WEINGARTEN REALTY INVESTORS /TX/
Form 8-K
September 26, 2007

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

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

Date of report (Date of earliest event reported): September 25, 2007

Weingarten Realty Investors

(Exact Name of Registrant as Specified in Its Charter)

Texas

(State or Other Jurisdiction of Incorporation)

1-9876	74-1464203
(Commission File Number)	(IRS Employer Identification No.)

2600 Citadel Plaza Drive, Suite 300, Houston, Texas	77008
(Address of Principal Executive Offices)	(Zip Code)

(713) 866-6000

(Registrant’s Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On September 24, 2007, Weingarten Realty Investors (the "Company") entered into a Purchase Agreement dated September 24, 2007 (the "Purchase Agreement") with Wachovia Investment Holdings, LLC ("Wachovia"). See Item 3.02 below for more information relating to the Purchase Agreement the contents of which are incorporated into this Item 1.01 by reference.

Item 3.02. Unregistered Sales of Equity Securities.

On September 25, 2007, the Company issued 8,000,000 Series G Depositary Shares, each representing 1/100 of the Company's Adjustable Rate Series G Cumulative Redeemable Preferred Shares, $0.03 par value (the "Series G Depositary Shares"), in a private placement at a price of $25.00 per depositary share for an aggregate price of $200,000,000 pursuant to the terms and conditions of the Purchase Agreement. Dividends on the Series G Depositary Shares are payable quarterly in arrears commencing December 15, 2007 at an initial dividend rate of Three-Month LIBOR plus 1.00%, subject to reset on the one year and fifteenth-month anniversary, and monthly thereafter, from the date of issuance.

The Series G Depositary Shares were issued to Wachovia in a private placement in reliance on Section 4(2) of the Securities Act of 1933, as amended. Pursuant to the Purchase Agreement, the Company, at its option, may redeem all or part of the Series G Depositary Shares for $25.00 per depositary share plus accrued and unpaid dividends (the "Redemption Price"). The Redemption Price is subject to adjustment depending on the date of redemption as provided in the Statement of Designation (as defined below).

Wachovia and certain of its affiliates have provided and may in the future provide certain commercial banking, financial advisory and investment banking services in the ordinary course of business for the Company for which they have and would receive customary fees.

Proceeds from the issuance of Series G Depositary Shares will be used to repay borrowings under the Company's revolving credit facility.

Copies of the Statement of Designation for the Adjustable Rate Series G Cumulative Redeemable Preferred Stock (the "Statement of Designation"), the Deposit Agreement relating to the Series G Depositary Shares and the Purchase Agreement are filed as Exhibits 3.1, 4.1 and 10.1 hereto, respectively, and are incorporated by reference herein.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

With respect to the Adjustable Rate Series G Cumulative Preferred Shares, the Statement of Designation was prepared and is effective as of September 24, 2007, and is attached as Exhibit 3.1 hereto and it, along with the contents of Item 3.02, are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
3.1.	

	Statement of Designation, dated September 24, 2007, with respect to Adjustable Rate Series G Cumulative Redeemable Preferred Shares of Weingarten Realty Investments
4.1	Deposit Agreement, dated September 25, 2007, by and among Weingarten Realty Investments, Mellon Investor Services LLC and holders from time to time of Series G Depositary Receipts
10.1.	Purchase Agreement, dated September 24, 2007, between Weingarten Realty Investors and Wachovia Investment Holdings, LLC relating to the issuance of Adjustable Rate Series G Cumulative Redeemable Preferred Shares.

SIGNATURE

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

Date: September 25, 2007

WEINGARTEN REALTY INVESTORS

By: /s/ Joe D. Shafer
Joe D. Shafer
Vice President/Chief Accounting Officer

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$16.97 and $16.69 for the third quarter and first nine months of 2004, respectively. These amounts represent increases of approximately 7.5% and 5.2% over the same periods of the prior year. Management estimates that menu prices were approximately 6.0% and 4.4% higher for the third quarter and first nine months of 2004 than for the same periods in 2003. The Company estimates that customer traffic (guest counts) on a same store basis, as adjusted for days restaurants were closed, decreased by approximately 1.3% during the third quarter and increased during the first nine months of 2004 by approximately 1.7%, compared to the corresponding periods of 2003.

