



**Ark  
Restaurants  
Corp.**

**2018 ANNUAL REPORT**

## The Company

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

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

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

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

We will provide, without charge, a copy of our Annual Report on Form 10-K for the fiscal year ended September 29, 2018, including financial statements, exhibits and schedules thereto, to each of our shareholders of record on February 12, 2019 and each beneficial holder on that date, upon receipt of a written request therefore mailed to our offices, 85 Fifth Avenue, New York, NY 10003 Attention: Treasurer.

February 15, 2019

Shareholders, Associates, and Friends of our Company,

EBITDA for this past year, which was approximately the same as the prior year, was considerably shy of our internal projections. Despite this uncomfortable result, we remain confident that the operating entities in our portfolio will provide better cash flow and value to equity shareholders going forward.

Our properties in Las Vegas and Florida performed as expected with revenue and operating profits edging higher. In Alabama, despite stable revenues, operating profits were lower than projected due to inefficiencies in the cost of goods. This has since been corrected and in addition, we have recently restructured back-office operations in Alabama which will lower our cost of doing business. Results there should be back in line with expectations. We are comfortable with these restaurants and the real estate that accompanied their acquisition. Much like our Florida properties, where we also acquired the real estate of their operations, these are properties with experienced management and we expect their performance to continue to improve shareholder value.

Our difficulties in the production of projected cash flow were essentially confined to the northeast. Our properties in the northeast underperformed for several reasons. In Boston, Durgin-Park had been generating losses for the last three years. We made efforts to correct this but last year the losses increased substantially, beyond our projections and beyond our operating loss in the prior fiscal year. We recently made the decision to close this property. Bryant Park in New York has approximately 600 outdoor seats that are in constant demand during the warm months. We also have outdoor seats at El Rio Grande in New York. The weather this year, especially in the months of August and September, significantly intruded on the utilization of those seats. When our outdoor areas are underperforming, we are unable to adjust labor. We go into the outdoor season staffed for the increased revenue these outdoor seats provide and not having them utilized is both a loss of revenue and a loss of efficiency of labor. Obviously, this places significant pressure on operating profits. Sequoia in Washington D.C. has 550 outdoor seats and experienced the same weather patterns as New York City and therefore the same squeeze on operating results. But, the disappointment at this restaurant was not confined to weather. After an expensive refurbishment which added additional capacity for private events, bookings in the late summer and fall were less than our expectation. We believe this was a factor of having been closed many months for the renovation. The weather and less than expected revenue from events translated into a major disappointment. Recently, activity for private events at Sequoia has improved. A good team is in place and they are starting to secure business. Finally, Thunder Grill at Union Station in Washington D.C. underperformed. A sizable revenue generator for the restaurant, Amtrak employees, moved from their leased space at the station when Amtrak moved their corporate office.

Our investment in an LLC that is the majority owner in The Meadowlands Racetrack in northern New Jersey received a boost in revenue with the inauguration of sports betting in the fourth quarter of the fiscal year. The dollar volume of betting we are servicing has exceeded the volumes of other sports betting operations in Atlantic City. This we believe bodes well for the future of The Meadowlands in obtaining a casino license once New Jersey determines its needs to offset the diminution of tax revenue from Atlantic City by allowing a casino in the northern part of the state. In addition to holding an interest in the LLC, if the LLC is successful in obtaining a casino license, we retain the exclusive right to all casino food and beverage operations with the exception of a Hard Rock Café (Hard Rock is a partner in the LLC).

We will pursue additional opportunities to acquire restaurants where the real estate comes along with the deal. This is our preference, although we will not ignore strong cash flows with favorable long-term underlying leases. We do have the capacity to make a further acquisition if the right property comes to our attention. In the past we have been successful at leasing spaces and developing restaurant concepts. High rents, elevated construction costs and our conservative nature have effectively limited these opportunities. Whether we acquire or build we are best suited to large spaces where we can do outsized volumes. We have proved adept at delivering good quality at fair prices in these settings.

Again, this would not be possible without the support of all who work with this company. Their efforts translate into customer satisfaction and our success.

