

ARK RESTAURANTS CORP  
Form 10-K/A  
May 02, 2014  
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

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

For the fiscal year ended September 28, 2013

or,

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

Commission File No. 1-09453

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

New York  
(State or Other Jurisdiction of  
Incorporation or Organization)

13-3156768  
(IRS Employer Identification No.)

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

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

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

Title of each class	Name of each exchange on which registered
Common Stock, par value \$.01 per share	The NASDAQ Stock Market LLC

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

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  
Yes  No  S

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting

company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer

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

Accelerated filer

Smaller Reporting  
Company

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

As of March 30, 2013, the last business day of the registrant’s most recently completed second fiscal quarter, the aggregate market value of voting and non-voting stock held by non-affiliates of the registrant was \$37,767,572.

At December 18, 2013, there were outstanding 3,256,395 shares of the Registrant’s Common Stock, \$.01 par value.

#### DOCUMENTS INCORPORATED BY REFERENCE

(1) In accordance with General Instruction G (3) of Form 10-K, certain information required by Part III hereof will either be incorporated into this Form 10-K by reference to the registrant’s definitive proxy statement for the registrant’s 2013 Annual Meeting of Stockholders filed within 120 days of September 28, 2013 or will be included in an amendment to this Form 10-K filed within 120 days of September 28, 2013.

**EXPLANATORY NOTE**

This Amendment No. 1 on Form 10-K/A (this “Amendment”) to the Annual Report on Form 10-K of Ark Restaurants Corp (the “Company”) for the fiscal year ended September 28, 2013, initially filed with the Securities and Exchange Commission (the “SEC”) on December 23, 2013 (the “Original Filing”), is being filed to correct a certain typographical error in the Original Filing. The report of the independent registered public accounting firm in the Original Filing in Item 8 inadvertently stated that the audits were conducted in accordance with the *auditing standards* of the PCAOB.

This Amendment No. 1 is being filed solely to correct the report of the independent registered public accounting firm to state that the audits were conducted in accordance with the *standards* of the PCAOB, as was intended to be filed with the Original Filing.

In addition, pursuant to the rules of the SEC, “Item 8. Financial Statements and Supplementary Data” is being filed in its entirety in this Amendment, however, the only change in Item 8 from the Original Filing has been to correct the report of the independent registered public accounting firm to state that the audits were conducted in accordance with the *standards* of the PCAOB. Further, the exhibit list in Item 15 of Part IV of the Original Filing has been amended to contain current dated certifications from the Company’s Chief Executive Officer and Chief Financial Officer, as required by Section 302 of the Sarbanes-Oxley Act of 2002. The certifications of the Company’s Chief Executive Officer and Chief Financial Officer are attached as exhibits to this Amendment.

Except for the foregoing amended information, this Amendment does not alter or update any other information contained in the Original Filing. Therefore, this Amendment should be read together with other documents the Company has filed with the SEC subsequent to the Original Filing. Information in such reports and documents updates and supersedes certain information contained in the Original Filing.

Item 8. Financial Statements and Supplementary Data

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

1

PART IV

Item 15. Exhibits and Financial Statement Schedules

	<u>Page</u>
(a)(1) Financial Statements:	
<u>Report of Independent Registered Public Accounting Firm</u>	F-1
<u>Consolidated Balance Sheets --</u> <u>at September 28, 2013 and September 29, 2012</u>	F-2
<u>Consolidated Statements of Income --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-3
<u>Consolidated Statements of Comprehensive Income --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-4
<u>Consolidated Statements of Changes in Equity --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-5
<u>Consolidated Statements of Cash Flows --</u> <u>years ended September 28, 2013 and September 29, 2012</u>	F-6
<u>Notes to Consolidated Financial Statements</u>	F-7

(2) Financial Statement Schedules

None.

(3) Exhibits:

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

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders  
Ark Restaurants Corp.

