

ARK RESTAURANTS CORP
Form 10-K
December 20, 2018
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTIONS 13 AND 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 29, 2018

or,

TRANSITION REPORT PURSUANT TO SECTIONS 13 AND 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File No. 1-09453

ARK RESTAURANTS CORP.
(Exact Name of Registrant as Specified in Its Charter)

New York 13-3156768
(State or Other Jurisdiction of (IRS Employer Identification No.)
Incorporation or Organization)

85 Fifth Avenue, New York, NY 10003
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (212) 206-8800

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

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

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock, par value \$.01 per share | The 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 whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations 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 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 amendments 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.

Large accelerated filer

Accelerated filer

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Non-accelerated filer (Do not check if a smaller reporting company) Smaller Reporting Company

Emerging Growth Company

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

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

As of March 31, 2018, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of voting and non-voting stock held by non-affiliates of the registrant was \$50,978,496.

At December 11, 2018, there were outstanding 3,474,681 shares of the Registrant's Common Stock, \$.01 par value.

DOCUMENTS INCORPORATED BY REFERENCE

(1) In accordance with General Instruction G (3) of Form 10-K, certain information required by Part III hereof will either be incorporated into this Form 10-K by reference to the registrant's definitive proxy statement for the registrant's 2018 Annual Meeting of Stockholders filed within 120 days of September 29, 2018 or will be included in an amendment to this Form 10-K filed within 120 days of September 29, 2018.

PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

On one or more occasions, we may make statements in this Annual Report on Form 10-K regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to management's current expectations of future financial performance, continued growth and changes in economic conditions or capital markets 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.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "targets," "result," "hopes," "will continue" or similar expressions identify forward looking statements. Forward-looking statements involve risks and uncertainties which could cause actual results or outcomes to differ materially from those expressed. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, adverse weather conditions, changes in consumer preferences and the level of competition from existing or new competitors.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter or subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in "Item 1A Risk Factors" of this Annual Report on Form 10-K.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-K/A, 10-Q, 10-Q/A and 8-K, our Schedule 14A, our press releases and other materials released to the public. Although we believe that at the time made, the expectations reflected in all of these forward-looking statements are and will be reasonable; any or all of the forward-looking statements in this Annual Report on Form 10-K, our reports on Forms 10-Q, 10-Q/A and 8-K, our Schedule 14A and any other public statements that are made by us may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Annual Report on Form 10-K, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Annual Report on Form 10-K or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. However, your attention is directed to any further disclosures made on related subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-Q and 8-K and Schedule 14A.

Unless the context requires otherwise, references to “we,” “us,” “our,” “ARKR” and the “Company” refer specifically to Ark Restaurants Corp. and its subsidiaries, partnerships, variable interest entities and predecessor entities.

Item 1. Business

Overview

We are a New York corporation formed in 1983. As of the fiscal year ended September 29, 2018, we owned and/or operated 20 restaurants and bars, 19 fast food concepts and catering operations through our subsidiaries. Initially our facilities were located only in New York City. As of the fiscal year ended September 29, 2018, five of our restaurant and bar facilities are located in New York City, two are located in Washington, D.C., five are located in Las Vegas, Nevada, three are located in Atlantic City, New Jersey, one is located in the Faneuil Hall Marketplace in Boston, Massachusetts, two are located on the east coast of Florida and two are located on the gulf coast of Alabama.

In addition to the shift from a Manhattan-based operation to a multi-city operation, the nature of the facilities operated by us has shifted from smaller, neighborhood restaurants to larger, destination properties intended to benefit from high patron traffic attributable to the uniqueness of the location and catered events. Most of our properties which have been opened in recent years are of the latter description. As of the fiscal year ended September 29, 2018, these include the operations at the 12 fast food facilities in Tampa, Florida and Hollywood, Florida (2004); the *Gallagher's Steakhouse* and *Gallagher's Burger Bar* in the Resorts Atlantic City Hotel and Casino in Atlantic City, New Jersey (2005); *Durgin Park Restaurant* and the *Black Horse Tavern* in the Faneuil Hall Marketplace in Boston, Massachusetts (2007); *Yolos* at the Planet Hollywood Resort and Casino in Las Vegas, Nevada (2007); *Robert* at the Museum of Arts & Design at Columbus Circle in Manhattan (2010); *Broadway Burger Bar and Grill* at the New York New York Hotel and Casino in Las Vegas, Nevada (2011); *Clyde Frazier's Wine and Dine* in Manhattan (2012); *Broadway Burger Bar and Grill* in the Quarter at the Tropicana Hotel and Casino in Atlantic City, New Jersey (2013), *The Rustic Inn* in Dania Beach, Florida (2014), *Shuckers* in Jensen Beach, Florida (2016) and two *Original Oyster Houses*, one in Gulf Shores, Alabama and one in Spanish Fort, Alabama (2017).

The names and themes of each of our restaurants are different except for our two *Gallagher's Steakhouse* restaurants, two *Broadway Burger Bar and Grill* restaurants, and two *Original Oyster House* restaurants. The menus in our restaurants are extensive, offering a wide variety of high-quality foods at generally moderate prices. The atmosphere at many of the restaurants is lively and extremely casual. Most of the restaurants have separate bar areas, are open seven days a week and most serve lunch as well as dinner. A majority of our net sales are derived from dinner as opposed to lunch service.

While decor differs from restaurant to restaurant, interiors are marked by distinctive architectural and design elements which often incorporate dramatic interior open spaces and extensive glass exteriors. The wall treatments, lighting and decorations are typically vivid, unusual and, in some cases, highly theatrical.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

The following table sets forth the restaurant properties we lease, own and operate as of September 29, 2018:

| <u>Name</u> | <u>Location</u> | <u>Year Opened(1)</u> | <u>Restaurant Size (Square Feet)</u> | <u>Seating Capacity(2) Indoor- (Outdoor)</u> | <u>Lease Expiration(3)</u> |
|---------------------------|--|---------------------------|--|--|--------------------------------|
| Sequoia | Washington Harbour Washington, D.C. | 1990 | 26,000 | 600 (400) | 2032 |
| Bryant Park Grill & Café | Bryant Park New York, New York | 1995 | 25,000 | 180 (820) | 2025 |
| America(4) | New York-New York Hotel and Casino Las Vegas, Nevada | 1997 | 20,000 | 450 | 2023 |
| Gallagher's Steakhouse(4) | New York-New York Hotel & Casino Las Vegas, Nevada | 1997 | 5,500 | 260 | 2023 |
| Gonzalez y Gonzalez(4) | New York-New York Hotel & Casino Las Vegas, Nevada | 1997 | 2,000 | 120 | 2021 |
| Village Eateries (4)(5) | New York-New York Hotel & Casino Las Vegas, Nevada | 1997 | 6,300 | 400 (*) | 2021 |
| Robert | Museum of Arts & Design New York, New York | 2009 | 5,530 | 150 | 2035 |
| Thunder Grill | Union Station Washington, D.C. | 1999 | 10,000 | 500 | 2019 |
| Gallagher's Steakhouse | Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey | 2005 | 6,280 | 196 | 2020 |
| Gallagher's Burger Bar | Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey | 2005 | 2,270 | 114 | 2020 |

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

| <u>Name</u> | <u>Location</u> | <u>Year Opened(1)</u> | <u>Restaurant Size (Square Feet)</u> | <u>Seating Capacity(2) Indoor-(Outdoor)</u> | <u>Lease Expiration(3)</u> |
|---|---|-----------------------|--------------------------------------|---|----------------------------|
| Durgin Park Restaurant and the Black Horse Tavern | Faneuil Hall Marketplace Boston, Massachusetts | 2007 | 18,500 | 575 | 2032 |
| Yolos | Planet Hollywood Resort and Casino Las Vegas, Nevada | 2007 | 4,100 | 206 | 2026 |
| Clyde Frazier's Wine and Dine | Tenth Avenue (between 37 th and 38 th Streets) New York, New York | 2012 | 10,000 | 250 | 2032 |
| Broadway Burger Bar and Grill | Tropicana Hotel and Casino Atlantic City, New Jersey | 2013 | 6,825 | 225 | 2033 |
| The Rustic Inn | Dania Beach, Florida | 2014 | 16,150 | 575 (75) | Owned |
| Southwest Porch (6) | Bryant Park New York, New York | 2015 | 2,240 | 0 (160) | 2025 |
| Shuckers | Jensen Beach, Florida | 2016 | 7,310 | 220 (170) | Owned |
| The Original Oyster House | Gulf Shores, Alabama | 2017 | 9,230 | 300 | Owned |
| The Original Oyster House | Spanish Fort, Alabama | 2017 | 10,500 | 420 | Owned |

Restaurants are, from time to time, renovated, renamed and/or converted from or to managed or owned facilities.

(1) "Year Opened" refers to the year in which we, or an affiliated predecessor of us, first opened, acquired or began managing a restaurant at the applicable location, notwithstanding that the restaurant may have been renovated, renamed and/or converted from or to a managed or owned facility since that date.

(2) Seating capacity refers to the seating capacity of the indoor part of a restaurant available for dining in all seasons and weather conditions. Outdoor seating capacity, if applicable, is set forth in parentheses and refers to the seating capacity of terraces and sidewalk cafes which are available for dining only in the warm seasons and then only inclement weather.

(3) Assumes the exercise of all of our available lease renewal options.

(4) Under the *America* lease, the sales goal is \$6.0 million. Under the *Gallagher's Steakhouse* lease the sales goal is \$3.0 million. Under the lease for *Gonzalez y Gonzalez* and the *Village Eateries*, the combined sales

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

goal is \$10.0 million. Each of the restaurants is currently operating at a level in excess of the minimum sales level required to exercise the renewal option for each respective restaurant.

We operate six small food court restaurants and one full-service restaurant in the *Village Eateries* food court at the (5) New York-New York Hotel & Casino. We also operate that hotel's room service, banquet facilities and employee cafeteria.

(6) This location is for a kiosk located at Bryant Park, New York, NY and all seating is outdoors.

(*) Represents common area seating.

The following table sets forth our less than wholly-owned properties that are managed by us, which have been consolidated as of September 29, 2018 – see Notes 1 and 2 to the Consolidated Financial Statements:

| <u>Name</u> | <u>Location</u> | <u>Year Opened(1)</u> | <u>Restaurant Size (Square Feet)</u> | <u>Seating Capacity(2)</u> | | <u>Lease Expiration(3)</u> |
|----------------------------|---|-----------------------|--------------------------------------|----------------------------|------------------|----------------------------|
| | | | | <u>Indoor-</u> | <u>(Outdoor)</u> | |
| El Rio Grande (4)(5) | Third Avenue (between 38th and 39th Streets) New York, New York | 1987 | 4,000 | 160 | | 2029 |
| Tampa Food Court(6)(7) | Hard Rock Hotel and Casino Tampa, Florida | 2004 | 4,000 | 250 | (*) | 2029 |
| Hollywood Food Court(6)(7) | Hard Rock Hotel and Casino Hollywood, Florida | 2004 | 5,000 | 250 | (*) | 2029 |
| Lucky Seven(6) | Foxwoods Resort Casino Ledyard, Connecticut | 2006 | 4,825 | 4,000 | (**) | 2026 |

Restaurants are, from time to time, renovated, renamed and/or converted from or to managed or owned facilities.

(1) "Year Opened" refers to the year in which we, or an affiliated predecessor of us, first opened, acquired or began managing a restaurant at the applicable location, notwithstanding that the restaurant may have been renovated, renamed and/or converted from or to a managed or owned facility since that date.

(2) Seating capacity refers to the seating capacity of the indoor part of a restaurant available for dining in all seasons and weather conditions. Outdoor seating capacity, if applicable, is set forth in parentheses and refers to the seating capacity of terraces and sidewalk cafes which are available for dining only in the warm seasons and then only inclement weather.

(3) Assumes the exercise of all our available lease renewal options.

(4) Management fees earned, which have been eliminated in consolidation, are based on a percentage of cash flow of the restaurant.

(5) We own a 19.2% interest in the partnership that owns *El Rio Grande*.

7

- (6) Management fees earned, which have been eliminated in consolidation, are based on a percentage of gross sales of the restaurant.
- (7) We own a 64.4% interest in the partnership that owns the *Tampa and Hollywood Food Courts*.
- (*) Represents common area seating.
- (**) Represents number of seats in the Bingo Hall at the Foxwoods Resort and Casino where our restaurant is located.

Leases

We are currently not committed to any significant projects; however, we may take advantage of opportunities we consider to be favorable, when they occur, depending upon the availability of financing and other factors.

Restaurant Expansion

On November 30, 2016, the Company, through newly formed, wholly-owned subsidiaries, acquired the assets of the Original Oyster House, Inc., a restaurant and bar located in the City of Gulf Shores, Baldwin County, Alabama and the related real estate and an adjacent retail shopping plaza and the Original Oyster House II, Inc., a restaurant and bar located in the City of Spanish Fort, Baldwin County, Alabama and the related real estate. The total purchase price was for \$10,750,000 plus inventory of approximately \$293,000. The acquisition is accounted for as a business combination and was financed with a bank loan from the Company's existing lender in the amount of \$8,000,000 and cash from operations.

The opening of a new restaurant is invariably accompanied by substantial pre-opening expenses and early operating losses associated with the training of personnel, excess kitchen costs, costs of supervision and other expenses during the pre-opening period and during a post-opening "shake out" period until operations can be considered to be functioning normally. The amount of such pre-opening expenses and early operating losses can generally be expected to depend upon the size and complexity of the facility being opened.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

Investment in New Meadowlands Racetrack

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC (“NMR”) through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR with no change in ownership. In February 2017 the Company funded its proportionate share (\$222,000) of a \$3,000,000 capital call bringing its total investment to \$5,108,000 with no change in ownership.

In addition to the Company's ownership interest in NMR, if casino gaming is approved at the Meadowlands and NMR is granted the right to conduct said gaming, the Company shall be granted the exclusive right to operate the food and beverage concessions in the gaming facility with the exception of one restaurant.

In conjunction with this investment, the Company, through a 98% owned subsidiary, Ark Meadowlands LLC ("AM VIE"), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the "Racing F&B Concessions") located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan discussed above. The principal and accrued interest related to this note in the amounts of \$1,928,000 and \$1,871,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the Consolidated Balance Sheets at September 29, 2018 and September 30, 2017, respectively.

On June 7, 2018, the New Jersey State Legislature voted to legalize sports betting at casinos and racetracks in the state. Pursuant to this legislature NMR opened a sports book in partnership with Fanduel, a leading provider of daily fantasy sports, in June 2018.

Recent Restaurant Dispositions and Charges

Lease Expirations – The Company was advised by the landlord that it would have to vacate *The Grill at Two Trees* property at the Foxwoods Resort and Casino in Ledyard, CT, which had a no rent lease. The closure of this property occurred on January 1, 2017 and did not result in a material charge to the Company's operations.

Other – On November 18, 2016, Ark Jupiter RI, LLC ("Ark Jupiter"), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the "ROFR") with SCFRC-HWG, LLC, the landlord (the "Seller") to purchase the land and building in which the Company operates its Rustic Inn location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter's lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June.