Costs and Expenses

Total restaurant operating expenses increased to 90.1% and 88.2% of sales for the third quarter and first nine months of 2004 compared to 88.3% and 87.2% in the corresponding periods of

2003 due primarily to the impact of higher cost of sales and the effect of higher operating expense percentages experienced in the Company s two newest restaurants opened in the fourth quarter of 2003.

Cost of sales, which includes the cost of food and beverages, increased to 33.8% of sales in the third quarter of 2004 from 32.6% in the third quarter of 2003 and to 33.7% of sales in the first nine months of 2004 from 32.2% in the corresponding period of 2003, as menu price increases did not offset, as a percentage of sales, significantly higher input costs associated with beef, pork, poultry, dairy products and other food commodities. Beef purchases represent the largest component of the Company s cost of sales, comprising approximately 28% of this category. The Company typically enters into an annual pricing agreement covering most of its beef purchases. Due to higher prices in the beef market, prices under the Company s current beef pricing agreement which was effective in March of 2004 increased by an estimated 13% to 14%. These prices will remain in effect until March of 2005.

Restaurant labor and related costs decreased to 32.6% and 31.7% of sales during the third quarter and first nine months of 2004 from 33.0% and 32.7% of sales during the same periods of 2003. Because of the nature of J. Alexander s operations and the Company s emphasis on providing high quality food and outstanding levels of service, much of the labor scheduled for overseeing restaurant operations, for preparing food, and for staffing the service areas of the restaurants is relatively fixed in nature within broad ranges of sales for each restaurant. As a result, increases in sales in the same store restaurant base in 2004 did not result in proportionate increases in labor costs and labor costs as a percentage of sales decreased. The effect of these decreases more than offset high labor costs in new restaurants. A decrease in group medical costs resulting from changes to the Company s group medical plan also contributed to the decreases.

Depreciation and amortization of restaurant property and equipment as a percentage of sales decreased for the 2004 periods primarily due to the effect of higher same store sales volumes which more than offset the effect of higher depreciation expense on the new, lower volume locations opened in the fourth quarter of 2003.

Other operating expenses, which include restaurant level expenses such as supplies, repairs and maintenance, utilities, rent and credit card fees, increased to 19.7% and 18.9% of sales during the third quarter and first nine months of 2004 from 18.6% and 18.2% of sales during the same periods of 2003. These increases were primarily related to increases in rent and other expenses associated with restaurants opened by the Company in 2003. Higher credit card fees, repairs and maintenance expenditures, and linen costs also contributed to the increases.

General and Administrative Expenses

General and administrative expenses, which include supervisory costs as well as management training costs and all other costs above the restaurant level, decreased by $253,000 in the third quarter of 2004 and increased by $71,000 during the first nine months of 2004 compared to the same periods of 2003.

General and administrative expenses for the third quarter and first nine months of 2003 included $207,000 and $329,000, respectively, of non-cash compensation expense recognized in connection with a stock option grant accounted for as a variable plan award. The exercise price of

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this option grant was fixed by the Company s Board of Directors in May of 2004 and, as a result, the Company will not, under current accounting rules, recognize additional compensation expense with respect to the grant after that date. The Company recognized compensation expense of $18,000 in the first nine months of 2004 in connection with this option due to changes in the price of the Company s common stock prior to the time the option price was fixed.

The decrease in general and administrative expenses for the third quarter of 2004 was due primarily to the inclusion in 2003 s third quarter results of the compensation expense in connection with the stock option discussed above. General and administrative expenses for the first nine months of 2004 included increases, as compared to the same period of 2003, in salary expense, including salaries for additional operations supervisory personnel added in connection with the Company s growth, and other personnel related expenses, including higher health insurance costs and higher management relocation costs, and higher corporate governance and American Stock Exchange compliance related expenses. These increases were partially offset by lower compensation expense recognized in connection with the stock option discussed above and the inclusion in 2003 s expenses of costs related to the separation from the Company of one of its corporate executives.

As a percentage of sales, general and administrative expenses decreased to 6.7% for the third quarter of 2004 from 8.4% in the same period of 2003 and to 7.0% for the first nine months of 2004 compared to 7.9% for the comparable period in 2003.

Pre-Opening Expense

Pre-opening costs are expensed as incurred. No pre-opening expenses were incurred for the 2004 periods because no new restaurants were opened or under development. Pre-opening expenses of $236,000 and $526,000 were incurred in the third quarter and first nine months of 2003, respectively, in connection with new restaurants opened in 2003.

