772

	Fiscal Year (1)			
	2002 (as previously reported)	2002 (restated)	2001 (as previously reported)	2001 (restated)
Revenues	\$ 651,970	\$ 651,970	\$ 539,130	\$ 539,130
Costs and expenses:				
Cost of sales	165,629	165,629	146,158	