In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

The Company transferred its lease and the related assets of *Canyon Road* located in New York, NY to a former employee. In connection with this transfer, the Company recognized an impairment loss in the

9

amount of \$75,000 which is included in depreciation and amortization expense for the year ended September 30, 2017.

Restaurant Management

Each restaurant is managed by its own manager and has its own chef. Food products and other supplies are purchased primarily from various unaffiliated suppliers, in most cases by our headquarter's personnel. Each of our restaurants has two or more assistant managers and sous chefs (assistant chefs). Financial and management control is maintained at the corporate level through the use of automated systems that include centralized accounting and reporting.

Purchasing and Distribution

We strive to obtain quality menu ingredients, raw materials and other supplies and services for our operations from reliable sources at competitive prices. Substantially all menu items are prepared on each restaurant's premises daily from scratch, using fresh ingredients. Each restaurant's management determines the quantities of food and supplies required and then orders the items from local, regional and national suppliers on terms negotiated by our centralized purchasing staff. Restaurant-level inventories are maintained at a minimum dollar-value level in relation to sales due to the relatively rapid turnover of the perishable produce, poultry, meat, fish and dairy commodities that are used in operations.

We attempt to negotiate short-term and long-term supply agreements depending on market conditions and expected demand. However, we do not contract for long periods of time for our fresh commodities such as produce, poultry, meat, fish and dairy items and, consequently, such commodities can be subject to unforeseen supply and cost fluctuations. Independent foodservice distributors deliver most food and supply items daily to restaurants. The financial impact of the termination of any such supply agreements would not have a material adverse effect on our financial position.

Competition

The hospitality industry is highly competitive and is often affected by changes in taste and entertainment trends among the public, by local, national and economic conditions affecting spending habits, and by population and traffic patterns. We believe that the principal means of competition among restaurants include the location, type and quality of facilities and the type, quality and price of beverage and food served.

Our restaurants compete directly or indirectly with many well-established competitors, both nationally and locally owned, some with substantially greater financial resources than we do. Their resources and market presence may provide advantages in marketing, purchasing and negotiating leases. We compete with other restaurant and retail establishments for sites and finding management personnel.

Employees

At November 30, 2018, we employed 2,102 persons (including employees at managed facilities), 585 of whom were full-time employees, and 1,517 of whom were part-time employees; 49 of whom were headquarters personnel, 135 of whom were restaurant management personnel, 1,323 of whom were kitchen personnel and 595 of whom were restaurant service personnel. A number of our restaurant service personnel are employed on a part-time basis. Changes in minimum wage levels may adversely affect our labor costs and the restaurant industry generally because a large percentage of restaurant personnel are paid at or slightly above the minimum wage. Our employees are not covered by any collective bargaining agreements.

Government Regulation

We are subject to various federal, state and local laws affecting our business. Each restaurant is subject to licensing and regulation by a number of governmental authorities that may include alcoholic beverage control, health, sanitation, environmental, zoning and public safety agencies in the state or municipality in which the restaurant is located. Difficulties in obtaining or failures to obtain the required licenses or approvals could delay or prevent the development and openings of new restaurants, or could disrupt the operations of existing restaurants.

Alcoholic beverage control regulations require each of our restaurants to apply to a state authority and, in certain locations, county and municipal authorities for licenses and permits to sell alcoholic beverages on the premises. Typically, licenses must be renewed annually and may be subject to penalties, temporary suspension or revocation for cause at any time. Alcoholic beverage control regulations impact many aspects of the daily operations of our restaurants, including the minimum ages of patrons and employees consuming or serving such beverages; employee alcoholic beverages training and certification requirements; hours of operation; advertising; wholesale purchasing and inventory control of such beverages; seating of minors and the service of food within our bar areas; and the storage and dispensing of alcoholic beverages. State and local authorities in many jurisdictions routinely monitor compliance with alcoholic beverage laws. The failure to receive or retain, or a delay in obtaining, a liquor license for a particular restaurant could adversely affect our ability to obtain such licenses in jurisdictions where the failure to receive or retain, or a delay in obtaining, a liquor license occurred.

We are subject to “dram-shop” statutes in most of the states in which we have operations, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to such person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. A settlement or judgment against us under a “dram-shop” statute in excess of liability coverage could have a material adverse effect on our operations.

Various federal and state labor laws govern our operations and our relationship with employees, including such matters as minimum wages, breaks, overtime, fringe benefits, safety, working conditions and citizenship requirements. We are also subject to the regulations of the Immigration and Naturalization Service. If our employees do not meet federal citizenship or residency requirements, their deportation could lead to a disruption in our work force. Significant government-imposed increases in minimum wages, paid leaves of absence and mandated health benefits, or increased tax reporting, assessment or payment requirements related to employees who receive gratuities could be detrimental to our profitability.

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

The New York State Liquor Authority must approve any transaction in which a shareholder of the licensee increases his holdings to 10% or more of the outstanding capital stock of the licensee and any transaction involving 10% or more of the outstanding capital stock of the licensee.

Seasonal Nature of Business

Our business is highly seasonal. The second quarter of our fiscal year, consisting of the non-holiday portion of the cold weather season in New York and Washington (January, February and March), is the poorest performing quarter. We achieve our best results during the warm weather, attributable to our

extensive outdoor dining availability, particularly at *Bryant Park* in New York and *Sequoia* in Washington, D.C. (our largest restaurants) and our outdoor cafes. However, even during summer months these facilities can be adversely affected by unusually cool or rainy weather conditions. Our facilities in Las Vegas are indoor and generally operate on a more consistent basis throughout the year.

Available Information

We make available free of charge through our Internet website, www.arkrestaurants.com, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, statements of beneficial ownership of securities on Forms 3, 4 and 5 and amendments to these reports and statements filed or furnished pursuant to Section 13(a) and Section 16 of the Securities Exchange Act of 1934 as soon as reasonably practicable after such materials are electronically filed with, or furnished to, the United States Securities and Exchange Commission, or SEC.

The above information is also available at the SEC's Office of Investor Education and Advocacy at United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-0213 or obtainable by calling the SEC at (800) 732-0330. In addition, the SEC maintains an Internet website at www.sec.gov, where the above information can be viewed.

Our principal executive offices are located at 85 Fifth Avenue, New York, New York 10003, and our telephone number is (212) 206-8800. Unless the context specifically requires otherwise, the terms the "Company," "Ark," "we," "us" and "our" mean Ark Restaurants Corp., a Delaware corporation, and its consolidated subsidiaries.

Item 1A. Risk Factors

Not applicable.

Item 1B. Unresolved Staff Comments

Not applicable.

Item 2. Properties

Our restaurant facilities and our executive offices, with the exception of *The Rustic Inn* in Dania Beach, Florida, *Shuckers* in Jensen Beach, Florida and the two *Original Oyster House* properties in Alabama, are occupied under

leases. Most of our restaurant leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of our sales at such facility. As of September 29, 2018, these leases (including leases for managed restaurants) have terms (including any available renewal options) expiring as follows:

| <u>Fiscal Year Lease</u> | <u>Number of</u> |
|--------------------------|-------------------|
| <u>Terms Expire</u> | <u>Facilities</u> |
| 2019-2023 | 5 |
| 2024-2028 | 7 |
| 2029-2034 | 9 |
| 2034-2038 | 1 |

Our executive, administrative and clerical offices are located in approximately 8,500 square feet of office space at 85 Fifth Avenue, New York, New York. Our lease for this office space expires in 2025.

For information concerning our future minimum rental commitments under non-cancelable operating leases, see Note 10 of the Notes to Consolidated Financial Statements for additional information concerning our leases.

Item 3. Legal Proceedings

In the ordinary course of our business, we are a party to various lawsuits arising from accidents at our restaurants and workers' compensation claims, which are generally handled by our insurance carriers.

Our employment of management personnel, waiters, waitresses and kitchen staff at a number of different restaurants has resulted in the institution, from time to time, of litigation alleging violation by us of employment discrimination laws. We do not believe that any of such suits will have a materially adverse effect upon us, our financial condition or operations.

Item 4. Mine Safety Disclosures

Not Applicable.

PART II

Item 5. Market For The Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Our Common Stock

Our Common Stock, \$.01 par value, is traded on the Nasdaq Capital Market under the symbol "ARKR."

As of December 11, 2018, there were 30 holders of record of our common stock and approximately an additional 1,654 beneficial owners.

Dividend Policy

On December 7, 2016, March 1, 2017, June 5, 2017, September 6, 2017, December 5, 2017, March 6, 2018, June 12, 2018, September 17, 2018 and December 5, 2018 our Board of Directors declared quarterly cash dividends in the amount of \$0.25 per share. We intend to continue to pay such quarterly cash dividends for the foreseeable future; however, the payment of future dividends is at the discretion of our Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

Purchases of Equity Securities by Issuer and Affiliated Purchases

There were no purchases made during the fourth quarter of the issuer's fiscal year.

Securities Authorized for Issuance under Equity Compensation Plans

The Company has options outstanding under two stock option plans, the 2010 Stock Option Plan (the "2010 Plan") and the 2016 Stock Option Plan (the "2016 Plan"). Options granted under both plans are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted and expire ten years after the date of grant. No additional options are available for grant under the 2010 plan.

On August 10, 2018, options to purchase 5,000 shares of common stock were granted at an exercise price of \$20.36 per share and on September 4, 2018 options to purchase 20,000 shares of common stock were granted at an exercise price of \$22.30 per share. Both grants are exercisable as to 50% of the shares commencing on the date of grant and as to an additional 50% commencing on the first anniversary of the date of grant. Such options had an aggregate grant date fair value of approximately \$94,000. The Company did not grant any options during the year ended September 30, 2017.

During the year ended September 29, 2018, options to purchase 26,050 shares of common stock at a weighted average exercise price of \$18.60 per share expired unexercised or were forfeited. During the year ended September 30, 2017, options to purchase 90,000 shares of common stock at a weighted average exercise price of \$32.15 per share expired unexercised.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

The following is a summary of the securities issued and authorized for issuance under our Stock Option Plans at September 29, 2018:

| Plan Category | (a) Number of securities to be issued upon exercise of outstanding options, warrants and rights | (b) Weighted - average exercise price of outstanding options, warrants and rights | (c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) |
|---|---|---|---|
| Equity compensation plans approved by shareholders | 378,750 | \$18.46 | 475,000 |
| Equity compensation plans not approved by shareholders ¹ | None | N/A | None |
| Total | 378,750 | \$18.46 | 475,000 |

Of the 378,750 options outstanding on September 29, 2018, 173,625 were held by the Company's officers and directors.

(1) The Company has no equity compensation plan that was not approved by shareholders.

On April 5, 2016, the shareholders of the Company approved the 2016 Stock Option Plan and the Section 162(m) Cash Bonus Plan. Under the 2016 Stock Option Plan, 500,000 options were authorized for future grant and are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant. Under the Section 162(m) Cash Bonus Plan, compensation paid in excess of \$1,000,000 to any employee who is the chief executive officer, or one of the three highest paid executive officers on the last day of that tax year (other than the chief executive officer or the chief financial officer) will meet certain "performance-based" requirements of Section 162(m) and the related IRS regulations in order for it to be tax deductible.

Stock Performance Graph

The graph set forth below compares the yearly percentage change in cumulative total shareholder return on the Company's Common Stock for the five-year period commencing September 28, 2013 and ending September 29, 2018 against the cumulative total return on the NASDAQ Market Index and a peer group comprised of those public companies whose business activities fall within the same standard industrial classification code as the Company. This graph assumes a \$100 investment in the Company's Common Stock and in each index on September 28, 2013 and that all dividends paid by companies included in each index were reinvested.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*

Among Ark Restaurants Corp., the NASDAQ Composite Index, and SIC Code 5812 - Eating & Drinking Places

*\$100 invested on 9/28/13 in stock or 9/30/13 in index, including reinvestment of dividends.

Indexes calculated on month-end basis.

| | Cumulative Total Return | | | | | |
|--|-------------------------|-----------|----------|----------|----------|----------|
| | 9/28/13 | 9/27/14 | 10/3/15 | 9/30/16 | 9/30/17 | 9/30/18 |
| Ark Restaurants Corp. | \$100.00 | \$ 108.06 | \$115.69 | \$118.17 | \$133.70 | \$132.91 |
| NASDAQ Composite | 100.00 | 121.64 | 127.37 | 148.79 | 183.54 | 230.21 |
| SIC Code 5812 - Eating & Drinking Places | 100.00 | 104.42 | 126.61 | 132.00 | 153.65 | 177.56 |

Item 6. Selected Consolidated Financial Data

Not applicable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

As of September 29, 2018, the Company owned and operated 20 restaurants and bars, 19 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customer and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance. The Consolidated Statement of Income for the year ended September 30, 2017 includes revenues and operating income of approximately \$11,804,000 and \$1,243,000, respectively, related to the Oyster House properties on the gulf coast of Alabama, which were acquired on November 30, 2016.

Accounting Period

Our fiscal year ends on the Saturday nearest September 30. We report fiscal years under a 52/53-week format. This reporting method is used by many companies in the hospitality industry and is meant to improve year-to-year comparisons of operating results. Under this method, certain years will contain 53 weeks. The fiscal years ended September 29, 2018 and September 30, 2017 included 52 weeks.

Seasonality

The Company has substantial fixed costs that do not decline proportionally with sales. The first and second fiscal quarters, which include the winter months, usually reflect lower customer traffic than in the third and fourth fiscal quarters. However, sales in the third and fourth fiscal quarters can be adversely affected by inclement weather due to the significant amount of outdoor seating at the Company's restaurants.

Results of Operations

The Company's restaurant operating income of \$5,032,000 for the year ended September 29, 2018 decreased 6.3% compared to restaurant operating income of \$5,371,000 (which excludes the recognition of a gain in the amount of \$1,637,000 in connection with the sale of the real estate underlying our *Rustic Inn*, Jupiter, FL property) for the year ended September 30, 2017. This decrease resulted primarily from poor weather conditions in the Northeast during the fourth quarter of fiscal 2018, partially offset by: (a) an increase in operating income in 2018 at *Sequoia* in Washington, DC, which was closed for renovation for the second and third quarters of fiscal 2017, and (b) an increase in operating income at *The Rustic Inn* in Dania Beach, FL as a result of the completion of the road construction project in early fiscal 2018 that was started in the second quarter of fiscal 2016 by the local municipality.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

The following table summarizes the significant components of the Company's operating results for the years ended September 29, 2018 and September 30, 2017, respectively:

| | Year Ended | | Variance | |
|-------------------------------------|--------------------|--------------------|-----------|---------|
| | September 29, 2018 | September 30, 2017 | \$ | % |
| | (in thousands) | | | |
| REVENUES: | | | | |
| Food and beverage sales | \$156,837 | \$151,196 | \$5,641 | 3.7 % |
| Other revenue | 3,153 | 2,681 | 472 | 17.6 % |
| Total revenues | 159,990 | 153,877 | 6,113 | 4.0 % |
| COSTS AND EXPENSES: | | | | |
| Food and beverage cost of sales | 43,036 | 41,597 | 1,439 | 3.5 % |
| Payroll expenses | 55,620 | 53,074 | 2,546 | 4.8 % |
| Occupancy expenses | 18,577 | 17,100 | 1,477 | 8.6 % |
| Other operating costs and expenses | 21,437 | 20,690 | 747 | 3.6 % |
| General and administrative expenses | 11,214 | 11,504 | (290) | -2.5 % |
| Depreciation and amortization | 5,074 | 4,541 | 533 | 11.7 % |
| Total costs and expenses | 154,958 | 148,506 | 6,452 | 4.3 % |
| RESTAURANT OPERATING INCOME | 5,032 | 5,371 | (339) | -6.3 % |
| Gain on sale of Ark Jupiter RI LLC | - | 1,637 | (1,637) | N/A |
| OPERATING INCOME | \$5,032 | \$7,008 | \$(1,976) | -28.2 % |

Revenues

During the Company's year ended September 29, 2018 ("fiscal 2018"), revenues increased 4.0% compared to the year ended September 30, 2017 ("fiscal 2017"). This increase resulted primarily from: (i) revenues related to the *Sequoia* in Washington, DC which was closed for renovation for the second and third quarters of fiscal 2017, (ii) revenues related to *The Oyster House* properties in Gulf Shores, Alabama (which were acquired on November 30, 2016), and (iii) the same-store sales impacts discussed below, partially offset by revenues related to the *Rustic Inn, Jupiter*, which was closed in June 2017.