Other Income (Expense)

Net interest expense did not change significantly during the 2004 periods compared to the corresponding periods of 2003.

Income Taxes

The Company s provisions for income taxes for the 2004 and 2003 periods include the estimated effects of federal alternative minimum tax (AMT) and state income taxes payable. AMT is computed by applying the AMT rate to the Company s pre-tax accounting income after adding back certain tax preference items, as well as certain permanent differences and timing differences in book and tax income. Changes in tax estimates and/or future changes in the valuation allowance maintained by the Company on its deferred tax assets can cause volatility in the Company s estimated effective tax rate from quarter to quarter, particularly at the Company s current level of estimated pre-tax income. The Company intends to further evaluate the valuation allowance maintained on its deferred tax assets at the end of fiscal year 2004 in conjunction with its preparation of its annual business plan and financial projections.

Because of current AMT regulations, the Company is presently unable to take full advantage of certain tax carryforward benefits it has accumulated. Also, because the Company maintains a valuation allowance on a portion of its deferred tax assets, no direct benefit is recognized in the income tax provisions with respect to the AMT credit carryforwards or other tax assets generated.

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The Company s federal income tax returns for fiscal years 2001 and 2002 are currently under examination by the Internal Revenue Service. Any adjustments resulting from this examination are not expected to have a material effect on the Company s consolidated financial condition.

LIQUIDITY AND CAPITAL RESOURCES

The Company s capital needs are primarily for the development and construction of new J. Alexander s restaurants, for maintenance of its existing restaurants, and for meeting required debt service obligations. The Company has met its capital needs and maintained liquidity in recent years primarily by use of cash flow from operations, use of bank lines of credit, and through proceeds received in 2002 from a mortgage loan.

The Company had cash flow from operations totaling $3,943,000 and $3,309,000 during the first nine months of 2004 and 2003, respectively. Cash and cash equivalents increased to $3,487,000 at September 26, 2004 from $1,635,000 at year end 2003.

In May of 2003, the Company entered into a secured bank line of credit agreement which provides up to $5,000,000 for financing capital expenditures related to the development of new restaurants and for general operating purposes. Credit available under the line, which restricts additional borrowing outside of the line, is currently approximately $4.6 million and is based on a percentage of the appraised value of the collateral securing the line. The credit line expires on April 30, 2006, unless converted to a term loan prior to March 30, 2006 under the provisions of the agreement. Borrowings outstanding under this credit line were $486,000 at December 28, 2003. There were no borrowings under the line as of September 26, 2004.

Management believes that current cash balances combined with cash flow from operations and credit available under the line of credit agreement will be adequate to meet its financing needs for 2004 and that its long-term growth plan of one to two restaurants per year will not be constrained due to lack of capital resources. To supplement its capital resources and provide additional funds for future growth, the Company completed a $750,000 five-year equipment financing in January 2004. Management believes that, if needed, additional financing would be available for future growth through an increase in bank credit, additional mortgage or equipment financing, or the sale and leaseback of some or all of the Company s unencumbered restaurant properties. There can be no assurance, however, that, if needed, such financing could be obtained or that it would be on terms satisfactory to the Company.

The Company currently does not plan to open any new restaurants in 2004. However, management is continually seeking locations for new J. Alexander s restaurants and would consider quickly taking advantage of any attractive opportunities which might arise. Management estimates that capital expenditures for existing restaurants and other corporate needs will be approximately $2,300,000 for 2004, net of a landlord s contribution of approximately $500,000 received in the first quarter of 2004 for tenant improvements for a new restaurant opened in the fourth quarter of 2003. Capital expenditures for the development of new restaurants, including any purchase of property and/or construction of restaurants, are dependent upon the timing and success of management s efforts to locate acceptable sites and would be in addition to the amounts above.

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The Company has periodically made purchases of its common stock under a repurchase program authorized by the Company s Board of Directors. The total authorized purchases under this program are $2,000,000. From June 2001 through May 14, 2003, the Company repurchased approximately 535,000 shares at a cost of approximately $1,555,000. The Company generally does not repurchase shares following the end of a fiscal quarter until after results for the quarter have been publicly announced.

While a working capital deficit of $2,201,000 was present as of September 26, 2004, the Company does not believe this deficit impairs the overall financial condition of the Company. Many companies in the restaurant industry operate with a working capital deficit because guests pay for their purchases with cash or cash equivalents at the time of sale while trade payables for food and beverage purchases and other obligations related to restaurant operations are not typically due for some time after the sale takes place. Since requirements for funding accounts receivable and inventories are relatively insignificant, virtually all cash generated by operations is available to meet current obligations.

