

ARK RESTAURANTS CORP  
Form 10-K  
December 23, 2013  
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended September 28, 2013

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  
Incorporation or Organization) (IRS Employer Identification No.)

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

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

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

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  S

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  S

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. S

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.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Large accelerated filer

Accelerated filer

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

Smaller Reporting  
Company

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

As of March 30, 2013, 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 \$37,767,572.

At December 18, 2013, there were outstanding 3,256,395 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 2013 Annual Meeting of Stockholders filed within 120 days of September 28, 2013 or will be included in an amendment to this Form 10-K filed within 120 days of September 28, 2013.

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-Q 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 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 28, 2013, we owned and/or operated 20 restaurants and bars, 22 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 28, 2013, five of our restaurant and bar facilities are located in New York City, three are located in Washington, D.C., seven are located in Las Vegas, Nevada, three are located in Atlantic City, New Jersey, one is located at the Foxwoods Resort Casino in Ledyard, Connecticut and one is located in the Faneuil Hall Marketplace in Boston, Massachusetts.

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. Most of our properties which have been opened in recent years are of the latter description. As of the fiscal year ended September 28, 2013, these include the operations at the 12 fast food facilities in Tampa, Florida and Hollywood, Florida, respectively (2004); the *Gallagher's Steakhouse* and *Gallagher's Burger Bar* in the Resorts Atlantic City Hotel and Casino in Atlantic City, New Jersey (2005); *The Grill at Two Trees* at the Foxwoods Resort Casino in Ledyard, Connecticut (2006); *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) and *Broadway Burger Bar and Grill* in the Quarter at the Tropicana Hotel and Casino in Atlantic City, New Jersey (2013).

The names and themes of each of our restaurants are different except for our two *Gallagher's Steakhouse* restaurants and two *Broadway Burger Bar and Grill* 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 properties we lease and operate as of September 28, 2013:

Name	Location	Year Opened(1)	Restaurant Size (Square Feet)	Seating Capacity(2) Indoor- (Outdoor)	Lease Expiration(3)
Center Café(4)	Union Station Washington, D.C.	1989	4,000	200	2009
Sequoia	Washington Harbour Washington, D.C.	1990	26,000	600 (400)	2017
Canyon Road	First Avenue (between 76 <sup>th</sup> and 77 <sup>th</sup> Streets) New York, New York	1984	2,500	130	2014
Bryant Park Grill & Café(5)	Bryant Park New York, New York	1995	25,000	180 (820)	2025
America(6)	New York-New York Hotel and Casino Las Vegas, Nevada	1997	20,000	450	2017
Gallagher's Steakhouse(6)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	5,500	260	2023
Gonzalez y Gonzalez(6)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	2,000	120	2021
Village Eateries (6)(7)	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
Venetian Food Court(8)	Venetian Casino Resort Las Vegas, Nevada	1999	2,050	300 (*)	2014
Rialto Deli	Venetian Casino Resort Las Vegas, Nevada	1999	1,150	150 (*)	2014
V-Bar		2000	3,000	100	2015

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Venetian Casino Resort  
Las Vegas, Nevada

Gallagher's Steakhouse	Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey	2005	6,280	196	2020
------------------------	--	------	-------	-----	------



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Gallagher's Burger Bar	Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey	2005	2,270	114	2020
The Grill at Two Trees	Foxwoods Resort Casino Ledyard, Connecticut	2006	3,359	101	2026
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	2027
The Sporting House(9)	New York-New York Hotel and Casino Las Vegas, Nevada	2010	31,000	350	2014
Clyde Frazier's Wine and Dine	Tenth Avenue (between 37 <sup>th</sup> and 38 <sup>th</sup> 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

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.

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.  
 (2)

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

(4) The lease for this location expired prior to October 2, 2010 and has been operating on a month-to-month basis with the consent of the landlord.

(5) The lease governing a substantial portion of the outside seating area of this restaurant expires on April 30, 2019.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Includes two five-year renewal options exercisable by us if certain sales goals are achieved during the two year period prior to the exercise of the renewal option. Under the *America* lease, the sales goal is \$6.0 million. Under (6) 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 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 (7) New York-New York Hotel & Casino. We also operate that hotel's room service, banquet facilities and employee cafeteria.

(8) We operate two small food court restaurants in a food court at the Venetian Casino Resort.

(9) This lease is cancellable upon 90 days written notice and provides for rent based on profits only. This restaurant opened at the end of October 2010.

(\*) Represents common area seating.

6

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

All of our less than wholly-owned restaurants have been consolidated – see Notes 1 and 2 to the Consolidated Financial Statements. The following table sets forth the facilities managed by us as of September 28, 2013:

Name	Location	Year Opened(1)	Restaurant Size (Square Feet)	Seating Capacity(2) Indoor- (Outdoor)	Lease Expiration(3)
El Rio Grande (4)(5)	Third Avenue (between 38 <sup>th</sup> and 39 <sup>th</sup> Streets) New York, New York	1987	4,000	160	2024
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% interest in the partnership that owns *El Rio Grande*.

(6) Management fees earned, which have been eliminated in consolidation, are based on a percentage of gross sales of the restaurant.

(7) We owned a 50% interest in the partnership that owns the *Tampa and Hollywood Food Courts* which increased to 64.4% as of December 26, 2012.

(\*) Represents common area seating.

(\*\*) Represents number of seats in the Bingo Hall.

7

## 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 March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a restaurant and bar in New York City named Clyde Frazier's Wine and Dine. In connection with the agreement, the landlord contributed \$1,800,000 towards the construction of the property (which has been deferred over the lease term), which totaled approximately \$7,000,000. The initial term of the lease for this facility expires on March 31, 2027 and has one five-year renewal. This restaurant opened during the second quarter of fiscal 2012 and, as a result, the Consolidated Statement of Income for the year ended September 29, 2012 includes approximately \$1,800,000 of pre-opening and operating losses related to this property.

On November 28, 2012, a subsidiary of the Company entered into an agreement to design and lease a restaurant at the Tropicana Hotel and Casino in Atlantic City, NJ. The cost to construct this restaurant was approximately \$1,500,000. The initial term of the lease for this facility expires June 7, 2023 and has two five-year renewals. The restaurant, Broadway Burger Bar and Grill, opened during the third quarter of fiscal 2013 and, as a result, the Consolidated Statement of Income for the year ended September 28, 2013 includes approximately \$100,000 of pre-opening and early operating losses related to this property.

On November 22, 2013, the Company, through a wholly-owned subsidiary, Ark Rustic Inn LLC, entered into an Asset Purchase Agreement with W and O, Inc. to purchase the Rustic Inn Crab House, a restaurant and bar in Dania Beach, Florida, for \$7,500,000 plus inventory. The acquisition is scheduled to close on or before February 28, 2014, subject to satisfactory completion of due diligence, execution of employment and non-competition agreements, Florida Liquor Authority approval and customary closing conditions.

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.

8

## Cost Method Investment

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. In conjunction with this investment, the Company also entered into a long-term agreement with NMR to provide food and beverage services for the new racing facilities at the Meadowlands Racetrack in northern New Jersey. NMR has a long-term lease with the State of New Jersey and the new facility opened in November 2013. The Company’s agreement extends to any future development at the race track site. 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%.

## Recent Restaurant Dispositions and Charges

*Lease Expirations* – On July 8, 2011, the Company entered into an agreement with the landlord of The Grill Room property located in New York City, whereby in exchange for a payment of \$350,000 the Company vacated the property on October 31, 2011. Such payment and the related loss on closure of the property, in the amount of \$179,000, are included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 29, 2012. This lease was scheduled to expire on December 31, 2011.

The Company was advised by the landlord that it would have to vacate the America property located in Washington, DC, which was on a month-to-month lease. The closure of this property occurred on November 7, 2011. The related loss on closure of this property, in the amount of \$186,000, is included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 29, 2012.

*Discontinued Operations* – Effective March 15, 2012, the Company vacated its food court operations at the MGM Grand Casino at the Foxwoods Resort Casino in Ledyard, CT. The Company determined that it would not be able to operate this facility profitably at this location at the current rent. As a result, the Company recorded a disposal loss in the amount of \$270,000, which was recorded during the second quarter of fiscal 2012, as well as operating losses of \$155,000 for the year ended September 29, 2012, all of which are included in discontinued operations, net of tax, in the Consolidated Statement of Income for the year ended September 29, 2012. Included in the Net Income Attributable to Non-controlling Interests in the accompanying Consolidated Statement of Income for the year ended September 29, 2012 are losses of \$33,000 attributable to the limited partners in this property.

*Other* – On October 29, 2012, the Company suffered a flood at its Red and Sequoia properties located in New York, NY as a result of a hurricane. The Company did not reopen these properties as the underlying leases were due to expire in the second quarter of fiscal 2013. Losses related to the closure of these properties, in the amount of \$256,000, are included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 28, 2013.

## 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 headquarters' 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.

9



## 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.

## Employees

At December 18, 2013, we employed 1,853 persons (including employees at managed facilities), 1,198 of whom were full-time employees, and 655 of whom were part-time employees; 46 of whom were headquarters personnel, 129 of whom were restaurant management personnel, 1,016 of whom were kitchen personnel and 662 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 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, this 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 generally operate on a more consistent basis throughout the year.

Item 1A. Risk Factors

The following are the most significant risk factors applicable to us:

RISKS RELATED TO OUR BUSINESS

**Disruptions in the overall economy and the Congressional budget issues may adversely impact our business.**

Our ability to generate revenue depends significantly on discretionary consumer spending. Any weakness in discretionary consumer spending could have a material adverse effect on our revenues, results of operations and financial condition.

The restaurant industry has been affected by economic factors, including the deterioration of national, regional and local economic conditions, high unemployment levels, and shifts in consumer spending patterns. Disruptions in the overall economy have reduced, and may continue to reduce, consumer confidence in the economy, negatively affecting consumer restaurant spending, which could be harmful to our financial position and results of operations. As a result, decreased cash flow generated from our business may adversely affect our financial position and our ability to fund our operations.

In the U.S., the uncertainty regarding significant mandated tax increases, sequestration and government spending cuts and budget negotiations pose a serious risk for the U.S. economy and consumer confidence. In the event that the U.S. federal government is unable to achieve a resolution of these issues there could be an adverse impact on the U.S. economy with a decrease in consumer spending, which could negatively impact our revenues and earnings.

**Healthcare reform legislation could have a negative impact on our business.**

The Patient Protection and Affordable Care Act (“Obamacare”), as well as other healthcare reform legislation being considered by Congress and state legislatures, may have an adverse effect on our business. The impact could be extensive and could increase our employee healthcare-related costs. Significant costs of the recent healthcare legislation enacted will occur beginning in 2015 due to provisions of the legislation being phased in over time and changes to our healthcare costs structure could have a significant, negative impact on our business.

