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| 10-Q | form10-q.htm Fog Cutter 10-Q 9-30-2009 |
| EX-11.1 | ex11_1.htm Exhibit 11.1 |
| EX-31.1 | ex31_1.htm Exhibit 31.1 |
| EX-32.2 | ex31_2.htm Exhibit 31.2 |
| EX-32.1 | ex32_1.htm Exhibit 32.1 |
| EX-32.2 | ex32_2.htm Exhibit 32.2 |

Module and Segment References

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

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended September 30, 2009

OR

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

Commission File No. 0-23911

Fog Cutter Capital Group Inc.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

52-2081138

(I.R.S. Employer Identification No.)

401 Arizona Avenue, Suite 200

Santa Monica, CA 90401

(Address of principal executive offices) (Zip Code)

(310) 319-1850

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer

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

Accelerated filer

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class
Common Stock, par value \$0.0001 per share

Outstanding at March 15, 2010
7,954,928 shares

FOG CUTTER CAPITAL GROUP INC.

FORM 10-Q

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Available information

Our website is www.fogcutter.com. We make our annual report on Form 10-K, as well as other reports filed with the Securities and Exchange Commission, available through our website as soon as reasonably practicable after they are filed. A copy of these reports may also be obtained by writing to us at 401 Arizona Avenue, Suite 200, Santa Monica, CA 90401, Attn: Investor Reporting.

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PART I -- FINANCIAL INFORMATION

ITEM 1. INTERIM CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

FOG CUTTER CAPITAL GROUP INC.
 CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION
(dollars in thousands, except share data)

| | September 30, 2009 (unaudited) | December 31, 2008 |
|--|--------------------------------------|----------------------|
| Assets | | |
| Current Assets: | | |
| Cash and cash equivalents | \$ 374 | \$ 390 |
| Accounts receivable | 1,742 | 2,712 |
| Notes receivable, current portion | 33 | 18 |
| Inventories | 1,989 | 2,964 |
| Other current assets | 183 | 294 |
| Total current assets | <u>4,321</u> | <u>6,378</u> |
| Notes receivable | - | 34 |
| Property, plant and equipment, net | 3,089 | 8,253 |
| Intangible assets, net | 2,592 | 4,068 |
| Goodwill | 8,028 | 8,028 |
| Investment in Debtor in Possession Subsidiaries | 3,969 | - |
| Other assets | 335 | 812 |
| Total assets | <u>\$ 22,334</u> | <u>\$ 27,573</u> |
| Liabilities and Stockholders' Equity (Deficit) | | |
| Liabilities: | | |
| Accounts payable and accrued liabilities | \$ 13,288 | \$ 17,486 |
| Borrowings and notes payable, current portion | 17,406 | 14,330 |
| Obligations under capital leases, current portion | 1,605 | 1,927 |
| Total current liabilities | <u>32,299</u> | <u>33,743</u> |
| Deferred income | 3,472 | 2,572 |
| Total liabilities | <u>35,771</u> | <u>36,315</u> |
| Commitments and contingencies | | |
| Minority interests in consolidated subsidiaries | 24 | 365 |
| Stockholders' Equity (Deficit): | | |
| Preferred stock, \$.0001 par value; 25,000,000 shares authorized; no shares issued and outstanding | - | - |
| Common stock, \$.0001 par value; 200,000,000 shares authorized; 11,757,073 shares issued as of September 30, 2009 and December 31, 2008; 7,954,928 shares outstanding as of September 30, 2009 and December 31, 2008 | 172,477 | 172,102 |
| Accumulated deficit | (173,927) | (169,198) |
| Treasury stock, 3,802,145 common shares as of September 30, 2009 and December 31, 2008, at cost | (12,011) | (12,011) |
| Total stockholders' equity (deficit) | <u>(13,461)</u> | <u>(9,107)</u> |
| Total liabilities and stockholders' equity (deficit) | <u>\$ 22,334</u> | <u>\$ 27,573</u> |

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

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FOG CUTTER CAPITAL GROUP INC.
 CONSOLIDATED STATEMENTS OF OPERATIONS
 (Unaudited)
 (dollars in thousands, except share data)

| | Quarter Ended September 30, | | Nine Months Ended September 30, | |
|--|--------------------------------|-------------------|------------------------------------|-------------------|
| | 2009 | 2008 | 2009 | 2008 |
| Revenue: | | | | |
| Restaurant and manufacturing sales | \$ 2,748 | \$ 11,292 | \$ 14,926 | \$ 32,473 |
| Restaurant franchise and royalty fees | 655 | 1,309 | 1,957 | 2,613 |
| Total revenue | 3,403 | 12,601 | 16,883 | 35,086 |
| Operating costs and expenses: | | | | |
| Restaurant and manufacturing cost of sales | 1,455 | 6,736 | 8,720 | 19,281 |
| Engineering and development | 229 | 285 | 764 | 865 |
| Depreciation and amortization | 121 | 502 | 688 | 1,508 |
| Total operating costs and expenses | 1,805 | 7,523 | 10,172 | 21,654 |
| General and administrative expenses: | | | | |
| Compensation and employee benefits | 1,119 | 2,520 | 4,086 | 9,067 |
| Professional fees | 132 | 668 | 957 | 2,378 |
| Other | 283 | 3,664 | 4,686 | 11,719 |
| Total general and administrative expenses | 1,534 | 6,852 | 9,729 | 23,164 |
| Non-operating income (expense): | | | | |
| Interest income | - | 30 | 16 | 101 |
| Interest expense | (498) | (646) | (1,770) | (1,505) |
| Other expense, net | (357) | (1,760) | (247) | (1,780) |
| Total non-operating income (expense) | (855) | (2,376) | (2,001) | (3,184) |
| Loss before provision for income taxes, minority interests, and equity in income of equity investees | (791) | (4,150) | (5,019) | (12,916) |
| Minority interest in (earnings) losses | 119 | (214) | 306 | (10) |
| Equity in income of equity investees | - | - | - | 218 |
| Income tax (expense) benefit | - | - | (3) | 52 |
| Loss from continuing operations | (672) | (4,364) | (4,716) | (12,656) |
| Income (loss) from discontinued operations (including gain on sale of \$4,217 in 2008) | - | - | (13) | 3,473 |
| Net loss | \$ (672) | \$ (4,364) | \$ (4,729) | \$ (9,183) |
| Basic loss per share from continuing operations | \$ (0.08) | \$ (0.55) | \$ (0.59) | \$ (1.59) |
| Basic earnings per share from discontinued operations | \$ - | \$ - | \$ - | \$ 0.44 |
| Basic loss per share | \$ (0.08) | \$ (0.55) | \$ (0.59) | \$ (1.15) |
| Basic weighted average shares outstanding | 7,954,928 | 7,954,928 | 7,954,928 | 7,954,928 |
| Dividends declared per share | \$ - | \$ - | \$ - | \$ - |

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

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FOG CUTTER CAPITAL GROUP INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (DEFICIT)
(Unaudited)

(dollars in thousands, except share data)

| | Common Stock | | Treasury Stock | | Accumulated Deficit | Total |
|------------------------------------|------------------|-------------------|------------------|--------------------|------------------------|--------------------|
| | Shares (1) | Amount | Shares | Amount | | |
| Balance at January 1, 2009 | 7,954,928 | \$ 172,102 | 3,802,145 | \$ (12,011) | \$ (169,198) | \$ (9,107) |
| Comprehensive income (loss): | | | | | | |
| Net loss | - | - | - | - | (4,729) | (4,729) |
| Stock options expensed in net loss | - | 375 | - | - | - | 375 |
| Balance at September 30, 2009 | <u>7,954,928</u> | <u>\$ 172,477</u> | <u>3,802,145</u> | <u>\$ (12,011)</u> | <u>\$ (173,927)</u> | <u>\$ (13,461)</u> |