Food and Beverage Same-Store Sales

On a Company-wide basis, same store food and beverage sales decreased 1.7% for the year ended September 29, 2018 as compared to the year ended September 30, 2017 as follows:

| | Year Ended | | Variance | |
|-------------------------|--------------------|--------------------|----------|--------|
| | September 29, 2018 | September 30, 2017 | \$ | % |
| | (in thousands) | | | |
| Las Vegas | \$47,852 | \$45,852 | \$2,000 | 4.4 % |
| New York | 39,636 | 39,887 | (251) | -0.6 % |
| Washington, DC | 3,112 | 3,573 | (461) | -12.9% |
| Atlantic City, NJ | 7,406 | 7,536 | (130) | -1.7 % |
| Boston | 2,839 | 3,235 | (396) | -12.2% |
| Connecticut | 2,120 | 2,156 | (36) | -1.7 % |
| Alabama | 11,924 | 11,804 | 120 | 1.0 % |
| Florida | 28,068 | 26,467 | 1,601 | 6.0 % |
| Same store sales | 142,957 | 140,510 | \$2,447 | 1.7 % |
| Other | 13,880 | 10,686 | | |
| Food and beverage sales | \$ 156,837 | \$ 151,196 | | |

Same-store sales in Las Vegas increased 4.4% primarily as a result of increased traffic near the properties where we operate our restaurant in connection with the opening of the T-Mobile Arena nearby. Same-store sales in New York decreased 0.6%, primarily as a result of poor weather conditions during the months in which our properties with outdoor seating areas are open, partially offset by strong catering revenues. Same-store sales in Washington, DC (which excludes *Sequoia*, which was closed for renovation for the second and third fiscal quarter of 2017) decreased 12.9% due to decreased traffic at our Thunder Grill property as a result of a major tenant vacating the adjacent space. Same-store sales in Atlantic City decreased 1.7% primarily due to decreased traffic at the properties in which we operate our restaurants as a result of the re-opening of two properties in June 2018. Same-store sales in Boston decreased 12.2% primarily as a result of decreased traffic at Faneuil Hall Marketplace where our property is located. Same-store sales in Connecticut decreased 1.7% due to declining traffic at the Foxwoods Resort and Casino where our properties are located. Same-store sales in Alabama were consistent with last year as expected. Same-store sales in Florida increased 6.0% as a result of the completion of the road construction project started in the second quarter of fiscal 2016 by the local municipality near *The Rustic Inn* in Dania Beach, FL. Other food and beverage sales consist of sales related to *Sequoia*, which was closed in for the entire second and third fiscal quarters of 2017, new restaurants opened or acquired during the applicable period (e.g. the *Oyster House* properties in 2017) and sales related to properties that were closed due to lease expiration and other closures.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after

it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

Other Revenue

Included in Other Revenues are purchase service fees which represent commissions earned by a subsidiary of the Company for providing purchasing services to other restaurant groups, as well as license fees, property management fees and other rentals. The increase in Other Revenue for fiscal 2018 as compared to fiscal 2017 is primarily due to an increase in property management fees and other rentals partially offset by decreased purchase service fees.

Costs and Expenses

Costs and expenses for the years ended September 29, 2018 and September 30, 2017 were as follows (in thousands):

| | Year Ended September 29, 2018 | % to Total Revenues | Year Ended September 30, 2017 | % to Total Revenues | Increase (Decrease) \$ | % |
|-------------------------------------|---|---------------------------|---|---------------------------|------------------------------|--------|
| Food and beverage cost of sales | \$43,036 | 26.9 % | \$41,597 | 27.0 % | \$1,439 | 3.5 % |
| Payroll expenses | 55,620 | 34.8 % | 53,074 | 34.5 % | 2,546 | 4.8 % |
| Occupancy expenses | 18,577 | 11.6 % | 17,100 | 11.1 % | 1,477 | 8.6 % |
| Other operating costs and expenses | 21,437 | 13.4 % | 20,690 | 13.4 % | 747 | 3.6 % |
| General and administrative expenses | 11,214 | 7.0 % | 11,504 | 7.5 % | (290) | -2.5 % |
| Depreciation and amortization | 5,074 | 3.2 % | 4,541 | 3.0 % | 533 | 11.7 % |
| | \$154,958 | | \$148,506 | | \$6,452 | |

The small decrease in food and beverage costs as a percentage of total revenues for the year ended September 29, 2018 compared to the same period of last year is primarily the result of a better mix of catering versus a la carte business at our larger properties (i.e. *Bryant Park*, *Sequoia*) combined with a taking advantage of bulk purchasing discounts offset by higher commodity prices.

Payroll expenses as a percentage of total revenues for the year ended September 29, 2018 increased as compared to the same period of last year primarily as a result of minimum wage increases associated with changes to labor laws partially offset by a better mix of catering versus a la carte business at our larger properties.

Occupancy expenses as a percentage of total revenues increased as compared to the same period of last year as a result of rents that are paid based on a percentage of sales and base rent increase at our other properties, partially offset by higher sales at properties where rents are relatively fixed or where the Company owns the premises at which the property operates (*The Rustic Inn* in Dania Beach, FL, *Shuckers* in Jensen Beach, FL and *The Oyster House* properties

in Gulf Shores, Alabama).

Other operating costs and expenses as a percentage of total revenues for fiscal 2018 were consistent with fiscal 2017.

General and administrative expenses (which relate solely to the corporate office in New York City) as a percentage of total revenues for fiscal 2018 decreased as compared to the same period of last year primarily as a result of lower headcount partially offset by annual wage increases.

Depreciation and amortization expense for fiscal 2018 increased as compared to the same period of last year primarily as a result of depreciation on the improvements made at our *Sequoia* property which were

20

placed in service in the fourth fiscal quarter of 2017, partially offset by additional depreciation in the amount of \$358,000 related to asset write-offs at *Sequoia* and *Canyon Road* (whose lease was transferred to an unrelated party) in fiscal 2017.

Income Taxes

Our income tax expense, deferred tax assets and liabilities, and liabilities for uncertain tax positions reflect management's best estimate of current and future taxes to be paid. We are subject to income tax in numerous state taxing jurisdictions. Significant judgement and estimates are required in the determination of consolidated income tax expense. The provision for income taxes reflects federal income taxes calculated on a consolidated basis and state and local income taxes which are calculated on a separate entity basis.

For state and local income tax purposes, certain losses incurred by a subsidiary may only be used to offset that subsidiary's income, with the exception of the restaurants operating in the District of Columbia. Accordingly, our overall effective tax rate has varied depending on the level of income and losses incurred at individual subsidiaries.

Deferred income taxes arise from temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements, which will result in taxable or deductible amounts in the future. In evaluating our ability to recover our deferred tax assets in the jurisdiction from which they arise, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. The assumptions about future taxable income require the use of significant judgment and are consistent with the plans and estimates we are using to manage the underlying businesses.

On December 22, 2017 the U.S. government enacted comprehensive tax reform commonly referred to as the Tax Cuts and Jobs Act ("TCJA"). Under Accounting Standards Codification ("ASC") 740, the effects of changes in tax rates and laws are recognized in the period which the new legislation is enacted. The TCJA makes broad and complex changes to the U.S. tax code, including, but not limited to: (1) reducing the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018; (2) changing rules related to uses and limitations of net operating loss carryforwards created in tax years beginning after December 31, 2017; (3) accelerated expensing on certain qualified property; (4) creating a new limitation on deductible interest expense to 30% of tax adjusted EBITDA through 2021 and then 30% of tax adjusted EBIT thereafter; (5) eliminating the corporate alternative minimum tax; and (6) further limitations on the deductibility of executive compensation under IRC §162(m) for tax years beginning after December 31, 2017. As the reduction in the U.S. federal corporate tax rate is administratively effective on January 1, 2018, our blended U.S. federal tax rate for the year ended September 29, 2018 was approximately 24%.

In response to the TCJA, the U.S. Securities and Exchange Commission ("SEC") staff issued Staff Accounting Bulletin No. 118 ("SAB 118"), which provides guidance on accounting for the tax effects of TCJA. The purpose of SAB 118 was to address any uncertainty or diversity of view in applying ASC Topic 740, Income Taxes in the reporting period in

which the TCJA was enacted. SAB 118 addresses situations where the accounting is incomplete for certain income tax effects of the TJCA upon issuance of a company's financial statements for the reporting period which include the enactment date. SAB 118 allows for a provisional amount to be recorded if it is a reasonable estimate of the impact of the TCJA. Additionally, SAB 118 allows for a measurement period to finalize the impacts of the TCJA, not to extend beyond one year from the date of enactment.

In connection with the TCJA, the Company recorded an income tax benefit of \$1,382,000 related to the re-measurement of our deferred tax assets and liabilities for the reduced U.S. federal corporate tax rate of 21%. The Company's accounting for the TCJA is complete as of September 29, 2018 with no significant differences from our provisional estimates recorded during interim periods.

The Company's overall effective tax rate in the future will be affected by factors such as the utilization of state and local net operating loss carryforwards, the generation of FICA tax credits and the mix of earnings by state taxing jurisdictions as Nevada does not impose a state income tax, as compared to the other major state and local jurisdictions in which the Company has operations. Our overall effective tax rate in the future will be affected by factors such as income earned by our VIEs, generation of FICA TIP credits and the mix of geographical income for state tax purposes as Nevada does not impose an income tax.

Liquidity and Capital Resources

Our primary source of capital has been cash provided by operations and, in recent years, bank and other borrowings to finance specific transactions, acquisitions and large remodeling projects. We utilize cash generated from operations to fund the cost of developing and opening new restaurants and smaller remodeling projects of existing restaurants we own.

Net cash provided by operating activities for fiscal 2018 decreased to \$9,575,000 as compared to \$10,350,000 in fiscal 2017. This decrease was attributable to changes in net working capital primarily related to accounts receivable, prepaid, refundable and accrued income taxes and accounts payable and accrued expenses.

Net cash used in investing activities for fiscal 2018 was \$5,050,000 and resulted primarily from purchases of fixed assets at existing restaurants and costs associated with the renovation of *Sequoia*.

Net cash used in investing activities for fiscal 2017 was \$14,641,000 and resulted primarily from purchases of fixed assets at existing restaurants, costs associated with the renovation of *Sequoia* and the cash portion of the purchase of *The Oyster House* properties in the amount of \$3,043,000, partially offset by the net proceeds in the amount of \$2,474,000 from the sale of *The Rustic Inn* in Jupiter, Florida

Net cash used in financing activities for the years ended September 29, 2018 and September 30, 2017 of \$919,000 and \$1,542,000, respectively, resulted primarily from the payment of dividends, principal payments on notes payable and distributions to non-controlling interests, offset by borrowings under the credit facility.

The Company had a working capital deficiency of \$4,628,000 at September 29, 2018 as compared with a deficiency of \$16,072,000 at September 30, 2017. This decrease resulted primarily from the refinancing completed on June 1, 2018 as discussed in Note 9 – Notes Payable Bank. We believe that our existing cash balances, current banking facilities and cash provided by operations will be sufficient to meet our liquidity and capital spending requirements at least through December 31, 2019.

On January 4, 2018, April 4, 2018, July 6, 2018 and October 12, 2018, the Company paid quarterly cash dividends in the amount of \$0.25 per share on the Company's common stock. The Company intends to continue to pay such quarterly cash dividend for the foreseeable future; however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

Restaurant Expansion

On November 30, 2016, the Company, through newly formed, wholly-owned subsidiaries, acquired the assets of the *Original Oyster House, Inc.*, a restaurant and bar located in the City of Gulf Shores, Baldwin County, Alabama and the related real estate and an adjacent retail shopping plaza and the *Original Oyster House II, Inc.*, a restaurant and bar located in the City of Spanish Fort, Baldwin County, Alabama and the related real estate. The total purchase price was for \$10,750,000 plus inventory of approximately \$293,000. The acquisition is accounted for as a business combination and was financed with a bank loan from the Company's existing lender in the amount of \$8,000,000 and cash from operations.

The opening of a new restaurant is invariably accompanied by substantial pre-opening expenses and early operating losses associated with the training of personnel, excess kitchen costs, costs of supervision and other expenses during the pre-opening period and during a post-opening "shake out" period until operations can be considered to be functioning normally. The amount of such pre-opening expenses and early operating losses can generally be expected to depend upon the size and complexity of the facility being opened.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

We may take advantage of other opportunities we consider to be favorable, when they occur, depending upon the availability of financing and other factors.

Investment in and Receivable from New Meadowlands Racetrack

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC ("NMR") through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR with no change in ownership. In February 2017 the Company funded its proportionate share (\$222,000) of a \$3,000,000 capital call bringing its total investment to \$5,108,000 with no change in ownership.

In addition to the Company's ownership interest in NMR, if casino gaming is approved at the Meadowlands and NMR is granted the right to conduct said gaming, the Company shall be granted the exclusive right to operate the food and beverage concessions in the gaming facility with the exception of one restaurant.

In conjunction with this investment, the Company, through a 97% owned subsidiary, Ark Meadowlands LLC ("AM VIE"), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the "Racing F&B Concessions") located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of

NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan as discussed above.

Recent Restaurant Dispositions and Charges

Lease Expirations – The Company was advised by the landlord that it would have to vacate The Grill at Two Trees property at the Foxwoods Resort and Casino in Ledyard, CT, which had a no rent lease. The closure of this property occurred on January 1, 2017 and did not result in a material charge.

Other – On November 18, 2016, Ark Jupiter RI, LLC (“Ark Jupiter”), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the “ROFR”) with SCFRC-HWG, LLC, the landlord (the “Seller”) to purchase the land and building in which the Company operated its Rustic Inn location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter’s lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June 2017. In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

The Company transferred its lease and the related assets of Canyon Road located in New York, NY to a former employee. In connection with this transfer, the Company recognized an impairment loss included in depreciation and amortization expense in the amount of \$75,000 for the year ended September 30, 2017.