Sincerely,

Michael Weinstein  
Chairman and Chief Executive Officer

# **ARK RESTAURANTS CORP.**

## **Corporate Office**

Michael Weinstein, Chairman and Chief Executive Officer  
Anthony J. Sirica, Chief Financial Officer  
Vincent Pascal, Senior Vice President and Chief Operating Officer  
Paul Gordon, Senior Vice President-Director of Las Vegas Operations  
Walter Rauscher, Vice President-Corporate Sales & Catering  
Nancy Alvarez, Controller  
Nicole Calix Coy, Director of Human Resources – Las Vegas Operations  
Linda Clous, Director of Facilities Management  
Luis Gomes, Director of Purchasing – Las Vegas Operations  
Marilyn Guy, Director of Human Resources  
Jeff Isaacson, Vice President – Beverage Operations  
Donna McCarthy, Director of Operations – Atlantic City  
Teresita Mendoza, Controller – Las Vegas Operations  
Veronica Mijelshon, Director of Architecture and Design  
Andrea O'Brien, Director of Tour and Travel  
John Oldweiler, Director of Purchasing  
Evyette Ortiz, Director of Marketing  
Sonal Shah, General Counsel and Secretary  
Brisa Shoshani, Executive Assistant – Las Vegas Operations  
Blair Roy, Director of Maintenance- Las Vegas Operations

## **Executive Chefs**

Jerome Lingle, Las Vegas, NV  
Vico Ortega, New York, NY  
Sergio Soto, Atlantic City, NJ

## **Restaurant General Managers-New York**

Dianne Giovannone, Clyde Frazier's Wine and Dine  
Ashlee Dean, Southwest Porch  
Ana Harris, Robert  
Bridgeen Rice, El Rio Grande  
Donna Simms, Bryant Park Grill

## **Restaurant General Managers-Washington D.C.**

Gregory Thompson, Thunder Grill  
Annie Chen, Sequoia

## **Restaurant General Manager-Atlantic City, NJ**

Michelle Fratticcioli, Gallagher's Steakhouse and Gallagher's Burger Bar  
Jason Kowerski, Broadway Burger Bar

### **Restaurant General Manager – Meadowlands, NJ**

Jennifer Jordan, Victory Sports Bar & Club

### **Restaurant General Managers-Las Vegas**

Ivonne Escobedo, Village Streets  
Deme Ayele, Yolos Mexican Grill  
Geri Ohta, Director of Sales and Catering  
Mary Massa, Gonzalez y Gonzalez  
Mary Marques, Gallagher’s Steakhouse  
Kelly Rosas, America  
Jeff Stein, Broadway Burger Bar & Grill

### **Restaurant General Managers-Florida**

Michael Diascro, Rustic Inn  
Edgar Gonzalez-Pratts, Hollywood Food Court  
Darvin Pratts, Tampa Food Court  
Robert Rae, Shuckers

### **Restaurant General Manager-Foxwoods**

Matilda Santana, Lucky 7

### **Restaurant General Managers- Alabama**

Jim Harrison, Original Oyster House- Spanish Fort  
Bud Morris, Original Oyster House- Gulf Shores

### **Restaurant Chefs-New York**

Gonzalo Colin, Robert  
Armando Cortes, Clyde Frazier’s Wine and Dine  
Fermin Ramirez, El Rio Grande  
Gadi Weinreich, Bryant Park Grill

### **Restaurant Chefs-Washington D.C.**

Fanor Baldarrama, Sequoia  
Michael Foo, Thunder Grill

### **Restaurant Chefs-Las Vegas**

Bernard Camat, Assistant Executive Chef  
Brandon Greenwood, Employee Dining Room and Production  
Adam Rio, Gallagher’s Steakhouse  
Justin Vega, America Restaurant  
Emery Allen, Broadway Burger  
Ryan Casarez, Yolos Mexican Grill  
Pedro Gonzalez, Gonzalez y Gonzalez

## **Restaurant Chefs-Florida**

Francisco Chinicle and Jordanys Santana, Hollywood Food Court  
Ralph Formisano, Shuckers  
Jason Lemon, Rustic Inn – Dania Beach, FL  
Nolberto Vernal, Tampa Food Court