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

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

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

/s/ CohnReznick LLP

Jericho, New York  
December 23, 2013

F-1

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

(In Thousands, Except Per Share Amounts)

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



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

See notes to consolidated financial statements.

F-2

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

(In Thousands, Except Per Share Amounts)

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

See notes to consolidated financial statements.

F-3

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

(In Thousands)

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

See notes to consolidated financial statements.

F-4

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

(In Thousands)

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

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

See notes to consolidated financial statements.

F-5

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

(In Thousands)

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

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

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

See notes to consolidated financial statements.

F-6



ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

As of September 28, 2013, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 20 restaurants and bars, 22 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customers and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance.

The Company operates five restaurants in New York City, three in Washington, D.C., seven in Las Vegas, Nevada, three in Atlantic City, New Jersey, one at the Foxwoods Resort Casino in Ledyard, Connecticut and one in Boston, Massachusetts. The Las Vegas operations include five restaurants within the New York-New York Hotel & Casino Resort and operation of the hotel’s room service, banquet facilities, employee dining room and six food court concepts; one bar within the Venetian Casino Resort as well as three food court concepts; and one restaurant within the Planet Hollywood Resort and Casino. In Atlantic City, New Jersey, the Company operates a restaurant and a bar in the Resorts Atlantic City Hotel and Casino and a restaurant and bar at the Tropicana Hotel and Casino. The operation at the Foxwoods Resort Casino consists of one fast food concept and a restaurant. In Boston, Massachusetts, the Company operates a restaurant in the Faneuil Hall Marketplace. The Florida operations under management include five fast food facilities in Tampa, Florida and seven fast food facilities in Hollywood, Florida, each at a Hard Rock Hotel and Casino.

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

**Accounting Period** — The Company’s fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 28, 2013 and September 29, 2012 included 52 weeks.

**Use of Estimates** — The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management’s most difficult and subjective judgments include allowances for potential bad debts on receivables, inventories, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its

tax assets and other matters. Because of the uncertainty in such estimates, actual results may differ from these estimates.

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

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

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

F-7

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

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

**Concentrations of Credit Risk** — Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents. The Company reduces credit risk by placing its cash and cash equivalents with major financial institutions with high credit ratings. At times, such amounts may exceed Federally insured limits.

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

**Accounts Receivable** — Accounts receivable is primarily comprised of normal business receivables such as credit card receivables that are paid off in a short period of time and amounts due from the hotels operators where the Company has a location, and are recorded when the products or services have been delivered. The Company reviews the collectability of its receivables on an ongoing basis, and provides for an allowance when it considers the entity unable to meet its obligation.

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

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

The Company offers customers the opportunity to purchase gift certificates. At the time of purchase by the customer, the Company records a gift certificate liability for the face value of the certificate purchased. The Company recognizes the revenue and reduces the gift certificate liability when the certificate is redeemed. The Company does not reduce its recorded liability for potential non-use of purchased gift cards. The Company also issues gift cards to service providers and to others for no consideration. Costs associated with these issuances are recognized at the time of

redemption.

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

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

The Company includes in construction in progress improvements to restaurants that are under construction. Once the projects have been completed, the Company begins depreciating and amortizing the assets. Start-up costs

F-8

incurred during the construction period of restaurants, including rental of premises, training and payroll, are expensed as incurred.

**Intangible Assets** — Intangible assets consist principally of purchased leasehold rights, operating rights and covenants not to compete. Costs associated with acquiring leases and subleases, principally purchased leasehold rights, and operating rights have been capitalized and are being amortized on the straight-line method based upon the initial terms of the applicable lease agreements, which range from 9 to 20 years. Covenants not to compete arising from restaurant acquisitions are amortized over the contractual period, typically five years.

**Long-lived Assets** — Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In the evaluation of the fair value and future benefits of long-lived assets, the Company performs an analysis of the anticipated undiscounted future net cash flows of the related long-lived assets. If the carrying value of the related asset exceeds the undiscounted cash flows, the carrying value is reduced to its fair value. Various factors including estimated future sales growth and estimated profit margins are included in this analysis. No impairment charges were necessary for the year ended September 28, 2013. See Note 6 for a discussion of impairment charges for long-lived assets recorded in fiscal 2012.

