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Submission:  
Mexican Restaurants, Inc.

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

FORM 10-K/A

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

For the Fiscal Year Ended December 28, 2008  
OR

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

Commission file number: 0-28234

MEXICAN RESTAURANTS, INC.

(Exact name of registrant as specified in its charter)

Texas  
(State or other jurisdiction of  
incorporation or organization)

76-0493269  
(IRS Employer Identification Number)

1135 Edgebrook, Houston, Texas  
(Address of Principal Executive Offices)

77034-1899  
(Zip Code)

Registrant's telephone number, including area code: 713-943-7574

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

| Title of Each Class | Name of Each Exchange on Which Registered |
|---------------------|---|
| Common Stock        | Nasdaq Stock Market LLC                   |

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

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

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

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

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

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

The aggregate market value of the Registrant's Common Stock held by non-affiliates of the Registrant, based on the sale trade price of the Common Stock as reported by the Nasdaq Small Cap Market on June 27, 2008, the last business day of the Registrant's most recently completed second quarter, was \$4,310,469. For purposes of this computation, all officers, directors and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed an admission that such officers, directors or 10% beneficial owners are, in fact, affiliates of the Registrant.

Number of shares outstanding of the Registrant's Common Stock, as of December 28, 2008: 3,251,641 shares of Common Stock, par value \$.01.

#### **Documents Incorporated By Reference**

Specified portions of the Registrant's definitive proxy statement in connection with the 2009 Annual Meeting of Shareholders to be held May 27, 2009, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A, are incorporated by reference into Part III of this report.

#### **EXPLANATORY NOTE**

Mexican Restaurants, Inc. (the "Company") is filing Amendment No. 1 (this "Amendment") to the Company's Annual Report on Form 10-K for the year ended December 28, 2008 (the "2008 Form 10-K"), which was originally filed on March 26, 2009 (the "Original Report"), to include an exhibit (Exhibit 10.16.1) omitted from the Original Report.

No other revisions or amendments have been made to Part IV, Item 15 or to any other portion of the Company's 2008 Form 10-K. This Amendment does not reflect events occurring after March 26, 2009, the date of the filing of the Original Report, or modify or update those disclosures that may have been affected by subsequent events. Currently-dated certifications from the Mexican Restaurants, Inc.'s Chief Executive Officer and Chief Financial Officer have been included as exhibits to this Amendment.

#### **PART IV**

#### **ITEM 15. EXHIBITS AND CONSOLIDATED FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this Report:

1. Consolidated Financial Statements:

The Consolidated Financial Statements are listed in the index to Consolidated Financial Statements on page F-1 of this Report.

2. Consolidated Financial Statement Schedules are omitted because they are either not applicable or not material.

3. The following exhibits are filed, furnished or incorporated by reference as exhibits to this Report as required by Item 601 of Regulation S-K. The exhibits designated with a cross are management contracts and compensatory plans and arrangements required to be filed as exhibits to this report.

Exhibits:

3.1 Articles of Incorporation of the Company, as amended (incorporated by reference to the corresponding Exhibit number of the Company's Form 8-K filed on May 25, 1999 with the Securities and Exchange Commission).

‡3.2 Bylaws of the Company.

‡4.1 Specimen of Certificate of Common Stock of the Company.

4.2 Articles of Incorporation of the Company (see 3.1 above).

‡4.3 Bylaws of the Company (see 3.2 above).

±†10.1 Employment Agreement by and between the Company and Louis P. Neeb dated April 2, 2001.

10.2 Indemnity Agreement by and between the Company and Louis P. Neeb dated as of April 10, 1996 (incorporated by reference to Exhibit 10.4 of the Company's Form S-1 Registration Statement filed under the Securities Act of 1933, dated April 24, 1996, with the Securities and Exchange Commission (Registration Number 333-1678) (the "1996 Form S-1")).

10.3 Indemnity Agreement by and between the Company and Larry N. Forehand dated as of April 10, 1996 (incorporated by reference to Exhibit 10.5 of the 1996 Form S-1).

10.4 Indemnity Agreement by and between the Company and Michael D. Domec dated as of April 10, 1996 (incorporated by reference to Exhibit 10.8 of the 1996 Form S-1).

10.5 Indemnity Agreement by and between the Company and J. J. Fitzsimmons dated as of April 10, 1996 (incorporated by reference to Exhibit 10.10 of the 1996 Form S-1).

10.6 Form of the Company's Multi-Unit Development Agreement (incorporated by reference to Exhibit 10.14 of the 1996 Form S-1).

10.7 Form of the Company's Franchise Agreement (incorporated by reference to Exhibit 10.15 of the 1996 Form S-1).

†10.8 1996 Long Term Incentive Plan (incorporated by reference to Exhibit 10.16 of the 1996 Form S-1).

†10.9 Mexican Restaurants, Inc. 2005 Long Term Incentive Plan (incorporated by reference to Exhibit 99.1 of the Company's Form S-8 filed December 1, 2005 with the Securities and Exchange Commission).