Critical Accounting Policies

Our significant accounting policies are more fully described in Note 1 to our consolidated financial statements. While all of these significant accounting policies impact our financial condition and results of operations, we view certain of these policies as critical. Policies determined to be critical are those policies that have the most significant impact on our consolidated financial statements and require management to use a greater degree of judgment and estimates.

Actual results may differ from those estimates.

We believe that given current facts and circumstances, it is unlikely that applying any other reasonable judgments or estimate methodologies would cause a material effect on our consolidated results of operations, financial position or cash flows for the periods presented in this report.

24

Below are listed certain policies that management believes are critical:

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management's most difficult and subjective judgments include allowances for potential bad debts on receivables, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and determining when investment impairments are other-than-temporary. Because of the uncertainty in such estimates, actual results may differ from these estimates.

Long-Lived Assets

Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In the evaluation of the fair value and future benefits of long-lived assets, we perform an analysis of the anticipated undiscounted future net cash flows of the related long-lived assets. If the carrying value of the related asset exceeds the undiscounted cash flows, the carrying value is reduced to its fair value. Various factors including estimated future sales growth and estimated profit margins are included in this analysis.

Management continually evaluates unfavorable cash flows, if any, related to underperforming restaurants. Periodically it is concluded that certain properties have become impaired based on their existing and anticipated future economic outlook in their respective markets. In such instances, we may impair assets to reduce their carrying values to fair values. Estimated fair values of impaired properties are based on comparable valuations, cash flows and/or management judgment.

Recoverability of Investment in New Meadowlands Racetrack ("NMR")

The carrying value of our Investment in Meadowlands Newmark LLC, which has a 63.7% ownership in NMR, is determined using the cost method. In accordance with the cost method, our initial investment is recorded at cost and we record dividend income when applicable, if dividends are declared. We review our Investment in NMR each reporting period to determine whether a significant event or change in circumstances has occurred that may have an adverse effect on its fair value.

As a result, we performed an assessment of the recoverability of our indirect Investment in NMR as of September 29, 2018 which involved critical accounting estimates. These estimates require significant management judgment, include inherent uncertainties and are often interdependent; therefore, they do not change in isolation. Factors that management estimated include, among others, the probability of gambling being approved in Northern New Jersey which is the most heavily weighted assumption and NMR obtaining a license to operate a casino, revenue levels, cost of capital, marketing spending, tax rates and capital spending.

In performing this assessment, we estimate the fair value of our Investment in NMR using our best estimate of these assumptions which we believe would be consistent with what a hypothetical marketplace participant would use. The variability of these factors depends on a number of conditions, including uncertainty about future events and our inability as a minority shareholder to control certain

outcomes and thus our accounting estimates may change from period to period. If other assumptions and estimates had been used when these tests were performed, impairment charges could have resulted.

As mentioned above, these factors do not change in isolation and, therefore, we do not believe it is practicable or meaningful to present the impact of changing a single factor. Furthermore, if management uses different assumptions or if different conditions occur in future periods, future impairment charges could result.

Leases

We recognize rent expense on a straight-line basis over the expected lease term, including option periods as described below. Within the provisions of certain leases there are escalations in payments over the base lease term, as well as renewal periods. The effects of the escalations have been reflected in rent expense on a straight-line basis over the expected lease term, which includes option periods when it is deemed to be reasonably assured that we would incur an economic penalty for not exercising the option. Percentage rent expense is generally based upon sales levels and is expensed as incurred. Certain leases include both base rent and percentage rent. We record rent expense on these leases based upon reasonably assured sales levels. The consolidated financial statements reflect the same lease terms for amortizing leasehold improvements as were used in calculating straight-line rent expense for each restaurant. Our judgments may produce materially different amounts of amortization and rent expense than would be reported if different lease terms were used.

Deferred Income Tax Valuation Allowance

We provide such allowance due to uncertainty that some of the deferred tax amounts may not be realized. Certain items, such as state and local tax loss carryforwards, are dependent on future earnings or the availability of tax strategies. Future results could require an increase or decrease in the valuation allowance and a resulting adjustment to income in such period.

Goodwill and Trademarks

Goodwill is recorded when the purchase price paid for an acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. Trademarks are considered to have an indefinite life. Goodwill and trademarks are not amortized, but are subject to impairment analysis at least once annually or more frequently upon the occurrence of an event or when circumstances indicate that a reporting unit's carrying amount is greater than its fair value. At September 29, 2018, the Company performed a qualitative assessment of factors to determine whether further impairment testing is required. Based on the results of the work performed, the Company has concluded that no impairment loss was warranted at September 29, 2018. Qualitative factors considered in this assessment include industry and market considerations, overall financial performance and other relevant events, management expertise

and stability at key positions. Additional impairment analyses at future dates may be performed to determine if indicators of impairment are present, and if so, such amount will be determined and the associated charge will be recorded to the Consolidated Statements of Income.

Stock-Based Compensation

The Company measures stock-based compensation cost at the grant date based on the fair value of the award and recognizes it as expense over the applicable vesting period using the straight-line method. Excess income tax benefits related to share-based compensation expense that must be recognized directly in equity are considered financing rather than operating cash flow activities.

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of our stock, the expected life of the options and the risk free interest rate. The Company issues new shares upon the exercise of employee stock options.

Recently Adopted and Issued Accounting Standards

See Note 1 of Notes to Consolidated Financial Statements for a description of recent accounting pronouncements, including those adopted in fiscal 2018 and the expected dates of adoption and the anticipated impact on the Consolidated Financial Statements.

Recent Developments

See Note 15 of Notes to Consolidated Financial Statements for a description of recent developments that have occurred subsequent to September 29, 2018.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 8. Financial Statements and Supplementary Data

Our Consolidated Financial Statements are included in this report immediately following Part IV.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures.

As of September 29, 2018 (the end of the period covered by this report), management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, at the end of such period, our disclosure controls and procedures were effective and provided reasonable assurance that information required to be disclosed in our periodic SEC filings is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. However, in evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of such possible controls and procedures.

Management's Annual Report on Internal Control Over Financial Reporting.

Management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Exchange Act Rule 13a-15(f), and for performing an assessment of the effectiveness of internal control over financial reporting as of September 29, 2018. Internal control over financial reporting is a process designed by, or under the supervision of, our principal executive and principal financial officers, or persons performing similar functions, and effected by our Board of Directors, management and other personnel, 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. Our internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U. S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Management performed an assessment of the effectiveness of our internal control over financial reporting as of September 29, 2018 based upon the criteria set forth in Internal Control — Integrated Framework issued by the 2013 Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Based on our assessment, management determined that our internal control over financial reporting was effective as of September 29, 2018.

This Annual Report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting as management's report was not subject to attestation by our independent registered public accounting firm pursuant to the permanent exemption of the SEC that permits us to provide only management's report in this annual report.

Changes in Internal Control Over Financial Reporting

On July 29, 2018, the Company's President and Chief Financial Officer, Robert J. Stewart, passed away at the age of 61. The Company hired a new Chief Financial Officer on September 4, 2018. There have been no other changes in our internal control over financing reporting that occurred during the quarter ended September 29, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

28

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information relating to our directors and executive officers is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders to be filed with the Securities and Exchange Commission (the “SEC”) pursuant to Regulation 14A no later than 120 days after the end of the fiscal year covered by this form (the “Proxy Statement”). Information relating to compliance with Section 16(a) of the Exchange Act is incorporated by reference to the Proxy Statement.

Code of Ethics

We have adopted a code of ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions. A copy is available free of charge through our Internet website, www.arkrestaurants.com, under the “Investors--Corporate Governance” caption.

Item 11. Executive Compensation

The information required by this item is incorporated herein by reference to the Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is incorporated herein by reference to the Proxy Statement.

Item 13. Certain Relationships and Related Transactions

The information required by this item is incorporated herein by reference to the Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information required by this item is incorporated herein by reference to the Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules

| | <u>Page</u> |
|--|-------------|
| (a)(1) Financial Statements: | |
| <u>Report of Independent Registered Public Accounting Firm</u> | F-1 |
| <u>Consolidated Balance Sheets --</u> <u>at September 29, 2018 and September 30, 2017</u> | F-2 |
| <u>Consolidated Statements of Income --</u> <u>years ended September 29, 2018 and September 30, 2017</u> | F-3 |
| <u>Consolidated Statements of Changes in Equity --</u> <u>years ended September 29, 2018 and September 30, 2017</u> | F-4 |
| <u>Consolidated Statements of Cash Flows --</u> <u>years ended September 29, 2018 and September 30, 2017</u> | F-5 |
| <u>Notes to Consolidated Financial Statements</u> | F-6 |

(2) Financial Statement Schedules

None.

(3) Exhibits:

The exhibits required by Item 601 of Regulation S-K and filed herewith are listed in the Exhibit List immediately preceding the exhibits.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders

Ark Restaurants Corp.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Ark Restaurants Corp. and Subsidiaries (the “Company”) as of September 29, 2018 and September 30, 2017, and the related consolidated statements of income, changes in shareholders’ equity, and cash flows for each of the years in the two-year period ended September 29, 2018, and the related notes (collectively referred to as the “financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of September 29, 2018 and September 30, 2017, and the results of its operations and its cash flows for each of the years in the two-year period ended September 29, 2018, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis

for our opinion.

/s/ CohnReznick LLP

We have served as the Company's auditors since 2004.

Jericho, New York

December 20, 2018

- 1 -

**ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS**

(In Thousands, Except Per Share Amounts)

| | September 29, 2018 | September 30, 2017 |
|---|--------------------------|--------------------------|
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents (includes \$181 at September 29, 2018 and \$363 at September 30, 2017 related to VIEs) | \$ 5,012 | \$ 1,406 |
| Accounts receivable (includes \$354 at September 29, 2018 and \$367 at September 30, 2017 related to VIEs) | 3,452 | 3,353 |
| Employee receivables | 386 | 399 |
| Inventories (includes \$19 at September 29, 2018 and \$22 at September 30, 2017 related to VIEs) | 2,094 | 1,992 |
| Prepaid and refundable income taxes (includes \$241 at September 29, 2018 and \$226 at September 30, 2017 related to VIEs) | 721 | 945 |
| Prepaid expenses and other current assets (includes \$51 at September 29, 2018 and \$63 at September 30, 2017 related to VIEs) | 1,547 | 1,988 |
| Total current assets | 13,212 | 10,083 |
| FIXED ASSETS - Net (includes \$0 at September 29, 2018 and \$6 at September 30, 2017 related to VIEs) | 45,264 | 45,215 |
| INTANGIBLE ASSETS - Net | 349 | 409 |
| GOODWILL | 9,880 | 9,880 |
| TRADEMARKS | 3,331 | 3,331 |
| DEFERRED INCOME TAXES | 2,988 | 1,491 |
| INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK | 7,036 | 6,979 |
| OTHER ASSETS (includes \$82 at September 29, 2018 and \$71 at September 30, 2017 related to VIEs) | 2,677 | 2,679 |
| TOTAL ASSETS | \$ 84,737 | \$ 80,067 |
| LIABILITIES AND EQUITY | | |
| CURRENT LIABILITIES: | | |
| Accounts payable - trade (includes \$158 at September 29, 2018 and \$116 at September 30, 2017 related to VIEs) | \$ 5,019 | \$ 4,750 |
| Accrued expenses and other current liabilities (includes \$348 at September 29, 2018 and \$260 at September 30, 2017 related to VIEs) | 10,702 | 10,176 |
| Dividend payable | 868 | 857 |
| Borrowings under credit facility | - | 6,198 |
| Current portion of notes payable | 1,251 | 4,174 |
| Total current liabilities | 17,840 | 26,155 |
| OPERATING LEASE DEFERRED CREDIT (includes (\$21) at September 29, 2018 and \$51 at September 30, 2017 related to VIEs) | 3,301 | 3,648 |
| NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs | 19,860 | 7,824 |
| TOTAL LIABILITIES | 41,001 | 37,627 |

COMMITMENTS AND CONTINGENCIES

EQUITY:

| | | |
|--|-----------|-----------|
| Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding, 3,470 shares at September 29, 2018 and 3,428 shares at September 30, 2017 | 35 | 34 |
| Additional paid-in capital | 12,897 | 12,639 |
| Retained earnings | 29,364 | 27,771 |
| Total Ark Restaurants Corp. shareholders' equity | 42,296 | 40,444 |
| NON-CONTROLLING INTERESTS | 1,440 | 1,996 |
| TOTAL EQUITY | 43,736 | 42,440 |
| TOTAL LIABILITIES AND EQUITY | \$ 84,737 | \$ 80,067 |

See notes to consolidated financial statements.

- 2 -

ARK RESTAURANTS CORP. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF INCOME**

(In Thousands, Except Per Share Amounts)

| | Year Ended | |
|--|--------------------------|--------------------------|
| | September 29, 2018 | September 30, 2017 |
| REVENUES: | | |
| Food and beverage sales | \$156,837 | \$151,196 |
| Other revenue | 3,153 | 2,681 |
| Total revenues | 159,990 | 153,877 |
| COSTS AND EXPENSES: | | |
| Food and beverage cost of sales | 43,036 | 41,597 |
| Payroll expenses | 55,620 | 53,074 |
| Occupancy expenses | 18,577 | 17,100 |
| Other operating costs and expenses | 21,437 | 20,690 |
| General and administrative expenses | 11,214 | 11,504 |
| Depreciation and amortization | 5,074 | 4,541 |
| Total costs and expenses | 154,958 | 148,506 |
| RESTAURANT OPERATING INCOME | 5,032 | 5,371 |
| Gain on sale of Ark Jupiter RI, LLC | - | 1,637 |
| OPERATING INCOME | 5,032 | 7,008 |
| OTHER (INCOME) EXPENSE: | | |
| Interest expense | 1,163 | 753 |
| Interest income | (57) | (170) |
| Total other (income) expense, net | 1,106 | 583 |
| INCOME BEFORE PROVISION (BENEFIT) FOR INCOME TAXES | 3,926 | 6,425 |
| Provision (benefit) for income taxes | (1,147) | 1,668 |
| CONSOLIDATED NET INCOME | 5,073 | 4,757 |
| Net income attributable to non-controlling interests | (418) | (718) |
| NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP. | \$4,655 | \$4,039 |
| NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE: | | |
| Basic | \$1.35 | \$1.18 |
| Diluted | \$1.31 | \$1.14 |
| WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING: | | |
| Basic | 3,439 | 3,424 |
| Diluted | 3,549 | 3,531 |

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY****FOR THE YEARS ENDED SEPTEMBER 29, 2018 AND SEPTEMBER 30, 2017**