**Goodwill and Trademarks** — Goodwill is recorded when the purchase price paid for an acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. Trademarks, which were acquired in connection with the *Durgin Park* acquisition, are considered to have an indefinite life. Goodwill and trademarks are not amortized, but are subject to impairment analysis at least once annually or more frequently upon the occurrence of an event or when circumstances indicate that a reporting unit's carrying amount is greater than its fair value. At September 28, 2013, the Company performed both a qualitative and quantitative assessment of factors to determine whether further impairment testing is required. Based on the results of the work performed, the Company has concluded that no impairment loss was warranted at September 28, 2013. Qualitative factors considered in this assessment include industry and market considerations, overall financial performance and other relevant events, management expertise and stability at key positions. Additional impairment analyses at future dates may be performed to determine if indicators of impairment are present, and if so, such amount will be determined and the associated charge will be recorded to the Consolidated Statements of Income.

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

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

***Defined Contribution Plans*** — The Company offers a defined contribution savings plan (the “Plan”) to all of its full-time employees. Eligible employees may contribute pre-tax amounts to the Plan subject to the Internal Revenue Code limitations. Company contributions to the Plan are at the discretion of the Board of Directors. During the years ended September 28, 2013 and September 29, 2012, the Company did not make any contributions to the Plan.

F-9

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

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

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

**Income Per Share of Common Stock** — Basic net income per share is calculated on the basis of the weighted average number of common shares outstanding during each period. Diluted net income per share reflects the additional dilutive effect of potentially dilutive shares (principally those arising from the assumed exercise of stock options).

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

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

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of the Company's stock, the expected life of the options and the risk free interest rate. The assumptions used for the 2012 grant include a risk free interest rate of 1.67%, volatility of 36.2%, a dividend yield of 6.13% and an expected life of 6.25 years.

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

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



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

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

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

## 2. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

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

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

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



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

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

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

### 3. RECENT RESTAURANT EXPANSION

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

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

#### 4. RECENT RESTAURANT DISPOSITIONS

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

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

F-12

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

The results of discontinued operations were as follows:

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

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

## 5. COST METHOD INVESTMENT

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC (“NMR”) through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR. In conjunction with this investment, the Company also entered into a long-term agreement with NMR to provide food and beverage services for the new racing facilities at the Meadowlands Racetrack in northern New Jersey. NMR has a long-term lease with the State of New Jersey and the new facility opened in November 2013. The Company’s agreement extends to any future development at the race track site.

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



**6. FIXED ASSETS**

Fixed assets consist of the following:

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

Depreciation and amortization expense related to fixed assets for the years ended September 28, 2013 and September 29, 2012 was \$4,295,000 and \$4,102,000, respectively.

Management continually evaluates unfavorable cash flows, if any, related to underperforming restaurants. Periodically it is concluded that certain properties have become impaired based on their existing and anticipated future economic outlook in their respective markets. In such instances, we may impair assets to reduce their carrying values to fair values. Estimated fair values of impaired properties are based on comparable valuations, cash flows and/or management judgment. During the year ended September 29, 2012, the Company recorded a charge of \$379,000 to impair the leasehold improvements and equipment of an underperforming restaurant. No impairment charges were necessary for the year ended September 28, 2013.

**7. NOTE RECEIVABLE**

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

8.

## INTANGIBLE ASSETS

Intangible assets consist of the following:

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

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

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

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

## 9. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

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



\$9,275 \$ 8,873

10.

## NOTES PAYABLE

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

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

F-15

meet minimum quarterly tangible net worth amounts, as defined, and minimum annual net income amounts, and contains customary representations, warranties and affirmative covenants. The agreement also contains customary negative covenants, subject to negotiated exceptions, on liens, relating to other indebtedness, capital expenditures, liens, affiliate transactions, disposal of assets and certain changes in ownership. The Company was in compliance with all debt covenants as of September 28, 2013.