(1) Issued and outstanding

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

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FOG CUTTER CAPITAL GROUP INC.
 CONSOLIDATED STATEMENTS OF CASH FLOWS
 (Unaudited)
 (dollars in thousands)

| | Quarter Ended September 30, | | Nine Months Ended September 30, | |
|---|--------------------------------|------------|------------------------------------|------------|
| | 2009 | 2008 | 2009 | 2008 |
| Cash flows from operating activities: | | | | |
| Net loss | \$ (672) | \$ (4,364) | \$ (4,729) | \$ (9,183) |
| Loss (income) from discontinued operations | - | - | 13 | (3,473) |
| Loss from continuing operations | (672) | (4,364) | (4,716) | (12,656) |
| Adjustments to reconcile net loss to net cash provided by (used in) operating activities: | | | | |
| Equity in income of equity investees | - | - | - | (218) |
| Depreciation and amortization | 189 | 617 | 916 | 1,845 |
| Foreign currency loss | - | 696 | - | 160 |
| Loss on sale of real estate | - | 563 | - | 563 |
| Share based compensation | 111 | 269 | 376 | 895 |
| Market value impairment reserve | - | 37 | - | 636 |
| Loss on disposal of property and equipment | 76 | 735 | 182 | 735 |
| Other | (422) | 259 | (108) | 130 |
| Change in: | | | | |
| Other assets | 31 | (563) | 1,666 | (1,871) |
| Deferred income | 84 | (645) | 905 | (626) |
| Accounts payable and accrued liabilities | 658 | 383 | 1,437 | 2,365 |
| Net cash provided by (used in) operating activities | 55 | (2,013) | 658 | (8,042) |
| Cash flows from investing activities: | | | | |
| Principal repayments on notes receivable, including loans to senior executives | 4 | 523 | 18 | 1,728 |
| Investment in debtor in possession subsidiaries | - | - | (1,219) | - |
| Investments in property, plant, and equipment | (182) | (306) | (401) | (1,320) |
| Proceeds on sale of real estate | - | 4,522 | - | 4,522 |
| Other | - | (1) | (179) | 190 |
| Net cash provided by (used in) investing activities | (178) | 4,738 | (1,781) | 5,120 |
| Cash flows from financing activities: | | | | |
| Proceeds from borrowings | 437 | 1,237 | 1,837 | 3,987 |
| Repayments on borrowings | (40) | (3,495) | (394) | (8,403) |
| Repayments under capital leases | (106) | (55) | (323) | (67) |
| Investments by minority interests, net | - | 11 | - | 361 |
| Net cash provided by (used in) financing activities | 291 | (2,302) | 1,120 | (4,122) |
| Effect of exchange rate change on cash | - | - | - | (21) |
| Net change in cash and cash equivalents from continuing operations | 168 | 423 | (3) | (7,065) |
| Net change in cash and cash equivalents from discontinued operations: | | | | |
| Net cash used in operating activities | - | - | (13) | (955) |
| Net cash provided by investing activities | - | - | - | 7,879 |
| Net cash used in financing activities | - | - | - | (79) |
| Net change in cash and cash equivalents | 168 | 423 | (16) | (220) |
| Cash and cash equivalents at beginning of period | 206 | 488 | 390 | 1,131 |
| Cash and cash equivalents at end of period | \$ 374 | \$ 911 | \$ 374 | \$ 911 |
| Supplemental disclosures of cash flow information: | | | | |
| Cash paid for interest | \$ 178 | \$ 675 | \$ 434 | \$ 2,099 |
| Non-cash financing and investing activities: | | | | |
| Net assets capitalized to investment in debtor in possession subsidiaries | \$ - | \$ - | \$ 2,750 | \$ - |

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

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

NOTE 1 – BASIS OF PRESENTATION AND ACCOUNTING POLICIES

The accompanying interim consolidated financial statements of Fog Cutter Capital Group Inc. and Subsidiaries ("FCCG" or the "Company") are unaudited and have been prepared in conformity with the requirements of Regulation S-X promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), particularly Rule 10-01 thereof, which governs the presentation of interim financial statements. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. The accompanying interim consolidated financial statements should be read in conjunction with the Company's Annual Report as of and for the year ended December 31, 2008 on Form 10-K ("2008 Form 10-K") as previously filed with the SEC on March 30, 2010. Except as described below, there have been no changes to the Company's significant accounting policies as described in Notes 2 and 3 to the consolidated financial statements in its 2008 Form 10-K.

In the Company's opinion, all adjustments, comprised of normal recurring accruals necessary for the fair presentation of the interim financial statements, have been included in the accompanying consolidated financial statements. Operating results for the nine months ended September 30, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The Company's operations and activities have become more focused on restaurant activities, and less focused on finance and real estate. As a result, certain reclassifications of the balances and modifications to the presentation of the financial statements have been made. None of these changes in presentation affected previously reported results of operations.

At September 30, 2009, certain Company officers and directors had, directly or indirectly, majority voting control of the Company.

NOTE 2 – SIGNIFICANT TRANSACTIONS

The following significant events affected our operations for the nine months ended September 30, 2009:

Bankruptcy Proceedings

On April 6, 2009, certain controlled subsidiaries of Fog Cutter Capital Group Inc. filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Central District of California – San Fernando Valley Division (the "Bankruptcy Court"). The entities involved and the case numbers assigned to the subsidiaries (collectively, the "Debtor In Possession Subsidiaries") are as follows:

Fatburger Restaurants of California, Inc., Case No. 1:09-bk-13964-GM

Fatburger Restaurants of Nevada, Inc., Case No. 1:09-bk-13965-GM

The Chapter 11 Cases are being jointly administered. Since the Chapter 11 bankruptcy filing date, the Debtor In Possession Subsidiaries have been operating their bankruptcy estates as "debtors in possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

On or about November 3, 2009, the Debtor In Possession Subsidiaries filed a joint plan of reorganization and related disclosure statement. The Bankruptcy Court is currently considering the plan of reorganization and disclosure statement.

During the time that the Debtor In Possession Subsidiaries are under bankruptcy protection, the Company will be deemed to not be in control of the Debtor In Possession Subsidiaries. As a result, certain assets, liabilities and the results of operations of the Debtor In Possession Subsidiaries were no longer part of the consolidated financial statements of the Company effective as of the date of the Chapter 11 Cases. As of September 30, 2009, the Company had recorded an Investment in Debtor In Possession in the amount of \$4.0 million, which represents the Company's net carrying value of the assets and liabilities of the Debtor In Possession Subsidiaries.

Borrowings

On June 26, 2009, certain Fatburger entities entered into two loan agreements in the total amount of \$1.5 million.

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The Debtor In Possession Subsidiaries borrowed \$1.1 million (the "DIP Loan") under authorization of the Bankruptcy Court. The loan matures June 26, 2010 and bears interest at 15%. The DIP loan is secured by the assets of the Debtor In Possession Subsidiaries and is further guaranteed and secured by the Company and other non-Debtor Fatburger entities.

In addition, Fatburger Corporation and Fatburger North America, Inc. borrowed \$0.4 million (the "Non-DIP Loan") from the same lender. The Non-DIP loan matures June 26, 2010 and bears interest at 15%. The Non-DIP loan is secured by the assets of Fatburger Corporation and Fatburger North America, Inc and is further guaranteed and secured by the Company.

Restaurant openings and closures

During the nine months ended September 30, 2009, Fatburger Holdings Inc. ("Fatburger"), the Company's restaurant operations subsidiary, opened eight additional franchise locations. In addition, one location was converted from a franchise-owned to a company-owned restaurant and one franchise location and five company-owned locations (including locations owned by the Debtor In Possession Subsidiaries) were closed.

NOTE 3 – COMMITMENTS, CONTINGENCIES & OFF-BALANCE SHEET RISK

Warlick complaints

On October 16, 2006, Fatburger Holdings, Inc., Fatburger Corporation and Fatburger North America, Inc. filed suit against Keith A. Warlick ("Warlick") the former Chief Executive Officer of Fatburger Holdings, Inc. and Fatburger Corporation. Warlick's employment with Fatburger was terminated on September 21, 2006 by resolution of the board of directors of Fatburger Holdings, Inc. The Fatburger companies initiated the lawsuit to recover damages from Warlick arising from wrongful acts and conduct during and after his employment, and are asserting claims for: breach of contract, breach of duty of loyalty, breach of fiduciary duty, conversion – embezzlement; fraud/commencement; intentional interference with contractual relations, and equitable indemnity. Warlick filed an answer to the lawsuit denying the allegations and included a Cross-complaint against Fatburger Holdings, Inc., Fatburger Corporation, Fatburger North America, Inc., Fog Cutter Capital Group, Inc., and Andrew Wiederhorn ("Cross-Defendants"), for breach of contract, employment discrimination based on race and retaliation, wrongful termination and defamation – slander without any specification of damages. On a motion filed by the Cross-Defendants, the Court dismissed Warlick's cross-claim for employment discrimination based on race and retaliation. In October 2009, the parties reached an agreement in principal to settle all claims alleged in this lawsuit and the settlement was completed on March 5, 2010. The settlement did not have a material effect on the consolidated statements of financial condition or the consolidated statement of operations of the Company.

On February 6, 2007, Warlick, his wife, and a limited liability company controlled by Warlick, each of whom is a minority shareholder of Fatburger Holdings, Inc., filed a complaint against various Fatburger entities, the Company, Andrew Wiederhorn, and members of the Fatburger board of directors. The complaint alleges fraud, negligent misrepresentation against Wiederhorn and the Company, and breach of contract and breach of fiduciary duty against all the defendants, related to business transactions which the plaintiff's allege were not in the best interests of Fatburger Holdings, Inc., or the plaintiff minority shareholders. The defendants disputed the allegations of the lawsuit and vigorously defended against the claims. In October 2009, the parties reached an agreement in principal to settle all claims alleged in this lawsuit and the settlement was completed on March 5, 2010. The settlement did not have a material effect on the consolidated statements of financial condition or the consolidated statement of operations of the Company.

Other litigation

The Company is involved in various other legal proceedings occurring in the ordinary course of business which management believes will not have a material adverse effect on the consolidated financial condition or operations of the Company.

Liquidity

The sale of real estate and other investments has historically been a recurring part of operations and a source of liquidity. However, most of those investments have been liquidated as the Company focused on the Fatburger operations. Borrowings and Fatburger's operations are now the major source of liquidity for the Company and management expects these sources, including the sale of Fatburger franchises, to generate adequate cash flow to meet the Company's liquidity needs for the 2009 fiscal year.