**Failure of our existing or new restaurants to achieve expected results could have a negative impact on our revenues and performance results.**

Performance results currently achieved by our restaurants may not be indicative of longer term performance or the potential market acceptance of restaurants in new locations. We cannot be assured that new restaurants that we open will have similar operating results as existing restaurants. New restaurants take several months to reach expected operating levels due to inefficiencies typically associated with new restaurants, including lack of market awareness, inability to hire sufficient staff and other factors. All of these factors are relevant to the Company's construction costs of approximately \$7,000,000 to open Clyde Frazier's Wine and Dine during the second quarter of fiscal 2012, resulting in approximately \$1,800,000 of pre-opening and operating losses for the year ended September 29, 2012. We also incurred construction costs of approximately \$1,500,000 during fiscal 2013 in connection with the opening of a new restaurant in Atlantic City. The failure of our existing or new restaurants to perform as predicted could negatively impact our revenues and results of operations.

**Our unfamiliarity with new markets may present risks, which could have a material adverse effect on our future growth and profitability.**

Due to higher operating costs caused by temporary inefficiencies typically associated with expanding into new regions and opening new restaurants, such as lack of market awareness and acceptance and limited availability of experienced staff, continued expansion may result in an increase in our operating costs. New markets may have different competitive conditions, consumer tastes and discretionary spending patterns than our existing markets, which may cause our restaurants in these new markets to be less successful than our restaurants in our existing markets. We cannot assure you that restaurants in new markets will be successful.

**Our ability to open new restaurants efficiently is subject to a number of factors beyond our control, including, but not limited to:**

- Selection and availability of suitable restaurant sites;
- Negotiation of acceptable lease or purchase terms for such sites;
- Negotiation of reasonable construction contracts and adequate supervision of construction;
- Our ability to secure required governmental permits and approvals for both construction and operation;
- Availability of adequate capital;
- General economic conditions; and
- Adverse weather conditions.

We may not be successful in addressing these factors, which could adversely affect our ability to open new restaurants on a timely basis, or at all. Delays in opening or failures to open new restaurants could cause our business, results of operations and financial condition to suffer.

**Increases in the minimum wage may have a material adverse effect on our business and financial results.**

Many of our employees are subject to various minimum wage requirements. Many of our restaurants are located in states where the minimum wage was recently increased and in other states in which increases are being considered. In addition, the one-day strikes for fast-food workers for an increase in the minimum wage to \$15 per hour may result in further increases in the minimum wage which would affect all restaurant workers. Accordingly, there likely will be additional increases implemented in jurisdictions in which we operate or seek to operate. These minimum wage increases may cause us to raise our prices which, in turn, could have a material adverse effect on our business, financial condition, results of operations or cash flows.

**Future changes in financial accounting standards may cause adverse unexpected operating results and affect our reported results of operations.**

Changes in accounting standards can have a significant effect on our reported results and may affect our reporting of transactions completed before the change is effective. New pronouncements and varying interpretations of pronouncements have occurred and may occur in the future. See Notes 1 and 2 to the Consolidated Financial Statements related to recently adopted accounting standards.

Changes to existing rules or differing interpretations with respect to our current practices may adversely affect our reported financial results.

**Our profitability is dependent in large measure on food, beverage and supply costs which are not within our control.**

Our profitability is dependent in large measure on our ability to anticipate and react to changes in food, beverage and supply costs. Various factors beyond our control, including climate changes and government regulations, may affect food and beverage costs. Specifically, our dependence on frequent, timely deliveries of fresh beef, poultry, seafood and produce subjects us to the risks of possible shortages or interruptions in supply caused by adverse weather, food contamination and related recalls or other conditions, which could adversely affect the availability and cost of any such items. We cannot assure you that we will be able to anticipate or react to increasing food and supply costs in the future. The failure to react to these increases could materially and adversely affect our business, results of operations and financial condition.

**Rising insurance costs could negatively impact profitability.**

The cost of insurance (workers compensation insurance, general liability insurance, property insurance, health insurance and directors and officers liability insurance) has risen significantly over the past few years and is expected to continue to increase. These increases, as well as potential state legislation requirements for employers to provide health insurance to employees, could have a negative impact on our profitability if we are not able to negate the effect of such increases with plan modifications and cost control measures or by continuing to improve our operating efficiencies.

**Compliance with existing and new regulations of corporate governance and public disclosure may result in additional expenses.**

Compliance with changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, the Dodd-Frank Act, new SEC regulations and NASDAQ Stock Market rules, has required an increased amount of management attention and external resources. We are committed to maintaining high standards of corporate governance and public disclosure. This investment, required to comply with these changing regulations, may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

**Intense competition in the restaurant industry could prevent us from increasing or sustaining our revenues and profitability.**

The restaurant industry is intensely competitive with respect to food quality, price-value relationships, ambiance, service and location, and many restaurants compete with us at each of our locations. There are a number of well-established competitors with substantially greater financial, marketing, personnel and other resources than ours,



and many of our competitors are well established in the markets where we have restaurants, or in which we intend to locate restaurants. Additionally, other companies may develop restaurants that operate with similar concepts.

Any inability to successfully compete with the other restaurants in our markets will prevent us from increasing or sustaining our revenues and profitability and result in a material adverse effect on our business, financial condition, results of operations or cash flows. We may also need to modify or refine elements of our restaurant system to evolve our concepts in order to compete with popular new restaurant formats or concepts that may develop in the future. We cannot assure you that we will be successful in implementing these modifications or that these modifications will not reduce our profitability.

**Many of our operations are located in casinos and much of our success will be dependent on the success of those casinos.**

The success of the business of our restaurants located in Las Vegas, Nevada, Atlantic City, New Jersey, Tampa and Hollywood, Florida, and Ledyard, Connecticut is substantially dependent on the success of the casinos in which the Company operates in these locations to attract customers for themselves and for our restaurants. Casinos in Atlantic City have experienced a significant decline in revenues in recent years. As more states approve casino gambling, our business in our existing geographic regions may continue to decline. The successful operation of the casinos in these locations is subject to various risks and uncertainties including, but not limited to:

- The risk associated with governmental approvals of gaming;
- The risk of a change in laws regulating gaming operations;
- Operating in a limited market;
- Competitive risks relating to casino operations; and
- Risks of terrorism and war.

**The restaurant industry is affected by changes in consumer preferences and discretionary spending patterns that could result in a reduction in our revenues.**

We continuously need to monitor and to modify our restaurants' menus, for changes in consumer preferences. These changes may cause us to lose customers, who are less satisfied with such modified menu, and we may not be able to attract a new customer base to generate the necessary revenues to maintain our income from restaurant operations. A change in our menus may also result in us having different competitors. We may not be able to successfully compete against established competitors in the general restaurant market. Our success also depends on various factors affecting discretionary consumer spending, including economic conditions, disposable consumer income and consumer confidence. Adverse changes in these factors could reduce our customer base and spending patterns, either of which could reduce our revenues and results of operations.

**Our geographic concentrations could have a material adverse effect on our business, results of operations and financial condition.**

We currently operate in seven regions, New York City, Washington, D.C., Las Vegas, Nevada, Tampa and Hollywood, Florida, Atlantic City, New Jersey, Ledyard, Connecticut, and Boston, Massachusetts. As a result, we are particularly susceptible to adverse trends and economic conditions in these markets, including its labor market, which could have a negative impact on our profitability as a whole. In addition, given our geographic concentration, negative publicity regarding any of our restaurants could have a material adverse effect on our business, results of operations

and financial condition, as could other regional occurrences such as acts of terrorism, local strikes, natural disasters or changes in laws or regulations.

**Our operating results may fluctuate significantly due to seasonality and other factors beyond our control.**

Our business is subject to seasonal fluctuations, which may vary greatly depending upon the region of the United States in which a particular restaurant is located. In addition to seasonality, our quarterly and annual operating results and comparable unit sales may fluctuate significantly as a result of a variety of factors, including, but not limited to:

--The amount of sales contributed by new and existing restaurants;

--The timing of new openings;

15

- Increases in the cost of key food or beverage products;
- Labor costs for our personnel;
- Our ability to achieve and sustain profitability on a quarterly or annual basis;
- Adverse weather;
- Consumer confidence and changes in consumer preferences;
- Health concerns, including adverse publicity concerning food-related illness;
- The level of competition from existing or new competitors;
- Economic conditions generally and in each of the market in which we are located; and
- Acceptance of a new or modified concept in each of the new markets in which we could be located.

These fluctuations make it difficult for us to predict and address in a timely manner factors that may have a negative impact on our business, results of operations and financial condition.

**Any expansion may strain our infrastructure, which could slow restaurant development.**

Any expansion may place a strain on our management systems, financial controls, and information systems. To manage growth effectively, we must maintain the high level of quality and service at our existing and future restaurants. We must also continue to enhance our operational, information, financial and management systems and locate, hire, train and retain qualified personnel, particularly restaurant managers. We cannot predict whether we will be able to respond on a timely basis to all of the changing demands that any expansion will impose on management and those systems and controls. If we are not able to effectively manage any one or more of these or other aspects of expansion, our business, results of operations and financial condition could be materially adversely affected.

**Our inability to retain key personnel could negatively impact our business.**

Our success will continue to be highly dependent on our key operating officers and employees. We must continue to attract, retain and motivate a sufficient number of qualified management and operating personnel, including general managers and chefs. The ability of these key personnel to maintain consistency in the quality and atmosphere of our restaurants is a critical factor in our success. Any failure to do so may harm our reputation and result in a loss of business.

**We could face labor shortages, increased labor costs and other adverse effects of varying labor conditions.**

The development and success of our restaurants depend, in large part, on the efforts, abilities, experience and reputations of the general managers and chefs at such restaurants. In addition, our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified employees, including restaurant managers, kitchen staff and wait staff. Qualified individuals needed to fill these positions are in short supply and the inability to recruit and retain such individuals may delay the planned openings of new restaurants or result in high employee turnover in existing restaurants. A significant delay in finding qualified employees or high turnover of existing employees could materially and adversely affect our business, results of operations and financial condition. Also, competition for qualified employees could require us to pay higher wages to attract sufficient qualified employees, which could result in higher, labor costs. In addition, increases in the minimum hourly wage, employment tax rates and levies, related benefits costs, including health insurance, and similar matters over which we have no control may increase our operating costs.

**Unanticipated costs or delays in the development or construction of future restaurants could prevent our timely and cost-effective opening of new restaurants.**

We depend on contractors and real estate developers to construct our restaurants. Many factors may adversely affect the cost and time associated with the development and construction of our restaurants, including, but not limited to:

- Labor disputes;
- Shortages of materials or skilled labor;
- Adverse weather conditions;
- Unforeseen engineering problems;
- Environmental problems;
- Construction or zoning problems;
- Local government regulations;
- Modifications in design; and
- Other unanticipated increases in costs.

Any of these factors could give rise to delays or cost overruns, which may prevent us from developing additional restaurants within our anticipated budgets or time periods or at all. Any such failure could cause our business, results of operations and financial condition to suffer.

**We may not be able to obtain and maintain necessary federal, state and local permits which could delay or prevent the opening of future restaurants.**

Our business is subject to extensive federal, state and local government regulations, including regulations relating to:

- Alcoholic beverage control;
- The purchase, preparation and sale of food;
- Public health and safety;
- Sanitation, building, zoning and fire codes; and

--Employment and related tax matters.