Provisions of the Company s mortgage loan agreement require that a minimum fixed charge coverage ratio of 1.25 to 1 be maintained for the businesses operated at the properties included under the mortgage and that a funded debt to EBITDA (as defined in the loan agreement) ratio of 6 to 1 be maintained for the Company and its subsidiaries. The Company s secured bank line of credit requires that the Company maintain a fixed charge coverage ratio of at least 1.5 to 1 and a maximum adjusted debt to EBITDAR (as defined in the loan agreement) ratio of 4.15 to 1. The bank loan agreement also provides that defaults which permit acceleration of debt under other loan agreements constitute a default under the bank agreement. The Company was in compliance with the financial covenants of its debt agreements as of September 26, 2004. Should the Company fail to comply with these covenants, management would likely request waivers of the covenants, attempt to renegotiate them or seek other sources of financing. However, if these efforts were not successful, amounts outstanding under these credit facilities could become immediately due and payable, and there could be a material adverse effect on the Company s financial condition and operations.

As of November 10, 2004, the Company had no financing transactions, arrangements or other relationships with any unconsolidated affiliated entities or related parties. Additionally, the Company is not a party to any financing arrangements involving synthetic leases or trading activities involving commodity contracts.

CONTRACTUAL OBLIGATIONS

In the ordinary course of business, the Company routinely executes contractual agreements for cleaning services, linen usage, trash removal and similar type services. Whenever possible, these agreements are limited to a term of one year or less and often contain a provision allowing the Company to terminate the agreement upon providing a 30 day written notice. Subsequent to December 28, 2003, there have been a number of agreements of the nature described above executed by the Company. None of them, individually or collectively, would be considered material to the Company s financial position or results of operations in the event of termination prior to the scheduled term.

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The following agreements represent contractual obligations entered into during the first nine months of 2004 that are considered significant to the Company:

Long-term Debt: In January 2004, the Company obtained $750,000 of long-term equipment financing. The note payable related to the financing has an interest rate of 4.97% and is payable in equal monthly installments of principal and interest of approximately $14,200 through January, 2009.

Purchase Obligations: The Company s annual beef pricing agreement was renewed effective March 8, 2004. Under terms of the agreement, if the Company s supplier has contracted for specific products, the Company is obligated to purchase such products. As of September 26, 2004, the Company s supplier was under contract to purchase approximately $4.5 million of beef related to the Company s annual pricing agreement which expires March 7, 2005.

In January 2004, the Company executed an agreement for a term of five years which obligates the Company to spend approximately $400,000 annually on food products.

Other Long-term Obligations: Effective January 1, 2004, the Company s obligations under its Salary Continuation Plan increased $127,000.

Aside from the items referenced above, there were no other material contractual obligations incurred during the nine months ended September 26, 2004.

From 1975 through 1996, the Company operated restaurants in the quick-service restaurant industry. The discontinuation of these quick-service restaurant operations included disposals of restaurants that were subject to lease agreements which typically contained initial lease terms of 20 years plus two additional option periods of five years each. In connection with certain of these dispositions, the Company remains secondarily liable for ensuring financial performance as set forth in the original lease agreements. The Company can only estimate its contingent liability relative to these leases, as any changes to the contractual arrangements between the current tenant and the landlord subsequent to the assignment are not required to be disclosed to the Company. A summary of the Company s estimated contingent liability as of September 26, 2004, is as follows:

Wendy s restaurants (39 leases)	$5,900,000
Mrs. Winner s Chicken & Biscuits restaurants (29 leases)	3,300,000
Total contingent liability to assigned leases	$9,200,000

There have been no payments by the Company of such contingent liabilities in the history of the Company.

CRITICAL ACCOUNTING POLICIES

The preparation of the Company s condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. On an

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ongoing basis, management evaluates its estimates and judgments, including those related to its accounting for income taxes, property and equipment, impairment of long-lived assets, contingencies and litigation. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting policies are defined as those that are reflective of significant judgments and uncertainties, and potentially result in materially different results under different assumptions and conditions. Management believes the following critical accounting policies are those which involve the more significant judgments and estimates used in the preparation of its consolidated financial statements.