Fatburger Debt Covenant

As of September 30, 2009, Fatburger had not made all of the required payments on indebtedness with an outstanding principal balance of \$3.9 million. As a result, the lender has declared the indebtedness in default and has accelerated the maturity date of the entire balance. If the Company is unsuccessful in renegotiating the debt with the lender and obtaining waivers of the default, the resulting consequences could have a material adverse impact on our business, prospects, financial condition, or results of operation. In addition to the payment default, at December 31, 2008, Fatburger was not in compliance with all obligations under the agreements evidencing its indebtedness, as defined in the applicable agreements, due to its failure to meet the prescribed fixed charge coverage ratio and the prescribed debt-coverage ratio in three notes payable. The Company is in discussions with the lender to restructure the debt.

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Dividends

The Company does not have a fixed dividend policy, and may declare and pay new dividends on common stock, subject to financial condition, results of operations, capital requirements and other factors deemed relevant by the Board of Directors. One factor the Board of Directors may consider is the impact of dividends on the Company's liquidity. No dividends were declared in the quarter ended September 30, 2009.

Fatburger operations

The Company is pursuing a growth strategy at Fatburger through developing additional franchisee restaurants. Fatburger development involves substantial risks that the Company intends to manage; however, it cannot be assured that present or future development will perform in accordance with the Company's expectations or that any restaurants will generate the Company's expected returns on investment. The Company's inability to expand Fatburger in accordance with planned expansion or to manage that growth could have a material adverse effect on the Company's operations and financial condition. In addition, if Fatburger or its franchisees are unsuccessful in obtaining capital sufficient to fund this expansion, the timing of restaurant openings may be delayed and Fatburger's results may be harmed.

Other

The Company has various operating leases for office, manufacturing and retail space which expire through 2017. The leases provide for varying minimum annual rental payments including rent increases and free rent periods. The Company has future minimum rental payments under non-cancelable operating leases with initial or remaining terms of one year or more of approximately \$18.9 million as of September 30, 2009.

There were no off balance sheet arrangements in effect during the nine months ended September 30, 2009.

NOTE 4 – STOCK OPTIONS AND RIGHTS

The Company has a stock option plan (the "Option Plan") that provides for options to purchase shares of the Company's common stock. The maximum number of shares of common stock that may be issued pursuant to options granted under the Option Plan is 3,500,000. Newly elected independent directors automatically receive 5,000 options on the day they join the Board of Directors. Additionally, each independent director receives, on the last day of each quarter, an automatic qualified grant of non-qualified options to purchase 1,500 shares of common stock at 110% of the fair market value on that day. Automatic grants vest one third on each of the first three anniversaries of the grant date and expire on the tenth anniversary of the grant date. The Company granted a total of 13,500 options to its independent directors in the nine months ending September 30, 2009.

There were no options granted with exercise prices below the market value of the stock at the grant date. Fair values for the third quarter of 2009 were estimated using the Black-Scholes option-pricing model with the following weighted average assumptions used: 0% dividend yield, expected volatility of 103%, risk-free interest rate of 4.7% and expected lives of ten years.

A summary of our stock options activity for the nine months ended September 30, 2009 is presented below:

| | Shares | Weighted Average Exercise Price |
|-----------------------------------|------------------|---------------------------------------|
| Outstanding at January 1, 2009 | 2,980,833 | \$ 1.51 |
| Granted | 13,500 | \$ 0.16 |
| Exercised | - | - |
| Cancelled/forfeited | - | - |
| Outstanding at September 30, 2009 | <u>2,994,333</u> | <u>\$ 1.51</u> |

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A summary of our stock options outstanding as of September 30, 2009 is presented below:

| Range of Exercise Prices | Shares | Weighted Average Remaining Life | Weighted Average Exercise Price |
|--------------------------|------------------|---------------------------------|---------------------------------|
| \$ 0.01 – 2.00 | 2,493,500 | 7.3 | \$ 1.31 |
| \$ 2.01 – 4.00 | 500,833 | 7.7 | \$ 2.47 |
| \$ 4.01 – 8.00 | - | - | \$ - |
| Total | 2,994,333 | 7.3 | \$ 1.51 |

NOTE 5 – INVENTORIES

Inventories relate primarily to the Company’s manufacturing subsidiary, DAC International (“DAC”), and consist of the following:

| | September 30, 2009 | December 31, 2008 |
|--------------------------|-------------------------------|-------------------|
| | <i>(dollars in thousands)</i> | |
| Raw materials | \$ 1,191 | \$ 2,097 |
| Work in progress | 392 | 366 |
| Finished goods | 406 | 501 |
| Total inventories | \$ 1,989 | \$ 2,964 |

NOTE 6 – ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consisted of the following:

| | September 30, 2009 | December 31, 2008 |
|---|-------------------------------|-------------------|
| | <i>(dollars in thousands)</i> | |
| Accounts payable | \$ 2,574 | \$ 8,439 |
| Sales deposits | 774 | 1,228 |
| Accrued wages, bonus and commissions | 733 | 693 |
| Other | 9,207 | 7,126 |
| Total accounts payable accrued liabilities | \$ 13,288 | \$ 17,486 |

At September 30, 2009, other accrued liabilities include the accrual of management fees (\$1.7 million) and option commitment fee (\$0.3 million), both associated with the 2008 sale of the Company’s former subsidiary, Fog Cap Retail Investors LLC (“FCRI”). Other accrued liabilities also include \$2.2 million in accrued professional fees.

NOTE 7 – OPERATING SEGMENTS

Operating segments consist of (i) restaurant operations conducted through Fatburger, (ii) manufacturing activities conducted through DAC International, and (iii) real estate and financing activities. Each segment operates with its own management and personnel. The Company allocates certain corporate expenses to Fatburger through a management fee to reflect management’s increased involvement in the restaurant operations and to more closely represent the true costs of restaurant operations in the appropriate segment reporting. The management fee is eliminated upon consolidation. The following is a summary of each of the operating segments:

Restaurant operations

As of September 30, 2009, the Company owned approximately 82% of the voting control of Fatburger, which operates or franchises 93 hamburger restaurants located primarily in California and Nevada, as well as 12 other states, Canada, United Arab Emirates, Indonesia and China. Franchisees currently own and operate 62 of the Fatburger locations. Twenty-seven restaurants are currently owned and operated by the Debtor In Possession Subsidiaries. During the bankruptcy period, the Company is being reimbursed for certain costs supporting the operation of the Debtor In Possession Subsidiaries as approved by the Bankruptcy Court.

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Eight new franchise restaurants were opened during the nine months ended September 30, 2009. Also during that period, Fatburger acquired the net assets of one franchise location and converted this location to a company-owned restaurant. In addition, one franchise location and five company-owned locations were closed.

| | Three months ended September 30, | | Nine months ended September 30, | |
|--|----------------------------------|------------|---------------------------------|------------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Company-owned restaurant sales | \$ 946 | \$ 7,755 | \$ 9,091 | \$ 23,643 |
| Royalty revenue | 578 | 562 | 1,681 | 1,697 |
| Franchise fee revenue | 76 | 748 | 275 | 916 |
| Total revenue | 1,600 | 9,065 | 11,047 | 26,256 |
| Cost of sales | (423) | (4,577) | (5,042) | (14,060) |
| Depreciation and amortization | (104) | (527) | (668) | (1,601) |
| Other general & administrative costs | (602) | (3,889) | (5,201) | (12,162) |
| Interest expense | (726) | (166) | (989) | (524) |
| Loss on disposal of property and equipment | (76) | (735) | (182) | (735) |
| Other non-operating expense | (191) | - | (191) | - |
| Management allocation | (295) | (527) | (1,117) | (1,579) |
| Market value impairment reserves | - | (37) | - | (37) |
| Minority interest in (earnings) losses | 118 | (214) | 305 | (10) |
| Segment loss | \$ (699) | \$ (1,607) | \$ (2,038) | \$ (4,452) |
| Capital expenditures | \$ - | \$ 371 | \$ 84 | \$ 639 |
| Segment assets | | | \$ 15,262 | \$ 20,471 |
| Minority interests | | | \$ 24 | \$ 671 |

Manufacturing operations

The Company conducts manufacturing activities through its wholly-owned subsidiary, DAC International. DAC is a supplier of computer controlled lathes and milling machinery for the production of eyeglass, contact, and intraocular lenses.

| | Three months ended September 30, | | Nine months ended September 30, | |
|--------------------------------------|----------------------------------|----------|---------------------------------|----------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Manufacturing sales | \$ 1,803 | \$ 3,536 | \$ 5,836 | \$ 8,831 |
| Cost of sales | (1,032) | (2,159) | (3,678) | (5,221) |
| Engineering and development | (229) | (285) | (764) | (865) |
| Depreciation and amortization | (36) | (42) | (103) | (100) |
| Other general & administrative costs | (577) | (707) | (1,840) | (2,293) |
| Interest expense | (9) | (12) | (41) | (33) |
| Other non-operating income (expense) | (1) | 259 | 4 | 285 |
| Segment income (loss) | \$ (81) | \$ 590 | \$ (586) | \$ 604 |
| Capital expenditures | \$ 114 | \$ (40) | \$ 280 | \$ 381 |
| Segment assets | | | \$ 5,692 | \$ 7,289 |