All of these regulations impact not only our current operations but also our ability to open future restaurants. We will be required to comply with applicable state and local regulations in new locations into which we expand. Any difficulties, delays or failures in obtaining licenses, permits or approvals in such new locations could delay or prevent the opening of a restaurant in a particular area or reduce operations at an existing location, either of which would materially and adversely affect our business, results of operations and financial condition.

**The restaurant industry is affected by litigation and publicity concerning food quality, health and other issues, which can cause guests to avoid our restaurants and result in liabilities.**

Health concerns, including adverse publicity concerning food-related illness, although not specifically related to our restaurants, could cause guests to avoid restaurants in general, which would have a negative impact on our sales. We may also be the subject of complaints or litigation from guests alleging food-related illness, injuries suffered on the premises or other food quality, health or operational concerns. A lawsuit or claim could result in an adverse decision against us that could have a material adverse effect on our business and results of operations. We may also be subject to litigation which, regardless of the

outcome, could result in adverse publicity. Adverse publicity resulting from such allegations may materially adversely affect us and our restaurants, regardless of whether such allegations are true or whether we are ultimately held liable. Such litigation, adverse publicity or damages could have a material adverse effect on our competitive position, business, results of operations and financial condition and results of operations.

## RISKS RELATED TO OUR COMMON STOCK

### **The price of our common stock may fluctuate significantly.**

The price at which our common stock trades may fluctuate significantly. A large number of shares of our common stock is concentrated in the hands of a small number of individuals and institutional investors and is thinly traded. An attempt to sell by a large holder could adversely affect the price of our stock.

The stock market has from time to time experienced significant price and volume fluctuations. The trading price of our common stock could be subject to wide fluctuations in response to a number of factors, including, but not limited to:

- Fluctuations in quarterly or annual results of operations;
- Changes in published earnings estimates by analysts and whether our actual earnings meet or exceed such estimates;
- Additions or departures of key personnel;
- Our ability to execute our business plan and open new restaurants;
- Changes in the restaurant industry;
- Competitive pricing pressures;
- Regulatory developments; and
- Changes in overall stock market conditions, including the stock prices of other restaurant companies.

In addition, our principal stockholders' ownership may discourage a potential acquirer from making a tender offer or otherwise attempt to obtain control of the Company, which, in time, could reduce our stock price or prevent our stockholders from realizing a premium over our stock price.



In the past, companies that have experienced extreme fluctuations in the market price of their stock have been the subject of securities class action litigation. If we were to be subject to such litigation, it could result in substantial costs and a diversion of our management's attention and resources, which may have a material adverse effect on our business, results of operations, and financial condition.

**Ownership of a substantial majority of our outstanding common stock by a limited number of stockholders will limit your ability to influence corporate matters.**

A substantial majority of our capital stock is held by a limited number of stockholders. Almost 50% of our common stock is beneficially owned by officers and directors of the Company. Accordingly, management and a few other stockholders have a strong influence on major decisions of corporate policy, and the outcome of any major transaction or other matters submitted to our stockholders, including, but not limited to, potential mergers, acquisitions and/or sale of substantially all assets or other corporate transactions, and amendments to our Amended and Restated Certificate of Incorporation. Stockholders other than these principal stockholders are therefore likely to have little influence on decisions regarding such matters. One such event occurred in February 2013 when the Company received from Landry's,

Inc. an unsolicited proposal to purchase all of the capital stock of the Company. The Company rejected the offer after careful consideration including a review of the proposal with its independent financial and legal advisors.

**Provisions in our charter documents and New York law could discourage or prevent a takeover, even if an acquisition would be beneficial to our stockholders.**

Provisions of our certificate of incorporation and by-laws, as well as provisions of New York law, could make it more difficult for a third party to acquire us, even if doing so would be beneficial to our stockholders. These provisions include:

-- The New York anti-takeover statute prevents any shareholder who acquires more than 20% of the Company's capital stock from acquiring control of the Company for a five-year period, unless approved by the Board, which the Company did not approve in connection with the unsolicited takeover proposal from Landry's, Inc. described above.

-- prohibiting cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect direct candidates; and

-- advance notice provisions in connection with stockholder proposals that may prevent or hinder any attempt by our stockholders to bring business to be considered by our stockholders at a meeting or replace our board of directors.

**Item 1B. Unresolved Staff Comments**

Not applicable.

**Item 2. Properties**

Our restaurant facilities and our executive offices 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 28, 2013, these leases (including leases for managed restaurants) have terms (including any available renewal options) expiring as follows:

Years Lease Terms Expire	Number of Facilities
2014-2018	8
2019-2023	7
2024-2028	5

2029-2033	5
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 2015.

For information concerning our future minimum rental commitments under non-cancelable operating leases, see Note 11 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. Executive Officers of the Registrant

The following table sets forth the names and ages of our executive officers and all offices held by each person:

Name	Age	Positions and Offices
Michael Weinstein	70	Chairman and Chief Executive Officer
Robert Stewart	57	President and Chief Financial Officer
Vincent Pascal	70	Senior Vice President and Chief Operating Officer
Paul Gordon	62	Senior Vice President

Each of our executive officers serves at the pleasure of the Board of Directors and until his successor is duly elected and qualifies.

Michael Weinstein has been our Chief Executive Officer and a director since our inception in January 1983, was elected Chairman in 2004 and was President of the Company from January 1983 to September 2007. Mr. Weinstein is also the President of each of our subsidiaries. Mr. Weinstein is an officer, director and 29.67% shareholder of RSWB Corp. and a director and 28% owner of BSWR Corp. (since 1998). Mr. Weinstein is also the owner of 30.67% of the membership interests in New Docks LLC. Collectively, these companies operate three restaurants in New York City, and none of these companies is a parent, subsidiary or other affiliate of us. Mr. Weinstein spends substantially all of his business time on Company-related matters.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Robert Stewart has been employed by us since June 2002, was elected Chief Financial Officer effective as of June 24, 2002, was elected to the Board of Directors in March 2012 and was elected President in December 2013. For the three years prior to joining us, Mr. Stewart was a Chief Financial Officer and Executive Vice President at Fortis Capital Holdings. For eleven years prior to joining Fortis Capital Holdings, Mr. Stewart held senior financial and audit positions in Skandinaviska Enskilda Banken in their New York, London and Stockholm offices.

Vincent Pascal has been employed by us since 1983 and was elected Vice President, Assistant Secretary and a director in 1985. Mr. Pascal became a Senior Vice President in 2001 and Chief Operating Officer in January, 2012.

Paul Gordon has been employed by us since 1983 and was elected as a director in November 1996 and a Senior Vice President in April 2001. Mr. Gordon is the manager of our Las Vegas operations, and is a Senior Vice President of each of the Company's Las Vegas, Nevada subsidiaries. Prior to assuming that role in 1996, Mr. Gordon was the manager of the Company's operations in Washington, D.C. commencing in 1989.

## 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 in the over-the-counter market on the Nasdaq National Market under the symbol "ARKR." The high and low sale prices for our Common Stock from October 2, 2011 through September 28, 2013 are as follows:

Calendar 2011	High	Low
Fourth Quarter	\$14.64	\$12.70
Calendar 2012		
First Quarter	16.40	13.30
Second Quarter	16.20	14.09
Third Quarter	16.85	14.13
Fourth Quarter	17.14	15.61
Calendar 2013		
First Quarter	21.64	16.77
Second Quarter	21.97	20.23
Third Quarter	22.25	20.05

## Dividend Policy

On December 7, 2011, March 7, 2012, May 29, 2012, September 4, 2012, November 29, 2012, March 6, 2013, June 12, 2013 and September 17, 2013 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.

## Securities Authorized for Issuance under Equity Compensation Plans

The Company has options outstanding under two stock option plans, the 2004 Stock Option Plan (the “2004 Plan”) and the 2010 Stock Option Plan (the “2010 Plan”), which was approved by shareholders in the second quarter of 2010. Effective with this approval the Company terminated the 2004 Plan. This action terminated the 400 authorized but unissued options under the 2004 Plan but it did not affect any of the options previously issued under the 2004 Plan.

Options granted under the 2004 Plan 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.

The 2010 Stock Option Plan is the Company’s only equity compensation plan currently in effect. Under the 2010 Stock Option Plan, 500,000 options were authorized for future grant. Options granted under the 2010



Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted.

The following is a summary of the securities issued and authorized for issuance under our Stock Option Plans at September 28, 2013:

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	623,100	\$ 19.69	248,500
Equity compensation plans not approved by shareholders <sup>1</sup>	None	N/A	None
Total	623,100	\$ 19.69	248,500

Of the 623,100 options outstanding on September 28, 2013, 358,500 were held by the Company's officers and directors.

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

#### 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 27, 2008 and ending September 28, 2013 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 27, 2008 and that all dividends paid by companies included in each index were reinvested.

	Cumulative Total Return					
	9/27/08	10/3/09	10/2/10	10/1/11	9/29/12	9/28/13
Ark Restaurants Corp.	\$100.00	\$104.19	\$94.60	\$92.05	\$125.07	\$169.22
NASDAQ Composite	100.00	103.76	116.52	120.44	157.60	195.67
SIC Code 5812 - Eating & Drinking Places	100.00	95.45	130.46	154.04	178.45	206.80

Item 6. Selected Consolidated Financial Data

Not applicable.

24

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

Overview

As of September 28, 2013, the Company owned and operated 20 restaurants and bars, 22 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.

*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 28, 2013 and September 29, 2012 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. In addition, 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 operating income of \$6,606,000 for the year ended September 28, 2013 decreased 33.9% compared to operating income of \$9,991,000 for the year ended September 29, 2012. This decrease resulted from a combination of factors including: (i) decreased traffic at our properties in Washington, DC due to poor weather and increased competition, (ii) increased competition and a decrease in the usage of complimentary by the ownership of the casinos at our Florida properties, (iii) professional fees related to the unsolicited bid made for the Company by Landry's, (iv) the negative impact of additional competition without a corresponding increase in overall traffic in Las Vegas, (v) the closure of our properties Red and Sequoia located in New York, NY in October 2012 as a result of a hurricane, and (vi) early operating losses in the amount of \$100,000 at our new restaurant, *Broadway Burger Bar*, at the Tropicana Hotel and Casino in Atlantic City, NJ, all partially offset by strong catering revenues in NY combined with a significant improvement in the performance of Clyde Frazier's Wine and Dine, which opened in March 2012.