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

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

11. COMMITMENTS AND CONTINGENCIES

**Leases** — The Company leases its restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2032. Most of the leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of the restaurants' sales in excess of stipulated amounts at such facility and in one instance based on profits.

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

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

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

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

***Legal Proceedings*** — In the ordinary course of its business, the Company is a party to various lawsuits arising from accidents at its restaurants and worker's compensation claims, which are generally handled by the Company's insurance carriers. The employment by the Company of management personnel, waiters, waitresses and kitchen staff at a number of different restaurants has resulted in the institution, from time to time, of litigation alleging violation by the Company of employment discrimination laws. Management believes, based in part on the advice

F-16

of counsel, that the ultimate resolution of these matters will not have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

## 12.

## STOCK OPTIONS

The Company has options outstanding under two stock option plans, the 2004 Stock Option Plan (the "2004 Plan") and the 2010 Stock Option Plan (the "2010 Plan"), which was approved by shareholders in the second quarter of 2010. Effective with this approval, the Company terminated the 2004 Plan. This action terminated the 400 authorized but unissued options under the 2004 Plan, but it did not affect any of the options previously issued under the 2004 Plan. Options granted under the 2004 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant.

The 2010 Stock Option Plan is the Company's only equity compensation plan currently in effect. Under the 2010 Stock Option Plan, 500,000 options were authorized for future grant. Options granted under the 2010 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant.

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

The following table summarizes stock option activity under all plans:

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

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

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

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

F-17

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining contractual life (in years)	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining contractual life (in years)
\$ 12.04	158,300	\$ 12.04	5.6	158,300	\$ 12.04	5.6
\$ 14.40	238,300	\$ 14.40	8.7	119,150	\$ 14.40	8.7
\$ 29.60	136,500	\$ 29.60	1.2	136,500	\$ 29.60	1.2
\$ 32.15	90,000	\$ 32.15	3.2	90,000	\$ 32.15	3.2
	623,100	\$ 19.69	5.5	503,950	\$ 20.95	4.7

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

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

13.

INCOME TAXES

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

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



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

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

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

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

In assessing the realizability of deferred tax assets, Management considers whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. The deferred tax valuation allowance of \$528,000 and \$234,000 as of September 28, 2013 and September 29, 2012, respectively, was attributable to state and local net operating loss carryforwards which are not



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

F-19

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

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

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

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

14. OTHER INCOME

Other income consists of the following:

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

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

F-20

## 15. INCOME PER SHARE OF COMMON STOCK

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

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

From discontinued operations:

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

From net income:

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

F-21

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

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

## **16. RELATED PARTY TRANSACTIONS**

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

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

## **17. SUBSEQUENT EVENTS**

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

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

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

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

\*\*\*\*\*

F-22

Signatures

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

ARK RESTAURANTS  
CORP.

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

Date: May 2, 2014

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/Michael Weinstein (Michael Weinstein)	Chairman of the Board and Chief Executive Officer	May 2, 2014
/s/Vincent Pascal (Vincent Pascal)	Senior Vice President and Director	May 2, 2014
/s/Robert Stewart (Robert Stewart)	President, Chief Financial Officer and Director (Principal Financial and Accounting Officer)	May 2, 2014
/s/Marcia Allen (Marcia Allen)	Director	May 2, 2014
/s/Steven Shulman (Steven Shulman)	Director	May 2, 2014
/s/Paul Gordon (Paul Gordon)	Senior Vice President and Director	May 2, 2014



Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

/s/Bruce R. Lewin (Bruce R. Lewin)	Director	May 2, 2014
/s/Arthur Stainman (Arthur Stainman)	Director	May 2, 2014
/s/ Stephen Novick (Stephen Novick)	Director	May 2, 2014