## Management's Discussion and Analysis of Financial Condition and Results of Operations

### Overview

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

#### *Accounting Period*

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

#### *Seasonality*

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

#### *Results of Operations*

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



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

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

## Revenues

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

### Food and Beverage Same-Store Sales

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

	Year Ended		Variance	
	September 29, 2018	September 30, 2017	\$	%
	(in thousands)			
Las Vegas	\$ 47,852	\$ 45,852	\$ 2,000	4.4%
New York	39,636	39,887	(251)	-0.6%
Washington, DC	3,112	3,573	(461)	-12.9%
Atlantic City, NJ	7,406	7,536	(130)	-1.7%
Boston	2,839	3,235	(396)	-12.2%
Connecticut	2,120	2,156	(36)	-1.7%
Alabama	11,924	11,804	120	1.0%
Florida	28,068	26,467	1,601	6.0%
Same store sales	142,957	140,510	\$ 2,447	1.7%
Other	13,880	8,276		
Food and beverage sales	\$ 156,837	\$ 151,196		

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

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

### Other Revenue

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

is primarily due to an increase in property management fees and other rentals partially offset by decreased purchase service fees.

## Costs and Expenses

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

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

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

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

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

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

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

Depreciation and amortization expense for fiscal 2018 increased as compared to the same period of last year primarily as a result of depreciation on the improvements made at our *Sequoia* property which were placed in service in the fourth fiscal quarter of 2017, partially offset by additional depreciation in the amount of \$358,000 related to asset write-offs at *Sequoia* and *Canyon Road* (whose lease was transferred to an unrelated party) in fiscal 2017.

## Income Taxes

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

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

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

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

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

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

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

be affected by factors such as income earned by our VIEs, generation of FICA TIP credits and the mix of geographical income for state tax purposes as Nevada does not impose an income tax.

### **Liquidity and Capital Resources**

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

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

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

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

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

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

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

#### *Restaurant Expansion*

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

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

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

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

#### *Investment in and Receivable from New Meadowlands Racetrack*

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

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

In conjunction with this investment, the Company, through a 97% owned subsidiary, Ark Meadowlands LLC (“AM VIE”), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the “Racing F&B Concessions”) located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year.

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

#### *Recent Restaurant Dispositions and Charges*

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

*Other* – On November 18, 2016, Ark Jupiter RI, LLC (“Ark Jupiter”), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the “ROFR”) with SCFRC-HWG, LLC, the landlord (the “Seller”) to purchase the land and building in which the Company operated its Rustic Inn location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter’s lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on

the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June 2017. In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

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

### **Critical Accounting Policies**

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

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

Below are listed certain policies that management believes are critical:

#### *Use of Estimates*

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

#### *Long-Lived Assets*

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

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



### *Recoverability of Investment in New Meadowlands Racetrack (“NMR”)*

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

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

In performing this assessment, we estimate the fair value of our Investment in NMR using our best estimate of these assumptions which we believe would be consistent with what a hypothetical marketplace participant would use. The variability of these factors depends on a number of conditions, including uncertainty about future events and our inability as a minority shareholder to control certain outcomes and thus our accounting estimates may change from period to period. If other assumptions and estimates had been used when these tests were performed, impairment charges could have resulted.

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

### *Leases*

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

### *Deferred Income Tax Valuation Allowance*

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

### *Goodwill and Trademarks*

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



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

#### *Stock-Based Compensation*

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

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

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

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

#### **Quantitative and Qualitative Disclosures About Market Risk**

Not applicable.

#### **Market For The Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

##### *Market for Our Common Stock*

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

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

##### *Dividend Policy*

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

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders  
Ark Restaurants Corp.

### **Opinion on the Financial Statements**

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

### **Basis for Opinion**

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

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

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

/s/ CohnReznick LLP

We have served as the Company’s auditors since 2004  
Jericho, New York  
December 20, 2018

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In Thousands, Except Per Share Amounts)