Real estate and financing operations

The Company invests in various interests in real estate and notes receivable. At September 30, 2009, this segment did not own any real estate, but owned a note receivable with a carrying value of \$33,000 which was primarily secured by real estate.

| | Three months ended September 30, | | Nine months ended September 30, | |
|--------------------------------------|----------------------------------|------------|---------------------------------|------------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Rental income | \$ - | \$ - | \$ - | \$ - |
| Operating expenses | - | - | - | - |
| Depreciation and amortization | - | - | - | - |
| Other general & administrative costs | - | (1) | - | (14) |
| Interest income | - | 27 | 3 | 90 |
| Interest expense | - | (489) | - | (1,468) |
| Other non-operating expense | - | (680) | - | (121) |
| Loss on sale of real estate | - | (563) | - | (563) |
| Market value impairment reserves | - | - | - | (599) |
| Equity in income of equity investees | - | - | - | 218 |
| Segment income (loss) | \$ - | \$ (1,706) | \$ 3 | \$ (2,457) |
| Capital expenditures | \$ - | \$ - | \$ - | \$ - |
| Segment assets | | | \$ 33 | \$ 5,353 |
| Minority interests | | | \$ - | \$ 106 |

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Reconciliation to total net loss

| | Three months ended September 30, | | Nine months ended September 30, | |
|--|----------------------------------|-------------------|---------------------------------|-------------------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Segment loss from operations | \$ (780) | \$ (1,988) | \$ (2,621) | \$ (5,570) |
| Corporate expenses | (838) | (2,189) | (3,907) | (8,502) |
| Elimination of intercompany charges | 946 | 548 | 1,815 | 2,099 |
| Income tax (expense) benefit | - | - | (3) | 52 |
| Income (loss) from discontinued operations | - | - | (13) | 3,473 |
| Net loss | <u>\$ (672)</u> | <u>\$ (3,629)</u> | <u>\$ (4,729)</u> | <u>\$ (8,448)</u> |

NOTE 8 – DISCONTINUED OPERATIONS

Leased real estate portfolio

In February 2008, the Company sold FCRI, a wholly-owned subsidiary that held the Company's leased real estate portfolio. At the time of sale, this portfolio was comprised of leasehold interests in 72 freestanding retail buildings located throughout the United States. Prior to the sale, the leased real estate portfolio was part of the Real Estate and Financing Operations segment. The following represents the results of operations during the time of the Company's ownership of FCRI:

| | Three months ended September 30, | | Nine months ended September 30, | |
|--|----------------------------------|-------------|---------------------------------|-----------------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Operating revenue | \$ - | \$ - | \$ - | \$ 610 |
| Operating expenses | - | - | - | (240) |
| Depreciation and amortization | - | - | - | (39) |
| Operating margin | - | - | - | 331 |
| General and administrative expenses | - | - | - | (7) |
| Interest expense | - | - | - | (157) |
| Other non-operating income | - | - | (13) | 8 |
| Gain on sale of discontinued real estate operations | - | - | - | 4,217 |
| Income (loss) from discontinued real estate operations | <u>\$ -</u> | <u>\$ -</u> | <u>\$ (13)</u> | <u>\$ 4,392</u> |
| Capital expenditures | \$ - | \$ - | \$ - | \$ 20 |
| Segment assets | - | - | - | - |

Software development and sales operations

In June 2008, the Company exercised its rights under a loan security agreement on loans to a consolidated subsidiary, Centrisoft Corporation. Pursuant to the security agreement, the collateral assets of Centrisoft were transferred to the Company in satisfaction of the loans. Centrisoft has since ceased operations. As of September 30, 2008, the Company no longer included Centrisoft as a consolidated subsidiary and as of December 31, 2008, the carrying value of the assets acquired from Centrisoft was zero. The following represents the results of operations during the time of the Company's ownership or operation of the Centrisoft assets:

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| | Three months ended September 30, | | Nine months ended September 30, | |
|--------------------------------------|----------------------------------|-------------|---------------------------------|-----------------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Software sales | \$ - | \$ - | \$ - | \$ 128 |
| Engineering and development | - | - | - | (158) |
| Depreciation and amortization | - | - | - | (182) |
| Other general & administrative costs | - | - | - | (215) |
| Interest expense | - | - | - | (492) |
| Segment loss | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ (919)</u> |
| Capital expenditures | \$ - | \$ - | \$ - | \$ - |
| Segment assets | | | \$ - | \$ - |

NOTE 9 – SUBSEQUENT EVENTS

Restaurant openings

Subsequent to September 30, 2009, Fatburger has opened five additional franchise locations, including new restaurants in Beijing and United Arab Emirates. During this period, Fatburger has closed two company-owned locations and three franchise locations.

Purchase of Land

On December 24, 2009, the Company acquired all of the membership interests in Highland Road Properties LLC (“HRP”) from an entity controlled by Mr. and Mrs. Wiederhorn. HRP is a special purpose entity that owns approximately 6 acres of residential land in Portland Oregon. Mr. and Mrs. Wiederhorn had previously allowed the land to be part of a pool of collateral securing indebtedness of the Company and it became necessary for the Company to have direct ownership of HRP in order to protect the remaining collateral. The Company paid \$750,000 for the HRP interests. The Highland Road land is being used by the Company as collateral for certain borrowings of the Company. The Board of Directors approved the purchase of HRP and determined that the transaction was in the best interests of the Company and its shareholders. On February 17, 2010, the Company caused HRP to transfer the land to certain lenders for a partial reduction in debt of \$350,000.

Guarantee of Debt

Certain of the Company’s lenders have, from time to time, required that Mr. Wiederhorn personally guarantee the Company’s debt obligations. As of March 15, 2010, Mr. Wiederhorn had personally guaranteed approximately \$8.9 million in debt of the Company and its subsidiaries. On March 23, 2010, the Company granted Mr. Wiederhorn a security interest in the assets of Fog Cutter Capital Group Inc. to secure his performance in the event he is required to perform under the guarantees.

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

Certain statements contained herein and certain statements contained in future filings by the Company with the SEC may not be based on historical facts and are "Forward-Looking Statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-Looking Statements are based on various assumptions and events (some of which are beyond the Company's control) and may be identified by reference to a future period or periods, or by the use of forward-looking terminology, such as "may," "will," "believe," "expect," "anticipate," "continue," or similar terms or variations on those terms, or the negative of those terms. Actual results could differ materially from those set forth in Forward-Looking Statements due to a variety of factors, including, but not limited to the Risk Factors identified herein and the following:

- economic factors, particularly in the market areas in which the Company operates;*
- the financial and securities markets and the availability of and costs associated with sources of liquidity;*
- competitive products and pricing;*
- the ability to sell assets to maintain liquidity;*
- fiscal and monetary policies of the U.S. Government;*
- changes in prevailing interest rates;*
- changes in currency exchange rates;*
- acquisitions and the integration of acquired businesses;*
- performance of retail/consumer markets, including consumer preferences and concerns about diet;*
- effective expansion of the Company's restaurants in new and existing markets;*
- profitability and success of franchisee restaurants;*
- availability of quality real estate locations for restaurant expansion;*
- credit risk management; and*
- asset/liability management*

Except as may be required by law, the Company does not undertake, and specifically disclaims any obligation, to publicly release the results of any revisions that may be made to any Forward-Looking Statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.

The following discussion and analysis should be read in conjunction with the Consolidated Financial Statements of Fog Cutter Capital Group Inc. and the notes thereto included elsewhere in this filing. References in this filing to "the Company," "we," "our," and "us" refer to Fog Cutter Capital Group Inc. and its subsidiaries unless the context indicates otherwise.

Executive Overview

Business overview

Fog Cutter Capital Group Inc. is primarily engaged in the operations of its Fatburger Holdings, Inc. ("Fatburger") restaurant business. We acquired the controlling interest in Fatburger in August 2003 and currently own 82% voting control. Fatburger, "The Last Great Hamburger Stand"®, opened its first restaurant in Los Angeles in 1952. As of September 30, 2009, there were 93 Fatburger restaurants located in 14 states and in Canada, United Arab Emirates and China. The restaurants specialize in fresh, made to order hamburgers and other specialty sandwiches. French fries, homemade onion rings, hand-scooped ice cream shakes and soft drinks round out the menu.

We plan to open additional Fatburger restaurants throughout the United States and internationally, including Canada, China, Indonesia and the United Arab Emirates. We intend to continue to increase the number of franchised locations in the U.S. and internationally. Franchisees currently own and operate 62 of the Fatburger locations and we have agreements for approximately 100 new franchise locations. Twenty-seven restaurants are currently owned and operated by the Debtor In Possession Subsidiaries. During the bankruptcy period, we are not consolidating the operations of the Debtor In Possession Subsidiaries in our financial statements, but we are being reimbursed for certain costs supporting the operation of the Debtor In Possession Subsidiaries as approved by the Bankruptcy Court.