(In Thousands, Except Per Share Amounts)

| | Common Stock | | Additional | Retained | Total Ark | Non- | Total |
|---|--------------|--------|------------|-----------|-------------|-------------|---------------|
| | Shares | Amount | Paid-In | Earnings | Restaurants | controlling | Equity |
| | | | Capital | | Corp. | Interests | Shareholders' |
| | | | | | Equity | | Equity |
| BALANCE - October 1, 2016 | 3,423 | \$ 34 | \$ 12,942 | \$ 27,158 | \$ 40,134 | \$ 2,570 | \$ 42,704 |
| Net income | - | - | - | 4,039 | 4,039 | 718 | 4,757 |
| Exercise of stock options | 5 | - | 72 | - | 72 | - | 72 |
| Tax benefit on exercise of stock options | - | - | 14 | - | 14 | - | 14 |
| Change in excess tax benefits from stock-based compensation | - | - | (389) | - | (389) | - | (389) |
| Distributions to non-controlling interests | - | - | - | - | - | (1,292) | (1,292) |
| Dividends paid - \$1.00 per share | - | - | - | (3,426) | (3,426) | - | (3,426) |
| BALANCE - September 30, 2017 | 3,428 | 34 | 12,639 | 27,771 | 40,444 | 1,996 | 42,440 |
| Cumulative effect adjustment related to adoption of ASU 2016-09 | - | - | (392) | 392 | - | - | - |
| BALANCE - October 1, 2017 | 3,428 | 34 | 12,247 | 28,163 | 40,444 | 1,996 | 42,440 |
| Net income | - | - | - | 4,655 | 4,655 | 418 | 5,073 |
| Exercise of stock options | 42 | 1 | 603 | - | 604 | - | 604 |
| Stock-based compensation | - | - | 47 | - | 47 | - | 47 |
| Distributions to non-controlling interests | - | - | - | - | - | (974) | (974) |
| Dividends accrued and paid - \$1.00 per share | - | - | - | (3,454) | (3,454) | - | (3,454) |
| BALANCE - September 29, 2018 | 3,470 | \$ 35 | \$ 12,897 | \$ 29,364 | \$ 42,296 | \$ 1,440 | \$ 43,736 |

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In Thousands)

| | Year Ended | |
|--|------------|-----------|
| | September | September |
| | 29, | 30, |
| | 2018 | 2017 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Consolidated net income | \$5,073 | \$4,757 |
| Adjustments to reconcile consolidated net income to net cash provided by operating activities: | | |
| Stock-based compensation | 47 | - |
| Loss on closure of restaurants | - | 120 |
| Gain on sale of Ark Jupiter RI, LLC | - | (1,637) |
| Loss on disposal of assets | - | 283 |
| Deferred income taxes | (1,497) | 1,550 |
| Accrued interest on note receivable from NMR | (57) | (56) |
| Depreciation and amortization | 5,074 | 4,132 |
| Amortization of deferred financing costs | 21 | 46 |
| Operating lease deferred credit | (347) | 72 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | (99) | 397 |
| Inventories | (102) | 193 |
| Prepaid, refundable and accrued income taxes | 224 | (1,373) |
| Prepaid expenses and other current assets | 441 | 546 |
| Other assets | 2 | (175) |
| Accounts payable - trade | 269 | 1,874 |
| Accrued expenses and other current liabilities | 526 | (379) |
| Net cash provided by operating activities | 9,575 | 10,350 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchases of fixed assets | (5,063) | (13,904) |
| Loans and advances made to employees | (136) | (121) |
| Payments received on employee receivables | 149 | 175 |
| Proceeds from the sale of Ark Jupiter RI, LLC | - | 2,474 |
| Purchase of the Oyster House | - | (3,043) |
| Additional investment in Meadowlands Newmark LLC | - | (222) |
| Net cash used in investing activities | (5,050) | (14,641) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Principal payments on notes payable | (2,067) | (3,951) |
| Borrowings under credit facility | 5,086 | 6,198 |
| Payment of debt financing costs | (125) | - |
| Dividends paid | (3,443) | (2,569) |
| Proceeds from issuance of stock upon exercise of stock options | 604 | 72 |
| Distributions to non-controlling interests | (974) | (1,292) |
| Net cash used in financing activities | (919) | (1,542) |

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

| | | |
|--|---------|----------|
| NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | 3,606 | (5,833) |
| CASH AND CASH EQUIVALENTS, Beginning of year | 1,406 | 7,239 |
| CASH AND CASH EQUIVALENTS, End of year | \$5,012 | \$1,406 |

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the year for:

| | | |
|--|---------|----------|
| Interest | \$1,008 | \$707 |
| Income taxes | \$127 | \$1,490 |
| Non-cash financing activities: | | |
| Note payable in connection with the purchase of the Oyster House | \$- | \$8,000 |
| Change in excess tax benefits from stock-based compensation | \$- | \$(389) |
| Refinancing of credit facility borrowings to term notes | \$4,430 | \$- |
| Accrued dividend | \$868 | \$857 |

See notes to consolidated financial statements.

- 5 -

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

As of September 29, 2018, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 20 restaurants and bars, 19 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customers and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance.

The Company operates five restaurants in New York City, two in Washington, D.C., five in Las Vegas, Nevada, three in Atlantic City, New Jersey, one in Boston, Massachusetts, two in Florida and two on the gulf coast of Alabama. The Las Vegas operations include four restaurants within the New York-New York Hotel & Casino Resort and operation of the hotel’s room service, banquet facilities, employee dining room and six food court concepts and one restaurant within the Planet Hollywood Resort and Casino. In Atlantic City, New Jersey, the Company operates a restaurant and a bar in the Resorts Atlantic City Hotel and Casino and a restaurant and bar at the Tropicana Hotel and Casino. The operation at the Foxwoods Resort Casino consists of one fast food concept. In Boston, Massachusetts, the Company operates a restaurant in the Faneuil Hall Marketplace. The Florida operations include the Rustic Inn in Dania Beach, Florida and Shuckers in Jensen Beach, Florida and the operation of five fast food facilities in Tampa, Florida and seven fast food facilities in Hollywood, Florida, each at a Hard Rock Hotel and Casino. In Alabama, the Company operates two Original Oyster Houses, one in Gulf Shores, Alabama and one in Spanish Fort, Alabama.

Basis of Presentation — The accompanying consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and accounting principles generally accepted in the United States of America (“GAAP”). The Company’s reporting currency is the United States dollar.

The Company had a working capital deficiency of \$4,628,000 at September 29, 2018. We believe that our existing cash balances, current banking facilities and cash provided by operations will be sufficient to meet our liquidity and capital spending requirements at least through December 31, 2019.

Accounting Period — The Company’s fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 29, 2018 and September 30, 2017 included 52 weeks.

Use of Estimates — The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management’s most difficult and subjective judgments include allowances for potential bad debts on receivables, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and determining when investment impairments are other-than-temporary. Because of the uncertainty in such estimates, actual results may differ from these estimates.

Principles of Consolidation — The consolidated financial statements include the accounts of Ark Restaurants Corp. and all of its wholly-owned subsidiaries, partnerships and other entities in which it has a controlling interest. Also included in the consolidated financial statements are certain variable interest entities (“VIEs”). All significant intercompany balances and transactions have been eliminated in consolidation.

Non-Controlling Interests — Non-controlling interests represent capital contributions, income and loss attributable to the shareholders of less than wholly-owned and consolidated entities.

Seasonality — The Company has substantial fixed costs that do not decline proportionally with sales. The first and second fiscal quarters, which include the winter months, usually reflect lower customer traffic than in

the third and fourth fiscal quarters. However, sales in the third and fourth fiscal quarters can be adversely affected by inclement weather due to the significant amount of outdoor seating at the Company's restaurants.

Fair Value of Financial Instruments — The carrying amount of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value due to the immediate or short-term maturity of these financial instruments. The fair values of notes receivable and payable are determined using current applicable rates for similar instruments as of the balance sheet date and approximate the carrying value of such debt instruments.

Cash and Cash Equivalents — Cash and cash equivalents include cash on hand, deposits with banks and highly liquid investments generally with original maturities of three months or less. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed after the last day of a reporting period are reported as a current liability in the accompanying Consolidated Balance Sheets.

Concentrations of Credit Risk — Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company reduces credit risk by placing its cash and cash equivalents with major financial institutions with high credit ratings. At times, such amounts may exceed Federally insured limits. Accounts receivable are primarily comprised of normal business receivables such as credit card receivables that are paid off in a short period of time and amounts due from the hotel operators where the Company has a location, and are recorded when the products or services have been delivered. The Company reviews the collectability of its receivables on an ongoing basis, and provides for an allowance when it considers the entity unable to meet its obligation. The concentration of credit risk with respect to accounts receivable is generally limited due to the short payment terms extended by the Company and the number of customers comprising the Company's customer base.

As of September 29, 2018 the Company had accounts receivable balances due from two hotel operators totaling 47% of total accounts receivable. As of September 30, 2017, the Company had accounts receivable balances due from two hotel operators totaling 39% of total accounts receivable.

For the years ended September 29, 2018 and September 30, 2017, the Company made purchases from one vendor that accounted for 10% of total purchases.

As of September 29, 2018, all debt outstanding is with one lender (see Note 9 – Notes Payable – Bank)

Inventories — Inventories are stated at the lower of cost (first-in, first-out) or market, and consist of food and beverages, merchandise for sale and other supplies.

Fixed Assets — Fixed assets are stated at cost less accumulated depreciation and amortization. Depreciation is determined using the straight-line method over the estimated useful lives of the assets. Estimated lives range from three to seven years for furniture, fixtures and equipment and up to 40 years for buildings and related improvements. Amortization of improvements to leased properties is computed using the straight-line method based upon the initial term of the applicable lease or the estimated useful life of the improvements, whichever is less, and ranges from 5 to 30 years. For leases with renewal periods at the Company's option, if failure to exercise a renewal option imposes an economic penalty to the Company, management may determine at the inception of the lease that renewal is reasonably assured and include the renewal option period in the determination of appropriate estimated useful lives. Routine expenditures for repairs and maintenance are charged to expense when incurred. Major replacements and improvements are capitalized. Upon retirement or disposition of fixed assets, the cost and related accumulated depreciation are removed from the Consolidated Balance Sheets and any resulting gain or loss is recognized in the Consolidated Statements of Income.

The Company includes in construction in progress improvements to restaurants that are under construction or are undergoing substantial improvements. Once the projects have been completed, the Company begins depreciating and amortizing the assets. Start-up costs incurred during the construction period of restaurants, including rental of premises, training and payroll, are expensed as incurred.

Intangible Assets — Intangible assets consist principally of purchased leasehold rights, operating rights and covenants not to compete. Costs associated with acquiring leases and subleases, principally purchased leasehold rights, and operating rights have been capitalized and are being amortized on the straight-line method based upon

the initial terms of the applicable lease agreements. Covenants not to compete arising from restaurant acquisitions are amortized over the contractual period, typically five years.

Long-lived Assets — Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In the evaluation of the fair value and future benefits of long-lived assets, the Company performs an analysis of the anticipated undiscounted future net cash flows of the related long-lived assets. If the carrying value of the related asset exceeds the undiscounted cash flows, the carrying value is reduced to its fair value. Various factors including estimated future sales growth and estimated profit margins are included in this analysis. Based on this analysis, no impairment charges were warranted at September 29, 2018. See Notes 4 and 10 for information regarding impairment charges for the year ended September 30, 2017.

Goodwill and Trademarks — Goodwill is recorded when the purchase price paid for an acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. Trademarks are considered to have an indefinite life. Goodwill and trademarks are not amortized, but are subject to impairment analysis at least once annually or more frequently upon the occurrence of an event or when circumstances indicate that a reporting unit's carrying amount is greater than its fair value. At September 29, 2018 and September 30, 2017, the Company performed qualitative assessments of factors to determine whether further impairment testing is required. Based on this assessment, no impairment losses were warranted at September 29, 2018 and September 30, 2017 as the fair value of the Company's equity is well in excess of its carrying amount. Qualitative factors considered in this assessment include industry and market considerations, overall financial performance and other relevant events, management expertise and stability at key positions. Additional impairment analyses at future dates may be performed to determine if indicators of impairment are present, and if so, such amount will be determined and the associated charge will be recorded to the Consolidated Statements of Income.

Investments – Each reporting period, the Company reviews its investments in equity and debt securities, except for those classified as trading, to determine whether a significant event or change in circumstances has occurred that may have an adverse effect on the fair value of such investment. When such events or changes occur, the Company evaluates the fair value compared to cost basis in the investment. For investments in non-publicly traded companies, management's assessment of fair value is based on valuation methodologies including discounted cash flows, estimates of sales proceeds, and appraisals, as appropriate. The Company considers the assumptions that it believes hypothetical marketplace participants would use in evaluating estimated future cash flows when employing the discounted cash flow or estimates of sales proceeds valuation methodologies.

In the event the fair value of an investment declines below the Company's cost basis, management is required to determine if the decline in fair value is other than temporary. If management determines the decline is other than temporary, an impairment charge is recorded. Management's assessment as to the nature of a decline in fair value is based on, among other things, the length of time and the extent to which the market value has been less than the cost basis; the financial condition and near-term prospects of the issuer; and the Company's intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery in market value.

Leases — The Company recognizes rent expense on a straight-line basis over the expected lease term, including option periods as described below. Within the provisions of certain leases there are escalations in payments over the base lease term, as well as renewal periods. The effects of the escalations have been reflected in rent expense on a straight-line basis over the expected lease term, which includes option periods when it is deemed to be reasonably assured that the Company would incur an economic penalty for not exercising the option. Tenant allowances are included in the straight-line calculations and are being deferred over the lease term and reflected as a reduction in rent expense. Percentage rent expense is generally based upon sales levels and is expensed as incurred. Certain leases include both base rent and percentage rent. The Company records rent expense on these leases based upon reasonably assured sales levels. The consolidated financial statements reflect the same lease terms for amortizing leasehold improvements as were used in calculating straight-line rent expense for each restaurant. The judgments of the Company may produce materially different amounts of amortization and rent expense than would be reported if different lease terms were used.

- 8 -

Revenue Recognition — Company-owned restaurant sales are comprised almost entirely of food and beverage sales. The Company records revenue at the time of the purchase of products by customers. Included in Other Revenues are purchase service fees which represent commissions earned by a subsidiary of the Company for providing purchasing services to other restaurant groups, as well as license fees, property management fees and other rentals.

The Company offers customers the opportunity to purchase gift certificates. At the time of purchase by the customer, the Company records a gift certificate liability for the face value of the certificate purchased. The Company recognizes the revenue and reduces the gift certificate liability when the certificate is redeemed. The Company does not reduce its recorded liability for potential non-use of purchased gift cards. As of September 29, 2018 and September 30, 2017, the total liability for gift cards in the amounts of approximately \$170,000 and \$158,000, respectively, are included in Accrued Expenses and Other Current Liabilities in the Consolidated Balance Sheets.

Additionally, the Company presents sales tax on a net basis in its consolidated financial statements.

Occupancy Expenses — Occupancy expenses include rent, rent taxes, real estate taxes, insurance and utility costs.

Defined Contribution Plan — The Company offers a defined contribution savings plan (the “Plan”) to all of its full-time employees. Eligible employees may contribute pre-tax amounts to the Plan subject to the Internal Revenue Code limitations. Company contributions to the Plan are at the discretion of the Board of Directors. During the years ended September 29, 2018 and September 30, 2017, the Company did not make any contributions to the Plan.