	September 29, 2018	September 30, 2017
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (includes \$181 at September 29, 2018 and \$363 at September 30, 2017 related to VIEs)	\$ 5,012	\$ 1,406
Accounts receivable (includes \$354 at September 29, 2018 and \$367 at September 30, 2017 related to VIEs)	3,452	3,353
Employee receivables	386	399
Inventories (includes \$19 at September 29, 2018 and \$22 at September 30, 2017 related to VIEs)	2,094	1,992
Prepaid and refundable income taxes (includes \$241 at September 29, 2018 and \$226 at September 30, 2017 related to VIEs)	721	945
Prepaid expenses and other current assets (includes \$51 at September 29, 2018 and \$63 at September 30, 2017 related to VIEs)	1,547	1,988
Total current assets	13,212	10,083
FIXED ASSETS - Net (includes \$0 at September 29, 2018 and \$6 at September 30, 2017 related to VIEs)	45,264	45,215
INTANGIBLE ASSETS - Net	349	409
GOODWILL	9,880	9,880
TRADEMARKS	3,331	3,331
DEFERRED INCOME TAXES	2,988	1,491
INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK	7,036	6,979
OTHER ASSETS (includes \$82 at September 29, 2018 and \$71 at September 30, 2017 related to VIEs)	2,677	2,679
<b>TOTAL ASSETS</b>	<b>\$ 84,737</b>	<b>\$ 80,067</b>
<b>LIABILITIES AND EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade (includes \$158 at September 29, 2018 and \$116 at September 30, 2017 related to VIEs)	\$ 5,019	\$ 4,750
Accrued expenses and other current liabilities (includes \$348 at September 29, 2018 and \$260 at September 30, 2017 related to VIEs)	10,702	10,176
Dividend payable	868	857
Borrowings under credit facility	-	6,198
Current portion of notes payable	1,251	4,174
Total current liabilities	17,840	26,155
OPERATING LEASE DEFERRED CREDIT (includes \$(21) at September 29, 2018 and \$51 at September 30, 2017 related to VIEs)	3,301	3,648
NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs	19,860	7,824
<b>TOTAL LIABILITIES</b>	<b>41,001</b>	<b>37,627</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>EQUITY:</b>		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding, 3,470 shares at September 29, 2018 and 3,428 shares at September 30, 2017	35	34
Additional paid-in capital	12,897	12,639
Retained earnings	29,364	27,771
Total Ark Restaurants Corp. shareholders' equity	42,296	40,444
NON-CONTROLLING INTERESTS	1,440	1,996
<b>TOTAL EQUITY</b>	<b>43,736</b>	<b>42,440</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 84,737</b>	<b>\$ 80,067</b>

See notes to consolidated financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In Thousands, Except Per Share Amounts)

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

See notes to consolidated financial statements.

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

(In Thousands, Except Per Share Amounts)

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

See notes to consolidated financial statements.

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

(In Thousands)

	Year Ended	
	September 29, 2018	September 30, 2017
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income	\$ 5,073	\$ 4,757
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Stock-based compensation	47	-
Loss on closure of restaurants	-	120
Gain on sale of Ark Jupiter RI, LLC	-	(1,637)
Loss on disposal of assets	-	283
Deferred income taxes	(1,497)	1,550
Accrued interest on note receivable from NMR	(57)	(56)
Depreciation and amortization	5,074	4,132
Amortization of deferred financing costs	21	46
Operating lease deferred credit	(347)	72
Changes in operating assets and liabilities:		
Accounts receivable	(99)	397
Inventories	(102)	193
Prepaid, refundable and accrued income taxes	224	(1,373)
Prepaid expenses and other current assets	441	546
Other assets	2	(175)
Accounts payable - trade	269	1,874
Accrued expenses and other current liabilities	526	(379)
Net cash provided by operating activities	<u>9,575</u>	<u>10,350</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(5,063)	(13,904)
Loans and advances made to employees	(136)	(121)
Payments received on employee receivables	149	175
Proceeds from the sale of Ark Jupiter RI, LLC	-	2,474
Purchase of the Oyster House	-	(3,043)
Additional investment in Meadowlands Newmark LLC	-	(222)
Net cash used in investing activities	<u>(5,050)</u>	<u>(14,641)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on notes payable	(2,067)	(3,951)
Borrowings under credit facility	5,086	6,198
Payment of debt financing costs	(125)	-
Dividends paid	(3,443)	(2,569)
Proceeds from issuance of stock upon exercise of stock options	604	72
Distributions to non-controlling interests	(974)	(1,292)
Net cash used in financing activities	<u>(919)</u>	<u>(1,542)</u>
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	3,606	(5,833)
CASH AND CASH EQUIVALENTS, Beginning of year	1,406	7,239
CASH AND CASH EQUIVALENTS, End of year	<u>\$ 5,012</u>	<u>\$ 1,406</u>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
Cash paid during the year for:		
Interest	<u>\$ 1,008</u>	<u>\$ 707</u>
Income taxes	<u>\$ 127</u>	<u>\$ 1,490</u>
Non-cash financing activities:		
Note payable in connection with the purchase of the Oyster House	<u>\$ -</u>	<u>\$ 8,000</u>
Change in excess tax benefits from stock-based compensation	<u>\$ -</u>	<u>\$ (389)</u>
Refinancing of credit facility borrowings to term notes	<u>\$ 4,430</u>	<u>\$ -</u>
Accrued dividend	<u>\$ 868</u>	<u>\$ 857</u>