Many factors affect our ability to open new franchise locations and we expect that it will take several years for our current franchisees to open all of their restaurant locations. As is typical for our industry, the identification of qualified franchisees and quality locations has an impact on the rate of growth in the number of our restaurants.

In addition to our restaurant operation, we also conduct manufacturing activities and make real estate and other real estate-related investments through various controlled subsidiaries.

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Operating segments

Our operating segments are:

- (i) Restaurant operations – conducted through our Fatburger subsidiary,
- (ii) Manufacturing operations – conducted through our wholly owned subsidiary, DAC International (“DAC”), and
- (iii) Real estate and financing operations.

Due to the varied nature of our operations, we do not utilize a standard array of key performance indicators in evaluating our results of operations. Our evaluation instead focuses on an investment-by-investment or asset-by-asset analysis within our operating segments.

Significant events

The following significant events affected our operations for the nine months ended September 30, 2009:

Bankruptcy Proceedings -- On April 6, 2009, certain of our controlled subsidiaries filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Central District of California – San Fernando Valley Division (the "Bankruptcy Court"). The entities involved and the case numbers assigned to the subsidiaries (collectively, the "Debtor In Possession Subsidiaries") are as follows:

Fatburger Restaurants of California, Inc., Case No. 1:09-bk-13964-GM

Fatburger Restaurants of Nevada, Inc., Case No.1:09-bk-13965-GM

The Chapter 11 Cases are being jointly administered. Since the Chapter 11 bankruptcy filing date, the Debtor In Possession Subsidiaries have been operating their bankruptcy estates as "debtors in possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

On or about November 3, 2009, the Debtor In Possession Subsidiaries filed a joint plan of reorganization and related disclosure statement. The Bankruptcy Court is currently considering the plan of reorganization and disclosure statement.

During the time that the Debtor In Possession Subsidiaries are under bankruptcy protection, we will be deemed to not be in control of the Debtor In Possession Subsidiaries. As a result, certain assets, liabilities and the results of operations of the Debtor In Possession Subsidiaries were no longer part of our consolidated financial statements effective as of the date of the Chapter 11 Cases. As of September 30, 2009, we had recorded an Investment in Debtor In Possession in the amount of \$4.0 million, which represents our net carrying value of the assets and liabilities of the Debtor In Possession Subsidiaries.

Borrowings – On June 26, 2009, certain Fatburger entities entered into two loan agreements in the total amount of \$1.5 million.

The Debtor In Possession Subsidiaries borrowed \$1.1 million (the "DIP Loan") under authorization of the Bankruptcy Court. The loan matures June 26, 2010 and bears interest at 15%. The DIP loan is secured by the assets of the Debtor In Possession Subsidiaries and is further guaranteed and secured by us and other Fatburger entities.

In addition, Fatburger Corporation and Fatburger North America, Inc. borrowed \$0.4 million (the "Non-DIP Loan") from the same lender. The Non-DIP loan matures June 26, 2010 and bears interest at 15%. The Non-DIP loan is secured by the assets of Fatburger Corporation and Fatburger North America, Inc and is further guaranteed and secured by us.

Restaurant openings and closures – During the nine months ended September 30, 2009, Fatburger opened eight additional franchise locations and one franchise location was closed. In addition, one franchise location was converted from a franchise-owned location to a company-owned restaurant and five Company owned locations (including locations owned by the Debtor In Possession Subsidiaries) were closed.

Results of operations

We have incurred net losses from continuing operations as follows:

| | Three months ended September 30, | | Nine months ended September 30, | |
|--------------------|--|------------|---------------------------------|-------------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands, except per share data)</i> | | | |
| Net loss | \$ (672) | \$ (4,364) | \$ (4,716) | \$ (12,656) |
| Net loss per share | \$ (0.08) | \$ (0.55) | \$ (0.59) | \$ (1.59) |

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Our net loss from continuing operations was \$4.7 million (or \$0.59 per share) for the nine months ended September 30, 2009 and \$0.7 million (or \$0.08 per share) for the three months then ended. This compares to a net loss of \$12.7 million (or \$1.59 per share) for the nine months ended September 30, 2008 and net loss of \$4.4 million (or \$0.55 per share) for the three months then ended. The loss is primarily due to operating expenses associated with our management infrastructure. We have put in place a management structure that we believe will enable us to significantly expand our operations, notably our Fatburger subsidiary. However, until the growth is realized, the cost of our management structure will be borne by our existing operations and we will likely continue to incur losses.

The following sections describe the results of operations of our operating segments for the three and nine months ended September 30, 2009 and 2008.

Restaurant segment operations

The following table shows our operating margin for company-owned restaurants for the three and nine months ended September 30, 2009 and 2008:

| | Three months ended September 30, | | Nine months ended September 30, | |
|--|---|--------------|---------------------------------|--------------|
| | 2009 | 2008 | 2009 | 2008 |
| | (% to Company-owned restaurant sales) | | | |
| Restaurant sales: | | | | |
| Company-owned restaurant sales | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of sales – food, paper, merchandise | (20.3%) | (26.9%) | (24.6%) | (26.2%) |
| Cost of sales – wages and benefits | (24.4%) | (32.1%) | (30.9%) | (33.3%) |
| Restaurant depreciation and amortization | (11.0%) | (6.1%) | (7.3%) | (6.0%) |
| Operating margin (restaurant sales only) | <u>44.3%</u> | <u>34.9%</u> | <u>37.2%</u> | <u>34.5%</u> |

For the nine months ended September 30, 2009, company-owned restaurant sales decreased to \$9.1 million from \$23.6 million for the same period in 2008. For the three months ended September 30, 2009, company-owned restaurant sales decreased to \$0.9 million from \$7.7 million for the same period in 2008. This decrease was primarily the result of the elimination of \$11.6 million in sales from stores owned by the Debtor In Possession Subsidiaries, which are not being consolidated during the bankruptcy period. Same store sales for company-owned restaurants, including Debtor In Possession Subsidiaries stores, open during all of 2008 decreased 5.6% for the first nine months of 2009 and 4.2% in the third quarter compared to the same periods in 2008.

The following table shows our total operating results from the restaurant segment for the three and nine months ended September 30, 2009 and 2008:

| | Three months ended September 30, | | Nine months ended September 30, | |
|----------------------------------|----------------------------------|----------------|---------------------------------|----------------|
| | 2009 | 2008 | 2009 | 2008 |
| | (% to total revenue) | | | |
| Total restaurant operations: | | | | |
| Company-owned restaurant sales | 59.1% | 85.6% | 82.3% | 90.0% |
| Royalty revenue | 36.1% | 6.2% | 15.2% | 6.5% |
| Franchise fee revenue | 4.8% | 8.2% | 2.5% | 3.5% |
| Total revenue | <u>100.0%</u> | <u>100.0%</u> | <u>100.0%</u> | <u>100.0%</u> |
| Cost of sales | (26.4%) | (55.7%) | (45.6%) | (59.0%) |
| General & administrative costs | (56.1%) | (43.5%) | (54.9%) | (47.0%) |
| Loss on disposal of fixed assets | (4.8%) | (8.1%) | (1.6%) | (2.8%) |
| Interest expense | (45.4%) | (1.8%) | (9.0%) | (2.0%) |
| Management allocation | (18.4%) | (6.2%) | (10.1%) | (6.2%) |
| Minority interest in losses | 7.4% | (2.4%) | 2.8% | 0.0% |
| Segment loss | <u>(43.7%)</u> | <u>(17.7%)</u> | <u>(18.4%)</u> | <u>(17.0%)</u> |

Royalty revenue remained steady at \$1.7 million for the first nine months of 2009 compared to the same period in 2008 and was also stable at \$0.6 million for the three months ended September 30, 2009 and 2008. We added eight franchise locations during the nine months ended September 30, 2009. This increase was partially offset by one location being converted from franchise to company-owned restaurants and the closure of one franchise restaurant. The royalty increase from the net increase in franchise locations was offset by a decrease of 8.7% in same store sales for franchise restaurants for the nine months ending September 30, 2009 (8.3% decrease in the third quarter) compared to the same period in 2008.

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System-wide same store sales decreased 7.3% for stores open during all of 2009 during the first nine months of 2009 compared to the same period in 2008, and decreased 6.5% in the third quarter of 2009 compared to the same period in 2008.

We plan to open additional Fatburger restaurants throughout the United States and internationally, including Canada, China, Saudi Arabia, Indonesia, Kuwait, and the United Arab Emirates. We intend to increase the number of franchised locations in the U.S. and internationally. Fatburger has opened a net increase of 44 restaurant locations since our acquisition in 2003. As is typical for our industry, the identification of qualified franchisees and quality locations has an impact on the rate of growth in the number of our restaurants.