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 28, 2013 and September 29, 2012, respectively:

	Year Ended		Variance	
	September 28, 2013	September 29, 2012	\$	%
	(in thousands)			
<b>REVENUES:</b>				
Food and beverage sales	\$ 129,122	\$ 136,914	\$(7,792)	-5.7 %
Other revenue	1,476	1,114	362	32.5 %
Total revenues	130,598	138,028	(7,430)	-5.4 %
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	32,791	35,157	(2,366)	-6.7 %
Payroll expenses	42,488	43,406	(918 )	-2.1 %
Occupancy expenses	17,533	17,702	(169 )	-1.0 %
Other operating costs and expenses	17,085	17,915	(830 )	-4.6 %
General and administrative expenses	9,792	9,368	424	4.5 %
Impairment loss	—	379	(379 )	-100.0 %
Depreciation and amortization	4,303	4,110	193	4.7 %
Total costs and expenses	123,992	128,037	(4,045)	-3.2 %
<b>OPERATING INCOME</b>	<b>\$ 6,606</b>	<b>\$ 9,991</b>	<b>\$(3,385)</b>	<b>-33.9 %</b>

## Revenues

During the Company's year ended September 28, 2013, revenues decreased 5.4% compared to the year ended September 29, 2012. This decrease is primarily due to: (i) a net decrease in same store sales of \$3,827,000, as discussed below and (ii) the closure of our properties *Red* and *Sequoia* located in New York, NY in October 2012 as a result of Hurricane Sandy, partially offset by revenues related to our new restaurants in New York City, *Clyde Frazier's Wine and Dine* (opened in March 2012), and Atlantic City, NJ, *The Burger Bar and Grill* at the Tropicana Hotel and Casino (opened in June 2013).

*Food and Beverage Same-Store Sales*

On a Company-wide basis, same store food and beverage sales decreased 3.0% for the year ended September 28, 2013 as compared to the year ended September 29, 2012 as follows:

	Year Ended		Variance	
	September 28, 2013	September 29, 2012	\$	%
	(in thousands)			
Las Vegas	\$55,100	\$57,150	\$(2,050)	-3.6 %
New York	31,413	29,128	2,285	7.8 %
Washington, DC	14,744	16,506	(1,762)	-10.7%
Atlantic City, NJ	3,078	3,485	(407 )	-11.7%
Boston	3,767	3,792	(25 )	-0.7 %
Connecticut	3,751	3,855	(104 )	-2.7 %
Florida	13,739	15,503	(1,764)	-11.4%
Same store sales	125,592	129,419	\$(3,827)	-3.0 %
Other	3,530	7,495		
Food and beverage sales	\$129,122	\$136,914		

Same store sales in Las Vegas decreased by 3.6% in fiscal 2013 compared to fiscal 2012 primarily as a result of the negative impact of additional competition without a corresponding increase in overall traffic. Same-store sales in New York (which exclude the Red and Sequoia properties as they were closed in October 2012) increased 7.8% as a result of strong catering revenues. Same-store sales in Washington, DC decreased 10.7% primarily as a result of decreased traffic due to poor weather as compared to last year and increased competition. Same-store sales in Atlantic City decreased 11.7% due to the continued decline in overall traffic in Atlantic City, NJ. Same-store sales in Boston were consistent from year to year as expected. Same-store sales in Connecticut decreased 2.7% due to declining traffic at the Foxwoods Resort and Casino where our properties are located. Same-store sales in Florida decreased 11.4% due to increased competition at one of our properties combined with a decrease in the usage of complimentary by the ownership of the casinos where our properties are located. Other food and beverage sales consist of sales related to new restaurants opened during the applicable period and sales related to properties that were closed during the period due to lease expiration and other closures and, therefore, not included in discontinued operations.

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*

The increase in Other Revenue for fiscal 2013 as compared to fiscal 2012 is primarily due to an increase in purchase service fees.

27

**Costs and Expenses**

Costs and expenses from continuing operations for the years ended September 28, 2013 and September 29, 2012 were as follows (in thousands):

	Year Ended		Year Ended		Increase (Decrease)			
	September 28, 2013	% to Total Revenues	September 29, 2012	% to Total Revenues	\$	%		
Food and beverage cost of sales	\$ 32,791	25.1 %	\$ 35,157	25.5 %	\$ (2,366)	-6.7 %		
Payroll expenses	42,488	32.5 %	43,406	31.4 %	(918 )	-2.1 %		
Occupancy expenses	17,533	13.4 %	17,702	12.8 %	(169 )	-1.0 %		
Other operating costs and expenses	17,085	13.1 %	17,915	13.0 %	(830 )	-4.6 %		
General and administrative expenses	9,792	7.5 %	9,368	6.8 %	424	4.5 %		
Impairment loss from write-down of long-lived assets	—	0.0 %	379	0.3 %	(379 )	-100.0 %		
Depreciation and amortization	4,303	3.3 %	4,110	3.0 %	193	4.7 %		
	\$ 123,992		\$ 128,037		\$ (4,045)			

Food and beverage costs as a percentage of total revenues for the year ended September 28, 2013 decreased as compared to the year ended September 29, 2012 as a result of improved menu costing partially offset by higher commodity prices.

Payroll expenses as a percentage of total revenues for the year ended September 28, 2013 increased as compared to the year ended September 29, 2012 due primarily to severance payments to employees of closed properties.

Occupancy expenses as a percentage of total revenues for the year ended September 28, 2013 increased as compared to the year ended September 29, 2012 as a result of lower sales at properties where rents are relatively fixed partially offset by a reduction in costs related to properties that were closed (as discussed above) due to flooding from Hurricane Sandy.

Other operating costs and expenses as a percentage of total revenues for the year ended September 28, 2013 remained static as compared to the year ended September 29, 2012. A slight decrease in total costs were the result of: (i) non-recurring expenses in the prior period associated with one of our properties, and (ii) a reduction in other operating costs and expenses related to properties that were closed (as discussed above) due to flooding from Hurricane Sandy, partially offset by losses related to the closure of the two properties in New York combined with expenses associated



with the opening of *Clyde Frazier's Wine & Dine* in March 2012.

During the year ended September 29, 2012, the Company recorded a charge of \$379,000 to impair the leasehold improvements and equipment of an underperforming restaurant.

General and administrative expenses (which relate solely to the corporate office in New York City) as a percentage of total revenues for the year ended September 28, 2013 increased as compared to the year ended September 29, 2012 primarily as a result of share-based compensation and professional fees related to the unsolicited bid made for the Company by Landry's, Inc. partially offset by the inclusion of our former President's severance in the prior period in connection with his resignation in December 2011.

## Income Taxes

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. Most of the restaurants we own or manage are owned or managed by a separate legal entity.

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.

Our overall effective tax rate in the future will be affected by factors such as the level of losses incurred at our New York City facilities which cannot be consolidated for state and local tax purposes, pre-tax income earned outside of New York City and the utilization of state and local net operating loss carry forwards. Nevada has no state income tax and other states in which we operate have income tax rates substantially lower in comparison to New York. In order to utilize more effectively tax loss carry forwards at restaurants that were unprofitable, we have merged certain profitable subsidiaries with certain loss subsidiaries.

The Revenue Reconciliation Act of 1993 provides tax credits to us for FICA taxes paid on tip income of restaurant service personnel. The net benefit to us was \$531,000 and \$564,000 in fiscal 2013 and 2012, respectively.

## Liquidity and Capital Resources

Our primary source of capital has been cash provided by operations. We utilize cash generated from operations to fund the cost of developing and opening new restaurants, acquiring existing restaurants owned by others and remodeling existing restaurants we own; however, in recent years, we have utilized bank and other borrowings to finance specific transactions.

Net cash flow provided by operating activities for the year ended September 28, 2013 was \$13,059,000, compared to \$13,423,000 for the prior year. This decrease was primarily attributable to the decrease in operating income as discussed above, partially offset by changes in net working capital.

Net cash used in investing activities for the year ended September 28, 2013 was \$10,380,000 and resulted primarily from the purchases of fixed assets at existing restaurants, the construction of the *Broadway Burger Bar and Grill* in Atlantic City, NJ, the purchase of the Florida membership interests and the investment in New Meadowlands Racetrack LLC.

Net cash used in investing activities for the year ended September 29, 2012 was \$5,862,000 and resulted from the purchases of fixed assets at existing restaurants and the construction of *Clyde Frazier's Wine and Dine* in New York City offset by net proceeds from the sales of investment securities.

Net cash used in financing activities for the year ended September 28, 2013 of \$2,636,000 resulted from the payment of dividends, principal payments on notes payable and distributions to non-controlling interests offset by proceeds of \$3,000,000 from the issuance of a note payable to a bank.

Net cash used in financing activities for the year ended September 29, 2012 of \$6,636,000 was principally used for the payment of dividends, purchase of treasury stock and distributions to non-controlling interests.

The Company had a working capital surplus of \$306,000 at September 28, 2013 as compared to a working capital surplus of \$4,061,000 at September 29, 2012. We believe that our existing cash balances, cash

provided by operations and availability of bank borrowings, as needed, will be sufficient to meet our liquidity and capital spending requirements at least through the next 12 months.

On December 28, 2012, April 4, 2013, July 2, 2013 and October 8, 2013, 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

On June 7, 2011, the Company entered into a 10-year exclusive agreement to manage a yet to be constructed restaurant and catering service at *Basketball City* in New York City in exchange for a fee of \$1,000,000 (all of which was been paid as of September 29, 2012 and is included in Intangible Assets in the accompanying Consolidated Balance Sheet as of September 29, 2012). Under the terms of the agreement, the owner of the property was to construct the facility at their expense and the Company was to pay the owner an annual fee based on sales, as defined in the agreement. As of September 28, 2013, the owner had not delivered the facility to the Company and the parties executed a promissory note for repayment of the \$1,000,000 exclusivity fee. The note bears interest at 4.0% per annum and is payable in 48 equal monthly installments of \$22,579, commencing on December 1, 2013.

#### *Restaurant Expansion*

On March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a restaurant and bar in New York City named *Clyde Frazier's Wine and Dine*. In connection with the agreement, the landlord contributed \$1,800,000 towards the construction of the property (which has been deferred over the lease term), which totaled approximately \$7,000,000. The initial term of the lease for this facility expires on March 31, 2027 and has one five-year renewal. This restaurant opened during the second quarter of fiscal 2012 and, as a result, the Consolidated Statement of Income for the year ended September 29, 2012 includes approximately \$1,800,000 of pre-opening and operating losses related to this property.

On November 28, 2012, a subsidiary of the Company entered into an agreement to design and lease a restaurant at the Tropicana Hotel and Casino in Atlantic City, NJ. The cost to construct this restaurant was approximately \$1,500,000. The initial term of the lease for this facility expires June 7, 2023 and has two five-year renewals. The restaurant, *Broadway Burger Bar and Grill*, opened during the third quarter of fiscal 2013 and, as a result, the Consolidated Statement of Income for the year ended September 28, 2013 includes approximately \$100,000 of pre-opening and early operating losses related to this property.

On November 22, 2013, the Company, through a wholly-owned subsidiary, Ark Rustic Inn LLC, entered into an Asset Purchase Agreement with W and O, Inc. to purchase the Rustic Inn Crab House, a restaurant and bar in Dania Beach, Florida, for \$7,500,000 plus inventory. The acquisition is scheduled to close on or before February 28, 2014, subject to satisfactory completion of due diligence, execution of employment and non-competition agreements, Florida Liquor

Authority approval and customary closing conditions.

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.

#### *Cost Method Investment*

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. In conjunction with this investment, the Company also entered into a long-term agreement with NMR to provide food and beverage services for the new racing facilities at the Meadowlands Racetrack in northern New Jersey. NMR has a long-term lease with the State of New Jersey and the new facility opened in November 2013. The Company’s agreement extends to any future development at the race track site. 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%.