Exhibits Index

- 3.1 Certificate of Incorporation of the Registrant, filed with the Secretary of State of the State of New York on January 4, 1983.
- 3.2 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on October 11, 1985.
- 3.3 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on July 21, 1988.
- 3.4 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on May 13, 1997.
- 3.5 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed on April 24, 2002 incorporated by reference to Exhibit 3.5 to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 30, 2002 (the "Second Quarter 2002 Form 10-Q").
- 3.6 By-Laws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-18 filed with the Securities and Exchange Commission on October 17, 1985.
- 10.1 Amended and Restated Redemption Agreement dated June 29, 1993 between the Registrant and Michael Weinstein, incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999 ("1994 10-K").
- 10.2 Form of Indemnification Agreement entered into between the Registrant and each of Michael Weinstein, Ernest Bogen, Vincent Pascal, Robert Towers, Jay Galin, Robert Stewart, Bruce R. Lewin, Paul Gordon and Donald D. Shack, incorporated by reference to Exhibit 10.2 to the 1994 10-K.
- 10.3 Ark Restaurants Corp. Amended Stock Option Plan, incorporated by reference to Exhibit 10.3 to the 1994 10-K.
- 10.4 Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999.
- 10.5 Ark Restaurants Corp. 1996 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No. 1) filed on March 16, 2001.
- 10.6 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas America Corp., incorporated by reference to Exhibit 10.6 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 3, 1998 (the "1998 10-K").
- 10.7 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Festival Food Corp., incorporated by reference to Exhibit 10.7 to the 1998 10-K.
- 10.8 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Steakhouse Corp., incorporated by reference to Exhibit 10.8 to the 1998 10-K.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K/A

- Amendment dated August 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of  
10.9 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.9 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2000 (the "2000 10-K").
- Amendment dated November 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of  
10.10 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.10 to the 2000 10-K.
- Amendment dated November 1, 2001 to the Fourth Amended and Restated Credit Agreement dated as of  
10.11 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 29, 2001 (the "2001 10-K").
- Amendment dated December 20, 2001 to the Fourth Amended and Restated Credit Agreement dated as of  
10.12 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 of the 2001 10-K.
- Amendment dated as of April 23, 2002 to the Fourth Amended and Restated Credit Agreement dated as of  
10.13 December 27, 1999 between us and Bank Leumi USA, incorporated by reference to Exhibit 10.13 of the Second Quarter 2002 Form 10-Q.
- Amendment dated as of January 22, 2002 to the Fourth Amended and Restated Credit Agreement dated as of  
10.14 December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.14 of the First Quarter 2003 Form 10-Q.
- Ark Restaurants Corp. 2004 Stock Option Plan, as amended, incorporated by reference to the Registrant's  
10.15 Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on January 26, 2004.
- Ark Restaurants Corp. 2010 Stock Option Plan, incorporated by reference to the Registrant's Definitive Proxy  
10.16 Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on February 1, 2010.
- 14 Code of Ethics, incorporated by reference to Exhibit 14.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 27, 2003.
- 16 Letter from Deloitte & Touche LLP regarding change in certifying accountants, incorporated by reference from the exhibit included with our Current Report on Form 8-K filed with the SEC on January 15, 2004 and our Current Report on Form 8-K/A filed with the SEC on January 16, 2004.
- 21 Subsidiaries of the Registrant.
- \*23 Consent of CohnReznick LLP.
- \*31.1 Certification of Chief Executive Officer.

\*31.2 Certification of Chief Financial Officer.

\*32 Section 1350 Certification.

101.INS\*\* XBRL Instance Document

101.SCH\*\* XBRL Taxonomy Extension Schema Document

101.CAL\*\* XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF\*\* XBRL Taxonomy Extension Definition Linkbase Document

101.LAB\*\* XBRL Taxonomy Extension Label Linkbase Document

101.PRE\*\* XBRL Taxonomy Extension Presentation Linkbase Document

\* Filed herewith.

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