Manufacturing segment operations

The following table summarizes the operating results of our manufacturing segment for the three and nine months ended September 30, 2009 and 2008:

| | Three months ended September 30, | | Nine months ended September 30, | |
|-----------------------------|----------------------------------|---------|---------------------------------|---------|
| | 2009 | 2008 | 2009 | 2008 |
| | (% to total revenue) | | | |
| Manufacturing sales | 100.0% | 100.0% | 100.0% | 100.0% |
| Manufacturing cost of sales | (57.2%) | (61.0%) | (63.0%) | (59.1%) |
| Engineering and development | (12.7%) | (8.1%) | (13.1%) | (9.8%) |
| Operating margin | 30.1% | 30.9% | 23.9% | 31.1% |
| Compensation expense | (21.2%) | (12.5%) | (20.1%) | (16.2%) |
| Depreciation expense | (2.0%) | (1.2%) | (1.7%) | (1.1%) |
| Other operating expense | (2.4%) | (0.5%) | (12.1%) | (7.0%) |
| Segment income | (4.5%) | 16.7% | (10.0%) | 6.8% |

Total revenue for this segment was \$5.8 million for the nine months ended September 30, 2009 (\$1.8 million for the third quarter), compared to \$8.8 million for the same nine months (\$3.5 million for the third quarter) in 2008. The net loss for this segment was \$0.6 million for the nine months ended September 30, 2009 (\$0.1 million for the third quarter), compared to net income of \$0.6 million for the same nine months (\$0.6 million for the third quarter) in 2008.

Real estate and financing segment operations

In February 2008, we sold FCRI, our wholly-owned subsidiary that held our leased real estate portfolio. The sales price was \$8.5 million and we recorded a gain on sale of \$4.2 million. Results of operations from FCRI (including the gain on sale in 2008) have been classified as discontinued operations.

Interest income – Our interest income for the first nine months of 2009 was \$3,000 compared to \$90,000 in the same period of 2008. For the three months ending September 30, 2009 and 2008, our interest income was zero and \$27,000, respectively. The reduction in interest income reflects the repayment of notes receivable during the last half of 2008.

Interest expense – We did not have interest expense related to real estate operations for the first nine months of 2009. We sold or wrote off our remaining real estate holdings in 2008 and repaid or restructured the related debt. During the first nine months of 2008, our real estate related interest expense was \$1.5 million (\$0.5 million for the third quarter).

Market value impairment reserves – We recognized a market value impairment reserve of \$0.6 million on one property in Barcelona, Spain in the first nine months of 2008 (\$0.4 million in the second quarter). We did not have any impairment losses in 2009.

Other non-operating income – In the nine months ended September 30, 2008, we had equity in income of equity investee of \$0.2 million. There was nothing comparable in 2009.

Corporate expenses

The following table summarizes our corporate expenses for the three and nine months ended September 30, 2009 and 2008.

| | Three months ended September 30, | | Nine months ended September 30, | |
|------------------------------------|----------------------------------|----------|---------------------------------|----------|
| | 2009 | 2008 | 2009 | 2008 |
| | (dollars in thousands) | | | |
| Compensation and employee benefits | \$ 484 | \$ 1,341 | \$ 1,601 | \$ 5,377 |
| Insurance | 39 | 96 | 147 | 234 |
| Directors fees | 34 | 94 | 191 | 282 |
| Occupancy costs | 44 | 34 | 101 | 104 |
| Other expenses | 237 | 624 | 1,867 | 2,508 |
| Total operating expenses | \$ 838 | \$ 2,189 | \$ 3,907 | \$ 8,502 |

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For the nine months ended September 30, 2009, we incurred corporate operating expenses of \$3.9 million (\$0.8 million for the third quarter), compared to \$8.5 million for the same nine months (\$2.2 million for the third quarter) in 2008. This decrease is primarily due to a decrease in compensation expenses related to senior executives. Other expenses for the nine months ended September 30, 2009 include general corporate interest expense of \$1.4 million (\$0.4 million for the third quarter). During the third quarter of 2009 we were able to negotiate a reduction in previously accrued lease payments on a corporate aircraft in the amount of \$0.3 million.

Management allocation and other intercompany charges

In 2006, as we focused our efforts on the Fatburger segment we began allocating a portion of our corporate expenses to our restaurant segment to more accurately reflect the operating results of that segment. This allocation was \$1.1 million the nine months ended September 30, 2009 and \$1.6 million for the nine months ended September 30, 2008. The management fee was \$0.3 and \$0.5 million for the third quarter in 2009 and 2008, respectively. This allocation is eliminated upon consolidation on the Consolidated Statements of Operations. Other intercompany charges, including intercompany interest expense, are eliminated upon consolidation.

Income taxes

During the nine months ended September 30, 2009 and 2008, a provision for income taxes was not required due to the net operating loss generated during the period. We recorded tax expense of \$3,000 for state taxes paid during the first quarter of 2009. We recorded a tax benefit of \$52,000 to recognize tax refunds received in the first quarter of 2008 on prior taxes paid.

Discontinued operations

Leased real estate portfolio – In February 2008, we sold our wholly-owned subsidiary, FCRI, which held our leased real estate portfolio. At the time of sale, this portfolio was comprised of leasehold interests in 72 freestanding retail buildings located throughout the United States. Prior to the sale, the leased real estate portfolio was part of our Real Estate and Financing Operations segment. The following represents the results of operations during the time of our ownership of FCRI:

| | Three months ended September 30, | | Nine months ended September 30, | |
|--|----------------------------------|------|---------------------------------|----------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Operating revenue | \$ - | \$ - | \$ - | \$ 610 |
| Operating expenses | - | - | - | (240) |
| Depreciation and amortization | - | - | - | (39) |
| Operating margin | - | - | - | 331 |
| General and administrative expenses | - | - | - | (7) |
| Interest expense | - | - | - | (157) |
| Other non-operating income | - | - | (13) | 8 |
| Gain on sale of discontinued real estate operations | - | - | - | 4,217 |
| Income (loss) from discontinued real estate operations | \$ - | \$ - | \$ (13) | \$ 4,392 |

Software development and sales operations – In June 2008, we exercised our rights under a loan security agreement on loans to a consolidated subsidiary, Centrisoft Corporation. Pursuant to the security agreement, the collateral assets of Centrisoft were transferred to us in satisfaction of the loans. Centrisoft has since ceased operations. As of September 30, 2008, we no longer included Centrisoft as a consolidated subsidiary and as of December 31, 2008, the carrying value of the assets acquired from Centrisoft was zero. The following represents the results of operations during the time of our ownership or operation of the Centrisoft assets:

| | Three months ended September 30, | | Nine months ended September 30, | |
|-----------------------------|----------------------------------|------|---------------------------------|----------|
| | 2009 | 2008 | 2009 | 2008 |
| | <i>(dollars in thousands)</i> | | | |
| Software sales | \$ - | \$ - | \$ - | \$ 128 |
| Engineering and development | - | - | - | (158) |
| Compensation expense | - | - | - | (92) |
| Depreciation expense | - | - | - | (182) |
| Other operating expense | - | - | - | (123) |
| Interest expense | - | - | - | (492) |
| Segment loss | \$ - | \$ - | \$ - | \$ (919) |

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Changes in financial condition

Our assets, liabilities and stockholders' equity (deficit) can be summarized as follows:

| | September 30, 2009 | December 31, 2008 |
|--------------------------------------|-----------------------|----------------------|
| <i>(dollars in thousands)</i> | | |
| Total assets | \$ 22,334 | \$ 27,573 |
| Total liabilities | \$ 35,771 | \$ 36,315 |
| Total minority interests | \$ 24 | \$ 365 |
| Total stockholders' equity (deficit) | \$ (13,461) | \$ (9,107) |

The \$5.2 million decrease in total assets during the first nine months of 2009 is primarily due to a net decrease in assets of \$3.9 million related to the Debtor In Possession Subsidiaries, which are not included in the consolidated financial statements during their bankruptcy period. Total liabilities decreased \$0.5 million over the first nine months of 2009 due to \$4.7 million in liabilities related to the Debtor In Possession Subsidiaries, partially offset by increases in borrowings and deferred income. Stockholders' equity (deficit) decreased during the first nine months of 2009 by approximately \$4.4 million, mainly resulting from our net loss of \$4.7 million, partially offset by share based compensation of \$0.4 million. These changes are described in more detail as follows:

Cash

Our cash balance was \$0.4 million at both December 31, 2008 and September 30, 2009. Significant sources and uses of cash during the quarter include:

- \$0.6 million of cash provided by operations – comprised primarily of our net loss from continuing operations of \$4.7 million adjusted for net non-cash items of \$5.3 million;
- \$1.8 million of cash used in investing activities, including investment in Debtor In Possession Subsidiaries of \$1.2 million and investment in property, plant and equipment of \$0.4 million; and
- \$1.1 million of cash provided in financing activities, including proceeds from borrowings of \$1.8 million, net of payments on borrowings of \$0.4 million and payments on capital leases of \$0.3 million.

Net property, plant and equipment

Net property, plant and equipment decreased \$5.2 million at September 30, 2009 compared to December 31, 2008, primarily due to the elimination of \$3.8 million in assets owned by the Debtor In Possession Subsidiaries and scheduled monthly depreciation. Obligations on property, plant, and equipment under capital lease decreased by \$0.3 million as a result of scheduled payments during the nine months ended September 30, 2009.