†10.10 Stock Option Plan for Non-Employee Directors (incorporated by reference to Exhibit 10.17 of the 1996 Form S-1).

10.11 Indemnification letter agreement by Larry N. Forehand dated April 10, 1996 (incorporated by reference to Exhibit 10.35 of the 1996 Form S-1).

†10.12 1996 Manager's Stock Option Plan (incorporated by reference to Exhibit 99.2 of the Company's Form S-8 Registration Statement filed on February 24, 1997 with the Securities and Exchange Commission).

†10.13 Employment Agreement by and between the Company and Andrew J. Dennard dated May 20, 1997 (incorporated by reference to Exhibit 10.45 of the Company's Form 10-K Annual Report filed on March 30, 1998 with the Securities and Exchange Commission).

†10.14 Performance Unit Agreement by and between Mexican Restaurants, Inc. and Andrew Dennard dated August 16, 2005 (incorporated by reference to Exhibit 10.25 to the Company's Form 10-K Annual Report filed on March 30, 2006 with the Securities and Exchange Commission).

†10.15 Performance Unit Agreement by and between Mexican Restaurants, Inc. and Louis P. Neeb dated August 16, 2005 (incorporated by reference to Exhibit 10.27 to the Company's Form 10-K Annual Report filed on March 30, 2006 with the Securities and Exchange Commission).

10.16 Credit Agreement between Mexican Restaurants, Inc. and Wells Fargo Bank, N.A. dated June 29, 2007 (incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on July 6, 2007 with the

Securities and Exchange Commission).

[\\*10.16.1 Agreement and Amendment No. 2 to Credit Agreement between Mexican Restaurants, Inc. and Wells Fargo Bank, N.A. dated December 28, 2008.](#)

10.17 Stock Purchase Agreement between Mexican Restaurants, Inc. and Forehand Family Partnership, Ltd. dated June 13, 2007 (incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q filed on August 14, 2007 with the Securities and Exchange Commission).

±21.1 List of subsidiaries of the Company.

±23.1 Consent of UHY LLP, Independent Registered Public Accounting Firm.

±24.1 Power of Attorney (included on the signature page to this Form 10-K).

[\\*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 Chief Executive Officer furnished 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 Chief Financial Officer furnished pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

\* Filed herewith.

† Incorporated by reference to corresponding exhibit number of the Company's Form S-1 Registration Statement under the Securities Act of 1933, dated April 24, 1996, with the Securities and Exchange Commission (Registration Number 333-1678) (the "1996 Form S-1").

‡ Management contract or compensatory plan or arrangement.

# Furnished herewith.

± Filed with the Original Report on March 26, 2009.

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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on April 8, 2009.

MEXICAN RESTAURANTS, INC.

*By: /s/ Curt Glowacki*  
\_\_\_\_\_  
Curt Glowacki,  
President and Chief Executive Officer

AGREEMENT AND AMENDMENT NO. 2 TO CREDIT AGREEMENT

THIS AGREEMENT AND AMENDMENT NO. 2 TO CREDIT AGREEMENT (this "Amendment") is made as of December 28, 2008, by and between MEXICAN RESTAURANTS, INC., a Texas corporation (the "Borrower"), and WELLS FARGO BANK, N.A., a national banking association (the "Lender").

WHEREAS, the Borrower and the Lender are parties to a certain Credit Agreement, dated as of June 29, 2007, as amended (the "Credit Agreement"); terms used herein and not otherwise defined are used herein as defined in the Credit Agreement; and

WHEREAS, the Borrower has requested that the Lender amend Sections 1.1 and 7.1(c) of the Credit Agreement and consent to the sale of the La Senorita Business (as defined below);

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments to Credit Agreement.

1.1 The defined term "Growth Capital Expenditures" set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"Growth Capital Expenditures. Capital Expenditures for growth including, but not limited to, New Construction relating to Operating Units and the acquisitions of restaurants, including remodeling and renovation expenditures for any restaurant, but excluding such remodeling and renovation expenditures to the extent (a) funded by insurance proceeds or (b) funded by the Borrower (i) to satisfy deductibles for insured losses or (ii) to implement improvements required by building codes not covered by insurance proceeds."

1.2 Section 7.1(c) of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

"(c) Commitments to Make Growth Capital Expenditures. The Borrower and its Subsidiaries will not make or commit to make (by entering into a lease or other agreement) any Growth Capital Expenditures (i) during Fiscal Year 2009, in excess of \$1,000,000 and (ii) during Fiscal Year 2010, in excess of \$1,200,000."