Income Taxes — Income taxes are accounted for under the asset and liability method whereby deferred tax assets and liabilities are recognized for future tax consequences attributable to the temporary differences between the financial statement carrying amounts of assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company has recorded a liability for unrecognized tax benefits resulting from tax positions taken, or expected to be taken, in an income tax return. It is the Company’s policy to recognize interest and penalties related to uncertain tax positions as a component of income tax expense. Uncertain tax positions are evaluated and adjusted as appropriate, while taking into account the progress of audits of various taxing jurisdictions.

Non-controlling interests relating to the income or loss of consolidated partnerships includes no provision for income taxes as any tax liability related thereto is the responsibility of the individual minority investors.

Income Per Share of Common Stock — Basic net income per share is calculated on the basis of the weighted average number of common shares outstanding during each period. Diluted net income per share reflects the additional dilutive effect of potentially dilutive shares (principally those arising from the assumed exercise of stock options). The dilutive effect of stock options is reflected in diluted earnings per share by application of the treasury stock method. Under the treasury stock method, if the average market price of a share of common stock increases above the option's exercise price, the proceeds that would be assumed to be realized from the exercise of the option would be used to acquire outstanding shares of common stock. The dilutive effect of awards is directly correlated with the fair value of the shares of common stock.

Stock-based Compensation — Stock-based compensation represents the cost related to stock-based awards granted to employees and non-employee directors. The Company measures stock-based compensation at the grant date based on the estimated fair value of the award and recognize the cost (net of estimated forfeitures) as compensation expense on a straight-line basis over the requisite service period. Upon exercise of options, all excess tax benefits and tax deficiencies resulting from the difference between the deduction for tax purposes and the stock-based compensation cost recognized for financial reporting purposes are included as a component of income tax expense.

- 9 -

Recently Adopted Accounting Standards — In March 2016, the Financial Accounting Standard Board (the “FASB”) issued Accounting Standards Update (“ASU”) No. 2016-09, *Compensation – Stock Compensation – Improvements to Employee Share-Based Payment Accounting*, which contains amended guidance for share-based payment accounting. We adopted the provisions of this standard during the first quarter of 2018. Under ASU 2016-09, all excess tax benefits and tax deficiencies resulting from the difference between the deduction for tax purposes and the stock-based compensation cost recognized for financial reporting purposes are included as a component of income tax expense as of October 1, 2017. Prior to the implementation of ASU 2016-09, excess tax benefits were recorded as a component of Additional paid-in capital and tax deficiencies were recognized either as an offset to accumulated excess tax benefits or in the income statement if there were no accumulated excess tax benefits. As a result of the adoption of ASU 2016-09 we have recorded a cumulative effect adjustment as of October 1, 2017 in the amount of \$392,000 and reduced income tax expense by approximately \$135,000 for the year ended September 29, 2018. The ASU clarifies the classification of certain share based payment activities within the statements of cash flows. We have elected to prospectively present the amount of excess tax benefits related to stock compensation as a component of cash flows from operating activities and not adjust prior periods. Additionally, cash payments made to taxing authorities on an employee’s behalf when directly withholding shares for tax-withholding purposes, which were previously included as cash flows from operating activities, are now required to be presented as cash flows from financing activities within the statement of cash flows. Such amounts were not material to our consolidated financial statements.

New Accounting Standards Not Yet Adopted — In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers*. The guidance provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. The guidance also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. This update is effective for the Company in the first quarter of fiscal 2019, which is when we plan to adopt these provisions. This update permits the use of either the retrospective or cumulative effect transition method, however we have not yet selected a transition method. Upon initial evaluation, we do not believe this guidance will have a significant impact on our recognition of revenue from company-owned restaurants, which is our primary source of revenue. We are continuing to evaluate the effect this guidance will have on other, less significant revenue sources, including catering revenues. The Company continues to monitor additional changes, modifications, clarifications or interpretations being undertaken by the FASB, which may, in conjunction with the completion of the Company’s overall assessment of the new guidance, impact the Company’s current conclusions.

In January 2016, FASB issued ASU No. 2016-01, *Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities*. The guidance will require equity investments in unconsolidated entities (other than those accounted for using the equity method of accounting) to be measured at fair value with changes in fair value recognized in net income. The amendments in this update will also simplify the impairment assessment of equity investments without readily determinable fair values by requiring a qualitative assessment to identify impairment, eliminate the requirement for public business entities to disclose the method and significant assumptions used to estimate the fair value that is required to be disclosed for financial instruments measured at amortized cost on the balance sheet and require these entities to use the exit price notion when measuring fair value of financial instruments for disclosure purposes. This guidance also changes the presentation and disclosure requirements for financial instruments as well as clarifying the guidance related to valuation allowance assessments when recognizing deferred tax assets resulting from unrealized losses on available-for-sale debt securities. The amendments in this guidance are effective for the Company in the first quarter of fiscal 2019. Early adoption is permitted for financial statements of fiscal years and interim periods that have not been issued. The Company is currently assessing the potential impact of this guidance on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases*. This update requires a lessee to recognize on the balance sheet a liability to make lease payments and a corresponding right-of-use asset. The guidance also requires certain qualitative and quantitative disclosures about the amount, timing and uncertainty of cash flows arising from leases. This update is effective for the Company in the first quarter of fiscal 2020, which is when we plan to adopt these provisions. We plan to elect the available practical expedients on adoption and we expect our balance sheet presentation to be materially impacted upon adoption due to the recognition of right-of-use assets

- 10 -

and lease liabilities for operating leases. We are continuing to evaluate the effect this guidance will have on our consolidated financial statements and related disclosures.

In August 2016, FASB issued ASU No. 2016-15, *Classification of Certain Cash Receipts and Cash Payments*. This update provides clarification regarding how certain cash receipts and cash payments are presented and classified in the statement of cash flows and addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice. This update is effective for annual and interim periods beginning after December 15, 2017, which will require us to adopt these provisions in the first quarter of fiscal 2019 using a retrospective approach. Early adoption is permitted. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes: Intra-Entity Transfers of Assets Other than Inventory*. The amendments in this guidance address the income tax consequences of intra-entity transfers of assets other than inventory. Current guidance prohibits the recognition of current and deferred income taxes for an intra-entity asset transfer until the asset has been sold to an outside party. In addition, interpretations of this guidance have developed in practice over the years for transfers of certain intangible and tangible assets. The amendments in the update will require recognition of current and deferred income taxes resulting from an intra-entity transfer of an asset other than inventory when the transfer occurs. This update is effective for us in the first quarter of fiscal 2019, which is when we plan to adopt these provisions using a modified retrospective approach. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-01, *Business Combinations: Clarifying the Definition of a Business*. This update provides that when substantially all the fair value of the assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets, the set is not a business. This update will be effective for the Company in the first quarter of 2019. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles-Goodwill and Other: Simplifying the Test for Goodwill Impairment*. The update simplifies how an entity is required to test goodwill for impairment by eliminating Step 2 from the goodwill impairment test. Step 2 measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount. The new rules will be effective for the Company in the first quarter of 2021. The Company is currently evaluating the potential impact adoption of this guidance on its consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-16 *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which provides guidance for the accounting for implementation costs of hosting arrangements that are considered service contracts. This pronouncement is effective for annual periods beginning after December 15, 2020 and interim periods within annual periods after December 15, 2021. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements. .

2. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

The Company consolidates any variable interest entities in which it holds a variable interest and is the primary beneficiary. Generally, a variable interest entity, or VIE, is an entity with one or more of the following characteristics: (a) the total equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support; (b) as a group the holders of the equity investment at risk lack (i) the ability to make decisions about an entity's activities through voting or similar rights, (ii) the obligation to absorb the expected losses of the entity, or (iii) the right to receive the expected residual returns of the entity; or (c) the equity investors have voting rights that are not proportional to their economic interests and substantially all of the entity's activities either involve, or are conducted on behalf of, an investor that has disproportionately few voting rights. The primary beneficiary of a VIE is generally the entity that has (a) the power to direct the activities of the VIE that most significantly impact the VIE's economic performance, and (b) the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE.

- 11 -

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

The Company has determined that it is the primary beneficiary of three VIEs and, accordingly, consolidates the financial results of these entities. Following are the required disclosures associated with the Company's consolidated VIEs:

| | September 29, 2018 | September 30, 2017 |
|---|--------------------------|--------------------------|
| | (in thousands) | |
| Cash and cash equivalents | \$ 181 | \$ 363 |
| Accounts receivable | 354 | 367 |
| Inventories | 19 | 22 |
| Prepaid and refundable income taxes | 241 | 226 |
| Prepaid expenses and other current assets | 51 | 63 |
| Due from Ark Restaurants Corp. and affiliates (1) | 338 | 534 |
| Fixed assets - net | - | 6 |
| Other assets | 82 | 71 |
| Total assets | \$ 1,266 | \$ 1,652 |
| Accounts payable - trade | \$ 158 | \$ 116 |
| Accrued expenses and other current liabilities | 348 | 260 |
| Operating lease deferred credit | (21) | 51 |
| Total liabilities | 485 | 427 |
| Equity of variable interest entities | 781 | 1,225 |
| Total liabilities and equity | \$ 1,266 | \$ 1,652 |

(1) Amounts due from Ark Restaurants Corp. and affiliates are eliminated upon consolidation.

The liabilities recognized as a result of consolidating these VIEs do not represent additional claims on the Company's general assets; rather, they represent claims against the specific assets of the consolidated VIEs. Conversely, assets recognized as a result of consolidating these VIEs do not represent additional assets that could be used to satisfy claims against the Company's general assets.

3. RECENT RESTAURANT EXPANSION

On November 30, 2016, the Company, through newly formed, wholly-owned subsidiaries, acquired the assets of the *Original Oyster House, Inc.*, a restaurant and bar located in the City of Gulf Shores, Baldwin County, Alabama and the related real estate and an adjacent retail shopping plaza and the *Original Oyster House II, Inc.*, a restaurant and bar located in the City of Spanish Fort, Baldwin County, Alabama and the related real estate. The total purchase price was for \$10,750,000 plus inventory of approximately \$293,000. The acquisition is accounted for as a business combination and was financed with a bank loan from the Company's existing lender in the amount of \$8,000,000 and cash from operations. The fair values of the assets acquired, none of which are amortizable, were allocated as follows (amounts in thousands):

| | |
|-----------------------------------|----------|
| Inventory | \$293 |
| Land and buildings | 6,650 |
| Furniture, fixtures and equipment | 395 |
| Trademarks | 1,720 |
| Goodwill | 1,985 |
| | \$11,043 |

- 12 -

The Consolidated Statement of Income for the year ended September 30, 2017 includes revenues and pre-tax income of approximately \$11,804,000 and \$1,243,000, respectively, related to the *Oyster House* properties. The unaudited pro forma financial information set forth below is based upon the Company's historical Consolidated Statements of Income for the year ended September 30, 2017 and includes the results of operations for the *Oyster House* properties for the periods prior to acquisition. The unaudited pro forma financial information is presented for informational purposes only and may not be indicative of what actual results of operations would have been had the acquisition of the *Oyster House* properties occurred on the dates indicated, nor does it purport to represent the results of operations for future periods.

| | Year Ended September 30, 2017 (unaudited) |
|--------------------------------|--|
| Total revenues | \$ 155,690 |
| Net income | \$ 4,246 |
| Net income per share - basic | \$ 1.24 |
| Net income per share - diluted | \$ 1.20 |
| Basic | 3,424 |
| Diluted | 3,531 |

4. RECENT RESTAURANT DISPOSITIONS

Lease Expirations – The Company was advised by the landlord that it would have to vacate *The Grill at Two Trees* property at the Foxwoods Resort and Casino in Ledyard, CT, which had a no rent lease. The closure of this property occurred on January 1, 2017 and did not result in a material charge.

Other – On November 18, 2016, Ark Jupiter RI, LLC (“Ark Jupiter”), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the “ROFR”) with SCFRC-HWG, LLC, the landlord (the “Seller”) to purchase the land and building in which the Company operated its *Rustic Inn* location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter’s lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June 2017. In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

The Company transferred its lease and the related assets of *Canyon Road* located in New York, NY to a former employee. In connection with this transfer, the Company recognized an impairment loss included in depreciation and amortization expense in the amount of \$75,000 for the year ended September 30, 2017.

5. INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC (“NMR”) through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR with a 63.7% ownership interest. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR and on February 7, 2017, the

- 13 -

Company invested an additional \$222,000 in NMR, both as a result of capital calls, bringing its total investment to \$5,108,000 with no change in ownership. This investment has been accounted for based on the cost method.

In addition to the Company's ownership interest in NMR through Meadowlands Newmark, LLC, if casino gaming is approved at the Meadowlands and NMR is granted the right to conduct said gaming, neither of which can be assured, the Company shall be granted the exclusive right to operate the food and beverage concessions in the gaming facility with the exception of one restaurant.

In conjunction with this investment, the Company, through a 97% owned subsidiary, Ark Meadowlands LLC ("AM VIE"), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the "Racing F&B Concessions") located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year. We have determined that AM VIE is a variable interest entity. However, based on qualitative consideration of the contracts with AM VIE, the operating structure of AM VIE, the Company's role with AM VIE, and that the Company is not obligated to absorb any expected losses of AM VIE, the Company has concluded that it is not the primary beneficiary and not required to consolidate the operations of AM VIE.

The Company's maximum exposure to loss as a result of its involvement with AM VIE is limited to a receivable from AM VIE's primary beneficiary (NMR, a related party) which aggregated approximately \$0 and \$9,000 at September 29, 2018 and September 30, 2017, respectively, and are included in Prepaid Expenses and Other Current Assets in the Consolidated Balance Sheets.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan discussed above. The principal and accrued interest related to this note in the amounts of \$1,928,000 and \$1,871,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the Consolidated Balance Sheets at September 29, 2018 and September 30, 2017, respectively.

In accordance with the cost method, our initial investment is recorded at cost and we record dividend income when applicable, if dividends are declared. We review our Investment in NMR each reporting period to determine whether a significant event or change in circumstances has occurred that may have an adverse effect on its fair value, such as the defeat of the referendum for casino gaming in Northern New Jersey in November 2016. No events or changes in circumstances have occurred during the year ended September 29, 2018 that have had a significant adverse effect on the fair value our Investment in NMR. As a result of the above, no impairment was deemed necessary as of September 29, 2018.

6.

FIXED ASSETS

Fixed assets consist of the following:

| | September 29, 2018 | September 30, 2017 |
|---|-----------------------|-----------------------|
| | (In thousands) | |
| Land and building | \$ 18,029 | \$ 17,164 |
| Leasehold improvements | 53,310 | 50,127 |
| Furniture, fixtures and equipment | 37,910 | 35,978 |
| Construction in progress | 59 | 980 |
| | 109,308 | 104,249 |
| Less: accumulated depreciation and amortization | 64,044 | 59,034 |
| | \$45,264 | \$ 45,215 |

Depreciation and amortization expense related to fixed assets for the years ended September 29, 2018 and September 30, 2017 was \$5,014,000 and \$4,096,000, respectively.