Goodwill and net intangible assets

| | September 30, 2009 | December 31, 2008 |
|-----------------------------------|-----------------------|----------------------|
| <i>(dollars in thousands)</i> | | |
| Goodwill – Fatburger | \$ 6,563 | \$ 6,563 |
| Goodwill – DAC International | 1,465 | 1,465 |
| Total goodwill | \$ 8,028 | \$ 8,028 |
| Net intangible assets – Fatburger | \$ 2,592 | \$ 4,068 |
| Total net intangible assets | \$ 2,592 | \$ 4,068 |

Net intangible assets decreased \$1.4 million in the nine months ended September 30, 2009 due to the elimination of \$1.3 million in intangible assets owned by the Debtor In Possession Subsidiaries. Net intangible assets other than goodwill at September 30, 2009 consist primarily of trademark rights of approximately \$2.1 million and franchise agreements of approximately \$0.3 million. We do not believe that there is any impairment of goodwill or net intangible assets at September 30, 2009.

Notes receivable

As of September 30, 2009, our notes receivable portfolio consists of one individual loan with a carrying value of \$33,000. The loan is secured by real estate consisting of commercial property located in Texas. The loan has an interest rate (excluding fees and points) of 7% and matures in April 2010.

Other assets

| | September 30, 2009 | December 31, 2008 |
|-------------------------------|-----------------------|----------------------|
| <i>(dollars in thousands)</i> | | |
| Trade receivables | \$ 1,742 | \$ 2,712 |
| Inventories | \$ 1,989 | \$ 2,964 |
| Other current assets: | | |
| Prepaid expenses | \$ 183 | \$ 294 |
| Other assets: | | |
| Security deposits | \$ 261 | \$ 471 |
| Capitalized finance fees | - | 202 |
| Other | 74 | 139 |
| Total other assets | \$ 335 | \$ 812 |

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Trade receivables and inventories at September 30, 2009 relate primarily to the operations of DAC. The reduction in other assets is primarily related to the elimination of assets owned by the Debtor In Possession Subsidiaries.

Deferred income

Our deferred income relating to the collection of unearned Fatburger franchise fees increased \$0.9 million at September 30, 2009, compared to December 31, 2008. This was the result of the collection of \$1.2 million in new franchise fees and prepaid royalties, offset by the recognition of \$0.3 million in franchise revenue. As of September 30, 2009, nearly all of the deferred income was comprised of the non-refundable franchise fee received by Fatburger for each future franchise location. These initial fees generally represent half of the total fee per location. The balance of the franchise fee will be collected in the future when leases on these specific franchise locations are signed.

Notes payable

As of September 30, 2009, our notes payable totaled \$17.4 million, including \$8.8 million of debt held at Fatburger and \$1.1 million at DAC. This compares to \$14.3 million at December 31, 2008. The increase is primarily due to new borrowings at Fatburger in the amount of \$1.5 million and the capitalization of accrued interest of \$1.3 million.

Accounts payable and accrued liabilities

Accounts payable and accrued liabilities totaled \$13.2 million at September 30, 2009, compared with \$17.5 million at December 31, 2008, and consisted of the following:

| | September 30, 2009 | December 31, 2008 |
|---|-------------------------------|----------------------|
| | <i>(dollars in thousands)</i> | |
| Accounts payable | \$ 2,574 | \$ 8,439 |
| Sales deposits | 774 | 1,228 |
| Accrued wages, bonus and commissions | 733 | 693 |
| Other | 9,207 | 7,126 |
| Total accrued expenses and other liabilities | \$ 13,288 | \$ 17,486 |

At September 30, 2009, other liabilities also include \$2.0 million for the accrual of management fees and the option commitment fee associated with the sale of FCRI and \$2.2 million in accrued professional fees.

Liquidity and Capital Resources

Liquidity is a measurement of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund business operations, acquisitions, and expansion (including growth of company-owned and franchised restaurant locations and for other general business purposes). In addition to our cash on hand, our primary sources of funds for liquidity during the first nine months of 2009 consisted of cash provided by borrowings and operations. As of September 30, 2009, we had cash or cash equivalents of \$0.3 million, which, together with projected borrowings and funds provided by operations, we believe will be sufficient to meet our current liquidity needs.

At September 30, 2009, we had total consolidated secured indebtedness of \$19.0 million, as well as \$16.8 million of other liabilities. Our consolidated secured indebtedness consisted of:

- \$8.8 million in notes payable and other debt of Fatburger, secured by the assets of Fatburger;
- \$1.6 million in capital leases maturing on or before 2010 which are secured by an aircraft and various restaurant assets;
- \$7.5 million of notes payable secured by various assets of the Company; and

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- \$1.1 million of short-term borrowings secured by the assets of DAC International.

The sale of real estate and other investments has historically been a recurring part of operations and a source of liquidity. However, most of those investments have been liquidated as we focused on the Fatburger operations. Borrowings and Fatburger's operations are now our major source of liquidity and we expect these sources, including the sale of Fatburger franchises, to generate adequate cash flow to meet the Company's liquidity needs. We believe that our existing sources of funds will be adequate to meet our liquidity needs; however, there can be no assurance that this will be the case.

If our existing liquidity position were to prove insufficient, and we were unable to repay, renew or replace maturing indebtedness on terms reasonably satisfactory to us, we may be required to sell (potentially on short notice) a portion of our assets, and could incur losses as a result. Specific risks to our liquidity position include the following:

Interest rate risk

Our borrowings and the availability of further borrowings are substantially affected by, among other things, changes in interest rates, changes in market spreads or decreases in credit quality of our assets. Material increases in interest expense from variable-rate funding sources, or material decreases in monthly cash receipts from operations, generally would negatively impact our liquidity. On the other hand, material decreases in interest expense from variable-rate funding sources would positively affect our liquidity. Fluctuations in interest rates will impact our net income to the extent our operations and our fixed rate assets are funded by variable rate debt. We may also be impacted to the extent that our variable rate assets re-price on a different schedule or in relation to a different index than any floating rate debt.

Fatburger debt covenant

As of September 30, 2009, Fatburger had not made all of the required payments on indebtedness with an outstanding principal balance of \$3.9 million. As a result, the lender has declared the indebtedness in default and has accelerated the maturity date of the entire balance. If the Company is unsuccessful in renegotiating the debt with the lender and obtaining waivers of the default, the resulting consequences could have a material adverse impact on our business, prospects, financial condition, or results of operation. In addition to the payment default, at December 31, 2008, Fatburger was not in compliance with all obligations under the agreements evidencing its indebtedness, as defined in the applicable agreements, due to its failure to meet the prescribed fixed charge coverage ratio and the prescribed debt-coverage ratio in three notes payable. We are currently in discussions with the lender to restructure the debt.

Fatburger expansion

Fatburger is involved in a nationwide expansion of franchise and company-owned locations, which will require significant liquidity. If real estate locations of sufficient quality cannot be located and either leased or purchased, the timing of restaurant openings may be delayed. Additionally, if Fatburger or its franchisees cannot obtain capital sufficient to fund this expansion, the timing of restaurant openings may be delayed.

Dividends

While we do not have a fixed dividend policy, we may declare and pay new dividends on our common stock, subject to our financial condition, results of operations, capital requirements and other factors deemed relevant by the Board of Directors. One factor the Board of Directors may consider is the impact of dividends on our liquidity. We have not declared or paid any dividends during 2009.

Over-the-counter stock listing

Effective October 14, 2004, our stock began trading in the over-the-counter ("OTC") market. Trading of our common stock on the OTC market reduces the liquidity of our common stock compared to quotation on a national market. Also, the coverage of the Company by security analysts and media is reduced, which we believe results in lower prices for our common stock than might otherwise prevail and also results in increased spreads between the bid and ask prices for our common stock. Additionally, certain investors will not purchase securities that are not quoted on a national market, which we believe impairs our ability to raise funds through the issuance of common stock or other securities convertible into common stock.

Off Balance Sheet Arrangements

We have various operating leases for office, manufacturing and retail space which expire through 2017. The leases provide for varying minimum annual rental payments including rent increases and free rent periods. We have future minimum rental payments under non-cancelable operating leases with initial or remaining terms of one year or more of approximately \$18.9 million as of September 30, 2009.

We did not have any other off-balance sheet arrangements in place as of September 30, 2009.

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Related Party Transactions

Purchase of Land

On December 24, 2009, the Company acquired all of the membership interests in Highland Road Properties LLC (“HRP”) from an entity controlled by Mr. and Mrs. Wiederhorn. HRP is a special purpose entity that owns approximately 6 acres of residential land in Portland Oregon. Mr. and Mrs. Wiederhorn had previously allowed the land to be part of a pool of collateral securing indebtedness of the Company and it became necessary for the Company to have direct ownership of HRP in order to protect the remaining collateral. The Company paid \$750,000 for the HRP interests. The Highland Road land is being used by the Company as collateral for certain borrowings of the Company. The Board of Directors approved the purchase of HRP and determined that the transaction was in the best interests of the Company and its shareholders. On February 17, 2010, the Company caused HRP to transfer the land to certain lenders for a partial reduction in debt of \$350,000.