Income Taxes: The Company had $6,422,000 of gross deferred tax assets at December 28, 2003, consisting principally of $4,738,000 of tax credit carryforwards. Generally accepted accounting principles require that the Company record a valuation allowance against its deferred tax assets unless it is more likely than not that such assets will ultimately be realized.

Due to losses incurred by the Company from 1997 through 1999 and because a significant portion of the Company s costs are fixed or semi-fixed in nature, management was unable to conclude from 1997 through 2001 that it was more likely than not that its existing deferred tax assets would be realized; therefore, the Company maintained a valuation allowance for 100% of its deferred tax assets, net of deferred tax liabilities, for those years.

In 2002, the Company completed its third consecutive profitable year, with pre-tax income increasing significantly over the previous year. In addition the Company had recorded significant increases in operating income in four of the five years from 1998 to 2002 and had reached a size and experience level which management believed made it less likely that an unsuccessful new restaurant would have a significant effect on consolidated operating results. Because of these factors, management further assessed the likelihood of realization of its deferred tax assets, using as its principal basis its forecast of future taxable income adjusted by applying varying probability factors to the achievement of this forecast. As the result of this assessment, the beginning of the year valuation allowance was reduced by $1,200,000 in the fourth quarter of 2002, with a corresponding credit to deferred income tax expense. Management completed a similar assessment in 2003 and concluded that the valuation allowance should be reduced by an additional $1,475,000. As a result, the beginning of the year valuation allowance was reduced by that amount in the fourth quarter of 2003, with a corresponding credit to deferred income tax expense. The valuation allowance at December 28, 2003 was $3,551,000.

Failure to achieve taxable income in the future, as so assessed, could affect the ultimate realization of the net deferred tax assets. Because of the uncertainties discussed above, there can be no assurance that management s assessment of taxable income will be achieved and that there could not be an increase in the valuation allowance in the future. It is also possible that the Company could generate profitability and taxable income levels in the future which

would cause management to conclude that it is more likely than not that the Company will realize all, or an additional portion of, its net deferred tax assets.

The Company will continue to evaluate the likelihood of realization of its net deferred tax assets and upon reaching any different conclusion as to the appropriate carrying value of these assets, management will adjust them to their estimated net realizable value. Any such revisions to the estimated net realizable value of the net deferred tax assets could cause the Company s provision for income taxes to vary significantly from period to period, although its cash tax payments would remain unaffected until the benefits of the various carryforwards were fully utilized. Management currently anticipates continuing to perform its most intensive assessment of the realizability of the Company s deferred tax assets during the fourth quarter in connection with the Company s annual budgeting process. Management believes this is most consistent with the earnings forecast model it uses to estimate the amount of deferred tax assets that are more likely than not to be realized.

In addition, certain other components of the Company s provision for income taxes must be estimated. These items include, but are not limited to, effective state income tax rates, allowable tax credits for items such as FICA taxes paid on reported tip income, and estimates related to depreciation expense allowable for tax purposes. These estimates are made based on the best available information at the time the tax provision is prepared. Income tax returns are generally not filed, however, until several months after year-end. All tax returns are subject to audit by federal and state governments, usually years after the returns are filed, and could be subject to differing interpretations of the tax laws.

Property and Equipment: Property and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized over the lesser of the asset s estimated useful life or the expected lease term, generally including renewal options. Improvements are capitalized while repairs and maintenance costs are expensed as incurred. Because significant judgments are required in estimating useful lives, which are not ultimately known until the passage of time and may be dependent on proper asset maintenance, and in the determination of what constitutes a capitalized cost versus a repair or maintenance expense, changes in circumstances or use of different assumptions could result in materially different results from those determined based on the Company s estimates.

Impairment of Long-Lived Assets: When events and circumstances indicate that long-lived assets most typically assets associated with a specific restaurant might be impaired, management compares the carrying value of such assets to the undiscounted cash flows it expects that restaurant to generate over its remaining useful life. In calculating its estimate of such undiscounted cash flows, management is required to make assumptions, which are subject to a high degree of judgment, relative to the restaurant s future period of operation, sales performance, cost of sales, labor and operating expenses. The resulting forecast of undiscounted cash flows represents management s estimate based on both historical results and management s expectation of future operations for that particular restaurant. To date, all of the Company s long-lived assets have been determined to be recoverable based on management s estimates of future cash flows.