2. Consent to Sale of La Senorita Business. Notwithstanding Section 8.4 of the Credit Agreement, the Lender hereby consents to the sale (the "Proposed Sale") by the Borrower and certain of its Subsidiaries of all or substantially all of the assets of their La Senorita restaurants and the equity interests of the La Senorita Franchise Company (the "La Senorita Business"), subject to the following conditions:

(a) the Proposed Sale shall occur on or before April 10, 2009 on substantially the same terms specified in the Letter of Intent, dated as of July 11, 2008 (as amended February \_\_, 2009) executed and delivered by Hacienda Mexican Restaurants and LAS Acquisition Company, Inc., on the one hand, and the Borrower and certain of its Subsidiaries, on the other hand;

(b) immediately prior to the Proposed Sale and after giving effect thereto no Default shall have occurred and be continuing;

(c) copies of all documents relating to the Proposed Sale and any other documents (financial or otherwise) reasonably requested by the Lender (including, without limitation, invoices for legal fees and other deal expenses related to the Proposed Sale) shall have been delivered to the Lender as and when requested; and

(d) one hundred percent (100%) of the proceeds of the Proposed Sale, which shall not be less than \$2,600,000, net of legal fees and other deal expenses related to the Proposed Sale (the "Net Proceeds"), shall be paid directly from the purchaser of the Business to the Lender for application by the Lender to the Obligations in accordance with the Credit Agreement.

3. Effects of Proposed Sale. From and after the consummation of the Proposed Sale,

(a) all Consolidated EBITDA generated by the Proposed Sale and the La Senorita Business during any Measurement Period during which the Proposed Sale was consummated shall be disregarded for purposes of calculating the Consolidated Fixed Charge Coverage Ratio and the Total Leverage Ratio; and

(b) the Commitment shall be reduced by an amount equal to one hundred percent (100%) of the Net Proceeds paid to the Lender pursuant to Section 2(d) above.

4. Conditions to Effectiveness. The amendments to the Credit Agreement contemplated hereby shall become effective as of the date first written above, provided that (i) the Lender shall have received from the Borrower a counterpart of this Amendment duly executed by the Borrower and (ii) the Borrower shall have paid the attorneys' fees of the Lender incurred in connection with this Amendment.

5. Representations.

The Borrower represents and warrants to the Lender, as follows:

(a) upon giving effect to this Amendment, no Default has occurred and is continuing as of the date hereof;

(b) the representations and warranties contained in Section V of the Credit Agreement are true and correct in all material respects on and as of the date hereof (except to the extent that such representations and warranties expressly relate to an earlier date); and

(c) the resolutions referred to in Section 4.1 of the Credit Agreement remain in full force and effect on and as of the date hereof.

6. General. The foregoing amendments to the Credit Agreement are limited as provided herein and do not extend to any other provisions of the Credit Agreement not specified herein or to any other matter. The Credit Agreement is ratified and confirmed and shall continue in full force and effect as amended hereby. This Amendment may be executed in any number of counterparts with the same effect as if the signatures hereto and thereto were upon the same instrument.

[Signature page follows.]

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Mexican Restaurants, Inc.

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IN WITNESS WHEREOF, THIS AGREEMENT AND AMENDMENT NO. 2 TO CREDIT AGREEMENT has been executed as a sealed instrument as of the date first written above.

MEXICAN RESTAURANTS, INC.

By: /s/ Andrew J. Dennard  
Name: Andrew J. Dennard  
Title: Executive Vice President & CFO

WELLS FARGO BANK, N.A

By: /s/ Stephen A. Leon  
Name: Stephen A. Leon  
Title: Managing Director

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Curt Glowacki, certify that:

1. I have reviewed this report on Form 10-K/A of Mexican Restaurants, 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 consolidated financial statements, and other financial information included in this annual report, fairly present in all material respects the consolidated 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 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 consolidated financial statements for external purposes in accordance with generally accepted accounting principles in the United States;
  - (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 (the Registrant's fourth fiscal quarter in the case of an annual report) 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 functions):
  - (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.

April 8, 2009

/s/ Curt Glowacki  
By: Curt Glowacki,  
Chief Executive Officer

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Andrew J. Dennard, certify that:

1. I have reviewed this report on Form 10-KA of Mexican Restaurants, 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 consolidated financial statements, and other financial information included in this annual report, fairly present in all material respects the consolidated 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 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 consolidated financial statements for external purposes in accordance with generally accepted accounting principles in the United States;
  - (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 (the Registrant's fourth fiscal quarter in the case of an annual report) 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 functions):
  - (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.

April 8, 2009

/s/ Andrew J. Dennard  
By: Andrew J. Dennard,  
Chief Financial Officer

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Mexican Restaurants, Inc.

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Exhibit 32.1

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Mexican Restaurants, Inc. (the "Company") on Form 10-K/A for the period ending December 28, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Curt Glowacki, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

*/s/ Curt Glowacki*

Curt Glowacki  
Chief Executive Officer  
April 8, 2009

The foregoing certification is being forwarded solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and should not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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Mexican Restaurants, Inc.

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**Exhibit 32.2**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Mexican Restaurants, Inc. (the Company) on Form 10-K/A for the period ending December 28, 2008 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Andrew J. Dennard, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

*/s/ Andrew J. Dennard*

Andrew J. Dennard  
Chief Financial Officer  
April 8, 2009

The foregoing certification is being forwarded solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and should not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.