Management continually evaluates unfavorable cash flows, if any, related to underperforming restaurants. Periodically it is concluded that certain properties have become impaired based on their existing and anticipated future economic outlook in their respective markets. In such instances, we may impair assets to reduce their carrying values to fair values. Estimated fair values of impaired properties are based on comparable valuations, cash flows and/or management judgment. Included in 2017 are impairment charges of \$75,000 related to *Canyon Road* (see Note 4), \$45,000 related to *Branches*, which is included in other operating costs and expenses, and \$283,000 related to *Sequoia* (see Note 10).

7.

INTANGIBLE ASSETS, GOODWILL AND TRADEMARKS

Intangible assets consist of the following:

| | September 29, 2018 | September 30, 2017 |
|---------------------------------|-----------------------|-----------------------|
| | (In thousands) | |
| Purchased leasehold rights (a) | \$ 2,395 | \$ 2,395 |
| Noncompete agreements and other | 253 | 253 |
| | 2,648 | 2,648 |

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

| | | |
|-------------------------------|-------|--------|
| Less accumulated amortization | 2,299 | 2,239 |
| Total intangible assets | \$349 | \$ 409 |

(a) Purchased leasehold rights arose from acquiring leases and subleases of various restaurants.

Amortization expense related to intangible assets for the years ended September 29, 2018 and September 30, 2017 was \$60,000 and \$42,000, respectively. Amortization expense for each of the next five years is expected to be \$38,000.

Goodwill is the excess of cost over fair market value of tangible and intangible net assets acquired. Goodwill is not presently amortized but tested for impairment annually or when the facts or circumstances indicate a possible impairment of goodwill as a result of a continual decline in performance or as a result of fundamental changes in

- 15 -

a market. Trademarks, which have indefinite lives, are not currently amortized and are tested for impairment annually or when facts or circumstances indicate a possible impairment as a result of a continual decline in performance or as a result of fundamental changes in a market.

The changes in the carrying amount of goodwill and trademarks for the years ended September 29, 2018 and September 30, 2017 are as follows:

| | Goodwill | Trademarks |
|----------------------------------|----------------|------------|
| | (In thousands) | |
| Balance as of October 1, 2016 | \$7,895 | \$ 1,611 |
| Acquired during the year | 1,985 | 1,720 |
| Impairment losses | - | - |
| Balance as of September 30, 2017 | 9,880 | 3,331 |
| Acquired during the year | - | - |
| Impairment losses | - | - |
| Balance as of September 29, 2018 | \$9,880 | \$ 3,331 |

8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

| | September 29, 2018 | September 30, 2017 |
|--|-----------------------|-----------------------|
| | (In thousands) | |
| Sales tax payable | \$820 | \$ 813 |
| Accrued wages and payroll related costs | 3,226 | 2,475 |
| Customer advance deposits | 4,439 | 4,186 |
| Accrued occupancy and other operating expenses | 2,217 | 2,702 |
| | \$10,702 | \$ 10,176 |

Long-term debt consists of the following:

| | September 29, 2018 | September 30, 2017 |
|--|-----------------------|-----------------------|
| | (In thousands) | |
| Promissory Note - Rustic Inn purchase | \$4,327 | \$ 2,290 |
| Promissory Note - Shuckers purchase | 5,015 | 3,083 |
| Promissory Note - Oyster House purchase | 5,346 | 6,667 |
| Credit Facility | 6,568 | 6,198 |
| | 21,256 | 18,238 |
| Less: Current maturities | (1,251) | (10,372) |
| Less: Unamortized deferred financing costs | (145) | (42) |
| Long-term debt | \$19,860 | \$ 7,824 |

On June 1, 2018, the Company refinanced its then existing indebtedness with its current lender, Bank Hapoalim B.M. (“BHBM”), by entering into an amended and restated credit agreement (the “New Revolving Facility”), which expires on May 31, 2021. The New Revolving Facility provides for total availability of the lesser of (i) \$10,000,000 and (ii) \$25,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM. Borrowings under the New Revolving Facility are payable upon maturity of the New Revolving Facility with interest payable monthly at LIBOR plus 3.25%, subject to adjustment based on certain ratios. As of September 29, 2018 and September 30, 2017, borrowings of \$6,568,000 and \$6,198,000, respectively, were outstanding under the Revolving Facility and had a weighted average interest rate of 5.4% and 4.7%, respectively.

In connection with the refinancing, the Company also amended the principal amounts and payment terms of its outstanding term notes with BHBM as follows:

Promissory Note – Rustic Inn purchase – On February 25, 2013, the Company issued a promissory note to BHBM for \$3,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 36 equal monthly installments of \$83,333, commencing on March 25, 2013. On February 24, 2014, in connection with the acquisition of *The Rustic Inn*, the Company borrowed an additional \$6,000,000 from BHBM under the same terms and conditions as the original loan which was consolidated with the remaining principal balance from the original borrowing at that date. The new loan was payable in 60 equal monthly installments of \$134,722, which commenced on March 25, 2014. In connection with the above refinancing, this note was amended and restated and increased by \$2,783,333 of credit facility borrowings. The new principal amount of \$4,400,000, which is secured by a mortgage on *The Rustic Inn* real estate, is payable in 27 equal quarterly installments of \$73,334, which commenced on September 1, 2018, with a balloon payment of \$2,419,990 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.

Promissory Note – Shuckers purchase – On October 22, 2015, in connection with the acquisition of *Shuckers*, the Company issued a promissory note to BHBM for \$5,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$83,333, commencing on November 22, 2015. In connection with the above refinancing, this note was amended and restated and increased by \$2,433,324 of credit facility borrowings. The new principal amount of \$5,100,000, which is secured by a mortgage on the *Shuckers* real estate, is payable in 27 equal quarterly installments of \$85,000, which commenced on September 1, 2018, with a balloon payment of \$2,804,988 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.

- 17 -

Promissory Note – Oyster House purchase – On November 30, 2016, in connection with the acquisition of the *Oyster House* properties, the Company issued a promissory note under the Revolving Facility to BIBM for \$8,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$133,273, commencing on January 1, 2017. In connection with the above refinancing, this note was amended and restated and separated into two notes. The first note, in the principal amount of \$3,300,000, is secured by a mortgage on the *Oyster House Gulf Shores* real estate, is payable in 19 equal quarterly installments of \$117,854, which commenced on September 1, 2018, with a balloon payment of \$1,060,717 on June 1, 2023 and bears interest at LIBOR plus 3.5% per annum. The second note, in the principal amount of \$2,200,000, is secured by a mortgage on the *Oyster House Spanish Fort* real estate, is payable in 27 equal quarterly installments of \$36,667, which commenced on September 1, 2018, with a balloon payment of \$1,209,995 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.

Deferred financing costs incurred in connection with the Revolving Facility in the amount of \$125,000 are being amortized over the life of the agreements on a straight-line basis and included in interest expense. Amortization expense was \$21,000 and \$46,000 for the years ended September 29, 2018 and September 30, 2017, respectively.

Borrowings under the Revolving Facility, which include all of the above promissory notes, are secured by all tangible and intangible personal property (including accounts receivable, inventory, equipment, general intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, intellectual property and deposit accounts) and fixtures of the Company.

The loan agreements provide, among other things, that the Company meet minimum quarterly tangible net worth amounts, as defined, maintain a fixed charge coverage ratio of not less than 1.1:1 and minimum annual net income amounts, and contain customary representations, warranties and affirmative covenants. The agreements also contain customary negative covenants, subject to negotiated exceptions, on liens, relating to other indebtedness, capital expenditures, liens, affiliate transactions, disposal of assets and certain changes in ownership. The Company was in compliance with all of its financial covenants under the Revolving Facility as of September 29, 2018.

As of September 29, 2018, the aggregate amounts of notes payable maturities are as follows:

| | | |
|------|----|-------|
| 2019 | \$ | 1,251 |
| 2020 | | 1,251 |
| 2021 | | 1,251 |
| 2022 | | 1,251 |
| 2023 | | 2,076 |

10.

COMMITMENTS AND CONTINGENCIES

Leases — The Company leases its restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2033. Most of the leases provide for the payment of base rents plus real

estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of the restaurants' sales in excess of stipulated amounts at such facility and in one instance based on profits.

- 18 -

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

As of September 29, 2018, future minimum lease payments under noncancelable leases are as follows:

| Fiscal Year | Amount (In thousands) |
|------------------------|-----------------------------|
| 2019 | \$ 9,529 |
| 2020 | 9,041 |
| 2021 | 7,993 |
| 2022 | 7,496 |
| 2023 | 6,759 |
| Thereafter | 31,578 |
| Total minimum payments | \$ 72,396 |

In connection with certain of the leases included in the table above, the Company obtained and delivered irrevocable letters of credit in the aggregate amount of approximately \$388,000 as security deposits under such leases.

Rent expense was approximately \$14,649,000 and \$13,547,000 for the fiscal years ended September 29, 2018 and September 30, 2017, respectively. Contingent rentals, included in rent expense, were approximately \$5,454,000 and \$4,420,000 for the fiscal years ended September 29, 2018 and September 30, 2017, respectively.

On January 12, 2016, the Company entered into an Amended and Restated Lease for its Sequoia property in Washington D.C. extending the lease for 15 years through November 30, 2032 with one additional five-year option. Annual rent under the new lease is approximately \$1,200,000 increasing annually through expiration. Under the terms of the agreement, the property was closed January 1, 2017 for renovation and reconcepting which cost approximately \$11,000,000. In connection with this closure, the Company recognized an impairment loss related to fixed asset disposals in the amount of \$283,000, which is included in depreciation and amortization expense for the year ended September 30, 2017. The restaurant re-opened in June 2017.

Legal Proceedings — In the ordinary course its business, the Company is a party to various lawsuits arising from accidents at its restaurants and workers' compensation claims, which are generally handled by the Company's insurance carriers. The employment by the Company of management personnel, waiters, waitresses and kitchen staff at a number of different restaurants has resulted in the institution, from time to time, of litigation alleging violation by the Company of employment discrimination laws. Management believes, based in part on the advice of counsel, that the ultimate resolution of these matters will not have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

The Company's defined contribution savings plan is currently under examination by the United States Department of Labor. The Company does not expect a material liability to result from this examination.

11.

STOCK OPTIONS

The Company has options outstanding under two stock option plans, the 2010 Stock Option Plan (the “2010 Plan”) and the 2016 Stock Option Plan (the “2016 Plan”). Options granted under both plans are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted and expire ten years after the date of grant.

On August 10, 2018, options to purchase 5,000 shares of common stock were granted at an exercise price of \$20.36 per share and on September 4, 2018 options to purchase 20,000 shares of common stock were granted at an exercise price of \$22.30 per share. Both grants are exercisable as to 50% of the shares commencing on the date of grant and as to an additional 50% commencing on the first anniversary of the date of grant. Such options had an aggregate grant date fair value of approximately \$94,000. The Company did not grant any options during the fiscal year 2017. The Company generally issues new shares upon the exercise of employee stock options.

- 19 -

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of the Company's stock, the expected life of the options and the risk free interest rate. The assumptions used for the 2018 grant include a risk free interest rates of 2.87% - 2.90%, volatility of 30.7%, a dividend yield of 5.6% and an expected life of 10 years.

During the year ended September 29, 2018, options to purchase 26,050 shares of common stock at a weighted average price of \$18.60 per share expired unexercised or were forfeited. During the year ended September 30, 2017, options to purchase 90,000 shares of common stock at an exercise price of \$32.15 per share expired unexercised. No options were granted during the year ended September 30, 2017. The following table summarizes stock option activity under all plans:

| | 2018 | | | 2017 | | | |
|---|-----------|---------------------------------|-----------------------------------|---------------------------|-----------|---------------------------------|---------------------------|
| | Shares | Weighted Average Exercise Price | Weighted Average Contractual Term | Aggregate Intrinsic Value | Shares | Weighted Average Exercise Price | Aggregate Intrinsic Value |
| Outstanding, beginning of period | 421,800 | \$ 17.86 | 5.2 Years | | 518,608 | \$ 20.29 | |
| Options: | | | | | | | |
| Granted | 25,000 | \$ 21.91 | | | - | | |
| Exercised | (42,000) | \$ 14.39 | | | (6,808) | \$ 17.15 | |
| Canceled or expired | (26,050) | \$ 18.60 | | | (90,000) | \$ 32.15 | |
| Outstanding and expected to vest, end of period | 378,750 | \$ 18.46 | 4.8 Years | \$ 1,824,400 | 421,800 | \$ 17.86 | \$ 2,745,156 |
| Exercisable, end of period | 366,250 | \$ 18.35 | 4.6 Years | \$ 1,807,300 | 421,800 | \$ 17.86 | \$ 2,745,156 |
| Shares available for future grant | 475,000 | | | | 500,000 | | |

Compensation cost charged to operations for the fiscal years ended September 29, 2018 and September 30, 2017 for share-based compensation programs was approximately \$47,000 and \$0, respectively. The compensation cost recognized is classified as a general and administrative expense in the Consolidated Statements of Income.

As of September 29, 2018, there was approximately \$47,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of one year.

The following table summarizes information about stock options outstanding as of September 29, 2018:

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

| Range of Exercise Prices | Options Outstanding | | | Options Exercisable | | |
|--------------------------|---------------------|---------------------------------|--|---------------------|---------------------------------|--|
| | Number of Shares | Weighted Average Exercise Price | Weighted Average Remaining contractual life (in years) | Number of Shares | Weighted Average Exercise Price | Weighted Average Remaining contractual life (in years) |
| \$12.04 | 35,000 | \$ 12.04 | 0.6 | 35,000 | \$ 12.04 | 0.6 |
| \$14.40 | 141,750 | \$ 14.40 | 3.7 | 141,750 | \$ 14.40 | 3.7 |
| \$22.50 | 177,000 | \$ 22.50 | 5.7 | 177,000 | \$ 22.50 | 5.7 |
| \$20.26 - \$22.30 | 25,000 | \$ 21.91 | 9.9 | 12,500 | \$ 21.91 | 9.9 |
| | 378,750 | \$ 18.46 | 4.8 | 366,250 | \$ 18.35 | 4.6 |

- 20 -

The Company also maintains a Section 162(m) Cash Bonus Plan. Under the Section 162(m) Cash Bonus Plan, compensation paid in excess of \$1,000,000 to any employee who is the chief executive officer, or one of the three highest paid executive officers on the last day of that tax year (other than the chief executive officer or the chief financial officer) will meet certain “performance-based” requirements of Section 162(m) and the related IRS regulations in order for it to be tax deductible.

12.

INCOME TAXES

On December 22, 2017 the U.S. government enacted comprehensive tax reform commonly referred to as the Tax Cuts and Jobs Act (“TCJA”). Under Accounting Standards Codification (“ASC”) 740, the effects of changes in tax rates and laws are recognized in the period which the new legislation is enacted. The TCJA makes broad and complex changes to the U.S. tax code, including, but not limited to: (1) reducing the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018; (2) changing rules related to uses and limitations of net operating loss carryforwards created in tax years beginning after December 31, 2017; (3) accelerated expensing on certain qualified property; (4) creating a new limitation on deductible interest expense to 30% of tax adjusted EBITDA through 2021 and then 30% of tax adjusted EBIT thereafter; (5) eliminating the corporate alternative minimum tax; and (6) further limitations on the deductibility of executive compensation under IRC §162(m) for tax years beginning after December 31, 2017. As the reduction in the U.S. federal corporate tax rate is administratively effective on January 1, 2018, our blended U.S. federal tax rate for the year ended September 29, 2018 was approximately 24%.