#### *Recent Restaurant Dispositions and Charges*

*Lease Expirations* – On July 8, 2011, the Company entered into an agreement with the landlord of The Grill Room property located in New York City, whereby in exchange for a payment of \$350,000 the Company vacated the property on October 31, 2011. Such payment and the related loss on closure of the property, in the amount of \$179,000, are included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 29, 2012. This lease was scheduled to expire on December 31, 2011.

The Company was advised by the landlord that it would have to vacate the America property located in Washington, DC, which was on a month-to-month lease. The closure of this property occurred on November 7, 2011. The related loss on closure of this property, in the amount of \$186,000, is included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 29, 2012.

*Discontinued Operations* – Effective March 15, 2012, the Company vacated its food court operations at the MGM Grand Casino at the Foxwoods Resort Casino in Ledyard, CT. The Company determined that it would not be able to operate this facility profitably at this location at the current rent. As a result, the Company recorded a disposal loss in the amount of \$270,000, which was recorded during the second quarter of fiscal 2012, as well as operating losses of \$155,000 for the year ended September 29, 2012, all of which are included in discontinued operations, net of tax, in the Consolidated Statement of Income for the year ended September 29, 2012. Included in the Net Income Attributable to Non-controlling Interests in the accompanying Consolidated Statement of Income for the year ended

September 29, 2012 are losses of \$33,000 attributable to the limited partners in this property.

*Other* – On October 29, 2012, the Company suffered a flood at its Red and Sequoia properties located in New York, NY as a result of a hurricane. The Company did not reopen these properties as the underlying leases were due to expire in the second quarter of fiscal 2013. Losses related to the closure of these properties, in the amount of \$256,000, are included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 28, 2013.

## Critical Accounting Policies

Our significant accounting policies are more fully described in Note 1 to our consolidated financial statements. While all 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.

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 our most difficult and subjective judgments include allowances for potential bad debts on receivables, inventories, the useful lives and recoverability of our assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of our tax assets and other matters. 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. During the year ended September 29, 2012, the Company recorded a charge of \$379,000 to impair the leasehold improvements and equipment of an underperforming restaurant. No impairment charges were necessary for the year ended September 28, 2013.

#### 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, which were acquired in connection with the *Durgin Park* acquisition, 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 28, 2013, the Company performed both a qualitative and quantitative 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 28, 2013. 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.

#### Share-Based Compensation

The Company measures share-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. During fiscal 2012, options to purchase 251,500 shares of common stock were granted and are exercisable as to 50% of the shares

commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant. The Company did not grant any options during fiscal 2013. The Company generally issues new shares upon the exercise of employee stock options.

### **Recent Developments**

On November 22, 2013, the Company, through a wholly-owned subsidiary, Ark Rustic Inn LLC, entered into an Asset Purchase Agreement with W and O, Inc. to purchase the Rustic Inn Crab House, a restaurant and bar in Dania Beach, Florida, for \$7,500,000 plus inventory. The acquisition is scheduled to close on or before February 28, 2014, subject to satisfactory completion of due diligence, execution of employment and non-competition agreements, Florida Liquor Authority approval and customary closing conditions.

On November 19, 2013, the Company invested an additional \$464,000 in the New Meadowlands Racetrack LLC (“NMR”) through a purchase of an additional membership interest in Meadowlands Newmark, LLC, an existing member of NMR, resulting in a total ownership of 11.6%.

On December 4, 2013, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on December 30, 2013 to shareholders of record at the close of business on December 16, 2013.

### **Recently Adopted and Issued Accounting Standards**

See Notes 1 and 2 of Notes to Consolidated Financial Statements for a description of recent accounting pronouncements, including those adopted in 2013 and the expected dates of adoption and the anticipated impact on the Consolidated Financial Statements.

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 28, 2013 (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 28, 2013. 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 28, 2013 based upon the criteria set forth in Internal Control — Integrated Framework issued by the 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 28, 2013.

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

There have been no changes in our internal control over financing reporting that occurred during the quarter ended September 28, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

See Part I, Item 4. “Executive Officers of the Registrant.” Other information relating to our directors and executive officers is incorporated by reference to the definitive proxy statement for our 2013 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. We will provide any person without charge, upon request, a copy of such code of ethics by mailing the request to us at 85 Fifth Avenue, New York, NY 10003, Attention: Robert Stewart.

Audit Committee Financial Expert

Our Board of Directors has determined that Marcia Allen, Director, is our Audit Committee Financial Expert, as defined under Section 407 of the Sarbanes-Oxley Act of 2002 and the rules promulgated by the SEC in furtherance of Section 407. Ms. Allen is independent of management. Other information regarding the Audit Committee is incorporated by reference from the Proxy Statement.

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

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.

37

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 28, 2013 and September 29, 2012</u>	F-2
<u>Consolidated Statements of Income --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-3
<u>Consolidated Statements of Comprehensive Income --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-4
<u>Consolidated Statements of Changes in Equity --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-5
<u>Consolidated Statements of Cash Flows --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-6
<u>Notes to Consolidated Financial Statements</u>	F-7

(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.

We have audited the accompanying consolidated balance sheets of Ark Restaurants Corp. and Subsidiaries as of September 28, 2013 and September 29, 2012, and the related consolidated statements of income, comprehensive income, changes in equity and cash flows for each of the years in the two-year period ended September 28, 2013. Ark Restaurants Corp. and Subsidiaries' management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the auditing standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, 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. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Ark Restaurants Corp. and Subsidiaries as of September 28, 2013 and September 29, 2012, and their consolidated results of operations and cash flows for each of the years in the two-year period ended September 28, 2013 in conformity with accounting principles generally accepted in the United States of America.

/s/ CohnReznick LLP

Jericho, New York  
December 23, 2013

F-1

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

(In Thousands, Except Per Share Amounts)

	September 28, 2013	September 29, 2012
<b><u>ASSETS</u></b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (includes \$637 at September 28, 2013 and \$714 at September 29, 2012 related to VIEs)	\$ 8,748	\$ 8,705
Short-term investments in available-for-sale securities	—	75
Accounts receivable (includes \$317 at September 28, 2013 and \$1,776 at September 29, 2012 related to VIEs)	2,712	3,790
Employee receivables	346	339
Inventories (includes \$16 at September 28, 2013 and \$28 at September 29, 2012 related to VIEs)	1,579	1,567
Prepaid and refundable income taxes (includes \$163 at September 28, 2013 and \$235 at September 29, 2012 related to VIEs)	567	985
Prepaid expenses and other current assets (includes \$13 at September 28, 2013 and September 29, 2012 related to VIEs)	1,038	1,087
Current portion of note receivable	226	—
Total current assets	15,216	16,548
FIXED ASSETS - Net (includes \$89 at September 28, 2013 and \$3,189 at September 29, 2012 related to VIEs)	25,017	26,194
NOTE RECEIVABLE, LESS CURRENT PORTION	774	—
INTANGIBLE ASSETS - Net	13	1,021
GOODWILL	4,813	4,813
TRADEMARKS	721	721
DEFERRED INCOME TAXES	4,806	4,960
OTHER ASSETS (includes \$71 at September 28, 2013 and September 29, 2012 related to VIEs)	5,098	907
<b>TOTAL ASSETS</b>	<b>\$ 56,458</b>	<b>\$ 55,164</b>
<b><u>LIABILITIES AND EQUITY</u></b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade (includes \$70 at September 28, 2013 and \$153 at September 29, 2012 related to VIEs)	\$ 2,758	\$ 2,729
Accrued expenses and other current liabilities (includes \$140 at September 28, 2013 and \$1,950 at September 29, 2012 related VIEs)	9,275	8,873
Dividend payable	814	—
Current portion of notes payable	2,063	885
Total current liabilities	14,910	12,487
OPERATING LEASE DEFERRED CREDIT	4,606	4,650
NOTES PAYABLE, LESS CURRENT PORTION	1,594	1,240
<b>TOTAL LIABILITIES</b>	<b>21,110</b>	<b>18,377</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>EQUITY:</b>		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued, 4,610 shares at at September 28, 2013 and 4,601 shares at September 29, 2012; outstanding, 3,254 shares at September 28, 2013 and 3,245 shares at September 29, 2012	46	46
Additional paid-in capital	22,978	23,410

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Retained earnings	22,950	22,372
	45,974	45,828
Less treasury stock, at cost, of 1,356 shares at September 28, 2013 and September 29, 2012	(13,220 )	(13,220 )
Total Ark Restaurants Corp. shareholders' equity	32,754	32,608
NON-CONTROLLING INTERESTS	2,594	4,179
TOTAL EQUITY	35,348	36,787
TOTAL LIABILITIES AND EQUITY	\$ 56,458	\$ 55,164

See notes to consolidated financial statements.

F-2

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

(In Thousands, Except Per Share Amounts)

	Year Ended	
	September 28, 2013	September 29, 2012
<b>REVENUES:</b>		
Food and beverage sales	\$ 129,122	\$ 136,914
Other revenue	1,476	1,114
Total revenues	130,598	138,028
<b>COSTS AND EXPENSES:</b>		
Food and beverage cost of sales	32,791	35,157
Payroll expenses	42,488	43,406
Occupancy expenses	17,533	17,702
Other operating costs and expenses	17,085	17,915
General and administrative expenses	9,792	9,368
Impairment loss from write-down of long-lived assets	—	379
Depreciation and amortization	4,303	4,110
Total costs and expenses	123,992	128,037
<b>OPERATING INCOME</b>	<b>6,606</b>	<b>9,991</b>
<b>OTHER (INCOME) EXPENSE:</b>		
Interest expense	62	23
Interest income	—	(33 )
Other income, net	(508 )	(454 )
Total other income, net	(446 )	(464 )
<b>INCOME BEFORE PROVISION FOR INCOME TAXES</b>	<b>7,052</b>	<b>10,455</b>
Provision for income taxes	1,941	3,013
<b>INCOME FROM CONTINUING OPERATIONS</b>	<b>5,111</b>	<b>7,442</b>
Loss from discontinued operations, net of tax	—	(292 )
<b>CONSOLIDATED NET INCOME</b>	<b>5,111</b>	<b>7,150</b>
Net income attributable to non-controlling interests	(1,286 )	(1,661 )
<b>NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.</b>	<b>\$3,825</b>	<b>\$5,489</b>
<b>AMOUNTS ATTRIBUTABLE TO ARK RESTAURANTS CORP.:</b>		
Income from continuing operations	\$3,825	\$5,748
Loss from discontinued operations, net of tax	—	(259 )
Net income	\$3,825	\$5,489
<b>NET INCOME (LOSS) PER ARK RESTAURANTS CORP. COMMON SHARE:</b>		
From continuing operations:		
Basic	\$ 1.18	\$ 1.75
Diluted	\$ 1.13	\$ 1.73
From discontinued operations:		
Basic	\$—	\$(0.08 )
Diluted	\$—	\$(0.08 )
From net income:		
Basic	\$ 1.18	\$ 1.67
Diluted	\$ 1.13	\$ 1.65
<b>WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:</b>		
Basic	3,246	3,292
Diluted	3,371	3,327

See notes to consolidated financial statements.