Guarantee of Debt

Certain of the Company’s lenders have, from time to time, required that Mr. Wiederhorn personally guarantee the Company’s debt obligations. As of March 15, 2010, Mr. Wiederhorn had personally guaranteed approximately \$8.9 million in debt of the Company and its subsidiaries. On March 23, 2010, the Company granted Mr. Wiederhorn a security interest in the assets of Fog Cutter Capital Group Inc. to secure his performance in the event he is required to perform under the guarantees.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Required

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures

Our Chief Executive Officer and our Chief Financial Officer, after evaluating the effectiveness of the Company’s “disclosure controls and procedures” (as defined in the Securities and Exchange Act of 1934 Rules 13a-15(e) and 15d-15(e)) as of September 30, 2009, have concluded that our disclosure controls and procedures were effective and designed to ensure that material information relating to us and our consolidated subsidiaries is accumulated and communicated to our management to allow timely decisions regarding required disclosure.

The Company does not expect that its disclosure controls and procedures will prevent all error and all fraud. A control procedure, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control procedures are met. Because of the inherent limitations in all control procedures, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The Company considered these limitations during the development of its disclosure controls and procedures, and will continually reevaluate them to ensure they provide reasonable assurance that such controls and procedures are effective.

Changes in internal control over financial reporting

There were no significant changes in our internal control over financial reporting in connection with an evaluation that occurred during the third quarter ending September 30, 2009 that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

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PART II -- OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Warlick Complaint

Fatburger Holdings, Inc., et al. v. Keith A. Warlick/ Warlick v. Fatburger, et al, Superior Court of California for the County of Los Angeles, Case No. 091436. On October 16, 2006, Fatburger Holdings, Inc., Fatburger Corporation and Fatburger North America, Inc. filed suit against Keith A. Warlick ("Warlick") the former Chief Executive Officer of Fatburger Holdings, Inc. and Fatburger Corporation. Warlick's employment with Fatburger was terminated on September 21, 2006 by resolution of the board of directors of Fatburger Holdings, Inc. The Fatburger companies initiated the lawsuit to recover damages from Warlick arising from wrongful acts and conduct during and after his employment, and are asserting claims for: breach of contract, breach of duty of loyalty, breach of fiduciary duty, conversion – embezzlement; fraud/commencement; intentional interference with contractual relations, and equitable indemnity. Warlick filed an answer to the lawsuit denying the allegations and included a Cross-complaint against Fatburger Holdings, Inc., Fatburger Corporation, Fatburger North America, Inc., Fog Cutter Capital Group, Inc., and Andrew Wiederhorn ("Cross-Defendants"), for breach of contract, employment discrimination based on race and retaliation, wrongful termination and defamation – slander without any specification of damages. On a motion filed by the Cross-Defendants, the Court dismissed Warlick's cross-claim for employment discrimination based on race and retaliation. In further response Warlick initiated a second lawsuit against the Company, various Fatburger companies, and members of the Fatburger board of directors, which is set out below. The Cross-Defendants disputed the allegations of the cross-claim and vigorously defended against the claims. In October 2009, the parties reached an agreement in principal to settle all claims alleged in this lawsuit and the settlement was completed on March 5, 2010. The settlement did not have a material effect on the financial statements of the Company.

Keith Warlick, et al. v. Fog Cutter Capital Group, et al., Superior Court of California for the County of Los Angeles, Case No. 58365915 On February 6, 2007, Warlick, his wife, and a limited liability company controlled by Warlick, each of whom is a minority shareholder of Fatburger Holdings, Inc., filed a complaint against various Fatburger entities, the Company, Andrew Wiederhorn, and members of the Fatburger board of directors. The complaint alleges fraud, negligent misrepresentation against Wiederhorn and the Company, and breach of contract and breach of fiduciary duty against all the defendants, related to business transactions which the plaintiff's allege were not in the best interests of Fatburger Holdings, Inc., or the plaintiff minority shareholders. The defendants disputed the allegations of the lawsuit and vigorously defended against the claims. In October 2009, the parties reached an agreement in principal to settle all claims alleged in this lawsuit and the settlement was completed on March 5, 2010. The settlement did not have a material effect on the financial statements of the Company.

ITEM 1A. RISK FACTORS

Other than as described below, there have been no material changes in the risk factors set forth in *Part I, Item 1A – Risk Factors* of our Annual Report as of and for the year ended December 31, 2008 on Form 10-K, as previously filed with the SEC on March 30, 2010.

Two of our Fatburger operating subsidiaries are currently operating as "debtors in possession" in Chapter 11 Bankruptcy proceedings, and there can be no assurance that Bankruptcy Court will approve the plan of reorganization.

On April 6, 2009, two of our operating Fatburger subsidiaries (the "Debtor In Possession Subsidiaries") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court. On or about November 3, 2009, the Debtor In Possession Subsidiaries filed a joint plan of reorganization and related disclosure statement. The Bankruptcy Court is currently considering the plan of reorganization and disclosure statement. There can be no assurance that the Bankruptcy Court will approve the plan of reorganization as proposed by the Debtor In Possession Subsidiaries, which could have a material adverse effect on our business, financial condition and results of operations.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Fatburger Debt Covenant

As of September 30, 2009, Fatburger had not made all of the required payments on indebtedness with an outstanding principal balance of \$3.9 million. As a result, the lender has declared the indebtedness in default and has accelerated the maturity date of the entire balance. If the Company is unsuccessful in renegotiating the debt with the lender and obtaining waivers of the default, the resulting consequences could have a material adverse impact on our business, prospects, financial condition, or results of operation. In addition to the payment default, at December 31, 2008, Fatburger was not in compliance with all obligations under the agreements evidencing its indebtedness, as defined in the applicable agreements, due to its failure to meet the prescribed fixed charge coverage ratio and the prescribed debt-coverage ratio in three notes payable. The Company is in discussions with the lender to restructure the debt.

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ITEM 6. EXHIBITS

- 11.1 Computation of Loss Per Common Share.
- 31.1 Certification of Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of the Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of the Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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SIGNATURES

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

FOG CUTTER CAPITAL GROUP INC.

By: /s/ Andrew A. Wiederhorn

Andrew A. Wiederhorn
Chief Executive Officer

By: /s/ R. Scott Stevenson

R. Scott Stevenson
Senior Vice President and Chief Financial Officer

Date: March 30, 2010

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EXHIBIT INDEX

| | |
|----------------------|---|
| 11.1 | Computation of Loss Per Common Share. |
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| 32.2 | Certification of the Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

EXHIBIT 11.1

COMPUTATION OF LOSS PER COMMON SHARE

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|----------------------------------|------------------|---------------------------------|------------------|
| | 2009 | 2008 | 2009 | 2008 |
| Diluted net loss per share from continuing operations: | | | | |
| Net loss from continuing operations available to common shareholders | \$ (672,000) | \$ (4,364,000) | \$ (4,716,000) | \$ (12,656,000) |
| Weighted average number of shares outstanding | 7,954,928 | 7,954,928 | 7,954,928 | 7,954,928 |
| Net effect of dilutive stock options based on treasury stock method | - | - | - | - |
| Total average shares | <u>7,954,928</u> | <u>7,954,928</u> | <u>7,954,928</u> | <u>7,954,928</u> |
| Fully diluted loss per share from continuing operations | \$ (0.08) | \$ (0.55) | \$ (0.59) | \$ (1.59) |

CERTIFICATION

EXHIBIT 31.1

I, Andrew A. Wiederhorn, Chief Executive Officer of Fog Cutter Capital Group Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fog Cutter Capital Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 30, 2010

/s/ ANDREW A. WIEDERHORN
Andrew A. Wiederhorn
Chief Executive Officer

CERTIFICATION

EXHIBIT 31.2

I, R. Scott Stevenson, Chief Financial Officer of Fog Cutter Capital Group Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fog Cutter Capital Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 30, 2010

/s/ R. SCOTT STEVENSON
R. Scott Stevenson
Chief Financial Officer

**Section 906 Certification
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER OR
PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with the accompanying quarterly report on Form 10-Q of Fog Cutter Capital Group Inc. for the quarter ended September 30, 2009 (the "Report"), I, Andrew A. Wiederhorn, Chief Executive Officer of Fog Cutter Capital Group Inc., hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fog Cutter Capital Group Inc.

This written statement is being furnished to the Securities and Exchange Commission as an exhibit to the Report.

March 30, 2010

/s/ Andrew A. Wiederhorn

Date

Andrew A. Wiederhorn
Chief Executive Officer

A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Section 906 Certification
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER OR
PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the accompanying quarterly report on Form 10-Q of Fog Cutter Capital Group Inc. for the quarter ended September 30, 2009 (the "Report"), I, R. Scott Stevenson, Senior Vice President and Chief Financial Officer of Fog Cutter Capital Group Inc., hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Fog Cutter Capital Group Inc.

This written statement is being furnished to the Securities and Exchange Commission as an exhibit to the Report.

March 30, 2010

/s/ R. Scott Stevenson

Date

R. Scott Stevenson
Senior Vice President and Chief
Financial Officer

A signed original of this written statement required by § 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.