In response to the TCJA, the U.S. Securities and Exchange Commission (“SEC”) staff issued Staff Accounting Bulletin No. 118 (“SAB 118”), which provides guidance on accounting for the tax effects of TCJA. The purpose of SAB 118 was to address any uncertainty or diversity of view in applying ASC Topic 740, Income Taxes in the reporting period in which the TCJA was enacted. SAB 118 addresses situations where the accounting is incomplete for certain income tax effects of the TJCA upon issuance of a company’s financial statements for the reporting period which include the enactment date. SAB 118 allows for a provisional amount to be recorded if it is a reasonable estimate of the impact of the TCJA. Additionally, SAB 118 allows for a measurement period to finalize the impacts of the TCJA, not to extend beyond one year from the date of enactment.

In connection with the TCJA, the Company recorded an income tax benefit of \$1,382,000 related to the re-measurement of our deferred tax assets and liabilities for the reduced U.S. federal corporate tax rate of 21%. The Company’s accounting for the TCJA is complete as of September 29, 2018 with no significant differences from our provisional estimates recorded during interim periods.

The provision for income taxes consists of the following:

| Year Ended | |
|--------------------|--------------------|
| September 29, 2018 | September 30, 2017 |

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

(In thousands)

Current provision (benefit):

| | | |
|-----------------|------|-----------|
| Federal | \$30 | \$ (144) |
| State and local | 320 | 287 |
| | 350 | 143 |

Deferred provision (benefit):

| | | |
|-----------------|---------|-------|
| Federal | (798) | 1,391 |
| State and local | (699) | 134 |
| | (1,497) | 1,525 |

\$(1,147) \$ 1,668

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

The effective tax rate differs from the U.S. income tax rate as follows:

| | Year Ended | |
|---|--------------------|--------------------|
| | September 29, 2018 | September 30, 2017 |
| | (In thousands) | |
| Provision at Federal statutory rate (24% in 2018 and 34% in 2017) | \$953 | \$ 2,185 |
| State and local income taxes, net of tax benefits | - | 255 |
| Tax credits | (789) | (632) |
| Income attributable to non-controlling interest | (102) | (244) |
| Changes in tax rates | 181 | 8 |
| Impact of Federal tax reform | (1,382) | - |
| Change in valuation allowance | (43) | - |
| Other | 35 | 96 |
| | \$(1,147) | \$ 1,668 |

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting and tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

| | September 29, 2018 | | September 30, 2017 | |
|---|--------------------|----------|--------------------|--|
| | (In thousands) | | | |
| Deferred tax assets: | | | | |
| State net operating loss carryforwards | \$4,141 | \$ 3,210 | | |
| Operating lease deferred credits | 513 | 826 | | |
| Deferred compensation | 364 | 580 | | |
| Tax credits | 802 | - | | |
| Other | 98 | 99 | | |
| Deferred tax assets, before valuation allowance | 5,918 | 4,715 | | |
| Valuation allowance | (311) | (354) | | |
| Deferred tax assets, net of valuation allowance | 5,607 | 4,361 | | |
| Deferred tax liabilities: | | | | |
| Depreciation and amortization | (2,080) | (2,160) | | |
| Partnership investments | (329) | (291) | | |
| Prepaid expenses | (210) | (419) | | |
| Deferred tax liabilities | (2,619) | (2,870) | | |

| | | |
|---------------------------------------|---------|----------|
| Net deferred tax assets (liabilities) | \$2,988 | \$ 1,491 |
|---------------------------------------|---------|----------|

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including recent operating profitability, forecasts of future earnings and

- 22 -

the duration of statutory carryforward periods. The Company recorded a valuation allowance of \$311,000 and \$354,000 as of September 29, 2018 and September 30, 2017, respectively; attributable to state and local net operating loss carryforwards which are not realizable on a more-likely-than-not basis. During fiscal 2018, the Company's valuation allowance decreased by approximately \$43,000 as the Company determined that certain state net operating losses became realizable on a more-likely-than-not basis.

As of September 29, 2018, the Company had General Business Credit carryforwards of approximately \$802,000 which expires in fiscal 2038. In addition, the Company has New York State net operating losses of approximately \$21,544,000 and New York City net operating loss carryforwards of approximately \$19,963,000 that expire through fiscal 2038.

During fiscal 2017, certain equity compensation awards expired unexercised. As such, the Company reversed the related deferred tax asset in the amount of approximately \$389,000 as a charge to Additional Paid-in Capital as there was a sufficient pool of windfall tax benefit available.

A reconciliation of the beginning and ending amount of unrecognized tax benefits excluding interest and penalties is as follows:

| | September 29, 2018 | September 30, 2017 |
|---|--------------------------|--------------------------|
| | (In thousands) | |
| Balance at beginning of year | \$ 152 | \$ 367 |
| Additions based on tax positions taken in current and prior years | 125 | 15 |
| Settlements | (167) | (134) |
| Decreases based on tax postions taken in prior years | - | (96) |
| Balance at end of year | \$ 110 | \$ 152 |

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. As of September 29, 2018, the Company accrued approximately \$66,000 of interest and penalties as a component of income tax expense. The Company expects that its unrecognized tax benefits will further decline over the next 12 months to the anticipated resolution of various tax examinations.

The Company files tax returns in the U.S. and various state and local jurisdictions with varying statutes of limitations. The 2015 through 2018 fiscal years remain subject to examination by the Internal Revenue Service and most state and local tax authorities.

13. INCOME PER SHARE OF COMMON STOCK

Basic earnings per share is computed by dividing net income attributable to Ark Restaurants Corp. by the weighted-average number of common shares outstanding for the period. Our diluted earnings per share is computed similarly to basic earnings per share, except that it reflects the effect of common shares issuable upon exercise of stock options, using the treasury stock method in periods in which they have a dilutive effect.

- 23 -

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

A reconciliation of the numerators and denominators of the basic and diluted per share computations for the fiscal years ended September 29, 2018 and September 30, 2017 follows:

| | Net Income Attributable to Ark Restaurants Corp. (Numerator) (In thousands, except per share amounts) | Weighted-Average Number of Shares (Denominator) | Earnings Per Share Amount |
|--------------------------------|---|--|------------------------------------|
| Year ended September 29, 2018 | | | |
| Basic | \$4,655 | 3,439 | \$ 1.35 |
| Effect of dilutive securities: | | | |
| Stock options | - | 110 | (0.04) |
| Diluted | \$4,655 | \$ 3,549 | \$ 1.31 |
| Year ended September 30, 2017 | | | |
| Basic | \$4,039 | 3,424 | \$ 1.18 |
| Effect of dilutive securities: | | | |
| Stock options | - | 107 | (0.04) |
| Diluted | \$4,039 | 3,531 | \$ 1.14 |

14. RELATED PARTY TRANSACTIONS

Employee receivables totaled approximately \$386,000 and \$399,000 at September 29, 2018 and September 30, 2017, respectively. Such amounts consist of loans that are payable on demand and bear interest at the minimum statutory rate (1.63% at September 29, 2018 and 1.29% at September 30, 2017).

Prior to joining the Company on September 4, 2018, the Chief Financial Officer was a member of a firm that provided consulting services to the Company. Total fees billed by this firm were \$303,000 and \$178,000 for the years ended September 29, 2018 and September 30, 2017, respectively. The Company ceased utilizing the services of this firm upon hiring of the Chief Financial Officer.

15. SUBSEQUENT EVENTS

On October 12, 2018, the Company filed a registration statement on Form S-8 to register the 500,000 shares of common stock under the Company's 2016 Plan.

On December 3, 2018, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on January 3, 2019 to shareholders of record at the close of business on December 18, 2018.

- 24 -

Signatures

Pursuant to the requirements of Section 13 or 15(d) 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.

ARK RESTAURANTS
CORP.

By: /s/ Michael Weinstein
Michael Weinstein
Chairman of the Board
and Chief Executive
Officer
(Principal Executive
Officer)

Date: December 20, 2018

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been duly signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|--|---|-------------------|
| /s/ Michael Weinstein (Michael Weinstein) | Chairman of the Board and Chief Executive Officer | December 20, 2018 |
| /s/ Vincent Pascal (Vincent Pascal) | Senior Vice President and Director | December 20, 2018 |
| /s/ Anthony J. Sirica (Anthony J. Sirica) | Chief Financial Officer and Director (Principal Financial and Accounting Officer) | December 20, 2018 |
| /s/ Marcia Allen (Marcia Allen) | Director | December 20, 2018 |
| /s/ Steven Shulman (Steven Shulman) | Director | December 20, 2018 |

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

| | | |
|--|---------------------------------------|----------------------|
| /s/ Paul Gordon (Paul Gordon) | Senior Vice President and Director | December 20, 2018 |
| /s/Bruce R. Lewin (Bruce R. Lewin) | Director | December 20, 2018 |
| /s/ Arthur Stainman (Arthur Stainman) | Director | December 20, 2018 |
| /s/ Stephen Novick (Stephen Novick) | Director | December 20, 2018 |

Exhibits Index

- 3.1 Certificate of Incorporation of the Registrant, filed with the Secretary of State of the State of New York on January 4, 1983.
- 3.2 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on October 11, 1985.
- 3.3 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on July 21, 1988.
- 3.4 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on May 13, 1997.
- 3.5 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed on April 24, 2002 incorporated by reference to Exhibit 3.5 to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 30, 2002 (the "Second Quarter 2002 Form 10-Q").
- 3.6 By-Laws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-18 filed with the Securities and Exchange Commission on October 17, 1985.
- 10.1 Amended and Restated Redemption Agreement dated June 29, 1993 between the Registrant and Michael Weinstein, incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999 ("1994 10-K").
- 10.2 Form of Indemnification Agreement entered into between the Registrant and each of Michael Weinstein, Ernest Bogen, Vincent Pascal, Robert Towers, Jay Galin, Robert Stewart, Bruce R. Lewin, Paul Gordon and Donald D. Shack, incorporated by reference to Exhibit 10.2 to the 1994 10-K.
- 10.3 Ark Restaurants Corp. 2004 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on January 26, 2004.
- 10.4 Ark Restaurants Corp. 2010 Stock Option Plan, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on February 1, 2010.
- 10.5 Securities Purchase Agreement, by and between the Registrant and Estate of Irving Hershkowitz, incorporated by reference to Exhibit 10.01 to the Registrant's Current Report on Form 8-K filed on December 15, 2011.
- 10.6 Promissory Note, in the principal amount of \$2,125,000, issued by the Company to Estate of Irving Hershkowitz, incorporated by reference to Exhibit 10.02 to the Registrant's Current Report on Form 8-K filed on December 15, 2011.
- 10.7 Promissory Note made by the Registrant to Bank Hapoalim B.M., issued as of February 25, 2013, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 1, 2013.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

- 10.8 Asset Purchase Agreement dated as of November 22, 2013 by and between W and O, Inc. and Ark Rustic Inn LLC, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 26, 2013.
- 10.9 Amended and Restated Promissory Note made by the Company to Bank Hapoalim B.M., issued as of February 24, 2014, incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on February 28, 2014.
- 10.10 Term or Installment Loan Rider to Promissory Note to Bank Hapoalim B.M. incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on February 28, 2014.
- 10.11 Commercial Contract Agreement and Rider to Commercial Contract Agreement both dated as of August 10, 2015 by and between Ark Shuckers Real Estate LLC and D.C. Holding Company, Inc., incorporated by reference to Exhibit 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.
- 10.12 Restaurant Asset Purchase Agreement dated as of August 10, 2015 by and between Ark Shuckers LLC and Ocean Enterprises, Inc. incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.
- 10.13 Management Purchase Agreement dated as of August 10, 2015 by and between Ark Island Beach Resort LLC and Island Beach Resort, Inc. incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.
- 10.14 Credit Agreement (Term Facility) between the Company and Bank Hapoalim B.M. issued as of October 21, 2015 incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.
- 10.15 Term Promissory Note issued by the Company in favor of Bank Hapoalim B.M. on October 21, 2015 incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.
- 10.16 Credit Agreement (Revolving Facility) and Form of Revolving Promissory Note between the Company and Bank Hapoalim B.M. issued as of October 21, 2015 incorporated by reference to Exhibit 10.7 and 10.8 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.
- 10.17 Asset Purchase Agreement dated as of October 21, 2016, by and between Ark Gulf Shores Real Estate, LLC, Ark Oyster House Gulf Shores I, LLC, Original Oyster House, Inc. and Premium Properties, Inc. including the Real Estate Purchase and Sale Agreement incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.
- 10.18 Asset Purchase Agreement dated as of October 21, 2016, by and between Ark Oyster House Causeway II, LLC, Ark Causeway Real Estate, LLC, Original Oyster House II, Inc. and Gumbo Properties, L.L.C. including the Real Estate Purchase and Sale Agreement incorporated by reference to Exhibit 2.2 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.
- 10.19 ROFR Purchase and Sale Agreement dated as of October 13, 2016 by and between SCFRC-HWG, LLC and Ark Jupiter RI, LLC incorporated by reference to Exhibit 2.3 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

- 10.20 Purchase and Sale Agreement between Ark Jupiter RI, LLC and 1065 A1A, LLC, incorporated by reference to Exhibit 2.4 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.
- 10.21 Second Amendment to Credit Agreement (Revolving Facility) dated as of November 30, 2016, by and between Ark Restaurant Corp. and Bank Hapoalim B.M incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed on January 27, 2017.
- 10.22 Mortgage and Security Agreement (Alabama) dated as of November 30, 2016, by and between Ark Gulf Shores Real Estate LLC and Ark Causeway Real Estate LLC and Bank Hapoalim B.M incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K/A filed on January 27, 2017.
- *10.23 Amended and Restated Credit Agreement (Revolving Facility) dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M.
- *10.24 Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated October 21, 2015 secured by the assets of Ark Shuckers Real Estate LLC.
- *10.25 Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated February 24, 2014 secured by the assets of Ark Rustic Inn Real Estate LLC.
- *10.26 Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated November 30, 2016 secured by the assets of Ark Gulf Shores Real Estate LLC.
- *10.27 Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated November 30, 2016 secured by the assets of Ark Causeway Real Estate LLC.
- 14 Code of Ethics, incorporated by reference to Exhibit 14.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 27, 2003.
- *21 Subsidiaries of the Registrant.
- *23 Consent of CohnReznick LLP.
- *31.1 Certification of Chief Executive Officer.
- *31.2 Certification of Chief Financial Officer.
- *32 Section 1350 Certification.

101.INS** XBRL Instance Document

101.SCH** XBRL Taxonomy Extension Schema Document

101.CAL** XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF** XBRL Taxonomy Extension Definition Linkbase Document

101.LAB** XBRL Taxonomy Extension Label Linkbase Document

101.PRE** XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

** Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.