See notes to consolidated financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

---

**1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. CONSOLIDATION OF VARIABLE INTEREST ENTITIES**

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



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

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

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

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

### 3. RECENT RESTAURANT EXPANSION

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

Inventory	\$ 293
Land and buildings	6,650
Furniture, fixtures and equipment	395
Trademarks	1,720
Goodwill	1,985
	<u>\$ 11,043</u>

The Consolidated Statement of Income for the year ended September 30, 2017 includes revenues and pre-tax income of approximately \$11,804,000 and \$1,243,000, respectively, related to the *Oyster House* properties. The unaudited pro forma financial information set forth below is based upon the Company's historical Consolidated Statements of Income for the year ended September 30, 2017 and includes the results of operations for the *Oyster House* properties for the periods prior to acquisition. The unaudited pro forma financial information is presented

for informational purposes only and may not be indicative of what actual results of operations would have been had the acquisition of the *Oyster House* properties occurred on the dates indicated, nor does it purport to represent the results of operations for future periods.

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

#### 4. RECENT RESTAURANT DISPOSITIONS

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

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

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

#### 5. INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC (“NMR”) through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR with a 63.7% ownership interest. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR and on February 7, 2017, the Company invested an additional \$222,000 in NMR, both as a result of capital calls, bringing its total investment to \$5,108,000 with no change in ownership. This investment has been accounted for based on the cost method.

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

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

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

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

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

## 6. FIXED ASSETS

Fixed assets consist of the following:

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

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

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

## 7. INTANGIBLE ASSETS, GOODWILL AND TRADEMARKS

Intangible assets consist of the following:

	<u>September 29, 2018</u>	<u>September 30, 2017</u>
	(In thousands)	
Purchased leasehold rights (a)	\$ 2,395	\$ 2,395
Noncompete agreements and other	<u>253</u>	<u>253</u>
	2,648	2,648
Less accumulated amortization	<u>2,299</u>	<u>2,239</u>
Total intangible assets	<u><u>\$ 349</u></u>	<u><u>\$ 409</u></u>

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

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

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

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

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



## 8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

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

## 9. NOTES PAYABLE – BANK

Long-term debt consists of the following:

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

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

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

- *Promissory Note – Rustic Inn purchase* – On February 25, 2013, the Company issued a promissory note to BHBM for \$3,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 36 equal monthly installments of \$83,333, commencing on March 25, 2013. On February 24, 2014, in connection with the acquisition of *The Rustic Inn*, the Company borrowed an additional \$6,000,000 from BHBM under the same terms and conditions as the original loan which was consolidated with the remaining principal balance from the original borrowing at that date. The new loan was payable in 60 equal monthly installments of \$134,722, which commenced on March 25, 2014. In connection with the above refinancing, this note was amended and restated and increased by \$2,783,333 of credit facility borrowings. The new principal amount of \$4,400,000, which is secured by a mortgage on *The Rustic Inn* real estate, is payable in 27 equal quarterly installments of \$73,334, which commenced on September 1, 2018, with a balloon payment of \$2,419,990 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.
- *Promissory Note – Shuckers purchase* – On October 22, 2015, in connection with the acquisition of *Shuckers*, the Company issued a promissory note to BHBM for \$5,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$83,333, commencing on November 22, 2015. In connection with the above refinancing, this note was amended and restated and increased by \$2,433,324 of credit facility borrowings. The new principal amount of \$5,100,000, which is secured by a mortgage on the *Shuckers* real estate, is payable in 27 equal quarterly installments of \$85,000, which commenced on September 1, 2018, with a balloon payment of \$2,804,988 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.
- *Promissory Note – Oyster House purchase* – On November 30, 2016, in connection with the acquisition of the *Oyster House* properties, the Company issued a promissory note under the Revolving Facility to BHBM for \$8,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$133,273, commencing on January 1, 2017. In connection with the above refinancing, this note was amended and restated and separated into two notes. The first note, in the principal amount of \$3,300,000, is secured by a mortgage on the *Oyster House Gulf Shores* real estate, is payable in 19 equal quarterly installments of \$117,854, which commenced on September 1, 2018, with a balloon payment of \$1,060,717 on June 1, 2023 and bears interest at LIBOR plus 3.5% per annum. The second note, in the principal amount of \$2,200,000, is secured by a mortgage on the *Oyster House Spanish Fort* real estate, is payable in 27 equal quarterly installments of \$36,667, which commenced on September 1, 2018, with a balloon payment of \$1,209,995 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.