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Self Insurance Accrual: At September 26, 2004 and December 28, 2003, the Company s accruals for self-insured group medical obligations totaled $92,000 and $127,000, respectively, and were included in the balance sheet caption Accrued expenses and other current liabilities. The liability for claims incurred but not paid, which includes claims incurred but not reported and claims reported but not paid, is an undiscounted amount calculated by applying a factor to the total of all claims incurred and paid during a particular calendar year. The factor is based primarily on the Company s historical experience relative to actual claims paid in years following the year in which the claim was incurred.

The above listing is not intended to be a comprehensive listing of all of the Company s accounting policies. In many cases, the accounting treatment of a particular transaction is specifically dictated by generally accepted accounting principles, with no need for management s judgment in their application. There are also areas in which management s judgment in selecting any available alternative would not produce a materially different result. For further information, refer to the Company s audited Consolidated Financial Statements and notes thereto included in the Company s Annual Report on Form 10-K/A for the fiscal year ended December 28, 2003, which contain accounting policies and other disclosures required by generally accepted accounting principles.

RISK FACTORS

In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, the Company is including the following cautionary statements identifying important factors that could cause the Company s actual results to differ materially from those projected in forward looking statements of the Company made by, or on behalf of, the Company.

The Company Faces Challenges in Opening New Restaurants. The Company s continued growth depends on its ability to open new J. Alexander s restaurants and to operate them profitably, which will depend on a number of factors, including the selection and availability of suitable locations, the hiring and training of sufficiently skilled management and other personnel and other factors, some of which are beyond the control of the Company. The Company s growth strategy includes opening restaurants in markets where it has little or no meaningful operating experience and in which potential customers may not be familiar with its restaurants. The success of these new restaurants may be affected by different competitive conditions, consumer tastes and discretionary spending patterns, and the Company s ability to generate market awareness and acceptance of J. Alexander s. As a result, costs incurred related to the opening, operation and promotion of these new restaurants may be greater than those incurred in other areas. In addition, it has been the Company s experience that new restaurants generate operating losses while they build sales levels to maturity. The Company currently operates twenty-seven J. Alexander s restaurants, of which four have been open for less than three years. Because of the Company s relatively small J. Alexander s restaurant base, an unsuccessful new restaurant could have a more adverse effect on the Company s results of operations than would be the case in a restaurant company with a greater number of restaurants.

The Company Faces Intense Competition. The restaurant industry is intensely competitive with respect to price, service, location and food quality, and there are many well-established competitors with substantially greater financial and other resources than the Company. Some of the Company s competitors have been in existence for a substantially longer period than the Company

and may be better established in markets where the Company s restaurants are or may be located. The restaurant business is often affected by changes in consumer tastes, national, regional or local economic conditions, demographic trends, traffic patterns and the type, number and location of competing restaurants.

The Company May Experience Fluctuations in Quarterly Results. The Company s quarterly results of operations are affected by timing of the opening of new J. Alexander s restaurants, and fluctuations in the cost of food, labor, employee benefits, and similar costs over which the Company has limited or no control. The Company s business may also be affected by inflation. In the past, management has attempted to anticipate and avoid material adverse effects on the Company s profitability due to increasing costs through its purchasing practices and menu price adjustments, but there can be no assurance that it will be able to do so in the future.

Changes in General Economic and Political Conditions Affect Consumer Spending and May Harm Revenues and Operating Results. Weak general economic conditions could decrease discretionary spending by consumers and could impact the frequency with which the Company s customers choose to dine out or the amount they spend on meals while dining out, thereby decreasing the Company s net sales. Additionally, possible future terrorist attacks and other military conflict could lead to a weakening of the economy. Adverse economic conditions and any related decrease in discretionary spending by the Company s customers could have an adverse effect on net sales and operating results.

The Company s Operating Strategy is Dependent on Providing Exceptional Food Quality and Outstanding Service. The Company s success depends largely upon its ability to attract, train, motivate and retain a sufficient number of qualified employees, including restaurant managers, kitchen staff and servers who can meet the high standards necessary to deliver the levels of food quality and service on which the J. Alexander s concept is based. Qualified individuals of the caliber and number needed to fill these positions are in short supply in some areas and competition for qualified employees could require the Company to pay higher wages to attract sufficient employees. Also, increases in employee turnover could have an adverse effect on food quality and guest service resulting in an adverse effect on net sales and results of operations.