F-3

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

(In Thousands)

	Year Ended	
	September	September
	28,	29,
	2013	2012
Consolidated net income	\$5,111	\$ 7,150
Other comprehensive loss, net of taxes:		
Unrealized loss on available-for-sale securities	—	(3 )
Total other comprehensive loss, net of taxes	—	(3 )
Comprehensive income	5,111	7,147
Comprehensive income attributable to non-controlling interests	(1,286)	(1,661 )
Comprehensive income attributable to Ark Restaurants Corp.	\$3,825	\$ 5,486

See notes to consolidated financial statements.

F-4



**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY**  
**YEARS ENDED SEPTEMBER 28, 2013 AND SEPTEMBER 29, 2012**

(In Thousands)

	Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income	Retained Earnings	Stock Option Receivable	Treasury Stock	Total Ark Restaurants Corp. Shareholders' Equity	Non- controlling Interests	Total Equity	
BALANCE - October 1, 2011	4,601	\$ 46	\$ 23,302	\$ 3	\$ 20,128	\$ (29 )	\$(10,095)	\$ 33,355	\$ 4,831	\$ 38,186
Net income	—	—	—	—	5,489	—	—	5,489	1,661	7,150
Unrealized loss on available-for-sale securities	—	—	—	(3 )	—	—	—	(3 )	—	(3 )
Write-off of stock option receivable	—	—	—	—	—	29	—	29	—	29
Purchase of treasury stock	—	—	—	—	—	—	(3,125 )	(3,125 )	—	(3,125 )
Stock-based compensation	—	—	108	—	—	—	—	108	—	108
Distributions to non-controlling interests	—	—	—	—	—	—	—	—	(2,313 )	(2,313 )
Payment of dividends - \$1.00 per share	—	—	—	—	(3,245 )	—	—	(3,245 )	—	(3,245 )
BALANCE - September 29, 2012	4,601	46	23,410	—	22,372	—	(13,220)	32,608	4,179	36,787
Net income	—	—	—	—	3,825	—	—	3,825	1,286	5,111
Exercise of stock options	9	—	121	—	—	—	—	121	—	121
Tax benefit on exercise of stock options	—	—	44	—	—	—	—	44	—	44
Purchase of member interests in subsidiary	—	—	(2,685 )	—	—	—	—	(2,685 )	(280 )	(2,965 )
Tax benefit of purchase of member interests in subsidiary	—	—	1,080	—	—	—	—	1,080	—	1,080
	—	—	691	—	—	—	—	691	(691 )	—

Elimination of non-controlling interest in discontinued operation										
Stock-based compensation	—	—	317	—	—	—	—	317	—	317
Distributions to non-controlling interests	—	—	—	—	—	—	—	—	(1,900 )	(1,900 )
Paid and accrued dividends - \$1.00 per share	—	—	—	—	(3,247 )	—	—	(3,247 )	—	(3,247 )
<b>BALANCE - September 28, 2013</b>	<b>4,610</b>	<b>\$ 46</b>	<b>\$ 22,978</b>	<b>\$ —</b>	<b>\$ 22,950</b>	<b>\$ —</b>	<b>\$(13,220)</b>	<b>\$ 32,754</b>	<b>\$ 2,594</b>	<b>\$ 35,348</b>

See notes to consolidated financial statements.

F-5

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

(In Thousands)

	Year Ended	
	September 28, 2013	September 29, 2012
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income	\$5,111	\$ 7,150
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Impairment loss from write-down of long-lived assets	—	379
Write-off of notes receivable from former president	—	66
Loss on closure of restaurants	256	365
Loss on disposal of discontinued operation	—	270
Deferred income taxes	1,234	2,293
Stock-based compensation	317	108
Depreciation and amortization	4,303	4,110
Operating lease deferred charge (credit)	(44 )	1,409
Changes in operating assets and liabilities:		
Accounts receivable	1,078	(112 )
Inventories	(103 )	(232 )
Prepaid, refundable and accrued income taxes	418	(1,129 )
Prepaid expenses and other current assets	(51 )	(675 )
Other assets	109	(14 )
Accounts payable - trade	29	207
Accrued expenses and other liabilities	402	(772 )
Net cash provided by operating activities	13,059	13,423
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(3,283 )	(7,995 )
Purchase of management rights	—	(400 )
Loans and advances made to employees	(124 )	(175 )
Payments received on employee receivables	117	87
Purchase of member interests in subsidiary	(2,965 )	—
Purchase of member interest in New Meadowlands Racetrack LLC	(4,200 )	—
Purchases of investment securities	—	(441 )
Proceeds from sales of investment securities	75	3,062
Net cash used in investing activities	(10,380)	(5,862 )
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from issuance of note payable	3,000	—
Principal payments on notes payable	(1,468 )	(78 )
Dividends paid	(2,433 )	(3,245 )
Proceeds from issuance of stock upon exercise of stock options	121	—
Excess tax benefits related to stock-based compensation	44	—
Purchase of treasury shares	—	(1,000 )

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Distributions to non-controlling interests	(1,900 )	(2,313 )
Net cash used in financing activities	(2,636 )	(6,636 )
NET INCREASE IN CASH AND CASH EQUIVALENTS	43	925
CASH AND CASH EQUIVALENTS, Beginning of year	8,705	7,780
CASH AND CASH EQUIVALENTS, End of year	\$8,748	\$ 8,705

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$62	\$ 23
Income taxes	\$379	\$ 2,363
Non-cash investing activity:		
Note payable in connection with purchase of treasury shares	\$—	\$ 2,125
Tax benefit of purchase of member interests in subsidiary	\$1,080	\$ —
Liquidation of non-controlling interest in discontinued operation	\$691	\$ —
Conversion of intangible asset to note receivable	\$1,000	\$ —
Non-cash financing activity:		
Accrued dividends	\$814	\$ —

See notes to consolidated financial statements.

F-6

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

As of September 28, 2013, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 20 restaurants and bars, 22 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, three in Washington, D.C., seven in Las Vegas, Nevada, three in Atlantic City, New Jersey, one at the Foxwoods Resort Casino in Ledyard, Connecticut and one in Boston, Massachusetts. The Las Vegas operations include five 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; one bar within the Venetian Casino Resort as well as three 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 and a restaurant. In Boston, Massachusetts, the Company operates a restaurant in the Faneuil Hall Marketplace. The Florida operations under management include five fast food facilities in Tampa, Florida and seven fast food facilities in Hollywood, Florida, each at a Hard Rock Hotel and Casino.

**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.

**Accounting Period** — The Company’s fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 28, 2013 and September 29, 2012 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, inventories, 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 other matters. 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. In addition, 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.

F-7

**Fair Value of Financial Instruments** — The carrying amount of cash and cash equivalents, investments, 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 approximates the carrying value of such debt.

**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. 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.

For the years ended September 28, 2013 and September 29, 2012, the Company made purchases from one vendor that accounted for approximately 12% and 13%, respectively, of total purchases in each year.

**Accounts Receivable** — Accounts receivable is 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 hotels 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.

**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.

**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.

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. The Company also issues gift cards to service providers and to others for no consideration. Costs associated with these issuances are recognized at the time of

redemption.

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

**Fixed Assets** — Leasehold improvements and furniture, fixtures and equipment are stated at cost less accumulated depreciation and amortization. Depreciation of furniture, fixtures and equipment is computed using the straight-line method over the estimated useful lives of the respective assets (three to seven years). 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 accounts 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. Once the projects have been completed, the Company begins depreciating and amortizing the assets. Start-up costs

F-8



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, which range from 9 to 20 years. 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. No impairment charges were necessary for the year ended September 28, 2013. See Note 6 for a discussion of impairment charges for long-lived assets recorded in fiscal 2012.

**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, which were acquired in connection with the *Durgin Park* acquisition, 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 28, 2013, the Company performed both a qualitative and quantitative 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 28, 2013. 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.

**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.

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

***Defined Contribution Plans*** — 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 28, 2013 and September 29, 2012, the Company did not make any contributions to the Plan.

F-9

**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).

**Share-based Compensation** — The Company measures share-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. Upon exercise of options, 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.

During fiscal 2012, options to purchase 251,500 shares of common stock were granted at an exercise price of \$14.40 per share and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant. Such options had an aggregate grant date fair value of approximately \$646,000. The Company did not grant any options during the fiscal year 2013. The Company generally issues new shares upon the exercise of employee stock options.

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 2012 grant include a risk free interest rate of 1.67%, volatility of 36.2%, a dividend yield of 6.13% and an expected life of 6.25 years.

***New Accounting Standards Adopted in Fiscal 2013*** — In June 2011, the Financial Accounting Standards Board (the “FASB”) issued new accounting guidance on the presentation of other comprehensive income. The new guidance eliminated the option to present the components of other comprehensive income as part of the statement of changes in equity. Instead, an entity has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The new accounting guidance became effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. Full retrospective application is required. The adoption of this guidance did not have a material impact on the Company’s financial statements, and the statements of comprehensive income were presented as a separate consecutive statement following the Consolidated Statements of Income.

***New Accounting Standards Not Yet Adopted*** — In December 2011, the FASB issued amended standards to increase the prominence of offsetting assets and liabilities reported in financial statements. These amendments require an entity to disclose information about offsetting and the related arrangements to enable users of its financial statements to understand the effect of those arrangements on its financial position. These revised standards are effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods are to be retrospectively applied. These amended standards may require additional

footnote disclosures for these enhancements; however they will not affect our consolidated financial position or results of operations.

In February 2013, the FASB issued guidance for the recognition, measurement, and disclosure of obligations resulting from joint and several liability arrangements for which the total amount of the obligation is fixed at the reporting date, except for obligations addressed within existing guidance. This guidance is effective for fiscal years ending after December 15, 2014 and is required to be applied retrospectively to all prior periods presented for those obligations that existed upon adoption. The Company does not expect the adoption this guidance to have a significant impact on its consolidated financial condition or results of operations.

In July 2013, the FASB issued new accounting guidance which requires entities to present unrecognized tax benefits as a reduction of a deferred tax asset for a net operating loss carryforward, a similar tax loss, or a tax credit carryforward, except to the extent the net operating loss carryforwards or tax credit carryforwards are not available to be used at the reporting date to settle additional income taxes, and the entity does not intend to use them for this purpose. The new accounting guidance is consistent with how the Company has historically accounted for unrecognized tax benefits, therefore the Company does not expect the adoption of this guidance to have a significant impact on its consolidated financial statements.

## 2. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

Upon adoption of the accounting guidance for VIEs on October 3, 2010, the Company determined that it was the primary beneficiary of two VIEs which had not been previously consolidated, Ark Hollywood/Tampa Investment, LLC and Ark Connecticut Investment, LLC, as the guidance requires that a single party (including its related parties and de facto agents) be able to exercise their rights to remove the decision maker in order for the “kick-out” rights to be considered substantive. Previously, a simple majority of owners that could exercise kick-out rights was considered a substantive right. This change resulted in the need for consolidation.