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

Borrowings under the Revolving Facility, which include all of the above promissory notes, are secured by all tangible and intangible personal property (including accounts receivable, inventory, equipment, general

intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, intellectual property and deposit accounts) and fixtures of the Company.

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

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

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

## 10. COMMITMENTS AND CONTINGENCIES

**Leases** — The Company leases its restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2033. Most of the leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of the restaurants' sales in excess of stipulated amounts at such facility and in one instance based on profits.

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

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

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

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

On January 12, 2016, the Company entered into an Amended and Restated Lease for its Sequoia property in Washington D.C. extending the lease for 15 years through November 30, 2032 with one additional five-year option. Annual rent under the new lease is approximately \$1,200,000 increasing annually through expiration. Under the terms of the agreement, the property was closed January 1, 2017 for renovation and re-concepting which cost approximately \$11,000,000. In connection with this closure, the Company recognized an impairment

loss related to fixed asset disposals in the amount of \$283,000, which is included in depreciation and amortization expense for the year ended September 30, 2017. The restaurant re-opened in June 2017.

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

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

## 11. STOCK OPTIONS

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

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

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

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

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

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

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

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

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

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

## 12. INCOME TAXES

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

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

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

The provision for income taxes consists of the following:

	<b>Year Ended</b>	
	<b>September 29, 2018</b>	<b>September 30, 2017</b>
	(In thousands)	
Current provision (benefit):		
Federal	\$ 30	\$ (144)
State and local	320	287
	<u>350</u>	<u>143</u>
Deferred provision (benefit):		
Federal	(798)	1,391
State and local	(699)	134
	<u>(1,497)</u>	<u>1,525</u>
	<u>\$ (1,147)</u>	<u>\$ 1,668</u>

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

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

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:

	<b>September 29, 2018</b>	<b>September 30, 2017</b>
	(In thousands)	
Deferred tax assets:		
State net operating loss carryforwards	\$ 4,141	\$ 3,210
Operating lease deferred credits	513	826
Deferred compensation	364	580
Tax credits	802	-
Other	98	99
	<hr/>	<hr/>
Deferred tax assets, before valuation allowance	5,918	4,715
Valuation allowance	(311)	(354)
	<hr/>	<hr/>
Deferred tax assets, net of valuation allowance	5,607	4,361
	<hr/>	<hr/>
Deferred tax liabilities:		
Depreciation and amortization	(2,080)	(2,160)
Partnership investments	(329)	(291)
Prepaid expenses	(210)	(419)
	<hr/>	<hr/>
Deferred tax liabilities	(2,619)	(2,870)
	<hr/>	<hr/>
Net deferred tax assets (liabilities)	\$ 2,988	\$ 1,491
	<hr/>	<hr/>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including recent operating profitability, forecasts of future earnings and the duration of statutory carryforward periods. The Company recorded a valuation allowance of \$311,000 and \$354,000 as of September 29, 2018 and September 30, 2017, respectively; attributable to state and local net operating loss carryforwards which are not realizable on a more-likely-than-not basis. During fiscal 2018, the Company's valuation allowance decreased by approximately \$43,000 as the Company determined that certain state net operating losses became realizable on a more-likely-than-not basis.

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

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



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

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

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

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

### 13. INCOME PER SHARE OF COMMON STOCK

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

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

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



#### **14. RELATED PARTY TRANSACTIONS**

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

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

#### **15. SUBSEQUENT EVENTS**

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

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