Significant Capital is Required to Develop New Restaurants. The Company s capital investment in its restaurants is relatively high as compared to some other casual dining companies. Failure of a new restaurant to generate satisfactory net sales and profits in relation to its investment could result in failure of the Company to achieve the desired financial return on the restaurant. Also, the Company has typically required capital beyond the cash flow provided from operations in order to expand, resulting in a significant amount of long-term debt and interest expense.

Changes In Food Costs and Product Availability Could Negatively Impact The Company s Net Sales and Results of Operations. The Company s profitability is dependent in part on its ability to purchase food commodities which meet its specifications and to anticipate and react to changes in food costs and product availability. The Company has experienced rising food costs in recent periods and expects the trend to continue. Ingredients are purchased from suppliers on terms and conditions that management believes are generally consistent with those available to similarly situated restaurant companies. Although alternative distribution sources are believed to be available for most products, increases in food prices, failure to perform by suppliers or distributors or limited

availability of products at reasonable prices could cause the Company s food costs to fluctuate and/or cause the Company to make adjustments to its menu offerings. Additional factors beyond the Company s control, including adverse weather conditions and governmental regulation, may also affect food costs and product availability. The Company may not be able to anticipate and react to changing food costs or product availability issues through its purchasing practices and menu price adjustments in the future, and failure to do so could negatively impact the Company s net sales and results of operations.

Litigation Could Have a Material Adverse Effect on the Company s Business. From time to time the Company is the subject of complaints or litigation from guests alleging food-borne illness, injury or other food quality or operational concerns. The Company is also subject to complaints or allegations from current, former or prospective employees based on, among other things, wage discrimination, harassment or wrongful termination. Any claims may be expensive to defend and could divert resources which would otherwise be used to improve the performance of the Company. A lawsuit or claim could also result in an adverse decision against the Company that could have a materially adverse effect on the Company s business.

The Company is also subject to state dram shop laws and regulations, which generally provide that a person injured by an intoxicated person may seek to recover damages from an establishment that wrongfully served alcoholic beverages to such person. While the Company carries liquor liability coverage as part of its existing comprehensive general liability insurance, the Company could be subject to a judgment in excess of its insurance coverage and might not be able to obtain or continue to maintain such insurance coverage at reasonable costs, or at all.

Nutrition and Health Concerns Could Have an Adverse Effect on the Company. Nutrition and health concerns are receiving increased attention from the media and government as well as from the health and academic communities. Food served by restaurants has sometimes been suggested as the cause of obesity and related health disorders. Certain restaurant foods have also been argued to be unsafe because of possible allergic reactions to them which may be experienced by guests, or because of alleged high toxin levels. Some restaurant companies have been the target of consumer lawsuits, including class action suits, claiming that the restaurants were liable for health problems experienced by their guests. Continued focus on these concerns by activist groups could result in a perception by consumers that food served in restaurants is unhealthy, or unsafe, and is the cause of a significant health crisis. Additional food labeling and disclosures could also be mandated by government regulators. Adverse publicity, the cost of any litigation against the Company, and the cost of compliance with new regulations related to food nutritional and safety concerns could have an adverse effect on the Company s net sales and operating costs.

The Company s Current Insurance Policies May Not Provide Adequate Levels of Coverage Against All Claims. The Company currently maintains insurance coverage that management believes is customary for businesses of its size and type. However, there are types of losses the Company may incur that cannot be insured against or that management believes are not commercially reasonable to insure. These losses, if they occur, could have a material and adverse effect on the Company s business and results of operations.

Expanding the Company s Restaurant Base By Opening New Restaurants in Existing Markets Could Reduce the Business of its Existing Restaurants. The Company s growth strategy

includes opening restaurants in markets in which it already has existing restaurants. The Company may be unable to attract enough guests to the new restaurants for them to operate at a profit. Even if enough guests are attracted to the new restaurants for them to operate at a profit, those guests may be former guests of one of the Company s existing restaurants in that market and the opening of new restaurants in the existing market could reduce the net sales of its existing restaurants in that market.

Government Regulation and Licensing May Delay New Restaurant Openings or Affect Operations. The restaurant industry is subject to extensive state and local government regulation relating to the sale of food and alcoholic beverages, and sanitation, fire and building codes. Termination of the liquor license for any J. Alexander s restaurant would adversely affect the net sales for the restaurant. Restaurant operating costs are also affected by other government actions that are beyond the Company s control, which may include increases in the minimum hourly wage requirements, workers compensation insurance rates and unemployment and other taxes. If the Company experiences difficulties in obtaining or fails to obtain required licensing or other regulatory approvals, this delay or failure could delay or prevent the opening of a new J. Alexander s restaurant. The suspension of, or inability to renew, a license could interrupt operations at an existing restaurant, and the inability to retain or renew such licenses would adversely affect the operations of the restaurant.