During the year ended September 28, 2013, the Company purchased an additional 14.39% of the membership interests of Ark Hollywood/Tampa Investment, LLC, directly from the individuals that held such interests, for an aggregate consideration of \$2,964,512. In connection with this transaction, the Company recorded a reduction to additional paid-in capital of \$2,684,896 representing the excess of the amount paid over the carrying value (\$279,616) of the non-controlling interests acquired as the acquisition of an additional interest in a less than wholly-owned subsidiary where control is maintained is treated as an equity transaction. In addition, the Company also recorded an increase to additional paid-in capital in the amount of \$1,079,591 representing the related deferred tax benefit of the transaction.

As a result of the above, Ark Hollywood/Tampa Investment, LLC is no longer considered a VIE as the Company now owns 64.39% of the voting membership interests. However, the Company continues to consolidate this entity as a result of its majority ownership. Accordingly, the following disclosures associated with the Company’s VIEs do not include Ark Hollywood/Tampa Investment, LLC as of September 28, 2013:



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

	September 28, 2013	September 29, 2012
	(in thousands)	
Cash and cash equivalents	\$637	\$ 714
Accounts receivable	317	1,776
Inventories	16	28
Prepaid income taxes	163	235
Prepaid expenses and other current assets	13	13
Due from Ark Restaurants Corp. and affiliates (1)	157	288
Fixed assets, net	89	3,189
Other long-term assets	71	71
Total assets	\$1,463	\$ 6,314
Accounts payable	\$70	\$ 153
Accrued expenses and other liabilities	140	1,950
Total liabilities	210	2,103
Equity of variable interest entities	1,253	4,211
Total liabilities and equity	\$1,463	\$ 6,314

(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 March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a restaurant and bar in New York City named *Clyde Frazier's Wine and Dine*. In connection with the agreement, the landlord contributed \$1,800,000 towards the construction of the property (which has been deferred over the lease term), which totaled approximately \$7,000,000. The initial term of the lease for this facility expires on March 31, 2027 and has one five-year renewal. This restaurant opened during the second quarter of fiscal 2012 and, as a result, the Consolidated Statement of Income for the year ended September 29, 2012 includes approximately \$1,800,000 of pre-opening and early operating losses related to this property.

On November 28, 2012, a subsidiary of the Company entered into an agreement to design and lease a restaurant at the Tropicana Hotel and Casino in Atlantic City, NJ. The cost to construct this restaurant was approximately \$1,500,000. The initial term of the lease for this facility expires June 7, 2023 and has two five-year renewals. The restaurant, *Broadway Burger Bar and Grill*, opened during the third quarter of fiscal 2013 and, as a result, the Consolidated Statement of Income for the year ended September 28, 2013 includes approximately \$100,000 of pre-opening and early operating losses related to this property.

#### 4. RECENT RESTAURANT DISPOSITIONS

***Lease Expirations*** – On July 8, 2011, the Company entered into an agreement with the landlord of *The Grill Room* property located in New York City, whereby in exchange for a payment of \$350,000 the Company vacated the property on October 31, 2011. Such payment and the related loss on closure of the property, in the amount of \$179,000, are included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 29, 2012. This lease expired on December 31, 2011.

The Company was advised by the landlord that it would have to vacate the *America* property located in Washington, DC, which was on a month-to-month lease. The closure of this property occurred on November 7, 2011. The related loss on closure of this property, in the amount of \$186,000, is included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 29, 2012.



**Discontinued Operations** – Effective March 15, 2012, the Company vacated its food court operations at the *MGM Grand Casino at the Foxwoods Resort Casino* in Ledyard, CT. The Company determined that it would not be able to operate this facility profitably at this location at the current rent. As a result, the Company recorded a disposal loss in the amount of \$270,000, which was recorded during the second quarter of fiscal 2012, as well as operating losses of \$155,000 for the year ended September 29, 2012, all of which are included in discontinued operations, net of tax, in the Consolidated Statement of Income for the year ended September 29, 2012. Included in the Net Income Loss Attributable to Non-controlling Interests in the accompanying Consolidated Statement of Income for the year ended September 29, 2012 are losses of \$33,000 attributable to the limited partners in this property.

The results of discontinued operations were as follows:

	Year Ended September 28, 2012 (In thousands)
Revenues	\$—\$ 910
Costs and expenses	— 1,335
Loss before income taxes	— (425 )
Income tax benefit	— (133 )
Net loss	\$—\$ (292 )

**Other** – On October 29, 2012, the Company suffered a flood at its *Red* and *Sequoia* properties located in New York, NY as a result of a hurricane. The Company did not reopen these properties as the underlying leases were due to expire in the second quarter of fiscal 2013. Losses related to the closure of these properties, in the amount of \$256,000, are included in Other Operating Costs and Expenses in the Consolidated Statement of Income for the year ended September 28, 2013.

## 5. COST METHOD INVESTMENT

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. In conjunction with this investment, the Company also entered into a long-term agreement with NMR to provide food and beverage services for the new racing facilities at the Meadowlands Racetrack in northern New Jersey. NMR has a long-term lease with the State of New Jersey and the new facility opened in November 2013. The Company’s agreement extends to any future development at the race track site.

This investment has been accounted for based on the cost method and is included in Other Assets in the accompanying Consolidated Balance Sheet at September 28, 2013. The Company periodically reviews its investments for impairment. If the Company determines that an other-than-temporary impairment has occurred, it will write-down the investment to its fair value. No indication of impairment was noted as of September 28, 2013.



**6. FIXED ASSETS**

Fixed assets consist of the following:

	September 28, 2013	September 29, 2012
	(In thousands)	
Leasehold improvements	\$41,987	\$ 41,028
Furniture, fixtures and equipment	33,249	34,161
	75,236	75,189
Less: accumulated depreciation and amortization	50,219	48,995
	\$25,017	\$ 26,194

Depreciation and amortization expense related to fixed assets for the years ended September 28, 2013 and September 29, 2012 was \$4,295,000 and \$4,102,000, 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. During the year ended September 29, 2012, the Company recorded a charge of \$379,000 to impair the leasehold improvements and equipment of an underperforming restaurant. No impairment charges were necessary for the year ended September 28, 2013.

**7. NOTE RECEIVABLE**

On June 7, 2011, the Company entered into a 10-year exclusive agreement to manage a yet to be constructed restaurant and catering service at *Basketball City* in New York City in exchange for a fee of \$1,000,000 (all of which was paid as of September 29, 2012 and is included in Intangible Assets in the accompanying Consolidated Balance Sheet as of September 29, 2012). Under the terms of the agreement the owner of the property was to construct the facility at their expense and the Company was to pay the owner an annual fee based on sales, as defined in the agreement. As of September 28, 2013, the owner had not delivered the facility to the Company and the parties executed a promissory note for repayment of the \$1,000,000 exclusivity fee. The note bears interest at 4.0% per annum and is payable in 48 equal monthly installments of \$22,579, commencing on December 1, 2013.

## 8. INTANGIBLE ASSETS

Intangible assets consist of the following:

	September 28, 2013	September 29, 2012
	(In thousands)	
Purchased leasehold rights (a)	\$2,343	\$ 2,343
Operating rights (b)	—	1,000
Noncompete agreements and other	283	283
	2,626	3,626
Less accumulated amortization	2,613	2,605
Total intangible assets	\$13	\$ 1,021

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

(b) Amounts paid in connection with *Basketball City* agreement and converted to a note receivable in fiscal 2013 – see Note 7.

Amortization expense related to intangible assets for each of the years ended September 28, 2013 and September 29, 2012 was \$8,000.

## 9. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	September 28, 2013	September 29, 2012
	(In thousands)	
Sales tax payable	\$783	\$ 852
Accrued wages and payroll related costs	1,435	1,475
Customer advance deposits	3,356	2,811
Accrued occupancy, gift cards and other operating expenses	3,701	3,735

\$9,275 \$ 8,873

10.

## NOTES PAYABLE

**Treasury Stock Repurchase** – On December 12, 2011, the Company, in a private transaction, purchased 250,000 shares of its common stock at a price of \$12.50 per share, or a total of \$3,125,000. Upon the closing of the purchase, the Company paid the seller \$1,000,000 in cash and issued an unsecured promissory note to the seller for \$2,125,000. The note bears interest at 0.19% per annum, and is payable in 24 equal monthly installments of \$88,541, commencing on December 1, 2012. As of September 28, 2013, the outstanding note payable balance was approximately \$1,240,000.

**Bank** – On February 25, 2013, the Company issued a promissory note, secured by all assets of the Company, to a bank for \$3,000,000. The note bears interest at LIBOR plus 3.0% per annum, and is payable in 36 equal monthly installments of \$83,333, commencing on March 25, 2013. As of September 28, 2013, the outstanding balance of this note payable was approximately \$2,417,000. The agreement provides, among other things, that the Company

F-15

meet minimum quarterly tangible net worth amounts, as defined, and minimum annual net income amounts, and contains customary representations, warranties and affirmative covenants. The agreement also contains 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 debt covenants as of September 28, 2013.

As of September 28, 2013, the aggregate amounts of notes payable maturing in the next three years are as follows:

2014	\$2,063
2015	1,174
2016	420
Total	\$3,657

11. COMMITMENTS AND CONTINGENCIES

**Leases** — The Company leases its restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2032. 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.

As of September 28, 2013, future minimum lease payments under noncancelable leases are as follows:

Fiscal Year	Amount (In thousands)
2014	\$ 8,289
2015	7,623
2016	7,056
2017	5,811
2018	3,929
Thereafter	22,538
Total minimum payments	\$ 55,246

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 from continuing operations was approximately \$14,117,000 and \$14,619,000 for the fiscal years ended September 28, 2013 and September 29, 2012, respectively. Contingent rentals, included in rent expense, were approximately \$4,811,000 and \$5,055,000 for the fiscal years ended September 28, 2013 and September 29, 2012, respectively.

***Legal Proceedings*** — In the ordinary course its business, the Company is a party to various lawsuits arising from accidents at its restaurants and worker's 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

F-16

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.

## 12.

## STOCK OPTIONS

The Company has options outstanding under two stock option plans, the 2004 Stock Option Plan (the "2004 Plan") and the 2010 Stock Option Plan (the "2010 Plan"), which was approved by shareholders in the second quarter of 2010. Effective with this approval, the Company terminated the 2004 Plan. This action terminated the 400 authorized but unissued options under the 2004 Plan, but it did not affect any of the options previously issued under the 2004 Plan. Options granted under the 2004 Plan 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.

The 2010 Stock Option Plan is the Company's only equity compensation plan currently in effect. Under the 2010 Stock Option Plan, 500,000 options were authorized for future grant. Options granted under the 2010 Plan 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.

During fiscal 2012, options to purchase 251,500 shares of common stock were granted and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant. No options were granted during the fiscal year ended September 28, 2013.

The following table summarizes stock option activity under all plans:

	2013		2012			
	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding, beginning of year	648,100	\$ 19.56		396,600	\$ 22.82	
Options:						
Granted	—			251,500	\$ 14.40	
Exercised	(9,300 )	\$ 13.11		—		
Canceled or expired	(15,700 )	\$ 17.87		—		
Outstanding and expected to vest, end of year (a)	623,100	\$ 19.69	\$3,264,802	648,100	\$ 19.56	\$1,415,116
Exercisable, end of year (a)	503,950	\$ 20.95	\$2,396,199	396,600	\$ 22.82	\$798,941



Weighted average remaining contractual life	5.5 Years	6.5 Years
Shares available for future grant	248,500	248,500

(a) Options become exercisable at various times and expire at various dates through 2022.