Future Changes in Financial Accounting Standards May Cause Adverse Unexpected Operating Results and Affect the Company s Reported Results of Operations. A change in accounting standards can have a significant effect on the Company s reported results and may affect the reporting of transactions completed before the change is effective. As an example, changes have recently been proposed to the accounting model for stock-based compensation. If adopted, the Company would recognize compensation expense in the statement of income for employee stock options using the fair value method, which could have a significant negative effect on the Company s reported results. New pronouncements and varying interpretations of pronouncements have occurred and may occur in the future. Changes to the existing rules or differing interpretations with respect to the Company s current practices may adversely affect its reported financial results.

Compliance With Changing Regulation of Corporate Governance and Public Disclosure May Result in Additional Expenses. Keeping abreast of, and in compliance with, changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new SEC regulations and American Stock Exchange rules, has required an increased amount of management attention and external resources. The Company remains committed to maintaining high standards of corporate governance and public disclosure and intends to invest all reasonably necessary resources to comply with evolving standards. This investment may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

FORWARD-LOOKING STATEMENTS

In connection with the safe harbor established under the Private Securities Litigation Reform Act of 1995, the Company cautions investors that certain information contained in this Form 10-Q, particularly information regarding future economic performance and finances, development plans, and objectives of management is forward-looking information that involves risks, uncertainties and other factors that could cause actual results to differ materially from those expressed or implied by

forward-looking statements. The Company disclaims any intent or obligation to update these forward-looking statements. Factors which could affect actual results include, but are not limited to, the Company s ability to increase sales in certain of its restaurants, especially two of the newer restaurants that are not performing at satisfactory levels; changes in business or economic conditions, including rising food costs and product shortages; the number and timing of new restaurant openings and the Company s ability to operate them profitably; competition within the casual dining industry, which is very intense; competition by new restaurants opened by the Company with its existing restaurants in the same vicinity; changes in consumer spending, consumer tastes, and consumer attitudes toward nutrition and health; expenses incurred if the Company is the subject of claims or litigation or increased governmental regulation; changes in accounting standards, which may affect the Company s reported results of operations; and expenses the Company may incur in order to comply with changing corporate governance and public disclosure requirements of the Securities and Exchange Commission and the American Stock Exchange. See Risk Factors included in this report for a description of a number of risks and uncertainties which could affect actual results.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes in the disclosures set forth in Item 7a of the Company s Annual Report on Form 10-K/A for the year ended December 28, 2003.

Item 4. Controls and Procedures

(a) *Evaluation of disclosure controls and procedures*. The Company s principal executive officer and principal financial officer have conducted an evaluation of the effectiveness of the Company s disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e) and 15d-15(e)) as of the end of the period covered by this quarterly report. Based on that evaluation, the Company s principal executive officer and principal financial officer concluded that, as of the end of the period covered by this quarterly report, the Company s disclosure controls and procedures effectively and timely provide them with material information relating to the Company and its consolidated subsidiaries required to be disclosed in the reports the Company files or submits under the Securities Exchange Act of 1934, as amended.

(b) *Changes in internal controls*. There were no significant changes in the Company s internal control over financial reporting that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, the Company s internal control over financial reporting.

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PART II. OTHER INFORMATION

Item 6. Exhibits

(a) Exhibits:

Exhibit 10.1	Form of Non-qualified Stock Option Agreement under the 2004 Equity Incentive Plan.
Exhibit 10.2	Form of Director s Non-qualified Stock Option Agreement under the 2004 Equity Incentive Plan.
Exhibit 10.3	Form of Incentive Stock Option Agreement under the 2004 Equity Incentive Plan.
Exhibit 31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
Exhibit 31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
Exhibit 32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
Exhibit 99.1	Restated Audit Committee Charter.

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SIGNATURES

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

	J. ALEXANDER S CORPORATION
Date: November 10, 2004	/s/ Lonnie J. Stout II
	Lonnie J. Stout II Chairman, President and Chief Executive Officer (Principal Executive Officer)
Date: November 10, 2004	/s/ R. Gregory Lewis
	R. Gregory Lewis Vice President and Chief Financial Officer (Principal Financial Officer)

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