The following table summarizes information about stock options outstanding as of September 28, 2013 (shares in thousands):

F-17

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	158,300	\$ 12.04	5.6	158,300	\$ 12.04	5.6
\$ 14.40	238,300	\$ 14.40	8.7	119,150	\$ 14.40	8.7
\$ 29.60	136,500	\$ 29.60	1.2	136,500	\$ 29.60	1.2
\$ 32.15	90,000	\$ 32.15	3.2	90,000	\$ 32.15	3.2
	623,100	\$ 19.69	5.5	503,950	\$ 20.95	4.7

Compensation cost charged to operations for the fiscal years ended September 28, 2013 and September 29, 2012 for share-based compensation programs was approximately \$317,000 and \$108,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the Consolidated Statements of Income.

As of September 28, 2013, there was approximately \$221,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately one year.

13.

INCOME TAXES

The provision for income taxes attributable to continuing operations consists of the following:

	Year Ended	
	September 28, 2013	September 29, 2012
	(In thousands)	
Current provision:		
Federal	\$ 518	\$ 469
State and local	188	251
	706	720
Deferred provision:		
Federal	984	3,140
State and local	251	(847 )
	1,235	2,293
	\$ 1,941	\$ 3,013



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

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

	<b>Year Ended</b>	
	September 28, 2013	September 29, 2012
	(In thousands)	
Provision at Federal statutory rate (34% in 2013 and 2012)	\$2,398	\$ 3,555
State and local income taxes, net of tax benefits	265	312
Tax credits	(531 )	(565 )
Income attributable to non-controlling interest	(437 )	(576 )
Other	246	287
	<b>\$1,941</b>	<b>\$ 3,013</b>

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 28, 2013	September 29, 2012
	(In thousands)	
Long-term deferred tax assets (liabilities):		
State net operating loss carryforwards	\$3,665	\$ 3,357
Operating lease deferred credits	974	1,069
Depreciation and amortization	(464 )	(358 )
Deferred compensation	1,524	1,431
Partnership investments	(460 )	(413 )
Other	95	108
Total long-term deferred tax assets	5,334	5,194
Valuation allowance	(528 )	(234 )
Total net deferred tax assets	<b>\$4,806</b>	<b>\$ 4,960</b>

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. The deferred tax valuation allowance of \$528,000 and \$234,000 as of September 28, 2013 and September 29, 2012, respectively, was attributable to state and local net operating loss carryforwards which are not

realizable on a more-likely-than-not basis.

F-19

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

	September 28, 2013	September 29, 2012
	(In thousands)	
Balance at beginning of year	\$ 209	\$ 209
Reductions due to settlements with taxing authorities	(31 )	—
Reductions as a result of a lapse of the statute of limitations	(16 )	—
Interest accrued during the current year	—	—
Balance at end of year	\$ 162	\$ 209

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. As of September 28, 2013, the Company accrued approximately \$96,000 of interest and penalties. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months. Inherent uncertainties exist in estimates of tax contingencies due to changes in tax law, both legislated and concluded through the various jurisdictions' tax court systems.

The Company files tax returns in the U.S. and various state and local jurisdictions with varying statutes of limitations. An examination of the Company's Federal tax returns for the fiscal years 2008 and 2009 was recently completed by the Internal Revenue Service and did not result in a material adjustment to the Company's consolidated financial position or results of operations. The 2010, 2011 and 2012 fiscal years remain subject to examination by the Internal Revenue Service. The 2009 through 2012 fiscal years generally remain subject to examination by most state and local tax authorities.

## 14.

## OTHER INCOME

Other income consists of the following:

	<b>Year Ended</b>	
	September 28, 2013	September 29, 2012
	(In thousands)	
Video arcade sales	\$ 22	\$ 74
Other rentals	5	35

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Insurance proceeds	393	325
Other	88	20
	\$508	\$ 454

F-20

## 15. INCOME PER SHARE OF COMMON STOCK

A reconciliation of the numerators and denominators of the basic and diluted per share computations for the fiscal years ended September 28, 2013 and September 29, 2012 follows:

	Net Income (Loss) Attributable to Ark Restaurants Corp. (Numerator) (In thousands, except per share amounts)	Shares (Denominator)	Per Share Amount
Year ended September 28, 2013			
From continuing operations:			
Basic EPS	\$3,825	3,246	\$ 1.18
Stock options	—	125	(0.05 )
Diluted EPS	\$3,825	3,371	\$ 1.13
From discontinued operations:			
Basic EPS	\$—	3,246	\$ —
Stock options	—	125	—
Diluted EPS	\$—	3,371	\$ —
From net income:			
Basic EPS	\$3,825	3,246	\$ 1.18
Stock options	—	125	(0.05 )
Diluted EPS	\$3,825	3,371	\$ 1.13
Year ended September 29, 2012			
From continuing operations:			
Basic EPS	\$5,748	3,292	\$ 1.75
Stock options	—	35	(0.02 )
Diluted EPS	\$5,748	3,327	\$ 1.73



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

From discontinued operations:

Basic EPS	\$(259 )	3,292	\$ (0.08 )
Stock options	—	35	—
Diluted EPS	\$(259 )	3,327	\$ (0.08 )

From net income:

Basic EPS	\$5,489	3,292	\$ 1.67
Stock options	—	35	(0.02 )
Diluted EPS	\$5,489	3,327	\$ 1.65

F-21

For the year ended September 28, 2013, options to purchase 158,300 shares of common stock at a price of \$12.04 and options to purchase 238,300 shares of common stock at a price of \$14.40 were included in diluted earnings per share. Options to purchase 136,500 shares of common stock at a price of \$29.60 and options to purchase 90,000 shares of common stock at a price of \$32.15 per share were not included in diluted earnings per share as their impact would be anti-dilutive.

For the year ended September 29, 2012, options to purchase 166,100 shares of common stock at a price of \$12.04 and options to purchase 251,500 shares of common stock at a price of \$14.40 were included in diluted earnings per share. Options to purchase 140,500 shares of common stock at a price of \$29.60 and options to purchase 90,000 shares of common stock at a price of \$32.15 per share were not included in diluted earnings per share as their impact would be anti-dilutive.

## **16. RELATED PARTY TRANSACTIONS**

The Company's former President and Chief Operating Officer resigned effective January 1, 2012. In connection therewith, the Company forgave loans due totaling \$66,000 (\$29,000 for stock option exercises receivable and \$37,000 for other loans) and has recorded additional compensation in the amount of \$475,400 in accordance with his separation agreement and release. Such amounts are included in General and Administrative Expenses in the Consolidated Statement of Income for the year ended September 29, 2012.

Receivables due from the former President, excluding stock option receivables, totaled \$37,000 at October 1, 2011. Such amount was forgiven during the year ended September 29, 2012 in connection with his resignation. Other employee loans totaled approximately \$346,000 and \$339,000 at September 28, 2013 and September 29, 2012, respectively. Such amounts are payable on demand and bear interest at the minimum statutory rate (0.16% at September 28, 2013 and 0.19% at September 29, 2012).

## **17. SUBSEQUENT EVENTS**

On November 22, 2013, the Company, through a wholly-owned subsidiary, Ark Rustic Inn LLC, entered into an Asset Purchase Agreement with W and O, Inc. to purchase the Rustic Inn Crab House, a restaurant and bar in Dania Beach, Florida, for \$7,500,000 plus inventory. The acquisition is scheduled to close on or before February 28, 2014, subject to satisfactory completion of due diligence, execution of employment and non-competition agreements, Florida Liquor Authority approval and customary closing conditions.

On November 19, 2013, the Company invested an additional \$464,000 in the New Meadowlands Racetrack LLC ("NMR") through a purchase of an additional membership interest in Meadowlands Newmark, LLC, an existing member of NMR, resulting in a total ownership of 11.6%.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

On December 4, 2013, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on December 30, 2013 to shareholders of record at the close of business on December 16, 2013.

\*\*\*\*\*

F-22

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 23, 2013

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 23, 2013
/s/Vincent Pascal (Vincent Pascal)	Senior Vice President and Director	December 23, 2013
/s/Robert Stewart (Robert Stewart)	President, Chief Financial Officer and Director (Principal Financial and Accounting Officer)	December 23, 2013
/s/Marcia Allen (Marcia Allen)	Director	December 23, 2013
/s/Steven Shulman (Steven Shulman)	Director	December 23, 2013
/s/Paul Gordon (Paul Gordon)	Senior Vice President and Director	December 23, 2013

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

/s/Bruce R. Lewin (Bruce R. Lewin)	Director	December 23, 2013
/s/Arthur Stainman (Arthur Stainman)	Director	December 23, 2013
/s/ Stephen Novick (Stephen Novick)	Director	December 23, 2013

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. Amended Stock Option Plan, incorporated by reference to Exhibit 10.3 to the 1994 10-K.
- 10.4 Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999.
- 10.5 Ark Restaurants Corp. 1996 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 (Amendment No. 1) filed on March 16, 2001.
- 10.6 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas America Corp., incorporated by reference to Exhibit 10.6 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 3, 1998 (the "1998 10-K").
- 10.7 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Festival Food Corp., incorporated by reference to Exhibit 10.7 to the 1998 10-K.
- 10.8 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Steakhouse Corp., incorporated by reference to Exhibit 10.8 to the 1998 10-K.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

- Amendment dated August 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of  
10.9 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.9 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2000 (the "2000 10-K").
- Amendment dated November 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of  
10.10 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.10 to the 2000 10-K.
- Amendment dated November 1, 2001 to the Fourth Amended and Restated Credit Agreement dated as of  
10.11 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 29, 2001 (the "2001 10-K").
- Amendment dated December 20, 2001 to the Fourth Amended and Restated Credit Agreement dated as of  
10.12 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 of the 2001 10-K.
- Amendment dated as of April 23, 2002 to the Fourth Amended and Restated Credit Agreement dated as of  
10.13 December 27, 1999 between us and Bank Leumi USA, incorporated by reference to Exhibit 10.13 of the Second Quarter 2002 Form 10-Q.
- Amendment dated as of January 22, 2002 to the Fourth Amended and Restated Credit Agreement dated as of  
10.14 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.14 of the First Quarter 2003 Form 10-Q.
- Ark Restaurants Corp. 2004 Stock Option Plan, as amended, incorporated by reference to the Registrant's  
10.15 Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on January 26, 2004.
- Ark Restaurants Corp. 2010 Stock Option Plan, incorporated by reference to the Registrant's Definitive Proxy  
10.16 Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on February 1, 2010.
- 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.
- 16 Letter from Deloitte & Touche LLP regarding change in certifying accountants, incorporated by reference from the exhibit included with our Current Report on Form 8-K filed with the SEC on January 15, 2004 and our Current Report on Form 8-K/A filed with the SEC on January 16, 2004.
- \*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.